

**BRIAN HEAD TOWN CODE
TITLE 1, CHAPTER 11 - PURCHASING**

1-11-2: PURCHASING ADMINISTRATION:

The Town Manager and department heads shall have the responsibility for the purchasing activities of the town and its various departments as set forth herein. (Ord. 02-002, 2-12-2002)

1-11-3: COMPETITIVE BIDDING; WHEN NECESSARY:

- A. Supplies, Equipment And Services: Except as otherwise provided in this chapter, purchases of supplies, equipment or contractual services of an estimated value less than twenty five thousand dollars (\$25,000.00) shall be effected only by contract with the lowest responsive and responsible bidder pursuant to solicitation of verbal bids. Such purchases with an estimated value of twenty-five thousand dollars (\$25,000.00) or greater shall be by written contract with the lowest responsive and responsible bidder, pursuant to the formal procedure hereinafter prescribed. Value amounts used herein refer to both unit cost and combined multiple unit costs, and determination shall be made by the Town Manager of the necessity of bidding after review of the pertinent requisition and specifications. Purchases of supplies, equipment or contractual services of an estimated value less than five thousand dollars (\$5,000.00) may be made in the open market without complying with bidding procedures, but at least three (3) informal bids (price quotations) should be utilized by the Town Manager or department head whenever possible, with bids solicited from prospective vendors either in writing or by telephonic request.
- B. Construction Projects: Except for maintenance and improvement projects performed by town personnel, all construction projects estimated by the Town Engineer or other appropriate party to have a value in excess of twenty-five thousand dollars (\$25,000), or where required by state law, shall be advertised for bid and awarded to the lowest responsive and responsible bidder pursuant to the procedure hereinafter prescribed. All such contract awards shall be made by written contract as provided in section 1-11-1 of this chapter.
- C. Bids Not Required For Certain Work: It is the policy of the town to reserve to itself all legal prerogatives to perform services and work with its own personnel and equipment; therefore, nothing in this chapter shall be construed to require bids to be called for or contracts let for: 1) conducting or managing any department, business or property of the town; 2) installing, lowering or repairing water mains or sewers or making connections with water mains or sewers; or 3) grading, repairing, relocating or maintaining streets, sidewalks, bridges, culverts or conduits; except where other provisions of state statutes may limit the value of work that can be performed by the town on its own account in these excluded areas. Any portion of a public works or improvement project not included in the above description shall be effected through bid and contract as provided in subsection B of this section, if the cost thereof is twenty five thousand dollars (\$25,000.00) or more.
- D. Professional Services: Contracts for professional services estimated to be in excess of twenty-five thousand dollars (\$25,000.00) shall be awarded at the discretion of the Town Council, including, but not limited to, auditing, banking, insurance, legal, engineering and similar professional consultation.

- E. Refusal To Receive Bids: The Town Manager may promulgate rules, procedures and regulations for guidance of the department heads to preclude contractors or suppliers from submitting bids where said proposed bidder has not completely satisfied prior notices to comply with construction documents, drawings and/or other specifications, or has otherwise failed to perform any work for the town or the state in a timely and satisfactory manner. If adopted, such rules and procedures shall provide for reasonable notice to the contractor and opportunity for hearing. (Ord. 02-002, 2-12-2002)

1-11-4: BIDDING PROCEDURES:

Where formal bidding is required, the lowest responsive and responsible bidder shall be determined through use of the following procedures:

- A. Notice For Bids: Notices inviting bids shall include a general description of the articles or services to be purchased, advise where bid forms and specifications are available, and state the time and place for opening bids. Under normal circumstances a notice shall be published at least twice in a newspaper of general circulation in the town with the first such publication occurring at least fourteen (14) days before the date of opening bids and the last such publication occurring at least five (5) days before the date of opening bids. In special circumstances where time is of the essence and authorized by consent of at least three (3) members of the Town Council, notice shall be published at least once in a newspaper of general circulation in the town with the publication occurring at least five (5) business days before the date of opening bids. Sealed bids shall be solicited from all responsive and responsible prospective bidders whose names are on any bidders list maintained by the town for the article or service being purchased. Where applicable, notice shall contain the town engineer's estimate of cost or advise as to its availability whenever such cost estimate has been made.
- B. Bid Opening: Sealed bids shall be submitted as designated in the notice with the statement "Bid for (Item)" on the envelope. Bids shall be opened in public at the time and place stated in the notice. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than thirty (30) days after the bid opening.
- C. Rejection Of Bids: The Town Manager or Town Council, as the case may be, shall have the authority to reject all bids, parts of all bids, or all bids for any one or more supplies or contractual services included in the proposed contract, when the low responsive and responsible bid exceeds Tie Bids: If two (2) or more bids received are for the same total amount or unit price, with quality and service being equivalent, and if the public interest will not permit the delay of re-advertising for bids, the town shall accept the lowest bid made after negotiation with the tie bidders at or after the time of the bid opening.
- D. Tie Bids: If two (2) or more bids received are for the same total amount or unit price, with quality and service being equivalent, and if the public interest will not permit the delay of re-advertising for bids, the town shall accept the lowest bid made after negotiations with the bidders at or after the time of the bid opening.
- E. Award Of Contracts: Contracts under one thousand dollars (\$1,000.00) shall be awarded by the department head of the department intending to purchase the supplies or services. Contracts for more than one thousand dollars (\$1,000.00), but less than twenty-five

thousand dollars (\$25,000.00), shall be awarded by such department head with the concurrence of the Town Manager. The Town Manager is granted discretion to change the amounts for purchases to be made by approval of only the department head down to five hundred dollars (\$500.00) or up to two thousand five hundred dollars (\$2,500.00). Contracts of twenty five thousand dollars (\$25,000.00) or more shall be awarded to the lowest responsive and responsible bidder by the Town Council, except that in the event the Town Council, as part of its review and approval of the town budget, has approved a specific line item appropriation for the supplies or services, the contract may be awarded by the Town Manager, regardless of amount, as long as the approved line item appropriation is not exceeded. In such event, the Town Manager shall follow applicable bidding requirements before award of the bid.

- F. Local Preference: In awarding bids for public work or the procurement of supplies or services, preference shall be given to residents of Iron County when quality, suitability and performance are equal. If the bid or offering from a non-preferred bidder submitted in response to an invitation to bid is the low bid and there is a preferred bidder, then the supplies, services or construction shall be obtained from or awarded to the preferred bidder if the lowest bid of a preferred bidder is within five percent (5%) of the low non-preferred bid and if he agrees to meet the low bid, in writing, within seventy two (72) hours after the notification to him that he is a qualifying preferred bidder. Such notice shall contain the exact price or bid submitted by the non-preferred bidder, and the town shall enter into no contract until seventy-two (72) hours have elapsed after notification to the qualifying low preferred bidder. For purposes of this subsection a "resident" is one who maintains its principal place of business in Iron County on the date of award and for at least ninety (90) consecutive days prior to such date. (Ord. 11-005, 6-14-2011, eff. 6-14-2011)

1-11-5: EXCEPTIONS TO BIDDING REQUIREMENTS:

- A. Uniqueness: Contracts which by their nature are not adapted to an award by competitive bidding, such as contracts for items available from a single source only, contracts for repair and maintenance of equipment already owned by the town which may be most efficiently performed by the originator of the equipment or its agent, contracts for the purchase of used equipment or items that are unique as to quality, condition and price, or contracts for a particular brand of equipment or product which is uniquely suited to the town's needs by reason of training of its personnel or compatibility with existing equipment, shall not be subject to the competitive bidding requirements of this chapter. Notwithstanding the exception from competitive bidding requirements, the town shall advertise in the same manner as provided in subs: If the Town Manager determines that supplies, materials or equipment can be purchased at any public auction, closeout sale, bankruptcy, foreclosure or other similar sale, and that such purchase can be made at a cost below the market cost in the county, the purchase may be made without complying with the competitive bidding requirements of this chapter if otherwise allowed by law.
- C. Necessity Of Council Approval: An exception to bidding requirements under this section shall not eliminate the necessity of Town Council approval of any contract in excess of twenty five thousand dollars (\$25,000.00) and for which a line item appropriation has not been made in the town budget. The only variation in the requirement for such approval shall be in the event of urgent time constraints creating an emergency, in which event an expenditure in excess of twenty five thousand dollars (\$25,000.00) may be authorized upon personal verbal approval of a majority of the council members, after explanation of the

circumstances, subject to formal ratification at the first public council meeting after authorization of the expenditure. (Ord. 02-002, 2-12-2002)

1-11-6: LOWEST RESPONSIBLE BIDDER:

- A. Considerations: In awarding to the lowest responsive and responsible bidder, the town shall consider, in addition to price:
1. The quality of supplies offered;
 2. The ability, capacity and skill of the bidder to perform the contract or provide the supplies or service required;
 3. Whether the bidder can perform the contract or provide the supplies promptly, or within the time specified, without delay or interference;
 4. The sufficiency of the bidder's financial resources and the effect thereof on his ability to perform the contract or provide the supplies or services;
 5. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
 6. The quality of the bidder's performance on previous orders or contracts for the town or others;
 7. Litigation by or against the bidder, either pending or threatened, where claim is made that the bidder provided or furnished materially defective workmanship or materials to the town, or failed to substantially comply with bid specifications or contract terms and conditions;
 8. Any previous or existing noncompliance by the bidder with laws and ordinances of the town relating directly or indirectly to the subject of the contract;
 9. The ability of the bidder to provide future maintenance and service, where such maintenance and service is essential;
 10. Possession or ability to obtain all necessary town and state licenses either at the time of bid or before doing business with the town, as specified by the contracting agent;
and
 11. A statement by bidder of all subcontractors that will be used who may do or supply ten percent (10%) or more of the total contract being awarded, or a willingness to supply such listing of subcontractors at the time of bid award.
- B. Award To Other Than Low Bidder: When the award is not given to the lowest bidder, a statement of the reasons therefor shall be prepared by the department head involved, sent to and approved by the Town Manager, and filed with any other papers related to the transaction.
- C. Challenge To Action: Where a bid is protested by someone having standing to do so, or an irregularity is waived by the person awarding the bid, written notice of such protest or waiver

shall be given to each bidder, immediately advising them of the right of any person adversely affected to file a protest with the Town Manager. Such protest must be made in writing within seventy-two (72) hours after the bid tabulation is made or after receipt of the notice of protest or waiver from the person awarding the bid, and failure to so file shall constitute a waiver of further challenge. Upon receipt of such challenge, the contract award process must cease until decision of the hearing board, as set forth below, unless the person responsible for award of the bid sets forth in writing particular facts and circumstances which require continuance of the contract award process without delay in order to avoid an immediate and serious danger to the public health, safety or welfare. An administrative hearing of the protest shall be held within fifteen (15) days before a board made up of the person awarding the bid, the Town Manager and the Town Attorney. (Ord. 02-002, 2-12-2002)

1-11-7: EMERGENCY PURCHASES:

In case of an actual or apparent emergency which requires immediate procurement of supplies or contractual services, the Town Manager may approve acquisition at the lowest attainable price without further compliance with the procedures provided herein. In such event, however, a full report of the circumstances of an emergency purchase shall be filed with the Town Clerk by the Town Manager and shall be open to public inspection. An "emergency" is any fact, circumstance or situation which threatens injury or damage as the result of any happening or circumstance which would delay the work of the town in such manner as to vitally affect life, health or convenience of the public. (Ord. 02-002, 2-12-2002)

1-11-8: INSURANCE AND BONDS:

When directed by the Town Council or Town Manager, or when required by state statute or town ordinance, insurance certificates and/or bonds, whether permit, bid, performance or materialmen, shall be provided to the Town Clerk in a form approved by the Town Attorney and in amounts recommended by the department head affected and approved by the Town Manager. Such bonds or insurance shall: a) name the town as an additional insured; b) where cancelable, provide that no cancellation thereof may be made without first giving the town at least thirty (30) days' prior written notice; and c) be in sums sufficient to fully protect the town and its interests. All corporate guarantors or sureties shall be licensed to do business in the state and shall be sound and reputable firms, as determined acceptable to the Town Attorney. (Ord. 02-002, 2-12-2002)

1-11-9: BID BONDS:

- A. When Required: Bid security in an amount equal to at least five percent (5%) of the amount of the bid shall be required for all competitive sealed bidding for construction contracts where the total value of the contract is in excess of ten thousand dollars (\$10,000.00). Bid security shall be a bond provided by a surety company authorized to do business in this state, the equivalent in cash, or any other form satisfactory to the town.
- B. Failure To Comply: When a bidder fails to comply with the requirement for bid security set forth in the invitation for bids, that bidder's bid shall be rejected unless it is determined that the failure to comply with the security requirements is non-substantial.

- C. Irrevocable: After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids, except as provided below. If a bidder is permitted to withdraw a bid before award, no action shall be taken against the bidder or bid security.
- D. Failure: If after being accepted the bid fails, the bid security bond shall be forfeited unless there has been a mistake in the bid of such consequence as to make it apparent that:
 - 1. A meeting of the minds never occurred and that enforcement of the contract would be unconscionable;
 - 2. Where the mistake related to a material feature of the contract;
 - 3. Where the mistake does not constitute culpable negligence or violation of a positive legal duty; and
 - 4. Where the town has been placed in status quo so that it suffers no serious prejudice. (Ord. 02-002, 2-12-2002)

1-11-10: PERFORMANCE BONDS:

- A. Public Improvements: The contractor on a project to construct public improvements shall be required to post performance and material-men bonds; provided, however, that if the estimated construction cost is under five thousand dollars (\$5,000.00), or if in bond will exceed the risk or benefit to the town, in which event the town may waive the performance bond requirement.
- B. Supplies Or Services: The Town Manager shall have the authority to require a performance bond before a contract is entered into to purchase or acquire supplies or services, in such amount as he may find reasonably necessary to protect the best interests of the town. (Ord. 02-002, 2-12-2002)

1-11-11: PUBLIC RECORD:

The statement of reasons for rejection of a low bid as provided in subsection [1-11-6](#) B of this chapter, the reasons for an emergency purchase made pursuant to section [1-11-7](#) of this chapter, any waiver pursuant to subsection 1-11-10A of this chapter, and any estimate of the cost of public construction work made by the Town Engineer pursuant to subsection [1-11-3B](#) of this chapter, where the estimate exceeds the sum of five thousand dollars (\$5,000.00), shall become a part of the official records of the town and shall be made available to the public upon request. (Ord. 02-002, 2-12-2002)

1-11-12: PROHIBITION AGAINST SUBDIVIDING:

No contract or purchase shall be subdivided so as to avoid the requirements of this chapter. (Ord. 02-002, 2-12-2002)

1-11-13: INTERLOCAL COOPERATION:

Wherever the public benefit can be maximized and costs minimized by entering into joint agreements with other public agencies within the state for the purchase or construction of any commodity, service or public work, the town shall have the power to so agree, upon approval and action by the Town Council. (Ord. 02-002, 2-12-2002)

1-11-14: DISCLOSURE OF INTEREST:

Any purchase order or contract within the purview of this chapter in which any elected or appointed officer, or municipal employee, has a financial interest, direct or indirect, shall be void unless a sworn statement has been filed with the Town Manager disclosing the name and address of the entity dealing with the town in which the officer or employee has an interest or from which he receives compensation, and in the case of an elected or appointed officer, there is additional disclosure in an open meeting to members of the body before which the matter is presented. Disclosure statements filed pursuant hereto are public information and shall be available for examination by the public. (Ord. 02-002, 2-12-2002)

1-11-15: PROHIBITED PRACTICES:

It shall be unlawful for any officer, agent or employee of the town, or any outside party or entity dealing or seeking to deal with the town, to engage in any of the following practices:

- A. Collusion or other agreement among bidders or prospective bidders, in restraint of freedom of competition, to fix or in any way rig prices or bids. In addition, any bid tainted with such collusion shall be voidable at the option of the town.
- B. Disclosure in advance of the opening of bids of the amount or content of one bid to another bidder or potential bidder. If such disclosure is deemed sufficiently material by the Town Manager, it shall void the bidding process and require a new advertisement or request for bids.
- C. Tender or acceptance of any gratuity in the form of cash, merchandise or other thing of value by a bidder, vendor or contractor to an officer, agent or employee of the town, whether before or after a bid or contract.
- D. Purchase of supplies or equipment for the personal use of an officer, agent or employee of the town in the name of the town, whether part of a town purchase or contract or separate, and whether paid for with town funds or personal funds of the purchaser. Sole exception shall be where the item or items purchased are required parts of a worker's equipment or uniform and necessary to the successful performance of his duties as a town officer or employee, although personally owned by him. (Ord. 02-002, 2-12-2002)

1-11-16: PENALTY:

The penalty for actions made unlawful by this chapter shall be a class B misdemeanor or infraction, subject to penalty as provided in section [1-4-1](#) of this code, in the discretion of the

charging Town Attorney, unless those action involve conduct which would be a felony under the laws of the state, in which event the town may refer the case to the County Attorney for prosecution. Imposition of a criminal penalty shall not affect the town's right to take administrative action with regard to an employee, impose sanctions against a contractor or purchaser, such as a refusal to deal with him further, or avail itself of any other right which it may have by law or otherwise. (Ord. 02-002, 2-12-2002; amd. 2010 Code)