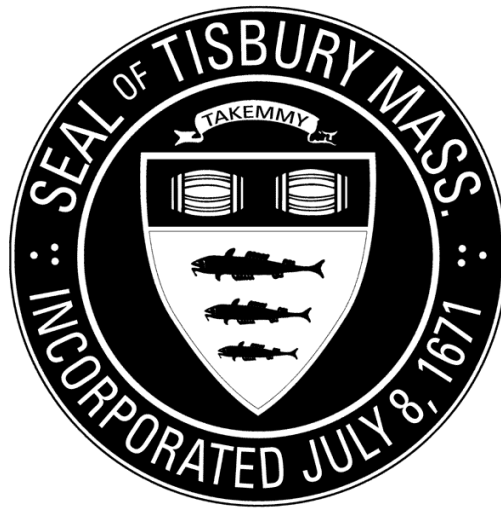


TOWN OF TISBURY



PROCUREMENT POLICIES & MANUAL

Procurement Office:

John W. Grande
Certified Purchasing Officer,
jgrande@tisburyma.gov
508-696-4203

Alexandra Kral
Executive Assistant,
akral@tisburyma.gov
508-696-4202

Marie Maciel
Contract Specialists,
mmaciel@tisburyma.gov
508-696-4200 X 152

TABLE OF CONTENTS

1. OBJECTIVE	3
2. PROCUREMENT PROCEDURE	3
3. OVERVIEW OF PROCUREMENT LAWS	3
3.1 Procurement of Supplies and Services	3
3.2 Public Works Construction:	3
3.3 Public Building Construction:	3
3.4 Procurement of Design Services	3
4. PROCUREMENT RESPONSIBILITIES	4
4.1 Town Department Responsibilities:	4
4.2 Procurement Office Responsibilities	6
5. CHANGE ORDERS, AMENDMENTS, EXTENTIONS	6
6. CONTRACTOR PERFORMANCE ISSUES	7
7. AVAILABLE SURPLUS	7
8. EMERGENCY PROCUREMENT	7
9. BID SPLITTING	8
10. COLLECTIVE PURCHASING OPPORTUNITIES	8

1. OBJECTIVE

The goal of this manual is to provide a reference tool for staff to understand how the Procurement Department makes procurement decisions and to ensure that all procurements made by the Town comply with the general law, local ordinances, and best purchasing practices. This manual outlines the procurement process and defines the roles of staff, Department Heads, and the Chief Procurement Officer(CPO), which will result in uniform specifications, fair and open solicitations; timely development of contracts and proper contract management

2. PROCUREMENT PROCEDURE

All Town departments, including the School Department and departments that operate through an enterprise fund, are subject to state procurement laws, inclusive but not limited to MGL 30B, 30,39M, 7 and 149, and are responsible for meeting all requirements. All Town Departments must follow all procurement policies and procedures as established by the Certified Procurement Officer.

3. OVERVIEW OF PROCUREMENT LAWS

The supply or service, and its application within the Town shall determine what legal requirements must be met in order for the procurement to be compliant with applicable purchasing laws. Departments must evaluate the procurement need and then follow the procedures that apply. A majority of purchases will fall into one of the following three categories:

3.1 Procurement of Supplies and Services: MGL c. 30B Unless expressly exempt from public bidding under MGL c. 30B, §1, the purchase of any supplies or services by the Town meeting certain monetary thresholds require compliance with the procurement procedures contained in MGL c. 30B.

3.2 Public Works Construction: MGL c.30, 39M Procurement of a contractor for the construction, reconstruction, installation, demolition, maintenance or repair of a public work requires public bidding. A public works construction project is generally considered any horizontal construction activity that involves any land disturbance, but excluding the construction of a building.

3.3 Public Building Construction: MGL c.149, §44A to 44M. Procurement of a contractor for the construction, reconstruction, installation, demolition, maintenance or repair of a building by a public agency is subject to the Filed Sub-Bid Law, MGL c. 149, §44A to 44M.

3.4 Procurement of Design Services: MGL c. 7, §38A to 38 H. Procurement of design services (Architect/Engineer, etc.), in connection with a public building project are subject to the Designer Selection Law. Design services in connection with a public works construction project are exempt from all bidding requirements as long as the Town hires a designer that fits the definition contained in MGL c. 30B, §2.

Please see “ Procurement Charts” for procurement thresholds and requirements applicable to each type of procurement as stated above by following <https://www.tisbury.ma.gov/town-administrator/contract-procurement-services/pages/procurement-manual>

4. PROCUREMENT RESPONSIBILITIES

For all competitive procurements the initiating Department will work cooperatively with Procurement Office to prepare the formal solicitation. The following section describes the procedures used by the Procurement Office, and the responsibilities of the initiating Department with respect to preparing, issuing, receiving, awarding and administering the solicitation and subsequent contract.

4.1 Town Department Responsibilities: Department Head shall be responsible for providing detailed project description to Procurement Official responsible for overseeing procurement of the required nature. Written project description must include appropriation source and Munis account number that will be used to cover the cost of the project, Estimated Cost of Project and at least three Vendor or Contractors that are capable of providing required service or product.

For MGL c.149 and MGL c.30, 39M or procurement of any engineering services related to Town Buildings and Roads, please contact Contract Specialist 508-696-4200 x 152

For procurement related to Finance Department Functions, Legal Services, Office Supplies, Software & Hardware purchases or any other miscellaneous services, please contact, Executive Assistant, 508696-4200 X 202

If the procurement meets “Sound Business Practices” criteria, the Town Departments may be authorized to independently procure required supplies and services. MGL c. 30B, §2 defines "Sound business practices", as ensuring the receipt of favorable prices by periodically soliciting price lists or quotes. All Town Departments are required to keep written record of each solicitation by completing “Price Solicitation” Form). The department Head and/or project manager must obtain completed W-9 form, valid Certificate of Liability Insurance and a copy of Workmen’s Compensation Declaration page from the contractor prior to commencement of any service. A copy of the completed form and all required documents must be provided to Procurement Office. All contracts must be awarded to responsible person offering the best price.

For Procurement of Supplies: The Department Head should provide item description that clearly defines purchase requirements. Said description may include dimensions, weight, performance rating, quality or type of guarantee/warranty. If a description is vague or incomplete, it may result in a supply that is not of the quality or value expected.

For Procurement of Services: The Department Head should provide a written scope of services which includes a detailed description of the task to be performed. Details should include what the work entails, what qualifications or skills are required of the person(s) doing the work, and what is needed (materials) to accomplish the work.

For Procurement of Building Construction Contracts: The Department Head must provide Procurement Official with a detailed description of the proposed construction project. After initial review of the proposed project, Procurement Official may request additional information such as but not limited to contractor’s qualifications requirements, prior experience of the contracting firm, specific materials or standards required to be used during the project, any certifications or licenses that should be retained either by the firm or the individuals performing the work.

Sole Source Procurement: A sole-source procurement is the purchase of supplies or services from a vendor without advertising or seeking competition. Procurement Law allows for a sole-source procurement under the special circumstances. For all sole-source procurement requests please fill out “Sole-source procurement form”, the Procurement Official will determine if sole-source procurement is permissible.

Request for Proposals Justification: Under MGL c. 30B, certain contracts must be procured using either invitation for bids (IFB) or request for proposal (RFP). RFP process has been developed to allow municipalities to award contract to the most advantageous proposal that might not always offer the lowest price. Department may request to utilize RFP process when there are factors beyond the quality requirements for which you are willing to pay more money. If the Department feels that a Request for Proposals best suits their needs, rather than an Invitation for Bids, the Department shall provide the CPO with written documentation describing the specific reasons why an RFP process is more beneficial than a bid process.

Contract Schedule: The Initiating Department should provide a basic timeline of need and/or implementation. Where applicable, the desired length of the contract should be provided. If there are any other terms and conditions not included in the Town’s basic terms, the Department should also provide those terms and conditions. Contract terms are limited to three years (including renewals); to go beyond a three-year period requires a Town Meeting vote (except certain construction projects).

Estimated Value: Since procurement laws are based upon dollar value thresholds, the Department will provide an estimate in order for the Procurement Official to determine the appropriate procedure. This estimate should be provided either by a Department employee experienced in the type of work being asked for, or by a vendor who has been informed of prevailing wage requirements.

Communication with Vendors/Contractors: The Department Head is encouraged to provide the Procurement Office with contact information for vendors or contractors who may be interested in solicitations. The Procurement Office will keep a record of these vendors and will include them in relevant solicitations.

Receipt of Quotes, Bids or Proposals: Unless permission is otherwise granted prior to solicitation, all quotes, bids and proposals are to be sent to the address of the Procurement Official responsible for the procurement of the required nature.

Review and Recommendation to Award: If the solicitation was procured through IFB process, the Department Head will be responsible for reviewing the submitted bids and determining if the bidder is responsible (A bidder is responsible if they are capable or qualified to perform the work.). The Department Head should conduct reference checks and whatever reasonable research may be conducted to determine the bidder’s reputation and ability to meet the requirements of the contract. The Procurement Official will assist in this process if needed. If the solicitation was an RFP, the CPO will select members of the evaluation team.

Contract Management: The Department Head and/or project manager is responsible for monitoring the progress and performance of any contract awarded in response to procurement initiated by said department. Responsibilities may include reviewing certified payrolls when connected to a Prevailing Wage project. All amendments, change orders, or extensions should be initiated by the Department Head and/or project manager and will be approved by the CPO. Department Heads are responsible for tracking the expiration

dates of their contracts. The Department Head and/or project manager will notify the CPO at least 45 days in advance of a contract expiration date in order to facilitate a new contract, if necessary. Department Heads are responsible for providing a copy of any performance review to the Procurement Office, whenever such review is required by DCAMM. Department Heads are responsible for received and reviewing certified payroll reports for all projects that are subject to Prevailing Wage Laws. Department Heads should maintain a file for each project which contains the certified payrolls; this file is retained for seven (7) years following the completion date of the project. Invoices should not be paid until certified payroll is received from the contractor.

4.2 Procurement Office Responsibilities: The Procurement Official in charge of overseeing procurement of the required nature shall be responsible for:

- *Issuing of Solicitation*
- *Distribution of Solicitation*
- *Coordinating Meetings and/or Interviews as may be required*
- *Receiving and Evaluating Responsiveness of received Bids (bid is responsive when it meets all of the requirements of the issued solicitation)*
- *Handling Late Responses*
- *Deciding Tie Bids*
- *Awarding and Executing Contracts*
- *Procurement Record Database:* All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules. The Chief Procurement Officer shall maintain a record listing all contracts made under Sole source procurements, or Emergency procurements, for a minimum of five years. The record shall contain: each contractor's name; the amount and type of each contract; and a listing of the supplies, services, or construction procured under each contract.
- *Contract Management:* The Procurement Official will keep a written record of any problems, quality issues, complaints, performance issues or other items that may be used to disqualify a vendor or contractor in the future.
- The Procurement Office will maintain records of all certified payroll reports that are provided by the contractor or the Department Head. Please note that while the Procurement Official will maintain records of certified payroll, it is not the responsibility of the CPO to obtain these records from the contractor. The Department Head should confirm they have received complete certified payroll records for any labor inclusive project, prior to remitting the final payment to the contractor. The Procurement Official will also keep a record of any performance report that is required by law.

5. CHANGE ORDERS, AMENDMENTS, EXTENTIONS

All change orders require a prior review and in-writing approval by the Certified Purchasing Official.

Supply and Service Contracts: Chapter 30B allows for an increase in the quantity of a supply or service, as long as the increase does not exceed twenty-five percent (25%) of the total contract price. Unit prices cannot be higher than the original unit prices, and a contract amendment must be signed by the original signatories. Contracts for the purchase of heating oil, gasoline, fuel oil, and road sand and salt are not subject to the percentage limit but must meet all other requirements stated above.

Construction Contracts: There is no statutory limit on change orders for construction projects; however, recent case law suggests that change orders should not exceed thirty percent (30%) of the original contract.

The contractor suggesting a change order shall supply the Department Head with a written explanation of the need for a change, including a detailed cost breakdown of the proposed change. It is the responsibility of the Department Head to ensure that the change order is, in fact, necessary for completion of the project and that the additional work proposed was not included in the existing specifications and contract. The Department Head should also determine if the requested change is accurate and has value to the overall project.

Amendments: Should a contract amendment be necessary for any reason; the Department Head and/or project manager is responsible for notifying the CPO in writing of the need and the reasons for the amendment. The CPO will execute the amendment, which will follow the same requirements as the original contract. Should the contract amendment require additional funding, the Department Head is responsible for securing that funding prior to requesting the information.

Extensions: Department Head needing an extension on a contract should submit a written request to the CPO at least 30 days in advance of needing the extension. The CPO will verify the eligibility of the contract for being extended, pursuant to the terms of the existing contract and subject to the applicable General Law. If the extension is warranted a "Notice of Extension" will be issued by the CPO.

6. CONTRACTOR PERFORMANCE ISSUES

The Department Head responsible for monitoring the progress and performance of the contract, must provide the contractor with a detailed and specific notice of problems. Copy of said notice must be provided to the Procurement Official, CPO and retained in the contract file. If the written notification, does not result in effective action on contractor's part to correct the problem, the department head must intensify monitoring efforts and schedule a meeting with the contractor, CPO and Procurement Official to discuss corrective action plan. The results of the meeting and any corrective action that the contractor agrees to take should be documented in the contract file. If the contractor unable or fails to address performance issues after reasonable notice, the contractor will be considered to be in default. The Department Head must inform CPO of the contractor's failure and existing performance terms of the contract. The CPO or Procurement official will prepare a default notice. If the problem persists after the default notice, the Town may consider terminating the contract.

7. AVAILABLE SURPLUS

The Town Departments must once a year notify Procurement Official and CPO of all available surplus equipment in the department. The Procurement Official will distribute collected information to all the departments prior to making surplus equipment available for public auction.

8. EMERGENCY PROCUREMENT

Supplies and Services (MGL c. 30B): 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, you may procure the needed item or service without complying with all of Chapter 30B's requirements. Even under emergency circumstances, however, you must comply with Chapter 30B to the extent possible.

Any Department Head with an emergency procurement must report emergency situation to the CPO immediately. The written report should include:

- a. The basis for the emergency procurement
- b. The name(s) of the vendor/contractor to be used
- c. The dollar amount committed to the emergency
- d. List of supplies and/or services to be procured

The CPO must authorize any emergency procurement of Supplies and Services if necessary. The Town may procure only those supplies or services necessary to meet the emergency. A local jurisdiction may not artificially create an emergency by postponing normal purchases.

Design and Construction Emergencies (MGL c.7; MGL; MGL c.30, 39M; MGL c.149): Please see Attachment C “ Handling Design and Construction Emergencies”.

Any Department Head with an emergency procurement must report emergency situation to the CPO immediately. The written report should include:

- a. The basis for the emergency procurement
- b. The name(s) of the vendor/contractor to be used
- c. The dollar amount committed to the emergency
- d. List of supplies and/or services to be procured

The CPO must authorize any emergency procurement of Design and Construction Services if necessary. The CPO may waive all or portion of the competitive bidding requirements when authorized by the applicable law. The CPO must file an emergency waiver request with applicable state agency when required by the applicable law.

9. BID SPLITTING

Bid-splitting is intentionally splitting a purchase into two or more smaller purchases for the purpose of evading a bidding law. Bid-splitting to avoid procurement requirements is against the law.

10.COLLECTIVE PURCHASING OPPORTUNITIES

The Commonwealth’s Operational Services Division (OSD) procures and awards a number of statewide contracts that are available to municipalities. Departments who wish to procure an item or services from an OSD contract should consult with Procurement Official to determine which statewide contract may meet their needs. For a full list of available state wide contract please follow this link <https://www.mass.gov/service-details/find-a-statewide-contract-user-guide>