

**ORDINANCE NO. 23-01**

**Introduced by: Alton Hardee, Jr., Commission President**

**AN ORDINANCE OF THE TOWN OF QUEENSTOWN TO REPEAL AND REPLACE THE TOWN PROCUREMENT POLICY TO GOVERN PURCHASES BY THE TOWN**

WHEREAS, pursuant to the Charter of the Town of Queenstown, Section 19-49, the Commissioners have the authority to adopt rules and regulations concerning competitive bidding and Town purchases and contracts; and

WHEREAS, the Commissioners are authorized to provide for the publication and codification of all laws, ordinances, resolutions, or regulations adopted by the municipality; and

WHEREAS, the Commissioners have determined that it is desirable and in the public interest to repeal and enact a new Procurement Policy to govern competitive bidding and town purchases and contracts.

NOW THEREFORE, BE IT ENACTED AND ORDAINED BY THE COMMISSIONERS OF QUEENSTOWN, AS FOLLOWS:

**SECTION 1.** The Ordinance Establishing Purchasing Procedures for the Town of Queenstown is hereby repealed and replaced with the following:

**Purpose.**

The purpose of this Policy is:

- A. To implement the purchasing policies of the Town of Queenstown and establish a uniform system for regulating Town Procurements.
- B. To permit continuing development and establish safeguards for the quality and integrity of procurement policies and procedures.
- C. To ensure the fair and equitable treatment of all persons and/or vendors dealing with the procurement system and encourage broad-based competition within the free enterprise system.
- D. To ensure that every expenditure of public funds, including State and Federal funds, comply with the terms and conditions of the funding source. If State and Federal requirements conflict with the provisions of this Manual, nothing in this Manual shall prevent the Town from complying with the terms and conditions of the Federal or State requirements.

E. To establish different procurement procedures to be followed for different classifications of purchases based upon their dollar amount.

F. To provide taxpayers of the Town of Queenstown with an economical and efficient method of public purchasing.

### **Definitions.**

**AWARD** – A determination, after review, that a certain vendor will be given the contract.

**BID** – A price submitted by a vendor for a product or service estimated to cost more than twenty-five thousand dollars (\$25,000).

**BIDDER** – Any person who submits a quote, proposal or bid.

**EMERGENCY** – A sudden and unexpected occurrence or condition which the Commissioners reasonably could not foresee, posing an actual and immediate threat to the continuance of essential normal operation of a Town function or the need to cope with a public exigency.

**INVITATION TO BID OR REQUEST FOR PROPOSALS** – A written or published solicitation for expenditures more than \$25,000 issued by the Town to contract the procurement of supplies, services, equipment, or construction, which will ordinarily result in the award of the contract to the responsive and responsible bidder making the lowest responsive bid.

**PURCHASING AGENT** – The Clerk of the Town of Queenstown or such person as may be designated by the Commissioners.

**QUOTE** – Procedure used for expenditures less than \$25,000. Pricing can be obtained by written quotations, facsimile, email, or sealed competitive bid.

**RESPONSIVE BIDDER**- A bidder is responsive if their bid responds to the bid specifications in all material respects and contains no irregularities or deviations from the specifications that would affect the amount of the bid or otherwise give the bidder an unfair competitive advantage.

**RESPONSIBLE BIDDER**- A bidder that shows financial responsibility, integrity, skill, ability, and the likelihood the bidder will do faithful and satisfactory work.

### **Purchase of Tangible Assets.**

Purchases less than or equal to \$10,000.00 may be accomplished without securing competitive quotations if the prices are considered to be reasonable. Sufficient funds must have been appropriated in the budget and available for expenditure. The Town Clerk indicates by signature on the invoice that the price is fair and reasonable.

## **Quotations.**

Quotations for all transactions, on materials and/or services with estimated cost of \$10,000.01 up to \$25,000.00 not covered by a contractual agreement, state contract, or cooperative purchasing agreement shall be obtained. The Town Clerk or designee is responsible for obtaining quotations except for situations otherwise provided in this policy.

Quotations shall include the following:

- Company logo or letterhead
- Sales person's name and signature
- Telephone and email address
- Itemized price
- Delivery date

The Clerk must obtain a minimum of three written quotes. If unable to secure three quotes, adequate documentation of the effort must be provided for the Town's file.

## **Emergency Purchases.**

Notwithstanding any other provisions of this Ordinance, the Purchasing Agent may make or authorize others, subject to the approval of the Commissioners, to make emergency procurements of supplies, services or construction items when there exists a threat to the functioning of the Town, such as, the preservation or protection of property, health, welfare, or safety of any person provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be made and shall set forth the contractor's name, amount, and a listing of the item(s) procured under the contract.

## **Sole Source Purchases.**

Sole Source Purchases: A bid or contract may be awarded for a supply, service, or equipment without competition when it is determined that there is only one feasible source available for purchase that exists, and that the normal procurement process is not appropriate. Sole source purchasing serves a proper corporate and public purpose. The determination as to whether procurement shall be made as a sole source shall be made by the Commissioners. Such determination and the basis therefore shall be in writing. In the case of reasonable doubt, competition should be solicited. Any request by a department that procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other procurement method will be suitable or acceptable to meet the need.

## **Competitive bidding procedure.**

All Supplies and contractual services, except as otherwise provided in this Ordinance, shall be purchased by formal written contract from the lowest responsive and responsible bidder, after due notice inviting proposals when the estimated value shall exceed \$25,000.

In all purchases and or sales requiring competitive bidding, the purchasing agent shall:

- a. Provide that notice inviting bids be published at least one time in an official newspaper of general circulation in Queen Anne's County, at Town Hall, and on the Town website. Said notice shall run once at least five days preceding the last day set for the receipt of proposals. Said notice shall include a brief description of the item or items to be bid, the time and date on which sealed bids are to be received and the location to which bids are to be returned, and any special conditions to which the item or items may be subject. The notice shall contain the time, date and location of the bid opening, and all such openings are to be public. The notice shall also contain the name of the purchasing agent.
- b. Provide written specifications to all parties responding to the notice of the bid. Said specifications shall contain sufficient information to reasonably describe the item or items, services, materials, equipment, etc., being sought for purchase. The use of exclusive specifications to the prohibition of equal items, etc., is prohibited. The specifications shall also contain any bond and/or other special conditions attached or made a part of the bid requirements. Bid forms may be provided.

The purchasing agent shall also solicit sealed bids from all responsible prospective suppliers who have requested their names to be added to a bidders' list, which the purchasing agent shall maintain, by sending them a copy of such newspaper notice or such other notice as will acquaint them with the proposed purchase or sale. In any case, invitations sent to the vendors on the bidders' list shall be listed to commodities that are similar in character and ordinarily handled by the trade group to which the invitations are sent.

A Bid Bond may be prescribed in the public notices inviting bids. Unsuccessful bidders shall be entitled to return of surety. A successful bidder shall forfeit any surety upon failure on his part to enter a contract with the town within 15 days after the award.

**Bid opening procedure; Rejection of bidding.**

Bids shall be submitted sealed to the purchasing agent and shall be identified as a bid with the name of the project on the envelope or subject line in an email. Bids shall be opened in public at the time and place stated in the public notices.

The purchasing agent, with the approval of the Commissioners, shall have the authority to reject all bids for any one or more supplies or contractual services included in the proposed contract, or accept in part, when the public interest will be served thereby.

The purchasing agent shall not accept the bid of a contractor who is in default on the payment of taxes, licenses or other money's due the Town.

Contracts may be negotiated by the Commissioners. Contracts shall be awarded to the lowest responsive and responsible bidder. In determining lowest responsive and responsible bidder, in addition to price, the Commissioners shall consider:

1. The ability, capacity, and skill of the bidder to perform the contract or provide the service required;
2. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
3. The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
4. The quality of performance of previous contracts or services;
5. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;
6. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
7. The quality, availability, and adaptability of the supplies or contractual services to the particular use required;
8. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract; and
9. Whether the bidder has met the criteria of the bid specifications, terms, and conditions.

The Commissioners reserve the right to negotiate with vendors, reject any or all bids, or waive any informality in the bidding. Bids could be held for a maximum of 60 (sixty) days from the date of the opening of bids for the purpose of reviewing the bids and investigating the qualifications of bidders, prior to making a final decision.

### **Exceptions to competitive bidding**

The following types of contracts may be awarded without complying with the bidding procedures otherwise required under this subtitle:

- a. Purchases or contracts involving less than \$10,000;
- b. Purchases of supplies or services that are available only through one source;
- c. Contracts for professional services such as those of attorneys, physicians, architects, engineers, accountants, consultants, and others possessing a similar high degree of technical skill and expertise, provided that to the extent appropriate for the particular services to be provided, an attempt is made to secure competitive proposals for these services;
- d. Purchases or contracts made when the Town Commissioners or an individual acting in their absence determines that an immediate danger to person or property exists.
- e. From any other emergency with the approval of the Town Commissioners;  
and
- f. Purchases based on state, county or municipal contracts that are established by a legal or competitive process

**Ethics in contracting. Collusive bidding.**

Notification: When collusion is suspected among any bidders, a written notice of such suspicion shall be transmitted to the Town Attorney.

Retention of documents: All documents involved in any procurement in which collusion is suspected shall be retained until the Town Attorney approves their destruction. All retained documents shall be made available to the Town Attorney upon request.

Amount of liability for damages: A person who enters into a contract with the Town after engaging in collusion with another person for the purpose of defrauding the Town shall be liable for damages equal to three (3) times the value of the loss to the Town that is attributable to the collusion.

**Authority to debar or suspend contractors**

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Town Commissioners, after consulting with the Town Attorney are authorized to debar a person for cause from consideration for award of contracts. The debarment shall be for a period of not more than five (5) years. After consultation with the Town Attorney, the Town Commissioners are authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity that might lead to debarment. The suspension shall not be for a period less than three (3) years.

The causes for debarment include:

1. Conviction for commission of a criminal offense in relation to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
2. Conviction under State or Federal statutes for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Town contractor;
3. Conviction under State or Federal antitrust statutes;
4. Violation of contract provisions, as set forth below, of a character which is regarded to be so serious as to justify debarment action:
  - a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;
  - b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one (1) or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment
5. Any other cause determined to be so serious and compelling as to affect responsibility as a Town contractor, including debarment by another governmental entity.

**Ethics of Town officers and employees; violation of competitive bidding regulations declared a misdemeanor.**

1. No contract shall be let or awarded in which any official or employee of the Town is financially interested and through which the official or employee may individually profit financially, nor shall any official or employee of the Town, in any capacity whatsoever, represent any person where such representation involves an appearance before the Town Commissioners or before any department of the administrative service of the Town. Any contract in violation of the provisions of this subsection shall be void, and any person found responsible for the making of a contract in willful violation of the provisions of this subsection shall be guilty of a misdemeanor.
2. For the purposes of section (1), a person who owns less the five (5) percent of the stock of any publicly held corporation listed on a national stock exchange shall not be considered to be financially interested.

**Section 2.** If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town Commissioners of Queenstown hereby declare that they would have passed this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

ORDAINED, APPROVED, AND PASSED by the Town Commissioners for the Town of Queenstown on this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

WITNESS:

TOWN COMMISSIONERS FOR THE  
TOWN OF QUEENSTOWN:

\_\_\_\_\_  
Aaron Horney, Town Clerk-Treasurer

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Alton Hardee, President

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Aaron Horney, Town Clerk-Treasurer

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Thomas B. Willis, Jr., Commissioner

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Aaron Horney, Town Clerk-Treasurer

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Bryon Callahan, Commissioner