

# **Chapter 11**

## **PURCHASING POLICY**

### **1-11-1: PURPOSE:**

The underlying purpose of this chapter is to:

- A. Ensure fair and equitable treatment of all persons who wish to or do conduct business with the city;
- B. Provide for the greatest possible economy in city procurement activities;
- C. Foster effective broad based competition within the free enterprise system to ensure that the city will receive the best possible service or product at the lowest possible price. (Ord. 3-17-97A, 3-17-1997)

### **1-11-2: EXEMPTIONS:**

- A. This chapter shall not prevent the city from complying with the terms and conditions of any grant, gift or bequest that is otherwise consistent with law.
- B. When a procurement involves the expenditure of federal assistance funds, the city shall comply with applicable federal law and regulations.
- C. The city may extend the terms of any contract in effect at the time of the adoption of the ordinance codified herein for a period not to exceed four (4) years. Any contract issued under the terms of this chapter may be extended for a period not to exceed four (4) years if the contractor's performance is satisfactory to the mayor and city council. (Ord. 3-17-97A, 3-17-1997)

### **1-11-3: DEFINITIONS:**

As used in this chapter, the following words and terms shall have the meanings ascribed to them in this section:

**BUSINESS:** Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

**CHANGE ORDER:** A written order signed by the purchasing agent, directing the contractor to suspend work or make changes, which the appropriate clauses of the contract authorize the purchasing agent to order, without the consent of the contractor or any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

**CONTRACT:** Any city agreement for the procurement or disposal of supplies, services or construction.

**INVITATION FOR BIDS:** All documents, whether attached or incorporated by reference, used for soliciting bids.

**PERSON:** Any business, individual, union, committee, club, other organization or group of individuals.

**PROCUREMENT:** Buying, purchasing, renting, leasing, leasing with an option to purchase, or otherwise acquiring any supplies, services or construction.

**PURCHASE DESCRIPTION:** The words used in a solicitation to describe the supplies or services to be acquired, and includes specifications attached to or made a part of the solicitation.

**PURCHASING AGENT:** The person or persons duly authorized by the mayor with the concurrence of the city council to enter into and administer contracts and make written determinations with respect thereto.

**REQUEST FOR PROPOSALS:** All documents, whether attached or incorporated by reference, used for soliciting proposals.

**SEALED BIDS:** Written proposals from persons or entities offering to contract with or to sell to the city which are received in sealed envelopes to be opened after the deadline for receipt of bids, as defined in an invitation to bid. (Ord. 3-17-97A, 3-17-1997; amd. 2003 Code)

#### **1-11-4: PURCHASING AGENT:**

The mayor, with the concurrence of the city council, shall appoint a purchasing agent or purchasing agents as necessary to assure the most efficient acquisition of goods and services for the city consistent with the provisions of this chapter. The purchasing agent shall be responsible to make procurements, solicit bids and proposals, enter into and

administer contracts, and make written determinations concerning bids or recommendations to the mayor and to the city council as provided herein. (Ord. 3-17-97A, 3-17-1997)

## **1-11-5: BIDS AND BIDDING:**

### **A. Purchases Not Requiring Sealed Bids:**

1. Expenditures of less than one thousand dollars (\$1,000.00) in total shall not require bids of any type. (Purchases shall not be artificially divided so as to constitute a small purchase under this section.)
2. Expenditures of more than one thousand dollars (\$1,000.00) but less than two thousand dollars (\$2,000.00) in total, shall require three (3) telephone bids. (Ord. 3-17-97A, 3-17-1997; amd. minutes of 4-10-2001)
3. Purchases made through the cooperative purchasing contracts administered by the state division of purchasing.
4. Purchases made from a single source provider.
5. Purchases required during an emergency, i.e., an eminent threat to the public health, welfare or safety; however, as much competition as practical should be invited and such purchases should be limited to amounts necessary to the resolution of the emergency.

### **B. Purchases Requiring Sealed Bids:**

1. Contracts shall be awarded by competitive sealed bidding except as otherwise provided by this chapter.
2. An invitation for bids shall be issued when a contract is to be awarded by competitive sealed bidding. The invitation shall include a description of the work, goods or services and all contractual terms and conditions applicable to the procurement. Public notice of the invitation for bids shall be given at least ten (10) days prior to the date set forth therein for the submission and/or opening of bids. The notice shall include posting of the invitation to bid at the usual place of posting notice for the city and publication in a newspaper of general circulation no less than one time within ten (10) days.
3. Bids shall be opened publicly by the responsible purchasing agent in the presence of not less than two (2) members of the city council, or an agent designated by the mayor, at the time and place designated in the invitation for bids. The amount of each bid and any other relevant information, together with the name of each bidder, shall be recorded. The record of each bid shall be open to public inspection.

4. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the requirements set forth in the invitation for bids.
  5. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the city or fair competition shall be permitted. All decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes shall be supported by a written determination made by the purchasing agent.
  6. The contract shall be awarded with reasonable promptness, by written notice, to the lowest responsible bidder determined solely in the discretion of the mayor when the successful bid meets the requirements and criteria set forth in the invitation for bids. Contracts over five thousand dollars (\$5,000.00) shall be ratified by the city council.
- C. Cancellation And Rejection Of Bids: An invitation for bids, a request for proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected, in whole or in part, as may be specified in the solicitation, when it is in the best interest of the city. The reasons for cancellation or rejection shall be made part of the contract file. Bids will not be invited or solicited from persons or entities controlled by persons which may cause conflict with the other provisions of law or the policy of the city concerning nepotism.
- D. Use Of Competitive Sealed Proposals In Lieu Of Bids: When the purchasing agent determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the city, a contract may be entered into by competitive sealed proposals. Competitive sealed proposals are most appropriately used for professional service contracts.
1. Proposals shall be solicited through a request for proposals. Public notice of the request for proposals shall be given at least fourteen (14) days prior to the advertised date of the opening of the proposals.
  2. Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared and shall be open for public inspection after contract award.
  3. The request for proposals shall state the relative importance of price and other evaluating factors.
  4. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

5. Award shall be made by decision of the mayor and city council and not by the purchasing agent to the person or entity whose proposal is determined, in writing, to be the most advantageous to the city, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

- E. Architect Or Engineer Services: Architect or engineer services are qualification based procurements subject to public notice under subsection B of this section. Contracts should be negotiated by the city based on demonstrated competence at fair and reasonable prices and awarded by action of the city council. See Utah Code Annotated sections 63-56-42 through 63-56-44. The procurement of other professional services such as auditing and legal services shall be negotiated by the city based on demonstrated competence at fair and reasonable prices and shall be exempt from the requirements of this policy but shall be ratified by the city council.
- F. Determination Of The Nonresponsibility Or Disqualification Of A Bidder: Determination of the nonresponsibility or disqualification of a bidder or offeror shall be made in writing. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of disqualification or nonresponsibility with respect to the bidder or offeror. Information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside of the city without prior written consent by the bidder or offeror.
- G. Cost Plus A Percentage Of Cost Contracts Prohibited: Subject to the limitations of this section, any type of contract which will promote the best interests of the city may be used; provided, that the use of a cost plus a percentage of cost contract is prohibited unless specifically approved by the city council. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the city than any other type or that is impracticable to obtain the supplies, services or construction required except under such a contract. (Ord. 3-17-97A, 3-17-1997)
- H. Required Contract Clauses: Required contract clauses are as follows:
1. The unilateral right of the city to order, in writing, changes in the work within the scope of the contract and changes in the time of performance of the contract that do not alter the scope of the contract work.
  2. Variations occurring between estimated quantities of work in a contract and actual quantities.

3. Suspension of work ordered by the city.
4. Requirements for performance bonds and labor and material payment bonds as required by law for construction projects. (Ord. 3-17-97A, 3-17-1997; amd. 2003 Code)

### **1-11-6: PREFERENCE:**

All specifications shall seek to promote overall economy and best use for the purposes intended and encourage competition in satisfying the city's needs, and shall not be unduly restrictive. Where practical and reasonable, and within the scope of this chapter, Utah products shall be given preference. (Ord. 3-17-97A, 3-17-1997)

### **1-11-7: APPEAL:**

- A. Authority: Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may appeal to the purchasing agent. An appeal shall be submitted in writing within five (5) working days after the aggrieved bidder knows or should have known of the facts causing the grievance.
- B. Decision: The purchasing agent shall promptly issue a written decision regarding any appeal, if it is not settled by a mutual agreement. The decision shall state the reasons for the action taken and inform the protestor, contractor or prospective contractor of the right to appeal to the city council.
- C. The city council shall be the final appeal entity on the city level.
- D. All further appeals shall be as provided in Utah Code Annotated sections 63-56-58 through 63-56-64. (Ord. 3-17-97A, 3-17-1997)

### **1-11-8: PROHIBITED ACTS AND ACTIVITIES:**

- A. No person involved in making procurement decisions may have personal investments or derive any income from any business entity which may create a conflict between their private interests and their public duties.

- B. Any person involved in making procurement decisions is guilty of a class B misdemeanor and subject to penalty as provided in section 1-4-1 of this title, if the person asks, receives or offers to receive any emolument, gratuity, contribution, loan or reward, or any promise thereof, either for the person's own use or the use or benefit of any other person or organization from any person or organization interested in selling to the city.
- C. The city shall not make any contract with, or purchase from, any person defined in the anti-nepotism policy of the city or from any related person or any entity in which an interdicted person under the city anti-nepotism policy has an interest. (Ord. 3-17-97A, 3-17-1997; amd. 2003 Code)