

CHAPTER 7

HOWELL TOWN PROCUREMENT PROCEDURES

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CHAPTER 7

HOWELL TOWN PROCUREMENT PROCEDURES

Section 7-1. NAME OF ORDINANCE.

This Ordinance shall be designated and named the Howell Town Procurement Procedure, Chapter 7, Howell Town Ordinances.

Section 7-2. GENERAL PURCHASES. (Amended 05-12-15, Ord. 2015-02; 11-12-15, Ord 2014-03)

Notwithstanding projects already approved by the Howell Town Council and funded accordingly, any single procurement item or project between \$1,000.00 and \$20,000.00 shall be brought before the Town Council and approved by the Town Council and Mayor.

Section 7-3 COMPETITIVE PROCUREMENT PROCESS. (Amended 05-12-15, Ord. 2015-02; 11-12-15, Ord. 2015-03)

Any project or item for purchase exceeding \$20,000.00 shall proceed through a competitive procurement process as follows:

A. Public notice of procurement process or sole source procurement.

(1) The Howell Town Council or department with independent procurement authority that issues an invitation for bids, a request for proposals, or a notice of sole source procurement required to be published in accordance with this section, shall provide public notice that includes:

- (a) for an invitation for bids or a request for proposals;
- (b) the name of the department requiring the procurement item;
- (c) for an invitation for bids or a request for proposals, information on how to contact the issuing procurement department in relation to the invitation for bids or request for proposals;
- (d) for a notice of sole source procurement, contact information and other information relating to contesting, or obtaining additional information in relation to, the sole source procurement;
- (e) for an invitation for bids or a request for proposals, the date of the opening and closing of the invitation for bids or request for proposals;
- (f) for a notice of sole source procurement, the earliest date that the procurement unit may make the sole source procurement;
- (g) information on how to obtain a copy of the invitation for bids, request for proposals, or further information related to the sole source procurement; and
- (h) a general description of the procurement items that will be

- obtained through the standard procurement process or sole source procurement.
- (2) Except as provided in Subsection (4), for an invitation for bids or a request for proposals, the Howell Town Council or issuing procurement department shall publish the notice described in Subsection (1), using at least one of the following methods:
- (a) at least seven days before the day of the deadline for submission of a bid or other response, publish the notice:
 - (i) in a newspaper of general circulation in the state; or
 - (ii) in a newspaper of local circulation in the area.
 - (b) at least seven consecutive days before the day of the deadline for submission of a bid or other response, publish the notice:
 - (i) on the main website for Howell Town or the procurement department acquiring the procurement item; or
 - (ii) on a state website that is owned, managed by, or provided under contract with, Howell Town or procurement department, for posting a public procurement notice.
- (3) Except as provided in Subsection (4), for a sole source procurement for which notice is required to be published in accordance with this section, Howell Town or the procurement department making the sole source procurement shall publish the notice described in Subsection (1), using at least one of the following methods:
- (a) at least seven days before the day on which Howell Town or the procurement department makes the sole source procurement, publish the notice:
 - (i) in a newspaper of general circulation in the state; or
 - (ii) in a newspaper of local circulation in the area:
 - (b) at least seven consecutive days before the day of the deadline for submission of a bid or other response, publish the notice:
 - (i) on the main website for Howell Town or the procurement department acquiring the procurement item; or
 - (ii) on a state website that is owned, managed by, or provided under contract with, Howell Town or procurement department, for posting a public procurement notice.
- (4) The Howell Town Council, issuing procurement department, or the procurement unit making a sole source procurement, may reduce the seven-day period described in Subsection (2) or (3), if the procurement officer or the procurement officer's designee signs a written statement that:
- (a) states that a shorter time is needed; and
 - (b) as it relates to an invitation for bids or a request for proposals,

determines that competition from multiple sources may be obtained within the shorter period of time.

- (5) (a) Howell Town Council or the issuing procurement department shall make a copy of an invitation for bids or a request for proposals available for public inspection at the Howell Town main office.
- (b) A procurement unit making a sole source procurement shall make a copy of information related to the sole source procurement available for public inspection at the Howell Town main office.

B. Preference for Resident Contractors.

- (1) As used in this section, "resident contractor" means a person, partnership, corporation, or other business entity that:
 - (a) either has its principal place of business in Howell Town or that employs workers who are residents of Howell Town when available; or
 - (b) either has its principal place of business in Box Elder County, Utah, or that employs workers who are residents of Box Elder County, Utah, when available; and
 - (c) was transacting business on the date when bids for the public contract were first solicited.
- (2) (a) In order to receive the reciprocal preference under this section, the bidder shall certify on the bid that the bidder qualifies as a resident contractor.
- (b) The reciprocal preference is waived if the certification described in Subsection (2)(a) does not appear on the bid.
- (3) (a) If the contractor submitting the lowest responsive and responsible bid is not a resident contractor whose principal place of business is in Howell Town or Box Elder County, and if a resident contractor has also submitted a responsive and responsible bid, and, with the benefit of the reciprocal preference, the resident contractor's bid is equal to or less than the original lowest bid, the Howell Town Council shall:
 - (i) give notice to the resident contractor that the resident contractor qualifies as a preferred resident contractor; and
 - (ii) issue the contract to the resident contractor if the resident contractor agrees, in writing, to meet the low bid within 72 hours after notification that the resident contractor is a preferred resident contractor.
- (b) The Howell Town Council shall include the exact price submitted by the lowest bidder in the notice that the issuing procurement unit submits to the preferred resident contractor.
- (c) The Howell Town Council may not enter into a contract with any other bidder for the construction until 72 hours have elapsed after

- notification to the preferred resident contractor.
- (4) (a) If there is more than one preferred resident contractor, the Howell Council shall award the contract to the willing preferred resident contractor who was the lowest preferred resident contractor originally.
- (b) If there were two or more equally low preferred resident contractors, the Howell Town Council shall appoint a committee for the purpose of examining the quality of work, history of work and completion of other jobs, complaints filed with any licensing agencies, etc., in order to determine and select the final contractor.
- (5) The provisions of this section do not apply if application of this section might jeopardize the receipt of federal or state funds.

C. Bias, conflicts of interest, and unlawful use of position or influence.

(1) As used in this section:

(a) "Contract administrator" means the person who administers a current contract, on behalf of Howell Town, including:

- (i) making payments relating to the contract;
 - (ii) ensuring compliance with the contract;
 - (iii) auditing a contractor in relation to the contract;
- or
- (iv) enforcing the contract.

(b) "Contribution" means:

(i) a voluntary gift or donation to a public entity for the public entity's use, and not for a particular person employed by a public entity, including:

- (A) a philanthropic donation;
- (B) services;
- (C) money; or
- (D) other items of value.

(c) "Gratuity" means anything of value, including:

- (i) money;
- (ii) a loan at an interest rate below the market rate or with terms that are more advantageous to the person receiving the loan than terms offered generally on the market;
- (iii) an award;
- (iv) employment;
- (v) admission to an event;
- (vi) a meal;
- (vii) lodging;
- (viii) travel; or
- (ix) entertainment for which a charge is normally made.

(d) "Family member" means a parent, stepparent, spouse, sibling,

stepsibling, child, stepchild, grandparent, great-grandparent, grandchild, or great-grandchild.

(e) "Interested person" means a person who is interested in any way in the sale of a procurement item or insurance to a public entity.

(f) "Kickback" means a gratuity given in exchange for favorable treatment in a pending procurement or the administration of a contract.

(g) "Pending procurement" means a procurement at any stage, including:

(i) preparing to engage in a standard procurement process, including preparing documents that will be used in the standard procurement process;

(ii) engaging in a standard procurement process;

(iii) evaluating, or making a recommendation regarding, a quote, a bid, or a response; and

(iv) awarding a contract or otherwise making a decision to obtain a procurement item from a particular person.

(h) "Procurement participant" means a person involved in:

(i) administering, conducting, or making decisions regarding a standard procurement process;

(ii) making a recommendation regarding award of a contract or regarding a decision to obtain a procurement item for a particular person;

(iii) evaluating a quote, a bid, or a response; or

(iv) awarding a contract or otherwise making a decision to obtain a procurement item from a particular person.

(2) (a) Except as provided in Subsection (5) or (6), it is unlawful for an interested person to give, offer, or promise to give a gratuity to:

(i) a procurement participant; or

(ii) an individual who the person knows is a family member of a procurement participant.

(b) Except as provided in Subsection (5) or (6), it is unlawful for a procurement participant to ask, receive, offer to receive, accept, or ask for a promise to receive a gratuity from an interested person.

(c) Except as provided in Subsection (5) or (6), it is unlawful for a contractor to give a gratuity to:

(i) a contract administrator of the contractor's contract; or

(ii) an individual who the contractor knows is a family member of a contract administrator of the contractor's contract.

(d) Except as provided in Subsection (5) or (6), it is unlawful for a person who is a contract administrator of a contract to ask, receive, offer to receive, accept, or ask for a promise to receive, for the

- contract administrator or a family member of the contract administrator, a gratuity from the contractor for that contract.
- (3) (a) It is unlawful for a person to give, offer, or promise to give a kickback to a procurement participant or to another person for the benefit of a procurement participant.
- (b) It is unlawful for a procurement participant to ask, receive, offer to receive, accept, or ask for a promise to receive a kickback for the procurement participant or for another person.
- (c) It is unlawful for a person to give a kickback to a contract administrator, or to another person for the benefit of a contract administrator.
- (d) It is unlawful for a contract administrator to ask, receive, offer to receive, accept, or ask for a promise to receive a kickback for the contract administrator or for another person.
- (4) It is unlawful for a procurement participant to use the procurement participant's position or influence to obtain a personal benefit for the procurement participant, or for a family member of the procurement participant, from an interested person.
- (5) A person is not guilty of a violation of Subsection (3) for giving, offering, promising to give, receiving, or accepting a hospitality gift if, as it relates to a procurement participant or a contract administrator:
- (a) the total value of all hospitality gifts given, offered, or promised to, or received or accepted by, the procurement participant or contract administrator in relation to a particular procurement or contract is less than \$10; and
- (b) the total value of all hospitality gifts given, offered, or promised to, or received or accepted by, the procurement participant or contract administrator from any one person, vendor, bidder, responder, or contractor in a calendar year is less than \$50.
- (6) (a) A person is not guilty of a violation of this section for giving, offering, or promising a contribution to a public entity, unless the contribution is given, offered, or promised with the intent to induce a person to make a procurement decision, or to take action in relation to the administration of a contract, in reciprocation for the contribution.
- (b) A person is not guilty of a violation of this section for receiving or accepting a contribution on behalf of a public entity, unless the person accepts or receives the contribution in exchange for making a procurement decision, or for taking action in relation to the administration of a contract, in reciprocation for the contribution.
- (c) A person is not guilty of a violation of this section if the person gives, offers, or makes a pledge, in the form of a contribution to an organization to which a procurement participant or contract administrator belongs, unless the contribution is given, offered, or pledged with the intent to induce a

- person to make a procurement decision, or to take action in relation to the administration of a contract, in reciprocation for the contribution.
- (7) (a) A person is not guilty of a violation of this section for providing employment to a family member if the employment was open to the general public and there was:
- (i) No other applicants for the position advertised, or
 - (ii) The applicant was the most qualified for the position.
- (b) Howell Town hereby adopts and applies the exemption provided for in U.C.A. ' 52-3-4.

Section 7-4 PENALTIES.

A person who violates this section is guilty of the following and shall be referred to and prosecuted by the Box Elder County Attorney:

- (a) a class B misdemeanor if the total value of the gratuity or kickback is \$250 or more; or
- (b) a class C misdemeanor if the total value of the gratuity or kickback is less than \$250 but greater than \$10.