

CITY OF BERLIN
New Hampshire

PURCHASING POLICY

Effective July 17, 2023

Issued by Berlin City Manager's Office

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CITY PROCUREMENT ORDINANCE

DIVISION 3.

PROCUREMENT*

* **Editors Note:** An ordinance adopted December 16, 2002 repealed division 3, §§ 2-426--2-454 in its entirety and added a new division 3, §§ 2-426--2-432. Formerly, such section pertained to purchasing and derived from §§ 5:401.1--5:401.22 of the 1977 Code.

Charter References: Purchasing and contract procedure, § 14j.

Cross References: Finance, § 2-166 et seq.; administrative code, § 2-196 et seq.; finance department created, § 2-291 et seq.

State Law References: Purchasing department, competitive bid requirements, RSA 48:17.

Sec. 2-426. Administration.

The City Manager, or his/her duly appointed representative, shall be the purchasing agent for every City department or agency of the City excluding the water works and school department. The City Manager shall sign all contracts for services which may be necessary for any of the City's departments or agencies which are required to purchase supplies, materials, or equipment through the City purchasing agent. No department of the City shall retain special counsel without explicit approval of the City Council. This section applies to all departments of the City, including the school department and the police department.

(Ord. of 12-16-02)

Sec. 2-427. Competitive purchasing.

Except as hereinafter provided, every City purchase or contract greater than twenty thousand dollars (\$20,000.00) in amount shall be made only after the receipt by City of publicly invited sealed competitive bids on uniform specifications. After recommendation from the department making the purchase, the City Manager shall award the contract to the lowest responsible bidder; quality, delivery, financial responsibility and guarantees of the bidders being equal. The City Manager may, in his/her discretion, reject any bid deemed insufficient or inadequate, or may reject all bids.

Except as hereinafter provided, every City purchase or contract of greater than five thousand dollars (\$5,000.00) but no more than twenty thousand dollars (\$20,000.00) shall be made only after receipt by the City of three (3) or more (if reasonably obtainable) competitive informal written quotations or phone quotations which are adequately documented.

Every purchase of five thousand dollars (\$5,000.00) or less shall be handled by the City on as competitive a basis as is deemed reasonable and prudent.

Purchases made through existing State of New Hampshire or other state contracts or Coos County contracts shall be deemed to meet the requirements of the above paragraphs. Nothing herein shall be construed to prevent joint bidding and contracting by the City and other public jurisdictions, and in fact, such is encouraged.

(Ord. of 12-16-02) (Ord. of 06-19-23) (Ord. of 07-17-23)

Sec. 2-428. Professional services.

Professional services contracts (architecture, engineering, construction management, risk management, financial and auditing and other professional services or consulting work) of twenty thousand dollars (\$20,000.00) or more may be entered into after receiving proposals from various interested firms, evaluating those proposals and anticipated quality of service to be rendered, and City Manager recommendation to and approval by the City Council. Such services of twenty thousand dollars (\$20,000.00) or less may be procured in a manner deemed reasonable and prudent by the City Manager. (Ord. of 12-16-02) (Ord. of 06-19-23)

Sec. 2-429. Change orders.

Contract change orders are hereby authorized to be made where necessary by the City Manager but shall not exceed ten (10) percent of the amount of the original contract unless specific City Council approval is obtained.
(Ord. of 12-16-02)

Sec. 2-430. Exceptions, waivers, standardization and emergencies.

Valid exceptions not subject to the above procurement requirements are utility purchases, legal services, medical, advertising, subscriptions and periodicals, postage, freight, health, travel and social services for City employees, the purchase of insurance, maintenance contracts with manufacturers of equipment purchased or with suppliers of data processing software or where the City decides to contract with non-profit organizations for the provision of health, welfare, social or recreational services for the City and/or to the general public or where the City decides to contract with governmental agencies for the provision of governmental services.

Sealed, publicly invited competitive bids will not be required for purchases in any situation where a contractor or supplier has defaulted upon his or her obligations to the City and there is present a security guaranteeing to the City the performance of said obligation at no additional cost to the City, over and above the original obligation. In such a case, the City Manager, with the approval of the City Council, may renegotiate and award the contract to whomsoever he/she sees fit providing that said renegotiation and award does not exceed the amount contracted for in the original obligation.

The City Council, on recommendation from the City Manager, may waive any of the above purchasing requirements in cases where it is deemed inadvisable to solicit bids because of a single source of supply or because of the need of standardization of the materials, supplies, equipment or services or for other stated reasons which the City Council deems to be in the interest of the City.

Where it is deemed appropriate to standardize on the procurement of materials, supplies, equipment or services, the City Council shall so indicate by resolution. The City finance department shall maintain an up-to-date listing of such standardized items or services. The procurement of such standardized items or services will be exempt from the foregoing bidding requirements. Nevertheless, City departments will, when reasonably possible, attempt to obtain competitive quotes from different suppliers, if any, for the standardized item or service.

In case of an accident or emergency, the City Manager may award contracts and make purchases for the purpose of repairing damages caused by the accident or meeting the public emergency without meeting the purchasing requirements of the above sections. In such cases the City Manager shall promptly file with the City Council a report which certifies the emergency nature of the incident and itemizes the purchases and their costs.

In the case of state or federally funded public works projects the City shall follow the procurement process established by the state and or federal agency funding the project.
(Ord. of 12-16-02) (Ord. of 06-19-23)

Sec. 2-431. Sale of surplus material.

The City Manager may authorize the sale of materials and equipment which he or she determines to be surplus to the needs of the City where a single item or lot does not exceed ten thousand dollars (\$10,000.00) in book value. In cases where such item or lot exceeds ten thousand dollars (\$10,000.00) in book value, the City Council shall approve the sale of such materials. All such surplus materials shall be disposed of by public auction or competitive bids or quotations. (Ord. of 12-16-02) (Ord. of 06-19-23)

Sec. 2-432. Sale of Land.

Generally, land owned by the City, which is determined by the City Council to be surplus land, will be sold by public auction or sealed bid or by such other means as the City Council determines to be in the best interest of the City.

Property taken by the City by tax deed will be processed and disposed of or retained in accordance with state laws and the above paragraph. However, in cases where former non-commercial residential property owners who occupied the property as their primary residence at the time of tax-deeding and who seek to repurchase their tax deeded property by tendering payment for all outstanding taxes, interest, fees and costs, the 15% assessment penalty referred to in RSA 80:90, I(f), is hereby waived, if and only if, such property has not been tax deeded by the City from the same or related (husband, wife, son, daughter, mother, father, sister, brother, grandparent or grandchild) owner(s) before, and if and only if, such non-commercial residential property was not under a condemnation order, notice of zoning violation or notice of other property-related violation of the law. Non-commercial as used herein shall mean property of no more than two residential units that has been the primary residence of the former owner for at least three (3) years at the time of tax deeding. (Ord. of 5-17-04) (Ord of 10-1-07)

Property taken by the City by tax deed will be processed and disposed of or retained in accordance with the provisions of this Code, state laws and the above paragraph. However, in order to allow more time for a former non-commercial residential property owner of a tax deeded property to repurchase his or her property after having given notice to the City of intent to repurchase, the time for a former non-commercial residential property owner to tender payment of all back taxes, interest, costs and penalties provided by law, is hereby extended an additional fifteen (15) days from the date the former non-commercial residential property owner provides written notice of the intention to repurchase the property and to pay all back taxes, interest, cost and penalties as defined in RSA 80:90. This fifteen (15) day extension of the deadline coupled with the 15 days the former non-commercial residential property owner has pursuant to RSA 80:89, II, to tender the monies needed to repurchase the property provides the former property owner up to a potential period of sixty (60) days from the date the former non-commercial residential property receives his/her Opportunity to Repurchase Notice to both provide notice of intention to repurchase the Tax Deeded property and to tender payment therefore.

If a former non-commercial residential property owner, in response to the Opportunity to Repurchase Notice, does not give notice of intent to repurchase within the first thirty (30) days or does not tender full payment within thirty (30) days of giving notice of intent to repurchase, then the City will proceed to offer the property for sale, retain or otherwise dispose of the property without any interest by the former non-commercial residential property owner, as provided by RSA 80:89. All other former property owners of City tax deeded properties will be held strictly to the repurchase time restrictions cited in RSA 80:89, II. (Ord. of 9-06-05)

If the former owner of a non-commercial residential tax-deeded property repurchases the property from the City the City may, as in its sole discretion determines appropriate, enter into a written agreement with the former non-commercial residential property owner which provides that some or all of the 15% assessment fee may be returned to the former non-commercial residential property owner by the city if such former owner in such written agreement is willing to see to the

removal of the condition(s) which resulted in the 15% assessment fee not being waived as provided in the first paragraph above within the time frame and in complete accordance with the conditions stipulated in the agreement.

(Ord. of 10-03-05)

If the former owner of a commercial residential tax-deeded property repurchases the property from the City, the City may, as in its sole discretion determines appropriate, enter into a written agreement with the former commercial residential property owner which provides that some or all of the 15% assessment fee may be returned to the former commercial residential property owner by the City if such former owner in such written agreement agrees to perform demolition and/or other work on the property which the City believes to be in the public interest to have accomplished and which the City believes has a value greater than the amount being returned to the former commercial residential property owner. To be eligible for any such reimbursement, the former commercial residential property owner must complete all such work to the satisfaction of the City within the time frame and in complete accordance with the conditions stipulated in the written agreement.

(Ord. of 10-03-05)

Sec. 2-433. Purchasing regulations.

The City Manager is hereby authorized to issue additional rules and regulations with respect to procurement by the City of supplies, equipment or services as well as the sale of surplus material within the confines of this division.

(Ord. of 12-16-02)

CITY PURCHASING REGULATIONS

PURPOSE

These purchasing regulations are issued pursuant the foregoing City ordinance for the purpose of further implementing the basic requirements of the purchasing ordinance of the City of Berlin which is intended to ensure that the City's procurement practices are reasonably uniform and efficient City-wide and that they obtain the best product for the lowest price wherever reasonable and possible through competitive quotes or bids or other prescribed procedures.

CENTRALIZED vs. De-CENTRALIZED PURCHASING

The City ordinance states:

"The city manager, or his/her duly appointed representative, shall be the purchasing agent for every city department or agency of the city excluding the water works and school department. The city manager shall sign all contracts for services which may be necessary for any of the city's departments or agencies which are required to purchase supplies, materials, or equipment through the city purchasing agent..."

Literally this means that all purchase contracts made by any City Department except the BWW and Schools must be made through the City Manager's office. There is a large difference between de-centralized purchasing where Departments pretty much carry out all procurement on their own and centralized purchasing where all the purchasing for all Departments gets done through a central purchasing agency.

The advantage of de-centralized purchasing is its flexibility and quickness for the Department. The disadvantage is that such flexibility and quickness sometimes results in inconsistency with the law, and inconsistent or inadequate contracting practices.

Centralized purchasing helps to ensure conformance with the law and proper and consistent contracting practices. It is more bureaucratic and slower for Departments who want to procure their items now without having to wait for a central purchasing agency to order for them.

These regulations are intended to strike a reasonable balance between the two approaches so that most Department purchases can be made quickly and easily as they have been in the past, but at the same time increase greatly the assurance that larger purchases will be made in conformance with the law and that adequate and consistent contracting practices are used.

PURCHASES OF LESS THAN \$5,000

Purchases of less than \$5,000 may continue to be made by Departments as they have in the past with or without the use of a Purchase Order. In this case the Purchase needs to be in the budget and be approved by the Department Head and the Finance Director and need not go through the City Manager's office. The competitive requirements of the ordinance must still be followed by the Department to extent reasonably possible.

PURCHASE ORDERS REQUIRED -- \$5,000 OR MORE

All City Departments except the Schools and BWW are required to order any purchase of \$5,000 or more with a Purchase Order made out as completely as possible and attaching any or all quotes or other information regarding the purchase already obtained by the Department and forwarding the Purchase Order (which at this point is a requisition) to the City Manager's office. All purchase orders of \$5,000 or more must be approved by the City Manager or his/her designee prior to any order for the item being placed. The City Manager may approve emergency purchases prior to approving the Purchase Order if convinced by the Department that circumstances warrant.

PROCESS -- \$5,000-\$20,000

If the amount of the item(s) or service(s) being purchased is between \$5,000 and \$20,000 and three written quotes for the item(s) or service(s) accompany the purchase order, the Manager's office will in all likelihood simply go ahead and issue the purchase order to the vendor for the purchase.

If the purchase order after review by the Manager's office appears to need additional work to conform to the purchasing ordinance, the Department may be requested to provide additional information or quotes before the item(s) or service(s) are ordered.

PROCESS -- \$20,000 OR MORE

If the purchase order is for an item(s), project or service(s) of more than \$20,000 the City Manager's office will begin the process for putting the purchase out to sealed public bid. In this case the bid boilerplate, bidding process and final contracting will all be finalized by the Manager's office. The responsibility the Department will have in this particular case will be to provide or work with the Manager's office to provide the detailed specification(s) of exactly what the Department intends to contract for.

SOLE SOURCE, BID WAIVER, OR PROFESSIONAL SERVICES RFP'S

If the Department desires that the purchase be made "sole source" or that bidding be waived for some appropriate reason or that the purchase is proposed to be through a state bid contract or some other government bid or joint bid contract or that the purchase is for a professional service where a Request for Proposal process would be more appropriate than a bidding process, the Purchase Order shall so state giving the reasons that a sole source is justified and including any information already obtained by the Department such as a copy of the state or other bid contract being proposed or a draft of the services being sought if a professional service RFP is being proposed.