

**RESOLUTION 2016-36**

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, ADOPTING THE TOWN OF FOUNTAIN HILLS PROCUREMENT POLICY DATED DECEMBER 1, 2016.

**BE IT RESOLVED** BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

SECTION 1. The Town of Fountain Hills Procurement Policy dated December 1, 2016 (the "Procurement Policy"), is hereby adopted in substantially the form and substance attached hereto as Exhibit A.

SECTION 2. If any section, subsection, sentence, clause, phrase or portion of this Resolution or any part of the Procurement Policy adopted herein by reference is for any reason to be held invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 3. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to take all steps and to execute all documents necessary to carry out the purpose and intent of this Resolution.

**PASSED AND ADOPTED BY** the Mayor and Council of the Town of Fountain Hills, Arizona, December 1, 2016.

**FOR THE TOWN OF FOUNTAIN HILLS:**

**ATTESTED TO:**

  
Linda M. Kavanagh, Mayor

  
Bevelyn J. Bender, Town Clerk

**REVIEWED BY:**

**APPROVED AS TO FORM:**

  
Grady E. Miller, Town Manager

  
Andrew J. McGuire, Town Attorney

EXHIBIT A  
TO  
RESOLUTION 2016-36

[Procurement Policy]

See following pages.

# **Town of Fountain Hills**

## **Procurement Policy**

**December 1, 2016**

## **Town of Fountain Hills Procurement Policy**

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## Town of Fountain Hills Procurement Policy

1. **Town of Fountain Hills Policy.** It is the policy of the Town of Fountain Hills (the “Town”) to promote and facilitate economical and timely acquisitions from sources of supplies, equipment and services necessary for Town Departments to accomplish their assigned responsibilities, while ensuring a fair and open process that maximizes competition. It is the policy of the Town that the acquisition process is carried out in compliance with the Town Procurement Code, which is set forth in Article 3-3 of the Fountain Hills Town Code (the “Procurement Code”) and ordinances and the administrative policies and procedures set forth herein (the “Procurement Policy”). The Town Manager or authorized designee (the “Procurement Agent”) is charged with the responsibility of implementing the Procurement Code and this Procurement Policy. Capitalized terms used in this Procurement Policy and not otherwise defined shall have the meaning set forth in the Procurement Code.
2. **Employee Responsibility.** Each Town Employee involved in the procurement process is responsible for reviewing, understanding and complying with the Procurement Code, applicable ordinances and this Procurement Policy. If there are any questions or concerns relative to either the applicable policies or procedures, or the ability of the Employee to respond effectively to the requirements of the procedures, then it is the responsibility of the Employee to bring such matters to the attention of the Town Manager immediately. Any purchase utilizing Town funds, regardless of dollar amount, must be for a valid public purpose.
3. **General Procurement Provisions.**
  - 3.1 **Procurement Agent Responsible.** The Procurement Agent shall be informed and involved in all Formal Solicitation discussions and decisions.
  - 3.2 **Applicability of Procurement Regulations.** All Town purchases and contracts for goods and services shall be subject to the rules and regulations of the Procurement Code and this Procurement Policy.
  - 3.3 **Competition.** All reasonable attempts shall be made to obtain competitive bids or proposals by appropriate solicitation method, as prescribed in this Procurement Policy.
  - 3.4 **Budget.** Purchases shall not be contracted for or made unless sufficient funds have been budgeted in the year in which the term of the contract commences. Funds must be re-appropriated for each subsequent year or part of a year within the term of the contract.
  - 3.5 **IT Purchase.** Purchase of any technology or communications goods or services must undergo review and approval of the Network and Information Technology Administrator.

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- 3.6 Fragmentation Prohibited. There shall be no fragmentation or division of contracts or purchase orders in order to circumvent the provisions of the Procurement Code or this Procurement Policy.
- 3.7 Special Conditions. The Procurement Agent must be notified of any specific procurement requirements of any grant, gift bequest or cooperative agreement by the procuring Department.
- 3.8 Publicity. All reasonable attempts shall be made to promote wide-spread awareness of anticipated purchases or contract opportunities to applicable vendors, contractors and suppliers.
- 3.9 Multi-department Contracts. When it is advantageous to the Town, Town-wide contracts should be initiated for use by one or multiple Town Departments for those services or supplies routinely purchased.
- 3.10 Town Attorney Preparation. All contracts are to be drawn under the supervision of the Town Attorney.
- 3.11 Town Attorney Review. Contracts for services and labor require review by the Town Attorney, regardless of dollar amount. Procurement of commodities by Open Market Purchase may be made without additional Town Attorney review so long as the vendor executes a purchase order containing the standard terms and conditions prepared by the Town Attorney.
- 3.12 On-going Contracts. The Town shall fully justify and directly negotiate a reasonable price for the services for instances in which either (A) maintenance, support or membership is required and there is no possibility of price competition; or (B) continuity of services is deemed in the best interest of the Town and continuity cannot be ensured with a competitive process.
- 3.13 Revenue Contracts. Generally, a competitive process shall be used to solicit offers from interested parties for no-cost or revenue-producing arrangements.
- 3.14 Department Monitoring. Contracts shall be monitored by the requesting Department for compliance, which Department shall be responsible for expiration and renewal requirements. Departments shall ensure that fully executed copies of their respective contracts, including all amendments, bonds and certificates of insurance, are on file with the Town Clerk.
- 3.15 Trials; Demonstrations. Vendor demonstrations, free trials or testing of products or services shall require a vendor's signed Statement of Vendor Understanding (Form FHPP3.15) with approval from the requesting Department director. Demonstration or trials of products with an estimated purchase price exceeding \$5,000 must be approved by the Town Manager. The Town shall not be obligated

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to purchase any equipment, product or services provided through demonstrations or testing periods.

- 3.16 Requisition; Purchase Order. Orders for goods and/or services shall not be placed without a requisition and purchase order in place, unless the purchase: (A) has been made utilizing an approved alternative procurement method such as purchasing card, emergency purchase or petty cash reimbursement; and (B) follows the applicable portions of the Procurement Code and this Procurement Policy for such purchases.
- 3.17 Point of Contact. The Employee listed on the cover page of a solicitation shall be the single point of contact for inquiries regarding such Town solicitation.
- 3.18 Confidentiality of Evaluation. Completion of a confidentiality statement is required of all solicitation evaluation team members.

### 4. Items Not Subject to Competitive Selection Requirements.

- 4.1 Utilities. Utilities, communications and other public services that are not subject to competition are exempt from this Procurement Policy; provided, however, that any agreements for such services shall be reviewed and approved by the Town Attorney.
- 4.2 Ancillary Goods and Services. Goods or services that are not specifically provided for in an agreement entered into pursuant to this Procurement Policy may be provided according to such agreement only if: (A) the Town Manager or authorized designee determines, in writing, that such unspecified goods or services are clearly necessary and incidental or ancillary to the goods or services provided for in the agreement; and (B) the agreement is amended to clearly include the incidental or ancillary services within the scope of work.

### 5. Informal Procurement Methods (Under \$50,000).

- 5.1 Petty Cash Purchases (\$1.00 – \$50). Petty cash may be used for expendable items only. Such expenditures shall not exceed \$50 and must be pre-approved by the procuring Department director. A request for petty cash reimbursement shall be accompanied by a valid receipt and certification of public purpose for the item purchased.
- 5.2 Open Market Purchases (Less than \$10,000). Open market purchases do not require competitive quotations or bids; however, competitive quotations and bids should be obtained when practical. Usually, these purchases are routine in nature and obtaining quotations generally consumes more time than is worthwhile expending and shall, to the extent applicable, adhere to the Town's Municipal Sponsorship and Naming Rights Policy.

## Town of Fountain Hills Procurement Policy

- A. This procurement method does not apply to the procurement of Professional Services, Construction or Exempt Construction.
- B. Except as set forth in this Section 5.2, Open Market Purchases must be made in conformance with the Town's Procurement Code and this Procurement Policy.

### 5.3 Small Purchases (\$10,000 – \$49,999).

- A. Subject to the provisions of Section 7 below, the procuring Department shall obtain at least three written competitive quotations for small purchases. A lesser number of quotations may be acceptable, provided there are insufficient numbers of competitive vendors, as approved by the Department director and the Procurement Agent. The shortage of potential bidders available shall be supported by written notification and/or specifications provided to each vendor and written "No Bid" response. The Procurement Agent or designee may require Departments to obtain formal competitive bids or proposals for some small purchases.
- B. While the internet may be a valuable tool for investigating sources for goods and services, quotes taken directly from a search of the internet Web sites are not considered "written" quotes and will not be accepted for this type of purchase.
- C. Departments shall comply with the public notice and legal advertising requirements. The posting must include detailed specifications of product or services solicited.
- D. The method in this Section 5.3 does not apply to the procurement of Construction or Exempt Construction, which shall be procured according to Section 8 below.

### 5.4 No-Cost Procurement.

- A. Revenue producing or "no-cost" contracts that involve the provision of commodities or services provided to the Town in support of Town operations, functions, or programs through which the provider will benefit monetarily, are considered business opportunities shall, to the extent applicable, adhere to the Town's Municipal Sponsorship and Naming Rights Policy.
- B. Revenue producing or no-cost contracts must be awarded using a competitive process that is appropriate to the value, complexity and profile of the business opportunity.

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- C. The Town has the authority to assist the contractor in designing, implementing and maintaining the standards of the provider's program.

### 5.5 Purchase Orders.

- A. The Procurement Agent shall provide forms of purchase order which shall be used for the purchase of all Materials and Services for or on behalf of the Town.
- B. Open purchase orders may be provided by the Procurement Agent for the routine purchase of regularly supplied items. An open purchase order shall be limited to a single source and shall not be valid for more than \$10,000 in the aggregate. All open Purchase Orders shall expire at the end of the fiscal year of issuance and the expiration date shall be plainly stated on the face thereof.

### 5.6 Purchasing Cards.

- A. Town Departments are authorized to use the purchase card ("P-Card") for certain purchases. The individual purchase transaction limit and monthly spending limit are set based on the types of purchases an individual may need to make. P-Card spending limits apply to the total transaction, including taxes, delivery and installation. A Department wishing to increase the P-Card spending limit for purchases should submit a request to the Finance Director including a justification for the request, the purpose for which the card will be used, the spending limit requested and a description of internal controls in effect to prevent misuse.
- B. All P-Card transactions shall be in accordance with applicable law, the Town Procurement Code, this Policy and any other applicable accounting and budgeting rules, policies and procedures established by the Finance Division.
- C. The use of a P-Card by anyone other than the authorized cardholder is prohibited.
- D. The P-Card may only be used to acquire or pay for goods related to a valid public purpose. The P-Card is to be used solely for authorized Town expenditures incurred while conducting Town business during authorized duty hours. **Use of the P-Card for personal expenditures is prohibited.** Using the P-Card for any of the following is strictly prohibited:
  - 1. To withdraw cash from ATMs or other sources.
  - 2. To purchase traveler's checks or any other negotiable instrument.

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3. To purchase alcoholic beverages or any illegal substance.
  4. To purchase professional services of the type that requires a Form 1099 to be issued. In general, the types of services that require the issuance of a Form 1099 include payment of rent, miscellaneous income to independent contractors, medical and health care payments, or fees paid to accountants, attorneys, programmers, temporary help, etc. For additional guidance with respect to Form 1099 requirements and reporting, contact the Finance Division.
  5. To make purchases exceeding the applicable spending limits.
- E. Dividing purchase transactions to circumvent purchase limits is prohibited.
- F. The P-Card may be used for travel-related expenses when such expenses are directly related to a conference attended by the P-Card holder. Hotel rooms may also be booked on the P-Card for meetings, conferences and other Town-authorized events.
- G. Unless otherwise prohibited, the P-Card may be used to conduct procurements by way of telephone or the Internet.
- H. Department responsibilities.
1. The Department director is responsible for all P-Card activity in her/his Department. The Department director shall:
    - a. Review and approve the issuance of any P-Card to an employee. Submit approved requests to the Finance Director for issuance of the P-Card. P-Card request forms may be obtained from the Finance Director.
    - b. Ensure that any employee to whom a P-Card is issued has been sufficiently trained to be familiar with the Town's P-Card and Purchasing policies and procedures.
    - c. Distribute P-Card applications to candidates for P-Cards along with a copy of this Policy and the P-Card Agreement; receive and distribute new and replacement P-Cards.
    - d. Monitor compliance with Town P-Card policies and procedures. It is the responsibility of the Department director to pursue full restitution, including penalties and interest from the cardholder, in the event of a cardholder's misuse of a P-Card. In the event of misuse, the Department

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director will report the incident to Human Resources for other disciplinary actions, up to and including dismissal.

- e. Review cardholder records at least quarterly to verify compliance with rules and policies and to confirm the appropriate use of P-Cards
  - f. Log on to Smart Data Online to review and approve charges made by the cardholders. This must be done within three (3) days of receipt of billing statements.
  - g. If an employee to whom a P-Card has been issued leaves the Town for any reason:
    - i. Recover the P-Card prior to employee leaving town property.
    - ii. Notify the Finance Director to cancel that P-Card.
    - iii. Request that the Administrative Services Director place a hold on wages (up to the maximum limit of the P-Card issued to the employee) if the employee leaves the Town employment and fails to surrender the P-Card.
    - iv. Document all appropriate files and forward the documentation to the Administrative Services Director to review for possible legal action.
    - v. If not previously resolved by the cardholder, resolve any disputed transactions and document the resolution thereof.
- 2. The Department director may appoint a Departmental P-Card Administrator who will have the responsibility for reconciling, on a monthly or more frequent basis, all charges against statements of activity.
  - 3. Late fees, delinquency charges and interest accrued are the responsibility of the Department.
- I. Cardholder Responsibilities.
- 1. A cardholder shall be an employee of the Town of Fountain Hills.

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2. Before receiving a P-Card, employees must sign an affidavit of acknowledgement and understanding of these policies and procedures for use of the P-Card. This document authorizes withholding of money from wages if the card is misused or not returned upon separation from Town employment.
3. A cardholder shall:
  - a. Maintain all receipts that document charges, credits or adjustments incurred on the P-Card. If original receipts are lost, the cardholder will contact the vendors to obtain duplicate receipts.
  - b. Log on to Smart Data Online to review purchases and account coding for accuracy.
  - c. Unless the employee's Department delegates this task to another employee, reconcile the monthly statement of activity against the purchasing activity conducted on the P-Card during that time frame (i.e., match receipts to statement of activity). Cardholders shall resolve any discrepancies on the monthly statement of activity, including charges for items returned to vendors, credit vouchers not appearing on the statement of activity, and disputes with either the vendor or the Town P-Card contractor. Any unresolved discrepancies shall be communicated to the Finance Division for resolution.
  - d. Forward the reconciled statement of activity and the original receipts to the Department director for final approval and submission to the Finance Division for payment.
  - e. Adhere to the limitations imposed upon the use of the P-Card.
  - f. Immediately surrender the P-Card upon resignation, retirement or termination from Town service. If the P-Card is not surrendered upon such separation, the employee consents, in writing by signing the P-Card agreement, to the withholding of the amount of the P-Card limit from any wages or other amounts due the employee pending the reconciliation by the Town of the final monthly statement of activity for the P-Card. Use of a P-Card issued by the Town after separation from Town service is prohibited.

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4. Except as otherwise herein provided, P-Cards are assigned to individual employees. It is the cardholder's responsibility to ensure the security of the P-Card and to ensure the use of the P-Card complies with this Policy.
5. If a P-Card is lost, misplaced, stolen or destroyed, this fact must be reported immediately to the Finance Director. In the case of a card that has been destroyed or otherwise rendered inoperative, the card to be replaced is to be returned to the Finance Director. Employees will be assessed a \$5.00 fee for replacement of lost, stolen or misplaced P-Cards.
6. The cardholder may be personally liable for P-Card charges and may be required to reimburse the Town for P-Card transactions that are contrary to any applicable laws, rules, policies or procedures.
7. Improper use of the P-Card is subject to the appropriate disciplinary actions (up to and including dismissal and prosecution).

### J. Compliance Reviews.

1. Periodically, the Finance Division may perform compliance audits of all Departments. All P-Card-related information, including but not limited to the following, will be reviewed:
  - a. Department policy and procedure documents.
  - b. Documents supporting any appointments or delegation of duties.
  - c. Cardholder agreements and related employee information.
  - d. Reconciled, detailed statements of activity.
  - e. Transactional information.
  - f. Adherence to limits.
  - g. All supporting documents and receipts.
2. A report of the findings resulting from a compliance audit will be issued to the Department director and the Town Manager.

6. **Formal Procurement Processes (\$50,000 or Greater).**

6.1 General Provisions.

- A. Except as permitted in Section 7 below, there must be a formal solicitation process for expenditures or when the total contract value for a singular item, service or commodity will exceed \$50,000 either as a one-time purchase or the aggregate cost or value over the contract term.
- B. The Procurement Agent shall ensure that Vendors are informed that they are responsible for reading all solicitation documents in their entirety, and that offering a bid or proposal in response to a solicitation is an offer to contract under the terms and conditions of the solicitation.
- C. The Procurement Agent and the applicable Department director are jointly responsible for ensuring compliance with all solicitation requirements.
- D. The Town will not reimburse any cost incurred by a vendor in preparing a bid, proposal or statement of qualifications.

6.2 Sealed Bidding – Invitation for Bids.

- A. The sealed bid method is preferred when it maximizes price competition by basing the selection among responsive, responsible bidders on price alone.
- B. The procuring Department shall contact the Procurement Agent to establish an Invitation for Bids (IFB). The Procurement Agent shall provide a solicitation number.
- C. The procuring Department shall determine the appropriate public release period and outreach based upon the nature of the solicitation. In making the determination, the procuring Department shall ensure compliance with requirements of applicable law, such as ARIZ. REV. STAT. §§ 9-812 and 34-201, as amended, and Section 3-3-17 of the Town Code, as amended.
- D. The procuring Department shall provide the Procurement Agent with all information necessary to produce a complete IFB package, in a form suitable for public release.
- E. After public opening, bids shall be checked and analyzed for compliance with bid requirements and law by the Procurement Agent.
- F. The procuring Department shall be responsible for: (1) tabulating and verifying all bids to determine compliance with the specifications; and (2) preparing the necessary materials for Town Council action.

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- G. Omissions on any item on the bid price sheet shall be deemed a “No Bid.”
- H. All bid tabulations will be posted by the Procurement Agent on the Town’s website after final verification of pricing and compliance with bid specifications.
- I. A full record of submissions, bid tabulations, disqualifications and notices of intent to award shall be kept on file according to the Town’s adopted records management policy.

6.3 Request for Proposals. The Request for Proposals method is primarily intended to permit competition on quality and other factors, as well as on price. Requests for proposals shall not be solicited from Technical Registrants, which shall only be procured through the Request for Qualifications process in Section 6.4.

- A. The procuring Department shall contact the Procurement Agent to establish a Request for Proposals (RFP). The Procurement Agent shall provide a solicitation number.
- B. The procuring Department shall determine the appropriate public release period and outreach based upon the nature of the solicitation. In making the determination, the procuring Department shall ensure compliance with requirements of applicable law, such as ARIZ. REV. STAT. §§ 9-812 and 34-201, as amended, and Section 3-3-17 of the Town Code, as amended.
- C. The procuring Department shall provide the Procurement Agent with all information necessary to prepare a complete RFP, in a form suitable for public release.
- D. After public opening, Proposals shall be checked and analyzed for compliance with solicitation requirements and law by the Procurement Agent, and distributed to the members of the Selection Committee with a comparison matrix and evaluation instructions.
- E. Firms under consideration will be evaluated by the Selection Committee composed of the Procurement Agent, the Department director procuring the services (or his/her designee), and any other staff that the Department director and Procurement Agent feel possess sufficient knowledge or relevant experience that would materially contribute to the evaluation. The Selection Committee may include outside professionals who can provide expertise not available from Town staff and shall include such professionals who are required by State law. Such outside professionals cannot represent a firm under consideration.
- F. Evaluations shall be tabulated by the Procurement Agent. Discussions and/or negotiations may be opened at this time with the firm selected to be

## Town of Fountain Hills Procurement Policy

the most qualified by the Selection Committee according to the scope of work.

- G. Original Proposal(s) of successful vendors shall be forwarded to the procuring Department for preparation of the item for Town Council action.
- H. The full record of submissions, summary of evaluations, disqualifications and notices of intent to award shall be kept on file according to the Town's adopted records management policy.

6.4 Request for Qualifications. The Request for Qualifications (RFQ) method is similar to the Request for Proposal method, except that qualifications are the determining factor in selection; price is not allowed to be considered. The RFQ is a request by the Town for detailed information concerning the qualifications of firms to provide professional services to the Town.

- A. The RFQ process is the preferred method for the selection of professional, Services, unless such services are direct-selected as permitted in Section 7 below.
- B. The procuring Department shall determine the appropriate public release period and outreach based upon the nature of the solicitation. In making the determination, the procuring Department shall ensure compliance with requirements of applicable law, such as ARIZ. REV. STAT. §§ 9-812 and 34-201, as amended, and Section 3-3-17 of the Town Code, as amended.
- C. The procuring Department shall provide the Procurement Agent with all information necessary to prepare a complete RFQ, in a form suitable for public release.
- D. The Procurement Agent shall assist the Department in completing a Request for Qualifications.
- E. The procuring Department may request that RFQ specifications be prepared by contracted consulting firms. Contractors who are working on specifications to be used for competitive procurements shall be precluded from submitting qualifications on the resulting procurement.
- F. After public opening, statements of qualifications shall be checked and analyzed for compliance with solicitation requirements and law by the Procurement Agent, and distributed to the members of the Selection Committee with a comparison matrix and evaluation instructions.
- G. Firms under consideration will be evaluated by a Selection Committee composed of the Procurement Agent, the Department director procuring the services (or his/her designee), and any other staff who the Department

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director and the Procurement Agent feel possess sufficient knowledge or relevant experience to materially contribute to the evaluation. The Selection Committee may include outside professionals as necessary or as required by State law. The outside professional cannot represent a firm that has responded to the RFQ.

- H. Evaluations shall be tabulated by the Procurement Agent. Discussions and/or negotiations shall be opened at this time with the firm selected to be the most qualified by the Selection Committee.
- I. If negotiations with the first firm do not result in an agreement, negotiations shall be conducted with the next ranked firm, and so forth.

- 7. **Exceptions for Professional Services.** Professional services should, unless direct selection is deemed to be in the Town's best interest, be awarded using the competitive process pursuant to Section 6 above that is appropriate to the value, complexity and profile of the business opportunity.

7.1 Amount of \$125,000 or Less. Professional Services in an amount of \$125,000 or less may be procured by direct selection of qualified vendor. However, competitive proposals, quotations and/or bids should be obtained when practical and permitted by law.

7.2 Amount Greater than \$125,000. Professional Services in an amount greater than \$125,000 shall be procured only through a Request for Proposals (RFP) or a Request for Qualifications (RFQ), as applicable.

- 8. **Construction Services.** Construction is governed by ARIZ. REV. STAT. Title 34. The procuring Department is responsible for the development of the solicitation in accordance with requirements of Title 34 and the Procurement Code for all Construction services. Exempt Construction services may be direct-selected according to the process set forth in Section 7 above.

- 9. **Pre-Qualification Lists/Register.** A list of qualified professionals may be established for use in selection of service providers by following all the same actions applied in the RFQ process set forth above. Qualified lists are normally used to streamline future contracting processes for consultant services, thus eliminating the need for multiple RFQs for the same discipline. Qualified lists are usually for the benefit of the procuring Department(s), but unless expressly precluded by the RFQ, Council action or State law, the lists may be used by any Department. Departments are required to solicit proposals from multiple firms on a qualified list prior to making a contract recommendation. Pre-qualification of Technical Registrants must comply with the requirements of ARIZ. REV. STAT. § 34-101 *et seq.*

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### 9.1 Dollar Thresholds for Pre-Qualified List.

- A. Anticipated Contract Amount Less than \$125,000: The Contractor may be directly selected from the list. The selected Contractor must submit updated resumes and current project lists before contract is executed.
- B. Anticipated Contract Amount Between \$125,000 - \$250,000: A Selection Committee shall be formed, including, at a minimum, the Department project manager and other individuals with the technical expertise to evaluate proposals. Staff shall request and evaluate updated resumes, project lists and proposals based on the scope of services for the project before entering into negotiation for the final selection. A minimum of three proposals should be requested, and each proposal ranked. The selection process may include interviews and discussion from the highest ranked firm. The Selection Committee shall select the highest qualified firm based on written and/or oral evaluations. If negotiations with the first firm do not result in an agreement, negotiations shall be conducted with the next ranked firm, and so forth.
- C. Anticipated Contract Amount Exceeds \$250,000: The Prequalified Consultants List may not be used, and the normal procurement process must be followed according to the Procurement Code and this Procurement Policy.

### 9.2 Equity Standards. Departments utilizing the Prequalified List shall ensure equitable treatment of all Contractors prequalified for Town projects.

## 10. Cooperative Procurement.

- 10.1 Described. Cooperative Purchasing is a method of inter-governmental purchasing in which a public purchaser has competitively selected and awarded a contract and allows other public purchasing agencies to purchase from the selected vendor under the same terms and conditions as the original contracting agency.
- 10.2 Equally Stringent. The Town is authorized to take advantage of purchasing contracts initiated, sponsored, conducted or administered by another public procurement unit, provided: (A) the program has been authorized by the governing body of the procurement unit; and (B) the procurement has been conducted by a competitive process at least as stringent as the Town's policy.
- 10.3 Form of Agreement. In order to utilize a cooperative contract, a Town Cooperative Purchase Agreement or Professional Services Agreement must first be in place. The procuring Department is responsible for verifying the existence of a valid underlying contract to which the Town's Cooperative Purchase Agreement or Professional Services Agreement may attach. If a cooperative agreement is already in place between the Town and the vendor in accordance with this Procurement Policy, the

## Town of Fountain Hills Procurement Policy

procuring Department may request an extension of the cooperative agreement so long as the underlying agreement is extended for at least the same term.

- 10.4 **Legal Requests.** Requests to the Town Attorney for use of a cooperative agreement must include all information necessary for the Town Attorney to draft the cooperative purchasing agreement including, but not limited to, the underlying contract, a scope of work and verification that the vendor is authorized to do business in Arizona.
11. **Noncompetitive Procurement.** In general, noncompetitive procurement methods should be avoided. In rare cases a needed purchase may fall into one or more noncompetitive categories. In these instances, a contract may be awarded or purchase made, provided the method appropriate to the procurement is properly documented.
- 11.1 **Sole Source Procurement.** Sole Source procurement shall be used only under circumstances where there is clear and convincing evidence that there is only one source available for the needed commodity or service. Any request by a Department that procurement be restricted to one potential Contractor shall be accompanied by an explanation as to why no other would be suitable or acceptable to meet the need. The Department requesting sole source procurement shall provide written evidence to support a sole source determination.
- A. In all instances the requesting Department must demonstrate that there was a serious, diligent effort to identify potential sources, test alternatives available, and provide adequate notice to potential vendors of the Town's need for a commodity or service.
  - B. Upon the Department's determination that a sole source is necessary and appropriate, the Sole Source Justification (Form FHPP11.1.B) must be completed for each sole source request. Requests received that do not include the completed Sole Source Justification form will be returned to the requesting Department. The justification information must be (1) submitted with all requests and (2) provided in sufficient detail to allow an informed decision on the request.
  - C. All sole source requests must be sent to the Procurement Agent, who will review the sole source request and decide whether or not the sole source is adequately justified.
  - D. The procuring Department shall determine the appropriate public release period and outreach based upon the nature of the solicitation. In making the determination, the procuring Department shall ensure compliance with requirements of applicable law, such as ARIZ. REV. STAT. §§ 9-812 and 34-201, as amended, and Section 3-3-17 of the Town Code, as amended.

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- E. Sole source requests that have been denied will be returned to the originating Department with instructions to prepare specifications for issuance of a competitive solicitation or to provide additional justification.

### 11.2 Competition Impractical Determination. Competition Impractical Determination (CID) shall be used only under circumstances where there is clear and convincing evidence that competitive solicitation is not in the best interests of the Town.

- A. In all instances the requesting Department must demonstrate that there was a serious, diligent effort to identify potential sources, test alternatives available, and provide adequate notice to potential vendors of the Town's need for a commodity or service or that costs exceed the benefit of open competition.
- B. Upon the Department's conclusion that a CID is necessary and appropriate, the CID Form (Form FHPP 11.2.B) must be completed. Requests received that do not include the completed CID Form will be returned to the requesting Department. The justification information submitted must provide in sufficient detail to allow an informed decision on the request to be made.
- C. All CID Forms must be sent to the Procurement Agent, who will review the CID and decide whether or not it is adequately justified.
- D. A CID that has been denied will be returned to the originating Department with instructions to prepare specifications for issuance of a competitive solicitation or to provide additional justification.

### 11.3 Emergency Procurement. Emergency Procurement, as authorized pursuant to Section 3-3-25 of the Town Code, shall be utilized only under circumstances when the delay in receiving needed products or services would seriously threaten: (i) the functioning of government; (ii) the preservation or protection of property; or (iii) the health or safety of any person. Although typical bidding procedures can be avoided, competition should be utilized to the extent practical and a contract, in a form approved by the Town Attorney, shall be executed.

- A. An Emergency Procurement exceeding \$50,000 shall be supported by a declaration of an emergency by the Mayor or the Town Council, which may be, if necessary, in the form of ratification of a prior action of the Town Manager.
- B. Emergency Procurements under \$50,000 may be approved by the Town Manager.

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- C. A written determination of the basis for the emergency procurement shall be forwarded to the Procurement Agent for inclusion with the procurement and/or payment file.
- D. The Town Department seeking an Emergency Procurement shall prepare a written requisition, which may occur after the emergency procurement, if necessary, documenting the existence of an Emergency condition and explaining the Procurement need. The requisition shall be signed by the Department director.
- E. An Emergency Procurement shall be limited to those Materials, Services or Construction reasonably necessary to satisfy the Emergency need.

12. **Amendments to Solicitations – Addenda.** Prior to award of a Contract, Addenda may be issued due to changes in quantity, specifications, scope of work, delivery schedules, opening dates or plans/drawings. Addenda may also be required for correcting an ambiguous provisions or resolving conflicting provisions.

12.1 **Changes following Pre-bid.** A change or correction required as a result of a discussion during a pre-bid/pre-proposal conference requires an addendum to the Solicitation. A change to the written terms of the Solicitation must be done formally in writing through an addendum to the solicitation document.

12.2 **Process for Changes.** The procuring Department shall notify the Procurement Agent of the solicitation to be amended, identifying specific areas of the document that will be changed, deleted, or added.

12.3 **Extensions of Time.** An important matter to consider when issuing an addendum is whether or not to extend the time and date for receipt of offers. The impact of the changes must be carefully considered in light of the time it will take a prudent offeror to incorporate those changes. This includes the time impact on the work already done in preparing the bid or proposal.

12.4 **Town Attorney Preparation.** The Procurement Agent will authorize the procuring Department to submit the request for an Addendum to the Town Attorney's Office for drafting.

13. **Receipt and Opening of Bids, Proposals, and Statements of Qualifications.**

- 13.1 **Bid Receipt.** Sealed Bids received, Proposals and Statements of Qualifications shall be time-stamped on the envelope or shipping label (not box), recorded on the solicitation log and kept in a safe place by the Procurement Agent until the appointed day and time when they are publicly opened and read. It is important to note that Sealed Bids shall not be submitted only by facsimile or in an electronic format even though an electronic copy may be required as part of the hard copy submitted.
- 13.2 **Late Bids.** Late Bids shall not be accepted and shall be returned, unopened, to the bidder.
- 13.3 **Bid Security.** Certified checks and bid bonds, if required by the Department as bid or performance security, shall be received, examined for accuracy and recorded by the Procurement Agent.
- 13.4 **Public Opening.** Responses to Solicitations shall be opened publicly at the time, date and location as designated in the Solicitation document. Bid/proposal openings are generally scheduled for Wednesdays at 3:00 p.m. (local time, Phoenix, Arizona), but may be scheduled at such other time as determined by the Procurement Agent.
- A. Sealed Bids shall be opened at the appointed date and time by an Employee from the procuring Department. The respondent name, bid price, and other information deemed appropriate by the Procurement Agent shall be read aloud. All other bid information terms and conditions will not be read at this time.
- B. Sealed Proposals shall be opened at the appointed date and time by an Employee from the procuring Department. Only the names of the proposers submitting information are to be read. Prices, if included as part of the proposal, shall not be provided or read at that time.
- 13.5 **File Keeping.** Envelopes and/or shipping labels from boxes shall be kept in the procurement file until after the protest period for that solicitation has passed. For projects using federal funds (i.e. HUD), all competitive Sealed Bids must be date and time stamped upon receipt. These time and date stamped bid envelopes must be retained with the project files as required by federal guidelines to document compliance for audit purposes.

14. **Contract Management and Vendor Payment.** The procuring Department is responsible for ensuring commodities or service deliverables are in compliance with the scope and terms of the contract. The procuring Department director serves as the Town representative in determining the acceptance/rejection of goods and services and the

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conditions of acceptance or rejection and payment of the deliverables. Responsibilities include, but are not limited to the following:

- 14.1 Monitoring. Monitoring contract performance and ensuring compliance with all contract terms and conditions.
- 14.2 Renewals/Extensions. Ensuring timely renewal/extension and managing amendments to the contract through Town Attorney approved amendments signed by the persons duly authorized to enter into contracts on behalf of the Town and Contractor.
- 14.3 Updates. Maintaining current contact information and ensuring that all contract documents are correctly updated and deposited with the Town Clerk's Office.