

Purchasing Policy M:1

NEK Community Broadband Communications Union District

Adopted July 8, 2021

PURPOSE AND AUTHORITY

The purpose of this document is to describe the process through which the NEK Community Broadband Communications Union District (NEK Broadband) will execute purchases and procure contractor services.

NEK Broadband designated the Executive Committee, Chair, and District Administrator as Purchasing Agents. Purchasing Agents are responsible for ensuring that the best possible price and quality are obtained with each purchase.

PROCUREMENT TYPES AND REQUIREMENTS

Incidental Purchases (up to \$10,000)

Incidental purchase is the acquisition of supplies or services of up to \$10,000 and is referred to as the micro-purchase threshold under Federal Acquisition Regulation (FAR) 2.101. Executive Committee designated Purchasing Agents may make budgeted purchases without prior approval of the Governing Board. If an item is unbudgeted, and is \$1,000 or less, the Board Chair or District Administrator is authorized to make the purchase, and the Treasurer will then report the purchase at the next Executive Committee or Board meeting. If an unbudgeted expense of more than \$1,000 is required, it must be brought to the Executive Committee for approval. If the expense represents a deviation from the approved budget of more than 10% of a major (top level) line item, it must be approved by the Governing Board. Incidental purchases may be awarded without soliciting competitive quotations if the purchasing agent considers the price to be reasonable.

Minor Purchases (between \$10,000 and \$250,000)

Procurement by minor purchase is the acquisition of budgeted supplies or services, the aggregate annual dollar amount of which is between \$10,000 and \$250,000 in accordance with the FAR simplified acquisition threshold. Minor purchases may be awarded using a simplified bidding process. Designated Purchasing Agents may make unbudgeted minor purchases only with prior approval of the Governing Board.

A simplified bidding process means that NEK Broadband develops a Statement of Work that identifies work to be performed, specific need(s) to be addressed and/or product(s) to be delivered and that solicits price quotations from two or more potential vendors known to provide the specified services or products. The simplified bidding process does not require a public bid posting. Vendors will be selected based on cost, the quality of the goods and services offered, and the ability, capacity, and skill of the vendor demonstrated under prior contracts with NEK Broadband.

Major Purchases (\$250,000 and above)

Procurement by major purchase is the acquisition of budgeted supplies or services, the aggregate annual dollar amount of which exceeds \$250,000. All major purchases require prior approval of the Governing Board.

For all major purchases a standard RFP bidding process with public posting is required.

The Governing Board may authorize a procurement process other than a standard RFP in certain circumstances. Circumstances in which a procurement process other than a standard RFP are appropriate may include, without limitation:

- a) where the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- b) the item or service is available only from a sole source;
- c) after a number of solicitations, competition is determined inadequate to yield a superior result for the CUD;
- d) the prior experience and knowledge of the vendor relative to the CUD or the subject matter of the engagement is likely to yield a superior result for the CUD with regard to risk mitigation, efficiency, speed and value of insight;
- e) due to the specific geographic location of goods or services sought, a standard RFP process is unlikely to yield a superior result for the CUD.

For all major purchases with a value above \$250,000 a standard RFP bidding process is required. The RFP must contain all requirements and conditions of the particular procurement process. An RFP must contain a Statement of Work and describe the criteria the NEK Broadband is going to utilize to select the vendor. NEK Broadband must evaluate bids in accordance with the criteria set forth in the RFP.

PURCHASES MADE WITH FEDERAL FUNDS

If federal funding is used for purchases between \$10,000 (\$2,000 in the case of construction projects subject to Davis Bacon requirements) and \$250,000, price or rate quotes must be obtained from two or more qualified sources following the affirmative action provision of this policy described below and all provisions regarding fair and unrestricted competition.

For purchases and construction projects at or exceeding \$250,000, NEK Broadband will follow the sealed bid process if federal funding is used. When procurement by sealed bids is used, NEK Broadband will follow procedures as defined in 2 CFR § 200.320(c), Vermont Bulletin 3.5 Section VIII(B), and consult the Vermont League of Cities and Towns model purchasing policy for other applicable State bid requirements.

AFFIRMATIVE ACTION AND LOCAL PREFERENCE

Whenever possible, qualified small, minority, and women-owned businesses shall be included in the solicitation lists for bids or non-bid purchases. If the purchase is federally funded in whole or in part, minority and women-owned businesses must be included in the solicitation lists and all other affirmative action requirements outlined in the grant provisions must be followed. NEK Broadband may exercise a preference for local businesses for purchases funded exclusively by the NEK Broadband district, or where permitted by federal law, but only if such a preference does not result in unreasonable prices or rates due to a lack of competition. For purchases funded in whole or in part with federal funding, NEK Broadband may not exercise a preference for local businesses, unless permitted by the federal funding source.

PROCUREMENT CODE OF CONDUCT

Employees, officers and agents of NEK Broadband, (in this document, "agents" includes NEK Broadband volunteers), who are involved in the procurement and selection of bids and purchases shall make reasonable efforts to avoid real, apparent, or potential conflicts of interest. No employee, officer or agent of NEK Broadband shall participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: the employee, officer or agent, any member of his or her immediate family, his or her partner, or an organization which employs, or is about to employ, any of the above, has a financial or personal interest in the firm/vendor selected for award.

An employee, officer or agent of NEK Broadband who is involved in the procurement and selection of a bid or purchase and who has a real or apparent conflict of interest must disclose that conflict of interest within the context of a duly warned Governing Board meeting that occurs before the bid selection or purchase takes place. Such disclosure must be documented in the minutes for that meeting which shall be retained as part of the official record surrounding the bid or purchase.

Officers, employees and agents of NEK Broadband will not solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.

Officers, employees and agents who fail to follow the above Procurement Code of Conduct shall be sanctioned or disciplined, to the extent permitted by law, for violations of the above standards.

DOCUMENTATION

Records documenting the procurement process for any Minor or Major purchases, as those terms are defined above, including the reason for the specific procurement method chosen, the basis for the award and contract pricing (showing evidence that the process was fair and equitable), as well as any other significant decisions that were part of the procurement process shall be maintained for a period of at least three years from the date of the submission to the Federal government of the final expenditure report if the purchase or project was funded with federal grants, or until the completion of any litigation, claim, negotiation, audit, or other action involving the records, whichever is longer. Otherwise, records shall be maintained by NEK Broadband in accordance with the retention and disposition schedules as set by the Vermont State Archivist.

The foregoing Policy is hereby adopted by the Governing Board of the NEK Community Broadband Communications Union District, Vermont, this 8th day of July , 2021 and is effective as of this date until amended or repealed.

SIGNATURES

Governing Board Chair

Governing Board members:

PURCHASING POLICY GUIDANCE

NEK BROADBAND PURCHASING POLICY GUIDANCE

The intent of this purchasing policy is to assist the NEK Community Broadband Communications Union District (NEK Broadband) in its efforts to procure goods and services in a manner that is efficient, timely, cost-effective, and encourages the most open, competitive purchasing process practicable, while treating all vendors equitably. Adopting and following a purchasing policy will increase the public's confidence in the municipal procurement process (NEK Broadband is organized as a municipality / body politic) and will help NEK Broadband adhere to standards and requirements associated with receipt of funds from state and federal governments. **Please note that the requirements of a municipal purchasing policy do not take the place of any specific procurement or record-keeping requirements that may be imposed on the municipality by a state or federal governmental contract, grant, or loan.**

This policy is intended to reflect best practices in municipal procurement, including competitive bidding for certain purchases and compliance with requirements for purchasing with federal funds. It includes some guidance and references to resource materials to help inform choices municipal officials need to make while adapting this model to fit their unique needs. It is also important to harmonize this policy within the context of related existing or proposed financial policies or procedures.

REQUIREMENTS FOR USING STATE OR FEDERAL FUNDS

The original source of most state grant, contract and loan funds is actually the federal government, and therefore any federal requirements associated with the funds are passed along to the recipient municipality. This policy attempts to incorporate as many of the federal requirements as possible - including the sections on code of conduct and competitive bidding - but the municipality should always carefully read any terms, conditions or other directives prior to accepting the funds in the first place. It is imperative to adhere to purchasing and other requirements. As of 2015, all federal agencies must adhere to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards <http://www.gpo.gov/fdsys/pkg/FR-2013-12-26/pdf/2013-30465.pdf>. This is a consolidation of several OMB (Office of Management and Budget) circulars that previously provided guidance for recipients of federal funds. It includes federal requirements for procurement processes, allowable direct and indirect costs, contract provisions and audit standards. Recent updates to the Federal Acquisition Regulation (FAR) thresholds can be found in the Federal Register at Volume 85, No. 192 (<https://www.govinfo.gov/content/pkg/FR-2020-10-02/pdf/2020-21690.pdf>). The full FAR can be found here: <https://www.acquisition.gov/sites/default/files/current/far/pdf/FAR.pdf>.

PROCEDURE TO ADOPT A PURCHASING POLICY

All municipal policies must be adopted by majority vote of the Governing Board at a meeting held in accordance with Vermont's Open Meeting Law. Consideration and adoption of such a policy should be done well in advance of a major purchase so that there is sufficient time to discuss the relevant issues and prepare a thoughtful and thorough document. Before adoption the Governing Board may choose to engage other municipal officials and employees to ensure that the policy is reasonable and realistic in terms of the personnel resources needed for compliance. After initial adoption, officials should annually review NEK Broadband's financial policies to ensure that each policy remains current.

Please carefully review further explanation of certain sections of the Purchasing Policy below:

Affirmative Action and Local Preference - Federal regulations require that municipalities include minority and women-owned businesses in their bidding processes. Municipalities must maintain written evidence including copies of correspondence that provide evidence of efforts made to reach out to minority and women-owned businesses as well as evidence that the process was fair and equitable with no unfair competitive practices engaged in by the municipality or vendors.

Federal regulations also require that when federal funds are used for a purchase, the municipality may not exercise a preference for businesses or suppliers based solely on location. On the other hand, when a purchase or contract is funded by local funds, a municipality is free to prefer businesses or suppliers that are based in or near the municipality. Some communities have set a percentage rate above the low bid when preference will be given to the local contractor.

Code of Conduct - Federal regulations require that real or apparent conflicts of interest that may arise in the context of municipal purchases and contracting are addressed. If the municipality does not already have a separate conflict of interest policy, it is important to address this topic in the body of a purchasing policy. At a minimum, the policy should define a procedure for public disclosure of the potential conflict and the level of participation permitted when discussion or voting takes place related to the purchase of an item where the conflict exists. It is not uncommon for a board member or the family member of a board member to own a local business that supplies materials and/or services to a municipality. In such instances, however, the board member should not be involved in the selection, award, or administration of the purchase or contract.

Documentation - Federal regulations require that for construction projects over \$2,000 and for all other purchases over \$10,000, the municipality must maintain written documentation of the entire bidding and selection process. This includes documentation of efforts to comply with federal affirmative action requirements including solicitation lists and copies of advertisements; copies of the Request for Bids, Bids and related documentation, copies of meeting minutes where decisions were made, and any other applicable documents.

Purchasing Authority - State law gives the Governing Board the ultimate authority over all municipal purchases and allows for the delegation of this authority to municipal officials or employees. A municipal purchasing policy allows the Governing Board to officially delegate purchasing authority and also sets parameters and requirements for the exercise of this authority. Municipalities need to customize this model policy to complement the size and structure of the particular municipal government. In communities where there is a town or city manager, that individual is the authorized purchasing agent by state law. 24 V.S.A. § 1231(3). In municipalities such as NEK Broadband, i.e., without a manager, the Governing Board is the authorized purchasing agent, but it may designate specific officers or employees to make and/or authorize certain purchases.

Depending on the level of municipal personnel expertise, the Governing Board may want to grant some ability to certain officers, volunteers or employees to make purchases of a reasonable dollar amount without requiring prior Governing Board authorization. By setting thresholds as to the dollar amount that can be spent without prior approval and specifying procedures to follow when a purchase is made, municipal affairs can continue to function between Governing Board meetings.

PURCHASING LEVELS

This policy differentiates between three levels of purchases: "Major," "Minor," and "Incidental." The Governing Board should assign dollar amounts to each of these categories of purchases when customizing this model, using amounts that make sense according to the size of the community and the expertise of municipal personnel. "Major" purchases should be set at a level of significant cost for which the Governing Board requires a formal bid process. "Minor" purchases should be set at a dollar value so that they may only be made by an authorized purchasing agent with prior approval. The Governing Board may also require that several quotes are obtained before the purchase is made. "Incidental" purchases should be set at a low enough level so that they may be made by a designated purchasing agent without prior approval.

There are also three categories of purchases that are created by federal regulation, and these are titled "micro," "small," and "large." The regulations impose different procedural requirements on each category that must be followed in order for the municipality to receive or retain federal grant funding. And while a municipality may impose purchasing and bidding requirements that are stricter than those imposed by the federal government, it may not impose requirements that are less strict.

Under the federal government's categories, so-called "large" purchases are those that exceed the so-called "Simplified Acquisition Threshold," which was set at \$250,000 in 2018 and is an inflation-adjusted number. Construction projects of any size also fit within the federal definition of "large" purchases. If these purchases are made with federal funds, the federal government requires the use of a sealed bid process. Purchases are "small" if they are between \$10,000 (\$2,000 in the case of construction projects subject to Davis Bacon requirements) and \$250,000. Purchases of this size require price or rate quotes from "an adequate number of qualified sources," which means that two or more vendors should be asked to provide quotes. "Micro" purchases are categorized by the federal government as those under \$10,000 (\$2,000 in the case of construction projects subject to Davis Bacon requirements) and may be awarded without any kind of competitive quotes if the price is deemed to be reasonable. Despite the lack of formal requirements for "micro" purchases, a reasonable effort should be made to distribute purchases equitably among qualified vendors.

COMPETITIVE BIDDING / BID SELECTION

The use of federal funds usually requires a formal bid procedure, including a sealed bid process for purchases over \$250,000. Municipalities are free to set much lower thresholds and require a formal bid process and/or sealed bids for any size purchase.

While competitive bidding is not required under Vermont law, it can have significant advantages for local governments. A choice of purchasing options allows a municipality to locate the most cost-effective suppliers of goods and services and make effective cost/quality comparisons. The process may include verbal and/or written quotations for purchases below a certain dollar threshold and a formal bidding process for higher dollar purchases. The use of such a process does not necessitate a low-bidder approach. The "Criteria for Bid Selection" section should clearly articulate the municipality's expectations.

In purchasing the services of a professional consultant, or when a service is of a specialized nature, the selection process is somewhat different. Cost, while important, should not be the most important factor. More important factors to consider are the expertise, knowledge, financial resources and experience of the individual or company providing the service. The selection processes can include the following:

Request for Qualification (RFQ). The RFQ process evaluates the professional qualifications of an individual or firm to provide consulting services. It usually is not project specific but may be related to specific skills being sought. If you are planning a bridge renovation, you

will be interested in structural engineering services. VTrans uses the RFQ process to develop a list of qualified consultants that will be considered for any future work the agency may be planning. These lists are available to communities upon request.

Request for Bid (also called "Request for Proposal" or "RFP"). A request for bids invites qualified firms to submit bids / proposals for a specific project. The project should be sufficiently well-defined to give the consultant some good understanding of the task to be accomplished and any timelines, meetings with the public and/or board members or other tasks to be performed.

With either a Request for Qualifications or a Request for Bids/Proposals, the procedure to follow for soliciting proposals is similar. Prepare an invitation to submit a proposal that briefly defines the professional service being sought. Include a reasonable deadline (including date, time and location) for submitting the proposals. A statement should also be included that "reserves the community's right to reject any or all bids if such action is deemed in the best interest of the community."

Advertise this invitation in a newspaper or on websites with a sufficiently broad circulation to reach all who may be qualified. In addition to the public notice, send the notice to a selected group that has previously worked for the community or that may be qualified. Document the outreach performed and remember that federal funding requires bids to be solicited from minority and women-owned businesses. The submitted proposals should be opened publicly at the designated time. Either the board or an appointed selection committee should review the proposals and arrange for interviews of those determined to be most qualified.

It is important to remember that no bid may be awarded to a vendor who has been debarred, suspended, or otherwise excluded from or ineligible for federal funding. Excluded parties (vendors) may be found on the website Sam.gov, the on-line grant award management system used for federal grants management.

Resource for questions on policies: The VT League of Cities & Towns Municipal Assistance Center can be reached at info@vlct.org or 1-800-649-7915. This policy is based on the VLCT model policy, and VLCT recommends legal review.