

ORDINANCE 2022-07

A RESOLUTION/ORDINANCE TO REVOKE, AMEND AND RE-ADOPT *CHAPTER 41, ARTICLE I, §41-1 THROUGH 41-4, PROCUREMENT*

RECITAL

The *Charter* of the Town of Smithsburg, Section 31-62, *Purchasing and Contracts*, authorizes the Mayor and Council to enact an Ordinance to regulate the bidding, purchasing and contract process. To create consistency and fairness in the bidding process, the Mayor and Council have determined that it is in the best interests of the citizenry of the Town of Smithsburg to revoke *Chapter 41, Article I, Sections 41-1 through 41-4* and amend and re-enact its *Procurement Ordinance* (Chapter 41, Sections 41-1 through 41-4) to regulate purchases and competitive bidding and to amend the *Code of Ordinances of the Town of Smithsburg* to amend *Chapter 41, FINANCE, Article I, §41-1 through 41-4, Procurement* in accordance with attached **Exhibit "A"** which is incorporated herein by reference.

RESOLUTION

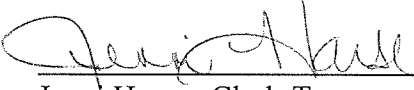
NOW, THEREFORE, BE IT RESOLVED, ENACTED AND ORDAINED as follows:

1. The **RECITAL** is made a part hereof and incorporated herein by reference.
2. CHAPTER 41, Article I, §§41-1 through 41-4 of the *Code of Ordinances of the Town of Smithsburg* as it currently exists be and is hereby repealed.
3. CHAPTER 41, §§41-1 through 41-4 of the *Code of Ordinances of the Town of Smithsburg* be and is hereby **amended, modified, re-titled and re-adopted** as set forth in **Exhibit 'A'** which is attached hereto and incorporated herein by reference.
4. Except for the amendments set forth in **Exhibit 'A'**, the remainder of **CHAPTER 41, FINANCE** shall remain in full force and effect.

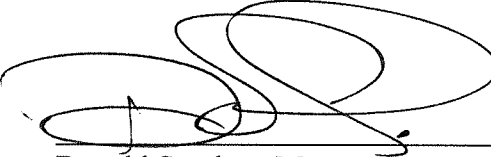
ORIGINAL

ATTEST:

**MAYOR AND COUNCIL OF
SMITHSBURG**



Jenni House, Clerk-Treasurer



Donald Souders, Mayor

Date of Introduction: 11/22/2022_____

Date of Passage: 12/06/2022_____

Effective Date: 12/26/2022_____

EXHIBIT 'A'

Chapter 41 Finance

[HISTORY: Adopted by the Mayor and Council of the Town of Smithsburg as indicated in article histories. Amendments noted where applicable.]

Article I Procurement

§ 41-1 Overview of policy.

- A. The Town Charter requires advertising for sealed bids for supplies, equipment, construction of public improvements or contractual services involving more than \$10,000.
- B. The Town utilizes some purchase agreements initiated by the federal, state, county or other municipal governments (the "initiating government" level) for certain items which have been competitively bid by those governments, i.e., road salt, some vehicles, paving, etc.

§ 41-2 Expenditures less than the Charter amount specified for Competitive Bidding.

For expenditures less than the amount specified in the Charter of the Town of Smithsburg for competitive bidding, the Town, through the Town Manager and/or Clerk/Treasurer may utilize purchase agreements initiated by the federal, state, county or another municipal governments located in the State of Maryland for purchases in these categories, without soliciting competitive quotes, proposals or bids.

Otherwise, absent such purchase agreements, the Town Manager and/or Clerk/Treasurer:

- A. May, but need not, solicit and secure up to three verbal quotes for purchases or services anticipated to cost less than \$5,000.00.
- B. Shall solicit and secure at least three written quotes from potential suppliers for purchases or services anticipated to cost more than \$5,000.00 but not more than the amount specified in the Town Charter requiring competitive bidding.

§41-3 Expenditures for amounts equaling and/or exceeding the amount specified in the Town Charter for Competitive Bidding (Adopted ***, 2022)

§ 41-3(a) Purchasing in general. Bidding, Purchases and Contracts Exceeding Charter Limit requiring Competitive Bidding

- A. For these types of purchases and contracts, the Town Manager, with authorization from the Council, shall act as purchasing agent for all supplies and contractual services needed by the Town of Smithsburg, or any using agency or department, which derives its support, wholly

or in part, from the Town of Smithsburg, in accordance with the following procedures set forth in this Chapter and such other rules and regulations which may, from time to time, be proscribed by the Mayor and Council by Ordinance. All written contracts awarded pursuant to this Section shall be executed by the Mayor after acceptance of the bid/proposal and acceptance/authorization by the Council.

- B. In addition to any specific powers and duties prescribed by this chapter, the Town Manager shall:
- (1) Act to procure for the Town the highest quality in supplies and contractual services at the lowest expense to the Town.
 - (2) Discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases and sales.
 - (3) Recommend to the Mayor and Council that they establish and amend, when necessary, all rules and regulations authorized by this chapter and any other necessary to its operation. The Mayor and Council shall make such changes by ordinance if same alters the substance of this Chapter.
 - (4) Keep informed of current developments in the field of purchasing, pricing, market conditions, and new products, and secure for the Town the benefits of research done in the field of purchasing by other governmental jurisdictions, national technical societies, trade associations having national recognition, and by private businesses and organizations.
 - (5) Prescribe and maintain such forms as shall be found reasonably necessary to the operation of this chapter.
 - (6) Exploit the possibilities of buying in bulk so as to take full advantage of discounts.
 - (7) Act so as to procure for the Town all federal and state exemptions to which it is entitled.
 - (8) Advise the Mayor and Council as to vendors who default in their contractual obligations, quotations, and irresponsible bidders and keep the Mayor and Council fully apprised of same so that the Mayor and Council may make a determination whether or not to deal, negotiate, and/or contract with said vendors.
 - (9) Compile and maintain a list of qualified bidders and vendors.

§ 41-3(b) **Competitive bidding.**

- A. Any purchase of supplies or contractual services, when the estimated or known cost thereof exceeds the amount specified in the Charter, shall be authorized by the Mayor and Council at a duly constituted meeting, and a contract shall be entered into for such services, contractual services, and/or supplies. Such purchases or contracts shall be entered into only after the taking of competitive bids, unless the taking of competitive bids, as hereinafter provided, is not required.
- B. Public notice of all required bidding shall be given in one issue of a newspaper having general

circulation within the Town and such other newspapers, trade publications or other media, electronic or otherwise, as may be considered appropriate for notifying a sufficient number of vendors to assure effective competition. Such public notice shall be published not less than 15 days prior to the opening of bids. Copies of the notice may be mailed to qualified vendors by the Town Manager. The list of vendors shall include all responsible prospective suppliers who have requested their names to be placed on the list of bidders. Special attention shall be given to notifying vendors having offices or residing within the Town of Smithsburg, Washington County, or which have qualified with the federal government, state or county as a minority-owned business enterprise. The notice required herein shall include a general description of the articles to be purchased or sold, or work to be performed, and shall state where bid specifications may be secured, and the time and place for opening of the bids

- C. The closing date and time for receiving bids shall be during normal business hours at the Town Hall or at the time of a meeting of the Mayor and Council. Bids shall be identified as bids on the sealed envelope. Bids shall be opened and evaluated by the Town Manager and Clerk-Treasurer following the Closing Date. In the event that the Town Manager or Clerk-Treasurer would not be available for the opening of bids/proposals, the Mayor shall designate an alternate for said opening. All bids received shall be tabulated and evaluated by the Town Manager. The Town Manager shall provide an analysis and tabulation together with the actual submitted bids to the Mayor and Council at the next public meeting following the opening of the bids for the Council's consideration and action.
- D. For purchases or contracts for which the taking of competitive bids is required, the Town Manager shall furnish the Mayor and Council as soon as practical a tabulation and analysis of all bids, the Town Manager's recommendation as to the bid and such other information as the Mayor and Council may need or shall require. The Mayor and Council, in an open meeting, shall consider the bids and then award, by a majority vote upon a Motion, the proposed contract, if they deem advisable within their discretion, to the lowest, responsible bidder in accordance with the provisions of this chapter. An award of a contract solicited through a Request For Proposals (RFP) process shall not be controlled solely on price.
- E. The Mayor and Council of the Town of Smithsburg shall have the right to accept or reject any and all bids or proposals, either in whole or in part, within their absolute discretion and readvertise.
- F. The Town Manager/the Town shall not accept the bid of a contractor who is in default on the payment of any taxes, licenses, fees or other monies due to the Town of Smithsburg.
- G. In determining the best available bid and/or proposal, the Town Manager shall consider and advise the Mayor and Council, for their determination and consideration, of the following matters:
 - (1) The ability, capacity and skill of the bidder/proposer to perform the contract or provide the service required.
 - (2) Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference.

- (3) The character, integrity, reputation, judgment, experience and efficiency of the bidder/proposer
- (4) The quality of performance of previous contracts or services with the Town of Smithsburg and/or communities, businesses or projects the Mayor and Council are aware of.
- (5) The previous and existing compliance by the bidder/proposer with the laws and ordinances relating to the contract or services.
- (6) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service.
- (7) The quality, availability and adaptability of the supplies, or contractual services to the particular use required.
- (8) The ability of the bidder to provide future maintenance and service of the items to be purchased, if required, and the convenience to the Town of the location at which such maintenance or service will be performed.
- (9) The number and scope of conditions attached to the bid or proposal
- (10) The estimated life cycle costs of the items to be purchased when it is possible to reasonably estimate such costs.
- (11) The cost of delivery of supplies or services to be purchased or, if the Town must obtain delivery of supplies or receive services at a place other than the premises of the Town, the convenience of the location at which delivery or receipt is to be made.
- (12) Whether or not the bidder/proposer is a person or business located within the corporate limits of the Town of Smithsburg, or a minority-owned business enterprise that has submitted a bid which has been adjudged to be equal in all other respects to the bids received from bidders which are neither minority-owned nor located with the corporate limits of the Town.
- (13) Such other information which, in the discretion of the Mayor and Council, may have a bearing upon the determination as to which bidder/proposer has offered the most acceptable bid or proposal under all of the surrounding circumstances.

§41-3(c)Exceptions to requirements.

- A. Unless the Mayor and Council determine otherwise and subject to the approval of the purchase or contract by the Mayor and Council, the requirements for the taking of competitive bids are not required for the following:
 - (1) Lease and/or rental of property, except as may be required by the *Local Government Article* of the *Annotated Code of Maryland*, § 1-706, pertaining to the sale and lease of property.
 - (2) Purchase of patented or manufactured products offered for sale in a noncompetitive market or solely by a manufacturer's authorized dealer, and are a sole source.

- (3) Contracts involving policies of insurance or surety company bonds.
- (4) Purchases made through the state or against federal purchase contracts.
- (5) Contracts with public utility service companies under tariffs on file with the Public Utility Commission, contracts made with another political subdivision of the State of Maryland or of another state adjoining the State of Maryland, the federal government and/or any agency of the State of Maryland or any municipal authority.
- (6) Contracts involving the services provided by members of the medical or legal profession, architects, engineers, accountants, surveying or planning professionals, environmental consultants, wastewater and water operators or other personal services involving professional expert advice or assistance and/or advice and service of a unique nature.
- (7) Purchase of supplies and equipment required for parts or components being procured as replacement parts in support of equipment specifically designed by the manufacturer, where data available is not adequate to assure that the part or component is identical with the part it is to replace or where contemplated procurement is to match or complement equipment or components previously purchased.
- (8) Purchase of technical, nonpersonal services in connection with the assembly, installation or servicing (or the instruction of personnel therein) of equipment of a highly technical or specialized nature.
- (9) Purchase of items through the Maryland Department of General Services Office of State Procurement.
- (10) Purchases through purchase agreements initiated and competitively procured by the federal, state, county or other municipal governments located in the State of Maryland for purchases in those categories pursuant to those agreements.

B. Local preference. The Mayor and Council reserve the right to show preference to local bidders in the purchase of supplies, equipment and services. The amount shall not exceed 10% of the total amount of the bid or quote. A "local bidder" is defined as an individual or business who maintains a place of business in the Town of Smithsburg or Washington County, Maryland; or maintains an inventory of merchandise in the Town of Smithsburg or Washington County, Maryland; or is subject to real and/or property taxes payable to the Town of Smithsburg or Washington County, Maryland. Any local bidder in default on payments of any county, state or Town tax or license shall not be eligible to receive preference until all taxes and/or licenses due are paid. Notice of preference availability shall be included in the invitation to bid and in all advertisements.

§ 41-3(d) **Requests for Proposals (RFP's)**

Competitive Bidding may not be appropriate in connection with certain purchases, sales and/or services which may involve matters and products of a unique and/or specialized nature. In those circumstances, the Mayor and Council upon a motion approved by a majority of the Council may choose to proceed to obtain the most suitable person, firm and/or product by

soliciting proposals from interested, qualified persons and firms. Unless otherwise specified, the procedures set forth in this Section shall be followed in connection with RFP's with the exception that awarding of the contract shall not be controlled solely by price. The Mayor and Council, within its discretion and with the advice the Town Manager, may utilize the factors set forth in §41-3(a)G in determining the most qualified person, product or firm for purposes of awarding the contract and/or project.

§ 41-3(e) Severability.

If any provision of this chapter shall be deemed by a court of competent jurisdiction to be invalid, the remainder of the chapter shall remain in full force and effect.

§ 41-4 Emergency purchases and contracts and Exceptional Circumstances

- A. Upon a Declaration of Emergency by the Mayor in accordance with the *Charter of the Town of Smithsburg* and/or *The Code of Ordinances of the Town of Smithsburg*, emergency purchases and emergency contractual services are exempt from the above competitive bidding process, the total cost of such purchases and services on an emergency basis being unknown in advance. The Town should make reasonable efforts to establish written labor and equipment rates on a periodic basis with persons capable of supplying the labor, equipment and/or materials which it anticipates might be needed in specific types of emergencies.

- B. Under exceptional circumstances resulting from supply shortages, a time-frame that does not permit the bidding process outlined above or other situations which the Mayor and Council deem it necessary to waive the competitive bidding requirements, purchases and contracts may be made exempt by the Mayor and Council after a request by the Town Manager and a finding of exceptional circumstances and a four fifths (4/5) vote of Council.

[Adopted 10-6-2009; Revised *, 2022]**

Please send Original Documents to:

Jenni House
Clerk -Treasurer
Town of Smithsburg
21 W. Water Street
P. O. Box 237
Smithsburg, MD 21783

JAN 24 2023

LR - Government
Instrument 0.00
Agency Name: Town of
Smithsburg
Instrument List: Other
Describe Other:
Ordinance
Ref: 2022-07

=====
Total: 0.00
01/23/2023 11:17
CC21-92
#18831048 CC0403 -
Washington
County/CC04.03.03 -
Register 03

This page not to be counted in calculating Recording Fee

**Clerk of Circuit Court
Washington County, Maryland**

Kevin R. Tucker, Clerk
24 Summit Avenue
Hagerstown, MD 21740
301-790-7991

For Clerks Use Only

Improvement Fee _____
Recording Fee _____
County Transfer Tax _____
Recordation Tax _____
State Transfer Tax _____
Non-Resident Tax _____
TOTAL _____

KUCZYNSKI & KUCZYNSKI, P.A.

Attorneys

Edward L. Kuczynski

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Attorneys at Law

PHOBE BUILDING
22 W. SALISBURY STREET
WILLIAMSPORT, MARYLAND 21795

Telephone
(301) 797-9120

Facsimile
(301) 797-4317

December 13, 2022

TO: Clerk of Court

RE: Town of Smithsburg:

**THE TOWN OF SMITHSBURG, MARYLAND – ORDINANCE/RESOLUTION
TO REVOKE, AMEND AND RE-ADOPT CHAPTER 41, ARTICLE I, § 1-41,
PROCUREMENT OF THE TOWN OF SMITHSBURG CODE OF ORDINANCES**

To whom it may concern:

Please record the above-mentioned documents in Acts, Ordinances and Resolutions for
Washington County.

Please mail the original documents to Jenni House, Clerk/Treasurer, Town of
Smithsburg, P.O. Box 237, 21 W. Water Street, Smithsburg, MD 21783.

If you should have any questions, do not hesitate to Contact this office. Thank you.

Very truly yours,

Kuczynski & Kuczynski, P.A.

By: *Edward L. Kuczynski*
Edward L. Kuczynski

ELK/lck
Encl: as noted
Corr: clerk 11.08.22