

TOWN OF CRESTONE
BIDDING AND PURCHASING POLICY
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Bidding and Purchasing Policy

DIVISION 1 Generally

Section 1. Purpose.

The purpose of this Policy is to provide for the fair and equitable treatment of all persons involved in purchasing by the Town, to maximize the purchasing value of public funds in procurement, to provide safeguards for maintaining a procurement system of quality and integrity and to foster effective, broad-based competition within the free enterprise system.

Section 2. Application.

This Policy shall apply to the procurement of materials, supplies, services and construction entered into by the Town. When the procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with any mandatory applicable federal law and regulations. Nothing in this Policy shall prevent the Town from complying with the terms and conditions of any grant, gift or bequest that is otherwise consistent with law. This Policy does not create or confer any right or entitlement upon any person to bid on or receive an award of any Town contract.

Section 3. Definitions.

The following definitions apply to this Policy:

Competitive sealed bidding, also called *formal bid*, shall mean the preferred process of acquiring materials, supplies, equipment and services, and for construction of public buildings, facilities or works in which an award is made to the lowest responsive and responsible bidder, based solely on the response to the criteria set forth in the Invitation to Bid; *competitive sealed bidding* does not include discussions or negotiations with bidders.

Confidential information shall mean information which is available to any employee only because of the employee's status as an employee of the Town and which is not a matter of public knowledge or available to the public on request.

Construction shall mean the process of building, improving, altering or demolishing improvements. *Construction* shall not include the operation, repair or maintenance of improvements.

Contract shall mean any Town agreement for the procurement or disposal of supplies, services or construction.

Invitations to bid shall mean all documents, whether attached or incorporated by reference, used for soliciting bids.

Materials shall mean all personal property, including but not limited to supplies, equipment, parts, printing and insurance; excluding, however, leases of a permanent interest in real property, securities and financial paper and water and water rights, whether represented by shares of stock in ditch and irrigation companies or otherwise.

Person shall mean any business, individual, union, committee, club, other organization or group of individuals.

Procurement shall mean the purchasing, renting, leasing or other acquisition of any materials, supplies, services or construction. It shall also include all functions that pertain to obtaining any material, service or construction, including the description requirement, the selection and solicitation of sources and the preparation and award of a contract.

Professional services shall mean the furnishing of labor, time, effort or expertise by a contractor with specialized knowledge in a field, including but not limited to architecture, engineering, medicine, finance, accounting (including auditing), appraisal and land surveying.

Public notice shall mean any publication reasonably calculated to inform responsible bidders or offerors. Public notice shall occur for a reasonable time and may be disseminated through any means of mass communication, including but not limited to newspapers, other written publications, posting, television, radio, other broadcasting media and electronic billboards.

Purchasing officer shall mean any person duly authorized by the governing body of the Town to enter and administer contracts and make written determinations with respect thereto.

Responsive bidder shall mean a person whose bid or offer conforms in all material respects to the requirements set forth in the invitation to bid or request for proposals.

Request for proposals shall mean all documents, whether attached or incorporated by reference, used for soliciting proposals.

Section 4. Authority to purchase.

Town Administrator is hereby designated as the Purchasing Officer responsible to make procurements, solicit bids and proposals, administer contracts and make written determinations and recommendations for each of the departments of the Town.

DIVISION 2 Bidding and Purchasing

Section 5. Methods of source selection.

All procurements subject to the terms of this Policy shall be awarded by competitive sealed bidding pursuant to Section 6 of this Policy, except as provided in:

- (1) Section 10 concerning awards by competitive sealed proposal;
- (2) Section 11 concerning awards authorized by negotiation, contracting for professional services; and
- (3) Section 12 concerning exemptions to use of competitive bid or proposal.

Section 6. Competitive sealed bidding.

(a) Competitive sealed bidding is intended to enable the Town to acquire goods and services it requires to conduct public business at the best possible cost. It also gives qualified and responsible vendors desiring to do business with the Town a fair and equitable opportunity to do so.

(b) An invitation to bid shall be issued when a contract is to be awarded by competitive sealed bidding. The invitation shall include a general description of the articles to be purchased, all contractual terms and conditions applicable to the procurement, the deadline for submission of bids and the time and place for opening bids.

(c) Public notice inviting bids shall be published at least once in a newspaper of general circulation in the Town at least ten (10) days preceding the last day set for receipt of bids. The public notice shall state the place, date and time of bid opening.

(d) Bids shall be opened publicly in the presence of one (1) or more witnesses at the time and place designated in the invitation to bid. Vendors and the public are invited and encouraged to attend bid openings. The Town Administrator or designee shall open bids publicly and shall read the names of the bidders and the amount of each bid, and any other information deemed appropriate by the Town Clerk or designee. All bids become part of public record, and therefore are available to the public. No statement shall be made as to any "winning bid" at the bid opening or any time until the bid is awarded.

(e) Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Policy. Bids shall be evaluated based on the requirements set forth in the invitation to bid, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose.

(f) Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted at the Town's sole discretion, only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and that the bid price actually intended is evident from the bid document previously submitted. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Town or fair competitor shall be permitted.

(g) The contract shall be awarded with reasonable promptness, by written notice to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation to bid. In the event the lowest responsive and responsible bid exceeds available funds, when time or economic considerations preclude resolicitation of work of a reduced scope, it is permissible to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. The Town Administrator shall submit all procurement under this Policy which exceeds a cost of five thousand dollars (\$5,000.00) to the Board of Trustees in an open meeting for final approval. The Town reserves the right to reject any and all bids when the lowest qualified bid exceeds the budget limit.

Section 7. Cancellation and rejections of bids.

An invitation to bid, a request for proposal or other solicitation may be cancelled, or any or all bids or proposals may be rejected, in whole or in part, as may be specified in the solicitation, when it is in the best interest of the Town in accordance with these rules and regulations. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future purchase of similar items.

Section 8. Standards of responsibility of bidders and offerors.

(a) In order to do business with the Town, a vendor must be able to demonstrate that it has:

(1) The appropriate financial, material, equipment, facility and personnel resources, experience and expertise, or the ability to obtain them, necessary to indicate the capability to meet all contractual requirements.

(2) A satisfactory record of performance and integrity.

(3) The legal capacity to contract with Town and supply all necessary information in connection with any inquiry concerning responsibility.

(b) The Town reserves the right to inspect the plant, place of business or worksite of a vendor.

(c) The unreasonable failure of a vendor to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility.

Section 9. Determination of nonresponsibility.

If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility, setting forth the basis of the finding, shall be prepared by the Town Administrator and a copy thereof shall be forwarded to the vendor. Once the determination of nonresponsibility has been made, the Town shall conduct no further business with such vendor unless and until the vendor has submitted supplemental information which indicates compliance with the Standards of Responsibility set forth in Section 8 of this Policy.

Section 10. Use of competitive sealed proposals in lieu of bids.

(a) When the Purchasing Officer determines that the use of competitive sealed bidding is either not practicable or not advantageous to the Town, a contract may be entered by use of the competitive sealed proposal method. Competitive sealed proposals are most appropriately used for professional service-type contracts.

(b) Proposals shall be solicited through a request for proposals. Public notice of the request for proposals shall be given at least ten (10) days prior to the advertised date of the opening of the proposals. Public notice shall include the proposal title, place, date and time of proposal opening.

(c) Proposals shall be opened as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared and shall be open for public inspection after the contract is awarded.

(d) The request for proposal shall state the relative importance of price and other evaluating factors.

(e) Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and before the contract is awarded for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(f) Award shall be made to the offeror whose proposal is determined, in writing, to be the most advantageous to the Town, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The Town Administrator shall submit all awards under this Section which exceed a cost of five thousand dollars (\$5,000.00) to the Town Board of Trustees in an open meeting for final approval. The Town reserves the right to reject any and all proposals when the lowest qualified proposal exceeds the budget limit. The contract file shall contain the basis on which the award is made.

Section 11. Contracting for professional services.

(a) By way of example but not by limitation, professional services, such as accountants, architects, auditors, consultants, engineers, land surveyors, etc., may be negotiated.

(b) Such services may be approved by the Town Administrator if the cost is two thousand five hundred dollars (\$2,500.00) or less.

(c) When the Town Administrator determines that the use of formal bidding is advantageous to the Town, procurement for professional services may be entered by use of competitive sealed proposal method.

(d) All multi-year contracts are subject to annual budget appropriations by Town Board of Trustees. All multi-year contracts are cancellable by the Town without penalty.

Section 12. Exemptions to use of competitive bid or proposal.

(a) Minor purchases. Any procurement not exceeding five thousand dollars (\$5,000.00) may be made in accordance with the procedures set forth below. Procurements shall not be artificially divided so as to constitute a small purchase under this Section.

(1) Procurements approved in the budget may be spent up to two thousand five hundred dollars (\$2,500.00) and shall be approved by the Town Administrator; provided that, whenever practical or advantageous, a reasonable number of vendors shall be solicited for quotations. Quotations may be oral or written, and the award shall be made to the vendor providing the lowest responsive and responsible quotation.

(2) Procurements greater than two thousand five hundred dollars (\$2,500.00) must be approved by the Town Board of Trustees. A reasonable number of vendors (ordinarily at

least three [3]) shall be solicited for quotations. Quotations may be oral or written, and the award shall be made to the vendor providing the lowest responsive and responsible quotation. The name of the vendors and the date and amount of each quotation shall be recorded, and such record shall be maintained for one (1) year from the date of the purchase.

(b) Emergency purchases. In case of an apparent emergency (a threat to public health, welfare or safety) which requires immediate purchase of materials, professional services or construction, the Town Administrator, or the Mayor, in the Town Administrator's absence, is empowered to procure such emergency needs by informal, open-market procedure as expeditiously as possible, at the lowest obtainable price, provided however, that ratification of such purchase shall be vested with and subject to approval of the Town Board of Trustees. A written determination of the basis for the emergency and for the selection of the particular contractor shall be made by the Town Administrator. The written determination shall be presented to Town Board of Trustees at the next open meeting.

DIVISION 3 Construction Contracts

Section 13. Bid security, performance and payment bonds.

(a) When a contract for public work or construction projects is awarded pursuant to the competitive bidding requirements of this Policy, the following bonds or security shall be delivered to the Town. (When deemed necessary and in the best interests of the Town, the Town Administrator may grant a waiver, in whole or in part, from the bid security, performance and payment bond provisions set forth below):

(1) When deemed necessary by the Town Administrator, bid deposits shall be prescribed in the public notice inviting bids. Unsuccessful bidders shall be entitled to a return of the surety required by the Town Administrator within ten (10) days after the award of the contract.

(2) A performance bond satisfactory to the Town, executed by a surety company authorized to do business in the State of Colorado or otherwise secured in a manner satisfactory to the Town, in an amount equal to one hundred percent (100%) of the price specified in the contract.

(3) A payment bond satisfactory to the Town, executed by a surety company authorized to do business in the State of Colorado or otherwise secured in a manner satisfactory to the Town, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the price specified in the contract.

(b) The Town may require bonds or security on projects other than construction and public works projects.

(c) In any construction or public works contract in excess of twenty-five thousand dollars (\$25,000.00), the Town shall deduct retainage from the partial payment in amounts specified to

protect the interest of the Town, and will retain this money until after completion of the entire contract. The amount to be retained from payments shall be ten percent (10%) of the value of the completed work, exclusive of payment for materials on hand, but not greater than five percent (5%) of the amount of the contract.

(d) Nothing in this Section shall be construed to limit the authority of the Town to require additional bonds or security.

Section 14. Local preference

It is the intention of the Town of Crestone whenever possible to use, without loss of quality or significant additional cost to the taxpayers, local businesses for the purchase of goods and supplies and all general services. The Town intends to give local businesses an advantage in the bidding process so that funds received from such contracts will be spent by the employees of local businesses in the local economy. For the purposes of this policy, a local business shall be defined as any business located or based in Saguache County. A local business shall be awarded a contract if its bid is within three (3) per cent of the lowest responsible bidder who does not have the local business designation. If a local bidder does not carry workers compensation insurance, the Town has the option to provide it, adding the additional cost to its own policy to the bid. In the event that the two lowest responsible bidders each have a local business designation, the lowest responsible bidder shall be awarded the contract.

DIVISION 4 Sale of Town Property

Section 15. Bidding procedure required for personal property.

(a) All sales of obsolete or unusable personal property with an estimated value in excess of two thousand dollars (\$2,000.00) shall be sold through the formal bid process to the highest responsible bidder, after due notice inviting bids. Such property with a value less than two thousand dollars (\$2,000.00) may be disposed of pursuant to policies and procedures established by the Town Administrator. The Town may engage auction firms to sell all obsolete or unusable property, after soliciting the auction firms through the formal bid process or through cooperative purchasing.

(b) The Town may reject all bids when it is in the best interests of the Town to do so.

(c) Any sale of real estate shall occur only after a public hearing.

DIVISION 5 Ethics in Public Contracting

Section 16. Criminal penalties.

To the extent that violations of the ethical standards of conduct set forth in this Division constitute violations of the State of Colorado Criminal Code, they shall be punishable as provided therein. Nothing contained in this Section shall prohibit prosecution of ordinance violations for the Town of Crestone. Such penalties shall be in addition to any civil sanctions set forth in this

Policy. Criminal, civil and administrative sanctions against employees or nonemployees, which are in existence on the effective date of this Policy, shall not be impaired.

Section 17. Gratuities and kickbacks.

(a) Town employees and members of their families shall not accept or solicit gifts or gratuities offered because of the employee’s duties, functions or responsibilities as an employee of the Town. This does not pertain to gifts of a general commercial advertising nature having a small value (less than fifty dollars [\$50.00]) or food or drink consumed by the employee at the time of receipt at an appropriate social or Town business.

(b) It is unethical for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

Section 18. Prohibition against contingent fees.

It is unethical for a person to be retained, or to retain a person, to solicit or secure a Town contract or other procurement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business, provided that full disclosure of all cost and pricing data, as well as such commission percentage, brokerage or contingent fee, is made when requested.

Section 19. Contemporaneous employment prohibited.

It is unethical for any Town employee or public official who is participating directly or indirectly in the procurement process to become or to be, while such a Town employee or public official, the employee of any person contracting with the governmental body by whom the employee is employed.

Section 20. Waiver from conflicts of interest.

The Town Administrator may grant a waiver from the conflict of interest provision or the contemporaneous employment provision upon making a written determination that:

- (1) The contemporaneous employment of the Town employee has been publicly disclosed;
- (2) The Town employee will be able to perform procurement functions without actual or apparent bias or favoritism; and
- (3) The award will be in the best interest of the Town.

Section 21. Use of confidential information.

It is unethical for any Town employee or public official to knowingly use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

Section 22. Sanctions.

(a) Employees. The Town Administrator may impose any one (1) or more of the following sanctions on a Town employee for violations of the ethical standards in this Policy:

- (1) Oral or written warnings or reprimands;
- (2) Suspension with or without pay for a specified period of time; or
- (3) Termination of employment.

(b) Nonemployees. The Town Administrator may impose any one (1) or more of the following sanctions on a nonemployee for violations of the ethical standards:

- (1) Written warnings or reprimands;
- (2) Termination of contracts; or
- (3) Suspension or revocation of ability to do business with the Town.

Section 23. Recovery of value transferred or received in breach of ethical standards.

(a) The value of anything transferred or received in breach of the ethical standards of this Policy by a Town employee, public official or nonemployee may be recovered from the Town employee, public official or nonemployee.

(b) Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the Town, and will be recoverable hereunder for the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one (1) offending party shall not preclude recovery from other offending parties.

Section 24. Authority to debar or suspend

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Town Administrator or designee, after the approval of the Town Board of Trustees, is authorized to debar a person for cause from consideration for award of contracts. The debarment shall be for a period of not more than three years. After the approval of the Town Board of Trustees, the Town Administrator is 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 which might lead to debarment. The suspension shall be for a period not to exceed three months. The causes for disbarment include:

- (a) Conviction or commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract;
- (b) Conviction under state or federal statutes of 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;

- (c) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- (d) Violation of contract provisions, as set forth below, of a character which is regarded by the Town Administrator to be so serious as to justify debarment action:
- (e) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;
- (f) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one 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.
- (g) After approval of a debarment or suspension by the Town of Crestone Board of Trustees, the Town Administrator shall issue a written order to debar or suspend which order shall be immediately mailed, by first class mail, or personally delivered to the debarred or suspended person. The order shall state the reasons for the action taken.