



**PROCUREMENT OFFICE**  
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## **PROCUREMENT POLICIES & PROCEDURES:**

M.G.L. CH. 30B – SUPPLIES AND SERVICES

### **INTRODUCTION TO THE PROCUREMENT OFFICE**

Any purchase or disposition made by the Town of Edgartown is subject to Massachusetts General Law and Federal Law governing public purchasing. The nature of the purchase dictates which law/s it must adhere to. In addition to the statutes enforced by the State, the Town is subject to the policies it has implemented to ensure sound business practices. The Town must comply with legal requirements, or its procurements are invalid and any resulting contract is unenforceable.

Town policy consists of self-imposed requirements which will always be stricter than legal requirements. *Town Policy requirements may be waived; legal requirements may not.* These policies are enforced by the Procurement Office; all purchases and dispositions above a certain financial threshold must be approved by the Procurement Officer as well as the Town Accountant.

The objectives of the Procurement Office are to obtain the materials, services and facilities required by each department when they are needed, at the best price reasonably available, through open, fair competition and at a reasonable cost. These objectives apply to a broad range of public purchases: all supplies, equipment, services, real property (M.G.L. c. 30B), design services (M.G.L. c. 7c), public works (M.G.L. c. 30 39M) and construction (M.G.L. c. 149).

The Procurement Office aims to fulfill both a service role as well as a control function. The service role focuses on helping a department obtain what it needs, while the control function entails the implementation and monitoring of policies and procedures designed to safeguard the Town's assets by reducing the level of certain risks.

The Town has no policy requirements for public works and building construction, so only legal requirements (c. 149 and c. 30 39M) apply.

These are the Town's Policies and Procedures, in conjunction with State/Federal Law, governing public purchases:

### **BIDDING POLICIES**

**M.G.L. c. 30B** establishes procedures to follow for most agreements for acquisitions of supplies and services, dispositions of surplus supplies, and real property acquisitions and dispositions by the Town. *Every Chapter 30B contract of \$10,000 or more must be signed by an individual that is authorized to execute contracts.* Chapter 30B does not apply to contracts governed by specific provisions of other statutes, such as the public construction laws, the designer selection law, or the law governing takings by eminent domain. Most of the Town's agreements with vendors for supplies and services,

including agreements to buy, rent, lease, lease-purchase or otherwise acquire supplies or services, are subject to Chapter 30B.

The CPO (Chief Procurement Officer) is responsible for all activities related to buying, leasing, renting or otherwise acquiring supplies and services for all departments, regardless of the contract value. This responsibility includes overseeing the solicitation; evaluating quotes, bids and proposals; and awarding contracts. The CPO ensures that the Town's contracting practices are carried out in accordance with state law and local requirements.

## **DEFINITIONS**

- **“Supplies”**: are defined in the law as “all property, other than real property, including equipment, materials and printing and further including services incidental to the delivery, conveyance and installation of such property.
- **“Services”**: are defined as “the furnishing of labor, time or effort by a contractor, not involving the furnishing of a specific end product other than reports.”
- **“Surplus Supplies”**: Chapter 30B applies to the disposal of any supply with resale or salvage value. If the value of the surplus supply is less than \$10,000, you will follow the Town's written procedures. For supplies valued at \$10,000 or more, the Chapter 30B procedures include solicitations for sealed bids, public auctions or the use of an established market.
- **“Real Property”**: Chapter 30B governs agreements to rent, convey or otherwise dispose of an interest in real property, as well as agreements to acquire an interest in real property. The law does not apply to residential rentals to qualified tenants by a housing or community development authority.
- **“IFB”**: Invitation for Bids; A process by which bids are submitted and evaluated and contract award is based on lowest price offered by a responsible and eligible bidder.
- **“RFP”**: Request for Proposals; A process by which non-price based proposals are submitted separately from price-based proposals. The non-price proposals are evaluated by a Committee, based on Comparative Criteria defined in the RFP, before the price offered is considered. This process allows the Town to award a contract based on factors other than the price.

## **DELEGATIONS**

Chapter 30B allows the CPO wide latitude to delegate powers and duties to other employees. A delegation can be specific and limited to a particular purchase or class of purchases, or it can be more general. Any delegation of the CPO's responsibilities, and any amendment to or revocation of a delegation, must be in writing, signed by the CPO, and submitted to the Office of the Inspector General. If a Department has not been given delegated authority by the Procurement Officer, any purchase over \$5,000 must be approved by the CPO.

## **CONTRACT TERMS**

The Town may enter into a Chapter 30B procurement contract for up to three years, including the term of any renewal, extension or option. A contract for supplies or services with a term of more than three years, including the term of any renewal, extension or option, is permissible only if a longer contract has been authorized by a majority vote at Town Meeting.

When soliciting bids for any project, the total contract term determines the value of the contract. A three year contract will always be a one-year contract with two one-year options for renewal, however, the value of that contract is determined by the entire contract length; in other words, the value of all three years.

**EXAMPLE:** A contract procured for services for one year that amounts to \$20,000 can be procured following the statutes for the \$10,000-\$50,000 threshold; but if that contract offers two one-year options

for renewal, the total contract value becomes \$60,000 (\$20,000 x 3 years) and the procurement then requires a sealed bid process (see charts below).

The Town may not enter into a multi-year contract unless funds are available for the first fiscal year of the contract. The payment and performance obligations for each succeeding year of a multi-year contract must be subject to the appropriation or availability of other funds, such as state or federal grants. When funds are not appropriated or otherwise made available to support the continuation of performance in a subsequent fiscal year, the Procurement Officer must cancel the contract. Despite this statutory requirement, however, there may be instances in which the Town will not be excused from payment obligations under a multi-year service contract because of a failure to appropriate funds.

All departments are required to maintain a written contract file for all Chapter 30B contracts in the amount of \$10,000 or more. All written records required by Chapter 30B must be maintained for a period of six years from the date of final payment under the contract. All of these records must be available for public inspection.

### **BIDDING THRESHOLDS**

The *legal requirements* and financial thresholds of procurement of supplies and services are as follows:

<b>0-\$9,999</b>	<b>\$10,000-\$50,000</b>	<b>\$50,000+</b>
Sound business practices (Solicit quotes to establish market value)	Provide Purchase Description and Solicit at least 3 written quotes	Advertised, Sealed bid process (IFB or RFP)

The Town's *policy requirements* for the procurement of supplies and services are slightly more rigorous:

<b>0-\$4,999</b>	<b>\$5,000-\$9,999</b>	<b>\$10,000-\$50,000</b>	<b>\$50,000+</b>
Sound business practices	Solicit at least 3 oral quotes	Provide Purchase Description and Solicit at least 3 <i>written</i> quotes	Advertised, Sealed bid process (IFB or RFP)

**Again, policy requirements may be waived with written CPO approval; legal requirements may not.**

Regardless of how you solicit your prices, unless you are using an RFP, the contract is always awarded to the *lowest responsible and responsive bidder*.

### **STATEWIDE CONTRACTS**

As a matter of law, a department may buy supplies and services which are exempt from M.G.L. c. 30B or buy supplies and services off a state (OSD) or cooperative contract (e.g., MHEC, Plymouth County) without using a procurement process.

The Operational Services Division (OSD) awards a variety of statewide contracts that the Town may use without conducting a separate Chapter 30B procurement process. Some of these contracts have specific rules that must be followed. Where there are no rules and where there are multiple statewide contracts for the supplies or services being purchased, the Procurement Officer requires that you solicit quotes from each of the vendors on the statewide contract and award the contract to the responsible vendor offering the needed quality of supplies or services at the lowest price. Any department that purchases supplies or services from a statewide contract must understand and comply with contract terms and conditions and should verify with OSD that the vendor is authorized to sell the item(s) it is buying.

In addition, it is Town policy that an authorized individual execute its own contract with a statewide contract vendor, including any additional legal terms. By incorporating the terms of the statewide contract into a Town contract, we ensure that the benefits of the statewide contract are applicable to the purchase. Department Heads or Project Owners are responsible for contract management, performance issues and payment issues relative to the contract.

Consult the Procurement Office (508-627-6185, [jmulinare@edgartown-ma.us](mailto:jmulinare@edgartown-ma.us)) for additional information on Commonwealth Department contract purchases, Collective (or collaborative) purchases, GSA purchases and Cooperative purchases.

## **BIDDING PROCEDURES**

### **Solicitation of Quotes**

The solicitation of quotes is used for purchases valued at under \$50,000. All Departments must implement sound business practices for any procurement between \$5,000 and \$9,999. For procurements between \$10,000 and \$50,000, a Purchase Description will be drafted, and at least three *written* quotes must be *solicited in writing*. It is not a requirement that you receive three written quotes, simply that they are solicited. It is a statutory requirement that all efforts to get quotes, successful or not, be documented. For any procurement under \$50,000, the Project Owner must contact the Procurement Department for a Payment Approval Form, and submit a signed (by the CPO) copy to Accounting Office once the Procurement has been completed.

**Please note that any procurement over \$5,000 must have the written approval of the Town Accountant on a Requisition Request Form before quotes may be solicited.**

### **Invitations for Bids & Requests for Proposals**

For procurements of \$50,000 or more, an advertised sealed bid process is mandatory. Whether the project will use an IFB or an RFP, the sealed bid process is administered in its entirety by the CPO. Unlike requests for quotes which can be done relatively quickly, IFBs and RFPs will usually take at least a month from start to finish. Although procurements will differ, Procurement requires that the typical IFB/RFP conform to the following procedure unless reasons for doing otherwise are specified in writing.

1. An IFB or RFP process is initiated when a Department Head or Project Owner fills out the Procurement Office's Bid Request Form. Alternatively, all project information can be provided to the CPO and the Procurement Officer may fill out the form on behalf of the Project Owner. If you have any questions, call the Procurement office.

2. The Bid Request Form is reviewed, completed and submitted by the CPO to the Town Accountant, who approves the procurement with her countersignature and authorizes the requisition of funds for the project, or says to hold the file pending further time, information or action.

3. When the countersigned form is returned to the CPO, a procurement file is opened, the advertisement is prepared and the procurement is assigned a bid number. In order for the advertisement to be placed, the project owner must provide the CPO with the complete specifications for the project. The project must then be advertised with a given due date for bids that is at least two weeks after the advertisement is published. The newspaper in which the ad shall be published is determined by the Procurement Officer and the Project Owner as well as by the nature of the Project (if a Supply or Service is not available from a vendor or contractor located on the island, an off-island newspaper must be utilized). The deadline to submit ads to the Martha's Vineyard Times is 12:00pm on Tuesday. The deadline to submit ads to the Vineyard Gazette is 12:00pm on Wednesday.

The deadline for the *Goods & Services Bulletin* is 3:00pm on Tuesday for publication **the following Tuesday**.

5. Dates for bid release, any pre-bid meeting and bid opening will then be established. (Typically the bid opening will occur at the time and place the bids are due.) These dates are set by CPO in working with the project owner. If a Pre-Bid Meeting or Mandatory Pre-Bid Meeting is scheduled, the project owner, or someone designated by the project owner, must attend to chair the meeting and respond to questions. The CPO will also be present.

The Pre-Bid Meeting is an opportunity for potential bidders to see a job site and/or to ask specific questions. Generally, the meeting should not be mandatory unless there is a compelling reason to make it so. However, if that's the case, a written justification needs to be submitted with the Bid Request Form to the CPO. The reason for this being that by mandating a pre-bid meeting, only the vendors who are able to attend may submit a bid, which can have the effect of limiting competition.

6. After the advertising requirements have been fulfilled, bids will be opened in public at the time specified in the Bid documents. Vendor information, including prices offered, becomes public information immediately with the IFB process.

With the RFP process, only a list of the vendors who submitted proposals is public until the evaluation of those proposals is complete. Once all the eligible vendors have been evaluated (according to the quality requirements and comparative criteria) the separately sealed price bids will be opened. This information becomes public when an agreement has been awarded. It is crucial to the RFP process that the evaluators DO NOT see the price until the comparative criteria has been applied to each vendor's proposal.

7. Once a vendor has been chosen, the terms of the contract can be negotiated, however, the scope of work indicated in the IFB/RFP must remain the same. There are options for increasing the amount of the contract at a later time, provided the unit prices remain the same. There are other agreement options, such as blanket contracts, that allow the Town more flexibility on spending within the confines of an agreement, but any contract must reflect the exact specifications of the IFB/RFP. Any substantial deviation from the original scope of work is illegal and grounds for a bid protest.

8. The bidding process ends when an agreement is executed with a vendor. It is usually not a good practice to accept a vendor's contract. It is important to be thorough when contracting for tax payer dollars, and contract management is a crucial part of this practice. It may be necessary to designate a contract manager if the agreement is for ongoing supplies and services, in order to ensure the vendor is delivering what they are contracted for. It is the responsibility of the department head as well as the CPO to ensure that the terms of the contract are upheld.

Consult the Procurement Office and Legal if a vendor is defaulting on the terms of a contract.

## **Addenda**

In order that all potential bidders receive the same information, once a bid document is released **ALL QUESTIONS** regarding a bid must be directed to the Procurement Office. For construction projects, public works projects and the purchase of goods and services, project managers, architects, engineers and all other employees are not to answer any questions about the bid from either the general public or interested bidders prior to the bid opening date. Questions from contractors and vendors must be made in writing to [jmulinare@edgartown-ma.us](mailto:jmulinare@edgartown-ma.us) or faxed to 508-627-6123. Procurement will collect all questions until the cut-off date specified for questions in the IFB or RFP. At that time, Procurement will prepare an addendum and forward it electronically to the project owner and architect for answers to be inserted in the addendum document. Once answered, the addendum should be sent back to the Procurement Office electronically for release to those on the bid list. Procurements may require more than one addendum.

## **CONTRACT AMENDMENTS**

A contract under Chapter 30B may only be increased up to twenty-five percent (25%) of the original contract value. As noted above, the unit prices must remain the same as the original unit prices. Furthermore, the Procurement Officer must specify, in writing, that the increase is necessary to fulfill the Town's actual needs and is more economical and practical than awarding another contract. Finally, both parties must agree in writing. Again, the contract amendment cannot substantially change a major contract term or condition and any amendment that benefits the contractor must also benefit the Town. M.G.L. c. 30B requires that all amendments be approved by either the CPO or the Town Administrator and any amendment over \$10,000 must be in writing. If the contract amendment results in a cost increase, there must be prior appropriation or other source of funds for the increase.

## **SOLE-SOURCE PROCUREMENTS**

A sole-source procurement is the purchase of supplies or services without advertising or competition. M.G.L. c. 30B §7 places strict limitations on this type of procurement. It is permissible for a department to make a sole-source procurement up to \$50,000 when a reasonable investigation shows that there is only one practicable source for the required service or supply. The determination that only one practicable source exists *must be made in writing* on a Sole Source Request and Declaration Form. It is the Department Head's responsibility to certify to the CPO that this is the only company that can provide the supply or service required.

Departments may make sole-source procurements of \$50,000 or more for the following:

Education materials; Library books; Software maintenance; Procurements from regulated industry companies (i.e., any utility companies subject to regulation by the Department of Public Utilities)

Supplies/services over \$50,000 that do not fall into the categories listed above, must go out to bid, *even if it has been determined there is only one practicable source.*

If the product description is too specific, it may have a proprietary specification which is subject to certain rules (M.G.L. c. 30B, §14). If you think this may be an issue, contact the CPO.

## **PROPRIETARY SPECIFICATIONS**

Although the construction and supplies and services bid laws are premised on fair and open competition, they do allow the use of so-called "proprietary" specifications under certain circumstances. A proprietary specification either cites a specific brand name or is written so restrictively that only one vendor or manufacturer can supply the desired service or item. For example, the Town may have standard door hardware (which it procured through a bid process) and wants to inventory the same brand hardware for replacements and repairs. Because such specifications use a brand name or are written in a way that only one vendor can bid, they are anticompetitive and the statutes require a written justification for their use. The written justification is to be available to the public on request. Departments that include proprietary items in their IFBs or RFPs must provide Procurement with a signed, credible written justification explaining why no other item will suffice prior to the bid release. (Remember, competitors and vendors have the right to look at it.) If you have not given the Procurement Department the written justification, your bid release may be delayed. Note that even if you use a proprietary specification, you still have to go out to bid.

## **SURPLUS PROPERTY & DISPOSITION PROCEDURES**

*To ensure that procedures for disposing of a surplus supply are followed properly, please see the Town's written policy for Disposal of Surplus Supplies.*

In any case where a department decides it no longer needs a supply, it must make a determination of

the supply's value. The rules within Chapter 30B apply to all tangible surplus supplies with a resale or salvage value, including motor vehicles, machinery, computer equipment, furniture, and other materials and supplies. The term "supplies" does not include real property. If the supply is worth \$10,000 or more, the Town must use a sealed bid process and award to the highest bidder. If the supply has a value of less than \$10,000 and is not considered "trash" (as defined below), the following procedures must be followed:

For any supplies not disposed of to Town departments or the general public, or for supplies valued at less than \$500, the CPO may dispose of the supply by either

- (a) donating the supply to a tax exempt, nonprofit organization that expressed an interest in the supply;
- (b) dispose of the supply as trash.

The town may dispose of as trash without following the foregoing for a supply which

- (a) is badly damaged and cannot be repaired or the cost to repair exceeds the value of the property if repaired;
- AND
- (b) has no salvage value

Property which is not damaged yet has no salvage value may also be disposed of as trash.

### **Trade-Ins**

Surplus supplies can be traded in as part of a Chapter 30B bid or proposal process. However, Chapter 30B does not permit trade-ins as part of a quote process unless the value of the supplies is less than \$10,000.

### **REAL PROPERTY TRANSACTIONS**

Chapter 30B applies to the purchase, sale, lease or rental of real property (including interests in real property). Chapter 30B establishes an advertised proposal process must be followed in **acquiring** real property by purchase or rental with a **cost** greater than \$35,000, and in **disposing** of real property by sale or rental with a **value** greater than \$35,000. Chapter 30B has additional requirements for the disposition of real property, regardless of its value.

Real property is defined as property consisting of land, buildings, crops, or other resources still attached to or within the land or improvements or fixtures permanently attached to the land or a structure on it. Interests in real property include leases, mortgages, preservation restrictions, easements and profits à prendre (such as the right to remove gravel or ledge from land).

The following real property transactions are *not* subject to Chapter 30B, either because they are specifically exempted or because the transactions are governed by other statutes:

- eminent domain takings
- rental of residential property to qualified tenants by a housing authority or a community development authority
- a contract to sell, lease or acquire residential, institutional, industrial or commercial real property by a public or quasi-public economic development agency or urban renewal agency engaged in the development and disposition of said real property in accordance with a plan approved by the appropriate authorizing authority
- a redemption or auction of tax title property authorized under the provisions of M.G.L. c. 60

- an acquisition from the Commonwealth an agreement between agencies, boards, commissions, authorities,
- departments or public instrumentalities of one city or town
- the exercise of an option to purchase forest, agriculture or recreation land for conservation purposes under M.G.L. c. 61, c. 61A, or c. 61B;
- an acquisition of real property or an interest therein by a community preservation committee under M.G.L. c. 44B, § 5(f); and
- licenses or permits for limited use of real property.

**EMERGENCY PROCUREMENTS**

If the time required to comply fully with Chapter 30B would endanger the health or safety of people or their property due to an unforeseen emergency, the Town may procure the needed item or service without complying with all of Chapter 30B’s requirements. Even under emergency circumstances, however, compliance with Chapter 30B, to the extent possible, is still required. A record of each emergency procurement must be maintained, documenting the basis for determining that an emergency exists, the name of the vendor, the amount and type of contract, and a list of the supplies or services purchased under each contract. We recommend that you also include in your record all procedures followed to elicit competition. Your record of an emergency procurement must be submitted as soon as possible to the *Goods and Services Bulletin* for publication.

If a department had reason to know in advance that it needed the supplies or services and failed to act until the need became critical, it will be very difficult to justify an emergency procurement. Invoking the emergency procedures in the absence of a genuine emergency could invalidate a contract.

UPDATED JULY 31, 2017

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