

**BOARD OF COMMISSIONERS
FOR THE
TOWN OF UPPER MARLBORO**

ORDINANCE: 2011-02
SESSION: Regular Town Meeting
DATE: May 17, 2011

AN ORDINANCE related to the use of competitive bidding, purchasing and contracting for all Town procurements. The purpose of this ordinance is to repeal any previously enacted ordinances on this subject matter and enact a new comprehensive ordinance in order to provide a more practical and efficient process for obtaining goods and services through public expenditures, and disposing of surplus property as more particularly set forth herein.

WHEREAS, pursuant to Md. Ann. Code, Article 23A, § 2, the Town of Upper Marlboro (hereinafter, "the Town") has the general authority to pass such ordinances not contrary to the Constitution of Maryland, public general law, and

WHEREAS, the Charter of the Town of Upper Marlboro (the "Charter") in Section 82-56 (Purchasing and Contracts) mandates that the Board of Commissioners adopt an ordinance consistent with said Section, and

WHEREAS, Ordinance 97-1, is no longer consistent with Charter Section 82-56 amended on August 17th, 2010 by Charter Resolution 01-2010, and

WHEREAS, the Board of Commissioners of the Town of Upper Marlboro (the "Board") desires to repeal Ordinance 97-1, in its entirety, that was approved on January 14, 1997, and

WHEREAS, the Board finds it in the best interest of the Town of Upper Marlboro to enact a new and comprehensive procurement ordinance as provided herein.

NOW THEREFORE, the Board of Commissioners of the Town of Upper Marlboro, State of Maryland, does ordain as follows:

SECTION 1. Purpose.

The purpose of this ordinance is to:

- (a) Provide for fair and equitable treatment of all persons involved in public purchasing by the Town;
- (b) Ensure the maximum purchasing value of public funds in procurement; and

(c) Provide safeguards for maintaining a procurement and disposition system of quality and integrity.

SECTION 2. Definitions.

The following words, terms and phrases, when used in this Ordinance shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“**Bid**” means an offer, in writing, to furnish goods or services in conformity with the **specifications**, delivery terms and conditions or other requirements included in the **invitation for bids** or an offer to purchase property declared to be surplus property by the Board of Commissioners.

“**Competitive sealed bid**” or Sealed Bidding means a method of procurement in which a supply, service, or **construction** item is defined in a list of **specifications**; the **specifications** are included in an **invitation for bids**; the **bids** are received by a specified time in sealed envelopes; an award is made to the lowest **responsible bidder** meeting all **specifications**, and cost is objectively measurable as defined in the **specifications**.

“**Competitive sealed proposal**” or Request for Proposals means a method of procurement in which a supply, service, or **construction** item is defined in a list of **specifications**; **proposals** are received by a specified time in sealed envelopes; and an award is made to the proposer most closely meeting **specifications** as determined by an evaluation that uses a predetermined and published set of evaluation criteria. Cost is one (1) criterion among others, all of which may be assigned specific weights.

“**Construction**” means the erection; alteration or repair of any Town structure or building; or other public improvements of any kind. “**Construction**” does not include the routine operation, repair or maintenance of existing facilities.

“**Contract**” means any type of Town agreement, regardless of how it may be titled, for the procurement or disposition of goods, services or **construction**.

“**Contractor**” means any person having a **contract** with the Town.

“**Invitation for bids**” means all documents, whether attached or incorporated by reference, used for soliciting **competitive sealed bids**.

“**Professional services**” means those services provided by persons whose services are customarily negotiated because of the individuality of those services, because of the extensive level of training, education and skill involved, and because they do not lend themselves to a fixed price **bid**.

“**Proposal**” means an offer to supply goods or perform services, or both or to purchase goods and services from the Town in response to a **request for proposals**.

“**Public notice**” as used herein means timely publication on the Town’s website, in a newspaper

of general circulation or in another appropriate publication as determined by the Board.

“**Request for proposals**” means all documents, whether attached or incorporated by reference, used for soliciting **proposals**.

“**Responsible bidder** or offeror” means a person who has the capability and reliability in all respects to perform fully the **contract** requirements. Any person who is in default on the payment of taxes, licenses or other monies due the Town shall not be deemed responsible.

“**Responsive bidder**” means a person who has submitted a **bid**, which conforms in all material respects to the **invitation for bids**.

“**Specification**” means any description of the design or functional characteristics, or of the nature of a supply, service, or **construction** item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service or **construction** item for delivery.

“**Town**” means the inhabitants of the Town of Upper Marlboro, Maryland that are collectively considered a body corporate and a municipal corporation empowered to enact certain ordinances through its legislative body pursuant to Article XI E of the Constitution of Maryland, the Charter and Article 23A of the Annotated Code of Maryland.

Part I Procurements over \$10,000

SECTION 3 (A) Competitive Sealed Bidding or Sealed Bid.

Unless the Board, by unanimous vote of the full Board, finds another method of procurement to be more advantageous, all purchases and **contracts** by the **Town**, shall be awarded through a **competitive sealed bid** process when the amount of the purchase or **contract** is anticipated to be \$10,000 or more. **Competitive sealed bidding** shall be the preferred method for **Town** procurement which is expected to exceed ten thousand dollars (\$10,000.00).

(a) **Invitation for bids.** An **invitation for bids** shall be in writing and shall include **specifications**, and all **contractual** terms and conditions deemed necessary and applicable to the procurement. **Public notice** of the invitation shall be given at least fifteen (15) days prior to the opening of the **bids**.

(b) Cancellation. The Board of Commissioners may cancel any **invitation for bids**.

(c) **Bid** opening. **Bids** shall be opened and recorded publicly as outlined in the **invitation for bids**, in the presence of one (1) or more witnesses at the time and place designated in the **invitation for bids**.

(d) **Bid** acceptance and evaluation. **Bids** shall be unconditionally accepted without alteration or correction except as authorized in this Ordinance, and shall be evaluated based on the requirements and

criteria set forth in the **invitation for bids**.

(e) **Bid** correction or withdrawal. Mistakes discovered after **bid** opening resulting in downward correction of a **bid**, which would displace the apparent low bidder, shall only be permitted if the error made and the intended **bid** price can be determined by the **Town** solely from the **bid** documents. Upward correction of a **bid**, established from the **bid** documents, shall be permitted only if the **Town** finds that the mistake was inadvertent and bona fide and that it would be unconscionable to require the **bidder** to enter into a **contract** at the **bid** price. All decisions to permit the correction or withdrawal of **bids** based upon **bid** mistakes, shall be supported by a written determination made by the President.

(f) Award. The **contract** shall be awarded with reasonable promptness by written notice from the President to the lowest responsible **bidder**.

SECTION 3 (B) Competitive Sealed Proposals or Request for Proposals.

(a) When appropriate to use. In lieu of bid specifications, a request for proposal may be issued. A request for proposal may be issued when a desired outcome is sought, but the method for achieving that outcome is not defined in a detailed specification, or circumstances allows for presenting different options for achieving the desired outcome beyond proposed specifications. Services or goods purchased by request for proposal shall be awarded based on a variety of factors, including project approach, experience, price, and such other criteria as shall be defined and specifically set forth in the request for proposal. Requests for proposal shall be posted in the same manner as bid specifications, and responses shall be sealed in the same manner as bids. **Proposals** shall be solicited through a **request for proposals** by **public notice**. Such **public notice** shall be given at least fifteen (15) days prior to the opening of the **proposals**.

(b) Confidentiality of **proposals**. The identity of any offeror or the contents of any **proposal** shall not be disclosed to competing offerors during the evaluation process.

(c) **Bid** regulations applicable to **proposals**. Subsections (b), (c), (d) and (e) of Section 3 (A) relating to **competitive sealed bids** shall also be applicable to **competitive sealed proposals**.

(d) Discussion with responsible offerors and revisions to **proposals**. As provided in the **request for proposals**; discussions may be conducted with responsible offerors who submit **proposals** determined to be reasonably susceptible to being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of **proposal** and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions there shall be no discussion of the identity of competing offerors.

(e) Award. Award shall be made to the responsible 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**. The **contract** file shall contain the basis on which the award is made, and shall be retained pursuant to the approved records retention schedule.

(f) The use of a **request for proposals** or other methods of procurement under this section must be authorized by a unanimous vote of the full Board upon a determination that such method is more advantageous for the **Town** than **competitive sealed bidding**.

SECTION 3 (C) All procurements within Part I must be approved by the Board before coming effective.

Part II Procurements at or below \$10,000

SECTION 4. Procurements between \$10,000 and \$2,000.

(a) Except as may be provided under Section 6, procurements under this Section require, insofar as it is practical, a minimum of three quotes or **proposals** that may include offers based on advertising materials available to the public. If such quote or **proposal** is oral, a written record of the offer shall be made with the date and details to be maintained with the procurement record.

(b) All procurements between \$10,000 and \$ 2,000 shall be approved by the Board.

SECTION 5. Procurements under two thousand dollars (\$2,000).

(a) The President is authorized to make individual purchases and execute contracts up to \$2,000 in cost without prior Board approval so long as the duration of the purchases or contract is one year or less as long as such contracts or purchases were previously authorized by a budget ordinance or approved within any detailed budget documents supporting said budget ordinance.

(b) For individual purchases or contracts over \$500, the President shall if feasible obtain three (3) or more offers, or quotations, such quotations may be oral or based on published prices.

(c) Purchases or contracts with a value of \$1,000 or more shall be reported to the Board.

(d) The President may, in writing, authorize the Town Clerk or Department Heads with the authority to make purchases under \$500 with the same restrictions as set forth in Section 5 (a) above.

Part III Special Procurement of Any Amount

SECTION 6. Special classes of procurements.

(a) Sole source procurement. A **contract** may be awarded without competition when the Board

of Commissioners determines and records in the minutes of a public meeting, after conducting a good faith review of available sources, that there is only one (1) source for the required supply, service or **construction** item. The President or his designee shall conduct negotiations as appropriate, as to price, delivery, and terms and keep a written record of all sole source procurements.

(b) Emergency procurement. Notwithstanding any other provision of this Ordinance, the Board of Commissioners may make or authorize others to make emergency procurement of supplies, services or **construction** items when there exists a threat to public health, welfare or safety, and delay would seriously injure the **Town** financially or otherwise. A written statement of the nature of the emergency shall be made by the President who shall promptly notify the Board of Commissioners of the circumstances requiring the emergency procurement. Such emergency procurement shall be made with a level of competition as deemed practical under the circumstances, but need not satisfy the requirements of Part I of this Ordinance.

(c) Cooperative and wholesale procurement.

(i) Cooperative purchasing. Notwithstanding any other provision of this Ordinance, the Board of Commissioners may **contract** with any supplier who offers goods or services on the same terms as provided other state or local governments or agencies thereof if the Board of Commissioners finds that the cost of the items to be purchased is equal to or less than that which could be obtained by competitive procurement.

(ii) Interjurisdictional purchasing. The Board of Commissioners may also **contract** directly with state or local governments or agencies thereof for goods or services when such goods, work or services were obtained through competitive procurement procedures or service to be performed is now being performed by the state or local jurisdiction.

(iii) Joint purchasing. The Board of Commissioners may join with other units of government in cooperative purchasing plans when the best interests of the **Town** would be served thereby.

(d) **Professional services.** Selection of professional service **contractors** for the **Town** may be procured by methods set forth in Section 3 or 4 of this Ordinance or by **public notice** and negotiation. Notwithstanding the foregoing, the Board of Commissioners may select individuals or firms to provide continuing **professional services** by whatever procedure the Board deems appropriate and in the best interests of the **Town**.