
MEMORANDUM

TO: McSherrystown Borough Council
DATE: July 29, 2021
RE: Municipal Contracting and Procurement

DISCUSSION:

At the McSherrystown Borough Council meeting held on July 28, 2021, a question arose during public comment regarding the purchase of a police vehicle without meeting the borough procurement requirements. The purpose of this memorandum is to explain the procurement requirements for boroughs in Pennsylvania and to address the questions raised during public comment.

A. PUBLIC BIDDING AND ADVERTISING REQUIREMENTS

Section 1402 of the Borough Code (the “Code”), 8 Pa.C.S.A. § 1402, contains bidding and notice requirements, and certain exceptions to competitive bidding.

(1) Threshold for Public Bidding and Telephonic or Written Quotes

i) No Competitive Bidding or Telephonic/Written Quotations Required

No competitive bidding or telephone/written quotations are required for contracts with a base amount of \$10,000.00 or less.

ii) Telephonic or Written Quotes Required

For contracts or purchases in excess of the base amount of Ten Thousand Dollars (\$10,000) but less than the base amount of Eighteen Thousand Five Hundred Dollars (\$18,500) require the Borough to request written or telephonic price quotations from at least three (3) qualified and responsible contractors.¹ A written record must be made for telephonic price quotations and shall contain at least the date of the quotation, the name of the contractor, the contractor’s representative, and the work which was subject to the quotation, and the price. In lieu of price quotations, a memorandum shall be kept on file showing that

¹ 8 Pa.C.S.A. § 1402(a.1).

fewer than three qualified contractors exist in the market area within which it is practicable to obtain quotations.²

iii) Competitive Bidding Required

With respect to the Borough, “[a]ll contracts or purchases in excess of the base amount of \$18,500, subject to adjustment . . . shall not be made except with and from the lowest qualified and responsible bidder after due notice in one newspaper of general circulation, at least two times at intervals of not less than three days where daily newspapers of general circulation are available for publication and, in case of weekly newspapers, notice once a week for two successive weeks.”³

iv) Annual Threshold Adjustments

The foregoing threshold figures for bidding and quotations are subject to annual adjustment by the Pennsylvania Department of Labor and Industry based upon changes in the Consumer Price Index. Adjustments are published annually in the Pennsylvania Bulletin. For 2021, the adjusted thresholds are: (A) purchases and contracts in an amount less than \$11,500 require no formal bidding or written/telephonic price quotations; (B) purchases and contracts between \$11,500 and \$21,300 require three written/telephonic quotations; and (C) purchases and contracts exceeding \$21,300 require formal bidding.⁴

(2) Exceptions From Public Bidding and Telephonic or Written Quotes

Certain contracts or purchases do not require competitive bidding or price quotations under the Code.

i) For Supplies and Materials

Bidding provisions related to the purchase of goods do not apply to purchases of “patented and manufactured or copyrighted products.”⁵

ii) For Personal or Professional Services

A Borough need not competitively bid personal or professional services contracts. Personal services are generally considered to require performance of a special knowledge, skill, and ability in the worker so that in case of a default the same service could not be easily obtained by another (e.g., contracts for actors to perform, singers to record, etc.). “Professional services” are those which involve quality as the paramount concern and require a recognized professional and special expertise. Where quality is of little concern, perhaps because the product or service varies little from company to company, competitive bidding should be required, but where quality of service is the paramount concern, the service should be exempt from competitive bidding requirements. Examples of professional services include engineers, accountants, physicians, and lawyers.

iii) Under Emergency Circumstances

² 8 Pa.C.S.A. § 1402(a.1).

³ 8 Pa.C.S.A. § 1402(a).

⁴ 50 Pa.B. 7112.

⁵ 8 Pa.C.S.A. § 1402(d).

Bidding and advertising requirements may be waived if a Borough determines that an emergency exists that requires it to purchase supplies and materials immediately.

iv) From COSTARS (or Similar Cooperative Program)

For supplies and materials contracts, certain items may be available through COSTARS, the Commonwealth's cooperative purchasing program, or a similar cooperative program. COSTARS satisfies cooperative purchasing requirements for local governments.⁶ A Borough need not first solicit competitive bids to purchase through COSTARS.

B. ANALYSIS

At the public meeting, it was noted that the vehicle in question was purchased without following the Code requirements. First, as a point of clarification, the Borough has not purchased the vehicle; the Borough leased a 2020 Ford Police Interceptor Utility AWD vehicle on April 24, 2020, and was signed and accepted by then the Borough Manager on May 8, 2020. Second, the lease was not leased in violation of the Code. The vehicle in question was leased using COSTARS. As indicated above, COSTARS **satisfies all cooperative purchasing requirements for local governments.** As such, the Borough need not first solicit competitive bids in order to lease the vehicle in question.

The line item for the vehicle was placed in the 2020 Budget at a public meeting held on November 20, 2019. It was later reaffirmed by the incoming Borough Council when the budget was opened in accordance with the Code.

C. CONCLUSION

There are certain requirements that a Borough must follow when making purchases or entering into a contract. As noted, purchases and contracts in an amount less than \$11,500 require no formal bidding or written/telephonic price quotations; purchases and contracts between \$11,500 and \$21,300 require three written/telephonic quotations; and purchases and contracts exceeding \$21,300 require formal bidding. These requirements must be followed unless there is an exception to the bidding requirements. Making purchases or leases through the COSTARS program is an exception to the bidding requirements. Here the Borough staff and Police Chief followed all applicable laws and the Code by leasing the vehicle through COSTARS. As the vehicle was leased through COSTARS, there were no bidding requirements that were needed to be followed by the Borough.

⁶ 62 Pa.C.S. § 1902.