

DEPARTMENT: ALL TOWN DEPARTMENTS

TITLE: **Procurement Policy**

Minutes reference date: 30 April 2007 28 September 2009 26 November 2012 27 November 2017

1) Policy Statement

The purpose of this policy is to establish transparent procurement guidelines to ensure the most ~~cost~~ effective and ~~cost~~ efficient methods are used to provide best value for the procurement of goods, services and construction for the Town of Amherst (hereinafter referred to as the "Town").

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The Town will conduct procurement practices in compliance with all Provincial legislation, International, National and Regional Trade Agreements, including the Nova Scotia Public Procurement Act and any amendments thereto.

2) Definitions

- a) Alternative Procurement (ALTP) - the procurement of goods, services and construction without a competitive process due to certain conditions/situations.
- b) Best Value - the bid that is determined by the Town to be in its best interests, not necessarily the lowest price bid, which is determined by evaluation of bids based on criteria or factors that may include purchase price, life cycle cost considerations, environmental and social considerations, delivery, servicing, past experience and performance, and any other criteria or factors stated in the requesting documents.
- c) Bid - a supplier's response to a Request for Quotation (RFQ), Request for Construction (RFC), Tender, Request for Proposal (RFP), Request for Expression of Interest (REI) or a Two Phase Bid to provide goods, services or construction.
- e)d) Invitational Competition – is a competitive process in which an invitation to submit bids is issued to at least three suppliers.
- e) Local Preference Area – all suppliers located within the County of Cumberland and the Town of Sackville, New Brunswick, plus a ten (10) mile radius outside of Sackville New Brunswick's town boundaries.
- e)f) Procurement Web Portal – means the public website owned by the Province of Nova Scotia where all public tender notices are posted.
- e)g) Public Request for Submission - refers to inviting responses to tenders, request for proposals, two phase bids, request for construction, request for expression of interest and request for standing orders.

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- h) Purchase Card - a corporate visa-credit card for the Town with various restrictions and limits based on the cardholder.
- i) Purchaser – a Town employee with the authority to purchase goods.
- j) Request for Construction (RFC) - used to publicly tender for a construction, reconstruction, demolition, remediation, repair or renovation of a building, structure, road, bridge or other engineering or architectural work.
- k) Request for Expression of Interest (REI) - process in which suppliers are invited to propose a solution to a problem and then those chosen are asked to respond to a subsequent Request for Proposal.
- l) Request for Quotations (RFQ) - informally obtaining price quotations from a number of different suppliers.
- m) Request for Proposal (RFP) - a formal invitation to suppliers to describe how their services, methods, equipment or products can address and/or meet the needs of the Town.
- n) Purchase Requisition/Purchase Order-an electronically generated document for the supply of goods or services from an approved vendor.
- o) Single Source – A single source procurement is an alternative procurement practice in which two or more suppliers can supply the goods and/or perform the services required by the Town of Amherst, but where the Town of Amherst selects one supplier over the others for reasons such as expertise, previous municipal or other related experience and not through a competitive process.
- p) Sole Source Procurement – is an alternative procurement practice in which it is evident that only one supplier can supply the goods and/or perform the services required and an award is made to that supplier.
- q) Standing Offer- a contractual arrangement with a supplier to provide certain goods or services on an “as required” basis, during a particular period of time, at a predetermined price or discount, generally within a predefined dollar limit.
- r) Sustainable Procurement- involves taking a holistic approach to obtain best value by integrating the following considerations in the procurement process:
- Environmental considerations: e.g. Green House Gas Reduction, Waste Reduction, Toxic Use Reduction;
  - Economic considerations: e.g. Life Cycle Cost, Fiscal Responsibility, Support for the Local Economy;
  - Social considerations: e.g. Employee Health and Safety, Inclusiveness and Fair Wage, Health Promotion.

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- o) Tender- a formal request to solicit for goods, services or construction obtained through posting on the Town and the Provincial websites.
- p) Two Phase Bid- a two stage process in which suppliers submit proposals for evaluation, and separately submit prices.

**3) Guiding Principles**

The following principles will guide the procurement practices of the Town of

- a) Procurement policy and procedures should provide the most efficient and effective methods resulting in best value for the Town.
- b) The procurement process is to ensure a fair, open, consistent and transparent process in the acquisition of goods, services and construction.
- c) Procurement methods are to encourage competition, innovative ideas and solutions, wherever possible, while respecting all legislative and trade agreement obligations for the supply of goods services and construction.
- d) Procurement policy provides for the use of suppliers, who can be expected to provide satisfactory performance, based on, but not limited to:
  - (i) past performance and/or previous contacts
  - (ii) financial and other resources to complete the contract bid;
  - (iii) references
- e) Promoting the use of Sustainable Procurement when evaluating bids by striving to obtain best value, taking into consideration environmental, economic and social considerations.
- f) This policy does not apply to payments for reoccurring items such as utilities, leases, rentals and similar reoccurring operating charges, while recognizing that in some circumstances, the initial commitment that leads to these ongoing payments is subject to the provisions of this policy.

**4) General**

- a) This policy applies to all departments, agencies, boards and commissions of the Town over which the Town has jurisdiction.
- b) The procuring of goods, services and construction will be facilitated by the Director of the requesting department in conjunction with the Procurement Coordinator according to this policy.
- c) The Town will be under no obligation to accept any bid received which is considered to be not in its best interest, in response to a verbal or written request.
- d) The Town may work with other levels of government, other municipal units, other agencies, boards and commissions, and associations such as the FCM (Federation of

Canadian Municipalities) and ~~UNSM-NSFM (Union of Nova Scotia Federation of Municipalities)~~ to encourage standardization of items and/or reduce overall costs to the Town for joint purchasing.

- e) The dollar values indicated within this policy are ~~inclusive-exclusive~~ of the Town's non-recoverable HST and are in Canadian Dollars.

**5) Purchasing Guidelines**

The following guidelines will be followed for the procurement of goods services and construction for the Town:

- ~~a) Up to \$2,000 - For purchases that are random in nature, purchaser will use standing offer, if one exists. Otherwise, purchases may be purchased by the department using a purchase order or Town purchase card in accordance with the Guiding Principles of this policy.~~
- ~~b) More than \$2,000 but less than \$15,000 - Where three or more suppliers exist, purchaser will attempt to solicit at least three written quotations. Award will be to the supplier offering best value. Funds are to be clearly identified in the approved operating or capital budget.~~
- ~~c) More than \$15,000 but less than \$25,000 - Where three or more suppliers exist, purchaser will attempt to solicit at least three written quotations. The Procurement Coordinator will post these opportunities on the Town website. Award will be to the supplier offering best value. Funds are to be clearly identified in the approved operating or capital budget.~~

~~If there is a possibility that the value will be over \$25,000 and/or there is uncertainty of the exact requirements of this request, other methods of procuring, such as RFP's and Tenders, should be used. These would be posted on both the Town and the Provincial website. This decision would be made by the Director of the requesting department in conjunction with the Procurement Coordinator.~~

- ~~d) \$25,000 or greater - the Procurement Coordinator will issue a public request for submissions (see Definitions, Section 2 e) by posting on the Town website and the Nova Scotia Procurement web portal. Documentation must state if submissions received are to be acknowledged at a public opening at a designated place, date and time. After bids are evaluated they are to be forwarded to the CAO, or Council for approval on the recommendation of the CAO. Funds are to be clearly identified in approved operating or capital budget.~~

Spending Category	Low Value	Low Value	High Value
	Quotations	Invitational Competition	Open Competition
Goods	Less than \$5,000	\$5,000 - \$24,999	\$25,000 and above
Services	Less than \$5,000	\$5,000 - \$49,999	\$50,000 and above
Construction	Less than \$5,000	\$5,000 - \$49,999	\$50,000 and above

Dividing procurement activity to reduce or keep the procurement value below certain thresholds is not permitted.

**a) Low Value Procurement**

If the value of the Goods, Services or Construction are less than \$5,000:

Staff are expected to obtain competitive quotations whenever possible and award to the bid that provides the best overall value. For procurement under \$5,000, the minimum of three quotations is not mandatory, however staff are expected to perform due diligence in selecting such suppliers, including obtaining quotations in cases where there are sufficient suppliers to do so, where there is sufficient time to do so, and when the value of the goods, services or construction makes it practical to do so.

**If the value of the Goods, Services or Construction is \$5,000 and over but less than the Open Competition thresholds:**

The acceptable process is to use an Invitational Competition. All Invitational Competitions must be conducted in accordance with the Procurement Guidelines and are subject to review by the Procurement Coordinator prior to issue.

**b) High Value Procurement**

If the value of the Goods, Services or Construction is above Open Competition thresholds, staff must work with the Procurement Coordinator to conduct a public competitive process. Open competitions are posted on the Town of Amherst website and the Nova Scotia Procurement Web Portal.

If an Invitational Competition is issued and the results demonstrate that the cost from the supplier determined to be providing best value is above the High Value Procurement threshold, the CAO may, at their discretion:

- Cancel the competition and not award
- Accept the result and award. The resulting award is an Alternative Procurement Practice; or
- Reject the result and require that the Competition be re-issued as an Open Competition.

**6) Methods of Procurement**

All procurement activity must be obtained through one of the following methods:

- a) Tender - A formal invitation to solicit competitive bids. It is used when detailed specifications are available that permit the evaluation of tenders against clearly stated criteria and specifications. A Request for Tenders (RFT) is a formal, competitive, sealed bidding process. Bid deposits and performance security may be required. The award is normally to the lowest bid received from a qualified bidder meeting the requirements of the tender and providing best value. Tender purchases shall be made

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by purchase order. Tenders must be opened in the presence of at least one elected official and the CAO or his/her designate at a time and location that is open to the public.

- b) Request for Proposal - A ~~R~~request for ~~P~~proposal (RFP) is a formal invitation to suppliers to describe how their services, methods, equipment or products can address and/or meet specific needs of the Town. It is used when a supplier is invited to propose a solution to a problem, requirement, or objective. ~~Unlike tenders,~~ Request for Proposals are evaluated against stated criteria to the terms of the RFP to determine if any should be accepted.

Negotiations with suppliers may be required to finalize any aspect of the proposal provided such discussion and negotiations are conducted to:

- (1) Award equitable treatment to each qualified bidder with respect to an opportunity for discussion and the revision of the proposal.
- (2) Prevent the disclosure of the proposal content of one ~~bidder~~ proponent to another.

Proposals submitted in response to a request for proposal need not be opened in public. A list of the proponents may be made available upon request. An award of a contract based upon a request for proposals will be made to the supplier whose proposal has the highest score based upon the criteria for evaluation set out in the request for proposals and equitably applied to all proposals. RFP purchases shall be made by purchase order.

- c) Request for Quotation - A request for quotation is an informal request for prices for goods and services that the purchaser will attempt to solicit from at least three (3) different suppliers. This process is normally used where bid deposit and performance bonds are not required and where the cost of the work does not warrant the time and level of effort and expense required for a normal tender process. Quotations should be in written form and attached to the Request for Quotation form which must be completed and given to the Procurement Coordinator for filing once it has been awarded.

If a quote is obtained verbally, the person obtaining it must document the quotation, including time, date, supplier, price and description of the goods and services, the person from whom the quotation was obtained and the name of the municipal staff obtaining the quotation. The RFQ form should be used for documentation purposes. RFQ purchases shall be made by purchase order, or purchase card if in US Dollars.

- d) Standing Offer – A tender process to guarantee a continuous supply of various goods, services or construction at a specific price for a specific period of time. The term of the standing offer can vary in duration but will be clearly defined in the tender documents. Standing Offers of the Government of the Province of Nova Scotia or other public sector entities may be used under the constraints within this policy where it is in the best interest of the Town.

- e) Two Phase Bids- Where detailed specifications are not available or it is impractical to prepare a specification based on price, a two phase bid may be issued, inviting for the submission of bids as follows:

Phase One- Pre-qualification step in which bidders submit proposals/expressions of interest in response to basic terms of reference for evaluation; need not be opened in public

Phase Two- Only those bidders whose submissions were determined to be acceptable in Phase One will be invited to submit priced bids for further consideration. Phase Two bids must be opened in public.

This type of purchasing has the advantage of a request for proposal in Phase One and the advantages of a tender in Phase Two. Two phase bid purchases shall be made by purchase order.

- f) Request for Expression of Interest - This process is similar to the Request for Proposal and is sometimes referred to as a Pre-Qualification, where suppliers are invited to propose a solution to a problem. The REI, however, is only the first stage in the procurement process. Bidders responding to the REI will be short listed according to their scoring in the evaluation process. The short listed firms will then be invited to respond to a subsequent Request for Proposal. A REI does not normally include pricing as price is a key evaluation criteria used in the second stage RFP process.
- g) Request for Construction - Used to publicly tender for a construction, reconstruction, demolition, remediation, repair, or renovation of a building, structure, road, bridge, or other engineering or architectural work. When a supplier is invited to bid on a construction project the tender documents usually contain a set of terms and conditions and separate bid form that apply to that specific project. Suppliers are requested to submit a response (bid) in accordance with predefined criteria. The selection of the successful proposal is based on a number of factors as described in the tender documents. A request for construction usually does not include professional consulting services related to the construction contract, unless they are included in the specifications.
- h) Negotiations - Negotiations with suppliers for the supply of goods and/or services would take place when any of the following conditions exist:
- (a) Due to market conditions, goods and/or services are in short supply;
  - (b) There is only one source of the goods or services;
  - (c) All bids received are non-compliant or exceed the amount budgeted for the purchase;
  - (d) The extension or reinstatement of existing contract would be more cost effective or beneficial to the Town providing the extension has been outlined in original documents. The extension or reinstatement of existing contract is subject to the approvals listed in section 9 – Award of Contracts.

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i) Alternative Procurement - In certain circumstances, described in this section, the Town may purchase goods, services and construction without using one of the options set out above. An alternative procurement purchase may occur.

(a) Where an unforeseeable situation of urgency exists and the goods, services or construction cannot be obtained in time by means of open procurement procedures. An emergency purchase occurs when a situation creates immediate and serious need which may not be reasonably met by any other procedure and includes without limitation:

A condition where lack of supplies or services may adversely affect the functioning of civic government, threaten public or private property or the environment, or jeopardize the health or safety of the public;

Emergency purchases are completed using the most expedient method, but will take economy into consideration.

Emergency purchases must be pre-approved by the CAO (or designate) where such approval may be reasonably sought.

(b) Where goods or consulting services regarding matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through an open tendering process could reasonably be expected to compromise government confidentiality, cause economic disruption or otherwise be contrary to the public interest;

(c) Where compliance with the open tendering provisions set out in this policy would interfere with the Town's ability to maintain security or order or to protect human, animal or plant life or health;

(d) In the absence of tenders in response to an open or selective tender, or when the tenders submitted have been collusive, or not in conformity with the essential requirements in the tender;

(e) To ensure compatibility with existing products, to recognize exclusive rights, such as exclusive licenses, copyright and patent rights, or to maintain specialized products that must be maintained by the manufacturer or its representative;

(f) Where there is an absence of competition for technical reasons and the goods or services can only be supplied by a particular supplier and no alternative or substitute exists;

(g) For the purchase of goods on a commodity market;

(h) For the procurement of goods or services the supply of which is controlled by a supplier that is a statutory monopoly;

(i) For work to be performed on or about a leased building or portions thereof that may be performed only by the lessor:



- (j) For work to be performed on property by a contractor according to provisions of a warranty or guarantee held in respect of the property or the original work;
- (k) For the procurement of a prototype or a first good or service to be developed in the course of and for a particular contract for research, experiment, study or original development, but not for routine purchases;
- (l) For the purchase of goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases;
- (m) For the procurement of original works of art;
- (n) For the procurement of subscriptions to newspapers, magazines or other periodicals;
- (o) For the procurement of real property;
- (p) For the procurement of goods intended for resale to the public;
- (q) For the procurement from charitable institutions, prison labour, persons with disabilities, sheltered workshop programs or through employment equity programs;
- (r) For procurement from a public body or non-profit organization; or
- (s) For the procurement of services of expert witnesses, specifically in anticipation of litigation or for the purpose of conducting litigation.

\*\*When an alternative procurement purchase occurs, the reason for doing so must be documented using the Alternative Procurement (ALTP) form.

#### **7) Local Preference**

If the goods, services or construction available from a local business are equal in providing best value to those available from a non-local business, the goods, services or construction from the local business shall be purchased.

In evaluating which goods, services or construction offer best value to the Town of Amherst, the Town shall apply a preference of 5% to the price offered by a local business as compared with non-local businesses, such that the price offered by the local business is adjusted lower by 5% for the purposes of evaluating which goods, services or construction offer best value.

In accordance with the Atlantic Procurement Agreement, the local preference described above does not apply to the following procurements:

- a) goods that have a value of \$25,000 or greater;
- b) services that have a value of \$50,000 or greater;
- c) construction that has a value of \$100,000 or greater.

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All requests for quotations and public requests for submissions must state that local preference applies to the procurement.

**8) Award of Contracts**

- a) The Chief Administrative Officer (CAO) may authorize the procurement of goods, services and construction:
  - i) that are \$250,000 or less and are included within the approved operating and capital budgets; Awards over the value of \$250,000 will be submitted to Council for approval.
  - ii) that exceed the approved budget by 25% or \$50,000, whichever is less. This will be done when it is reasonable to do so and when options to achieve project completion or item procurement are limited.
  - iii) that is an emergency situation. In these cases, the CAO is authorized to make reasonable and informed procurement decisions (operating and capital) which are determined by him/her to be necessary. Among other things such decisions may be deemed by the CAO to be necessary to protect the legal interests or satisfy legal obligations of the Town, or involve a situation where failure to act could reasonably be expected to compromise Town confidentiality, cause economic disruption, or would otherwise be contrary to the public interest. Authorizations for such expenditures are considered to be over and above the other authorities given under this policy to exceed approved budget amounts.
  - iv) where the purchase was made in accordance with this policy and falls within the thresholds established within the Atlantic Procurement Agreement and all subsequent amendments thereto.
  - v) Where the purchase was the result of a public purchasing process conforming to the Town's procurement policy and The Atlantic Trade and Procurement Partnership, and all appropriate Trade Agreements and their subsequent amendments Agreement.
  - vi) Where the purchase is awarded to the supplier providing best value and meeting specifications.
  - vii) Where the award of a Request for Proposal is made to the highest scoring qualified proponent based upon evaluation criteria within the Request for Proposal.
  - viii) Where there is no legislative requirement to obtain Council approval.
- b) All bids are subject to evaluation after opening and before award of contract. The bid request documents must clearly identify the requirements of the procurement, the evaluation method, evaluation criteria based on the purpose and objectives of this policy, and the weights assigned to each criterion.

- c) Where award is over the limits established in the Atlantic [Trade Procurement Partnership Agreement](#) for the purchase of goods, services and construction, award amount and company name is to be posted on the Provincial Procurement Web Portal.
- d) A quarterly report to Council of awards of contracts under the value of \$250,000 approved by the CAO or designate shall be made available to Council and shall show the name of the contract, the name of the successful bidder, the amount of the award, any person or company to whom a single or sole source has awarded, and the budgetary provision.
- e) At the discretion of the CAO, any award of goods, services or construction may be referred to Council for approval.

#### 10) Documentation Requirements

The following documents are required in order to work for the Town:

Workers Compensation Board (WCB) - WCB certificates are required any time a service and/or construction project is being completed on Town of Amherst property. The proponent MUST provide a valid WCB certificate prior to the commencement of any work. This certificate will state when the coverage expires. If the WCB certificate expires before the project is finished, then the replacement certificate MUST be received in order for the work to continue. Town employees have the right to stop any work in progress if an up-to-date WCB certificate is not provided. If the approved vendor is exempt from WCB, proof of the exemption will be supplied before work can commence.

Liability Insurance - Proponents must provide a valid certificate from their insurance company with the Town named and added under Additional Insured for liability purposes with at least \$2,000,000 liability coverage. This certificate must be provided before the commencement of any work.

Construction Safety - A Certificate of Good Standing is required from a registered safety certified company such as the Nova Scotia Construction Safety Association whenever any type of construction, reconstruction, demolition, remediation, repair or renovation is being completed on Town property for any projects that are over \$10,000. This documentation must be provided before the commencement of any work.

#### 11) Code of Ethics

All procurement carried out by the Town must be conducted according to policies, provincial and federal legislation, trade agreements and ethical business practices. ~~We~~ [All employees](#) must in good faith, conduct business with current and prospective suppliers and be fair in all business dealings. We shall encourage the negotiation of an equitable and mutually acceptable settlement when a dispute arises and request removal from a procurement process when a personal conflict of interest is perceived. We shall require suppliers to provide accurate representations of goods, services and construction and encourage them to consider sustainability in their products. We shall strive to obtain best value for each expenditure.

#### 12) Supplier Performance

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- a) Suppliers may be subject to disqualifications if there is sufficient evidence of failure to meet the standards specified by the Town. Suppliers may be evaluated based on competitive price, quality of a product, contract adherence and performance and after sales service. Upon reasonable notice in writing to the supplier involved, and after a reasonable opportunity for response, a supplier can be disqualified for a period not exceeding three years from participation in solicitation for goods, services and construction when:
    - i. Serious breach of contract indicating unwillingness to perform a contract in accordance with the terms and conditions or specifications or a record of unsatisfactory performance of one or more contracts in accordance with its specifications or both.
    - ii. The offer of any gratuity to an official or employee of the Town by a supplier or contractor for consideration.
  - b) A written decision shall be issued to the person disqualified or suspended setting out its reasons for disqualification or suspension, to the usual business address of that person as shown in the records of the purchasing section.
  - c) Disqualification will be approved by the CAO.

**13) Supplier Debriefing**

Upon request of a supplier who is an unsuccessful bidder, the Town must conduct a debriefing with that supplier to provide feedback on the evaluation of the bid. The debriefing must be conducted as follows:

- a) the ~~Treasurer~~ CAO or designate and/or Procurement Coordinator, along with the person named in the documents, will attend the meeting;
- b) the debriefing must provide reasons for the disqualification of the supplier, or in the case where evaluation scoring was used, provide an overview of the supplier's score in each category and reasons for that score;
- c) the debriefing must also provide information to the supplier on how to improve future submissions;
- d) the debriefing must not disclose any information regarding other bidders or their submissions.

**14) Contract Documents, Bid and Performance Securities and Specifications**

- a) The CAO may, from time to time, approve such standard forms including bid and performance securities if any, for purchase by Invitation to Tender, Request for Proposals, Request for Quotations, sole source, or emergency purchases as well as forms of contract for types of purchase including but not limited to construction, supplies and installation or service as they may deem advisable.
- b) Bid bonds, performance bonds, irrevocable letters of credit and other securities including labour and material bonds may be required for such purposes in such form and in such amounts as the CAO deems advisable.

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**15) Special Services**

- a) Legal Services - Legal services will be acquired by staff based upon qualifications, experience, services offered, past performance, proposed fees and other relevant considerations. The acquisition of legal services must be approved by the CAO in consultation with the Director(s) of the user department(s). (These services include expert witnesses, and subject experts required for legal proceeding, hearing or similar matter.) Legal services having a value of \$10,000 or more shall be approved by Council. The term for legal services will be at the discretion of the Town.
- b) Financial Auditing Services – These services may be contracted on a one year term to be renewed on an annual basis on terms satisfactory to the Town. Selection of an auditor shall be completed by the Audit Committee of Council who will recommend the selection of an auditor to Council. Annual selection and/or renewal of the contract for audit services will be made by the Audit Committee.

**16) Tie Bids**

After the assessment process is complete and it cannot be reasonably determined who has submitted the lowest compliant bid and a tie exists, the Procurement Coordinator may flip a coin to determine the award.

**17) Suppliers indebted to the Town of Amherst**

Any supplier/contractor having a customer account with the Town, which is in arrears, will have such arrears deducted from any payments due to the supplier/contractor. Such deduction may be waived by the CAO, where the supplier/contractor has entered into a payment arrangement deemed to be suitable by the Treasurer.

**18) Purchases by Town of Amherst Employees**

Employees or immediate family members (husband, wife, son, or daughter) of employees of the Town are not permitted to purchase personal use items through the purchasing system except where employee purchase plans are being offered.