



MAGNA POLICY #2

PURCHASING, CONTRACTING AND PROCUREMENT

Adopted by Ordinance #18-01-01 on January 9, 2018

Amended by Resolution #19-09-01 on September 10, 2019

ARTICLE I
GENERAL PROVISIONS

1. The underlying purposes of this policy are:
 - a. To ensure fair and equitable treatment of all persons who wish to, or do conduct business with the Metro Township.
 - b. To provide for the greatest possible economy in Metro Township procurement activities.
 - c. To foster effective broad-based competition within the free enterprise system to ensure that the Township will receive the best possible service or product at the lowest possible price

2. Compliance - Exemptions from this policy.
 - a. This policy shall not prevent the Metro Township from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.
 - b. When procurement involves the expenditure of federal assistance funds, the Metro Township shall comply with applicable federal law and regulations.

3. Definitions
 - a. "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
 - b. "Change order" means a written order signed by the purchasing agent, directing the contractor to suspend work or make changes, which the appropriate clauses of the contract authorize the purchasing agent to order without the consent of the contractor or any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
 - c. "Contract" means any Metro Township agreement for the procurement or disposal of supplies, services, or construction.
 - d. "Invitation for bids" means all documents, whether attached or incorporated by reference, used for soliciting bids.
 - e. "Person" means any business, individual, union, committee, club, other organization, or group of individuals.
 - f. "Procurement" means buying, purchasing, renting, leasing, leasing with an option to purchase, or otherwise acquiring any supplies, services, or construction.

- g. “Purchasing agent” means the person duly authorized by the Metro Township Council to enter into and administer contracts and make written determinations with respect thereto.
- h. “Purchase description” means the words used in a solicitation to describe the supplies, services or construction to be purchased, and includes specifications attached to or made a part of the solicitation.
- i. “Request for proposals” means all documents, whether attached or incorporated by reference, used for soliciting proposals.

ARTICLE II

OFFICE OF THE PURCHASING AGENT

The Council shall appoint a Purchasing Agent. The Purchasing Agent shall be responsible to make procurements, solicit bids and proposals, enter into and administer contracts, and make written determinations for the Metro Township.

ARTICLE III

SOURCE SELECTION AND CONTRACT FORMATION - GENERAL PROVISIONS

- 1. Purchase not requiring sealed bids.
 - a. Procurements costing less than \$10,000 in total, or procurements costing less than \$40,000 with Council approval, shall not require bids of any type. (Purchases shall not be artificially divided so as to constitute a small purchase under this section.)
 - b. Procurements costing more than \$10,000 but less than \$40,000 in total, shall require 2 telephone bids.
 - c. Purchases made through the cooperative purchasing contracts administered by the State Division of Purchasing or other governmental entity which has applied its purchasing and procurement policies.
 - d. Purchases made from a single-source provider.
 - e. Purchases required during an emergency, i.e., an eminent threat to the public’s health, welfare, or safety. However, as much competition as practical should be obtained; and, such purchases should be limited to amounts necessary to the resolution of the emergency.
- 2. Purchases requiring sealed bids.

- a. Contracts shall be awarded by competitive sealed bidding except as otherwise provided by this policy.
- b. An invitation for bids shall be issued when a contract is to be awarded by competitive sealed bidding. The invitation shall include a purchase description and all contractual terms and conditions applicable to the procurement. Public notice of the invitation for bids shall be given at least 10 days prior to the date set forth therein for the opening of bids. The notice may include publication in a newspaper of general circulation, or posting on an approved public notice website.
- c. Any procurement in excess of \$40,000 shall require a legal notice in a local newspaper of general circulation, or posting on an approved public notice website.
- d. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitations for bids. The amount of each bid and any other relevant information, together with the name of each bidder, shall be recorded. The record and each bid shall be open to public inspection.
- e. Bids shall be unconditionally accepted without alternation or correction, except as authorized in this policy. Bids shall be evaluated based on the requirements set forth in the invitation for bids.
- f. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the Metro Township of fair competition shall be permitted. All decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes shall be supported by a written determination made by the purchasing agent.
- g. The contract shall be awarded with reasonable promptness, by written notice, to the lowest bidder whose bid meets the requirements and criteria set forth in the invitation for bids.
- h. The Metro Township shall follow the procedures contained in Utah Code 11-39-101 et seq. for the letting of contracts for the construction of building improvements or public works projects as defined therein and any provision of this policy that conflicts with the provisions of Utah Code 11-39-101 et seq. shall not apply to the letting of contracts covered by this chapter of state law.

3. Cancellation and rejection of bids.

An invitation for bids, a request for proposals, or other solicitations may be canceled, 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 interests of the Metro Township. The reasons shall be made part of the contract file.

4. Use of competitive sealed proposals in lieu of bids (Requests for Proposals).

When the purchasing agent determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the Metro Township, a contract may be entered into by

competitive sealed proposals. Competitive sealed proposals are most appropriately used for professional service-type contracts.

- a. Proposals shall be solicited through a request for proposals. Public notice of the request for proposals shall be given at least 10 days prior to the advertised date of the opening of the proposals.
- b. Proposals shall be opened so 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 contract award.
- c. The request for proposals shall state the relative importance of price and other evaluating factors.
- d. 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 prior to award for the purpose of obtaining best and final offers. In conduction discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
- e. Award shall be made to the person whose proposal is determined, in writing, to be the most advantageous to the Metro Township, 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 contract file shall contain the basis on which the award is made.

5. Architect-Engineer services are qualification-based procurements.

Requests for such services should be publicly announced. Contracts should be negotiated by the Metro Township based on demonstrated competence at fair and reasonable prices.

6. Determination of non-responsibility of bidder.

Determination of non-responsibility of a bidder or offeror shall be made in writing. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to the bidder or offeror. Information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside of the purchasing division without prior written consent by the bidder or offeror.

7. Cost-plus-a-percentage-of-cost contracts prohibited.

Subject to the limitations of this section, any type of contract which will promote the best interests of the Metro Township may be used, provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the Metro Township than any other type or that it is impracticable to obtain the supplies, services, or construction, required except under such a contract.

ARTICLE IV

PURCHASES USING APPROVED VENDORS

Section 1 - Purpose of Policy

The purpose of this Article of the Policy is to allow the Mayor and Council to more effectively and efficiently procure services when work needs to be done to avoid higher costs of repair or replacement. Using contractors from a pre-approved list from which to solicit bids directly may significantly reduce the time between problem identification and resolution.

Section 2 - Definitions

- 1) "Approved Vendor" means a vendor that has been vetted and pre-approved for consideration to perform certain work for a governmental entity.
- 2) "Approved Vendor List" means a register of pre-approved vendors maintained by either 1) the State of Utah, 2) Salt Lake County, or 3) the Magna Water District.
- 3) "Council" means the Magna Metro Township Council, the municipal legislative body of Magna, or its successor.
- 4) "Public Infrastructure" means all public infrastructure owned by Magna that, if it fails, may place residents' life, health, safety, and/or property at risk to damage or destruction. Infrastructure items may include but are not limited to municipality-owned public roadways, streetlights, storm drains and related appurtenances, computers, software, and buildings.
- 5) "Emergency Event" means an event, either natural or man-made that may result in damages to the Municipality's public infrastructure.
- 6) "Magna" means the Magna Metro Township- a municipality pursuant to state law, or its successor.
- 7) "Public Works Director" means the Director of Public Works for Magna, or MSD-contracted designee/designated agency.
- 8) "Purchasing Agent" means the person identified by the Municipality to purchase goods and services for the Municipality. May also be referred to as the "Agent."
- 9) "Qualified Bid" means a bid received from a vendor that is determined by the Purchasing Agent to be sufficiently provided to the price and scope of work requested.

Section 3 -Direct Contact of Approved Vendors for Bids when determined of benefit by the Purchasing Agent

- 1) When determining when to use Direct Contact with Approved Vendors, the Purchasing Agent may qualify their need based on, but not limited to, the following criteria:
 - a. Public Infrastructure Failure

1. When a part or portion of the Municipality's public infrastructure has been identified as having failed by the Public Works Director, the Purchasing Agent may choose to directly solicit bids from companies contained on an approved vendor list identified for use by the Municipality if the following situations exist:
 1. The failure is determined by the Public Works Director to pose
 - a. A public health and/or safety risk; and/or
 - b. Imminent risk to creating a significantly escalated repair cost if work to repair the infrastructure is delayed;
 2. And,
 3. It is determined by the Public Works Director the cost of performing the repair is expected to be less than \$100,000.
- b. Public Infrastructure at Imminent Risk of Failure
 1. When a part or portion of the Municipality's public infrastructure, during its inspection, has been identified by the Public Works Director to be at imminent failure, the Purchasing Agent may choose to directly solicit bids from companies contained on an approved vendor list identified for use by the Municipality if the following situations exist:
 1. The failure is determined by the Public Works Director to pose
 - a. A public health and/or safety risk; and/or
 - b. Imminent risk to creating a significantly escalated repair cost if work to repair the infrastructure is delayed;
 2. And,
 3. It is determined by the Public Works Director the cost of performing the repair is expected to be less than \$100,000.
- c. Public infrastructure required for the daily conduct of business that can impair or delay the administrative conduct of the public business.
 1. When certain municipal infrastructure used by the municipality may be purchased through direct contact with approved vendors if it is determined by the Purchasing Agent and respective Department Director to be unable to perform necessary work due to changes in
 1. laws,
 2. ordinances,
 3. administrative processes; or
 4. technology platforms

- ii. And,
- iii. The purchase is determined to cost less than \$40,000.

Section 4 -Direct Contact of Approved Vendor Bids; Purchasing Agent's
Process

- 1) If it is decided by the Purchasing Agent to pursue a direct contact bid process using companies from an approved vendor list, the Purchasing Agent shall
 - a. Maintain a record of all communications between the Agent and all vendors contacted from which a bid is requested; and,
 - b. Must receive a minimum of two (2) qualified bids from the approved vendors contacted.
- 2) Final Approval of all direct contact of approved vendors purchases must be approved by the council prior to the execution of the contract.
- 3) Recommendations for purchases to be considered for Council Approval shall be based on "Best Price/Best Service Delivery" as determined by the Purchasing Agent.

ARTICLE V

APPEALS

1. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may appeal to the purchasing agent. An appeal shall be submitted in writing within 5 working days after the aggrieved person knows or should have known of the facts.
2. The purchasing agent shall promptly issue a written decision regarding any appeal, if it is not settled by a mutual agreement. The decision shall state the reasons for the action taken and inform the protestor, contractor, or prospective contractor of the right to appeal to the Council.
3. The Council shall be the final appeal on the Metro Township level.

ARTICLE VI

ETHICS IN PUBLIC CONTRACTING

1. No person involved in making procurement decisions may have personal investments in any business entity which will create a substantial conflict between their private interests and their public duties.
2. Any person involved in making procurement decisions is guilty of a felony if the person asks, receives, or offers to receive any emolument, gratuity, contribution, loan, or reward, or any promise thereof, either for the person's own use or the use or benefit of any other person or organization from any person or organization interested in selling to the Metro Township.