

Chapter 53.50 PURCHASING OF SUPPLIES AND SERVICES¹

53.50.001 Centralized purchasing.

- (a) All goods and services shall be purchased through the department of finance according to the standards and procedures set forth in this chapter.
- (b) The following agencies are exempt from the requirement to purchase through the department of finance, but shall be subject to purchasing standards and procedures as established by ordinance:
 - (1) Harbor department.

(CBJ Code 1970, §§ 53.50.020(a)—(c), 57.05.050; Serial No. 70-6, § 3, 1970; Serial No. 71-45, § 4, 1971; Serial No. 86-29, § 3, 1986; Serial No. 93-11am, § 6, 1993; Serial No. 2002-38, § 5, 11-4-2002)

53.50.005 Purchasing officer; duties.

- (a) The manager shall designate an employee of the finance department as the purchasing officer for the City and Borough.
- (b) Except as otherwise specifically provided by ordinance, the purchasing officer shall:
 - (1) Procure or supervise the procurement of all goods and services purchased by or donated to the City and Borough;
 - (2) Prescribe the time, manner, and form of all requests for purchases of goods and services purchased by the City and Borough;
 - (3) With the concurrence of the City and Borough attorney, prescribe standard forms for bids, requests for proposals, and contracts;
 - (4) Prescribe training in public procurement methods for borough employees;
 - (5) Prescribe administrative policies and procedures which may be necessary to carry out the provision of this chapter;
 - (6) Supervise the opening of bids and evaluations of requests for proposals, and issue notices regarding the award of contracts.

(Serial No. 80-52, § 2, 1980; Serial No. 93-11am, § 2, 1993; Serial No. 96-31, § 2, 1996)

¹Charter reference(s)—Competitive bidding, § 9.14.

State law reference(s)—Contractor requirements, AS 29.25.010(a)(10); procurement preference, AS 29.71.040; employment preferences, AS 36.10.005 et seq.

53.50.006 Delegations by purchasing officer.

- (a) The purchasing officer may delegate, in writing, to other municipal employees the authority to procure or supervise the procurement of goods and services needed by the City and Borough.
- (b) A delegation under this section shall be accompanied by the purchasing officer's written determination that the delegate possesses training and experience adequate to the delegation.
- (c) Procurement authority delegated under this section may be limited as to type or amount and may be revoked by the purchasing officer.
- (d) No municipal employee subject to the provisions of section 53.50.001 shall purchase goods or services with municipal funds, except in accordance with a proper delegation of authority by the purchasing officer. Except for purchases established by the manager, any contracts, purchases or procurement entered into in violation of this section are voidable.

(CBJ Code 1970, §§ 53.50.020, 53.50.100; Serial No. 71-45, § 4, 1971; Serial No. 93-11am, § 3, 1993)

53.50.010 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bidder with disabilities means a bidder who:

- (1) Is certified as disabled by a state or federal procurement program and adds value by actually manufacturing, assembling, creating, performing, controlling, managing, or supervising the services provided; or
- (2) Will perform the contract with a work force at least 75 percent of which is composed of persons having significant physical or mental disabilities, provided that such disabilities do not adversely affect the ability of the bidder to perform the service or provide the product bid; and
- (3) As of the date and time of the bid deadline, is not delinquent in the payment of any taxes or associated penalties, interest, or fees, or any special assessments, owing to the City and Borough on account of that business.

Change order means a written amendment to a public improvement project construction contract regarding work that is within the scope of the project. The manager or his or her designee shall review and approve, disapprove, or modify, change orders in accordance with a written policy adopted by the manager.

Class 2 emergency means circumstances less grave than those justifying the declaration of a civil defense emergency pursuant to section 03.25.040 but still sufficient to pose a threat to public health, welfare or safety. A class 2 emergency shall be declared by the manager upon a written statement of the reasons therefor.

Formal competitive sealed bid means a bid or proposal that must be submitted through the sealed online process and in conformance with a prescribed format to be opened publicly at a specified date and time. The formal competitive sealed bid tool is a procurement method used to solicit competitive sealed bid responses, sometimes called formal bids, when price is the basis for award.

Informal public solicitation means a competitive bid, price quotation, or proposal for supplies or services that is conveyed via letter, fax, email, or other manner that does not require a formal sealed bid or proposal, public opening, or other formalities. The informal public solicitation tool is generally relegated to requirements that may be considered low value or fall under a stipulated price/cost threshold.

Juneau bidder and *Juneau proposer* mean a person who:

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- (1) Submits a bid or proposal under the name of the business appearing on the bidder's or proposer's City and Borough business registration required under CBJ 69.05.170;
 - (2) Has maintained, for a period of six months immediately preceding the date of the bid or proposal deadline, a place of business within the City and Borough staffed by the bidder or proposer or an employee of the bidder or proposer;
 - (3) Provides in the normal course of business, goods or services of the general nature being solicited and adds value to those goods or services by manufacturing, assembling, creating, performing, controlling, managing, or supervising the goods or services provided;
 - (4) As of the date and time of the bid or proposal deadline, is in compliance with the registration and filing requirements for sales tax and business personal property tax on account of that business; and
 - (5) As of the date and time of the bid or proposal deadline, is not delinquent in the payment of any taxes or associated penalties, interest, or fees, or any special assessments, owing to the City and Borough on account of that business.

Lowest qualified bidder means the person submitting the lowest responsive and responsible bid.

Party means, with respect to a particular procurement, a person submitting a bid or proposal to contract with the City and Borough pursuant to that procurement. The manager may adopt regulations under chapter 01.60 to implement the provisions of this section.

Public improvement, as used in this chapter, and only for purpose of competitive bidding, includes the erection, building, construction, placement, creation and expansion of an improvement to land; it does not include rebuilding, repair, removing, resurfacing, rehabilitating or replacing any chattel, fixture or improvement to land.

Public notice, as used in this chapter, means notice posted on the City and Borough of Juneau online procurement site and may also include:

- (1) Publication in a newspaper, trade journal, online notification service, or other publication calculated to reach prospective bidders or proposers; and
- (2) Notices posted on public bulletin boards or in public places within or near the area where the work or services are to be performed or the supplies furnished.

Services means labor, professional services and consulting services.

Supplemental agreement means a written amendment to a public improvement project construction contract regarding work that is outside the scope of the original project and approved pursuant to CBJ 53.50.040(c).

Supplies means all supplies, materials and equipment.

Written quotation and *written proposal* means an informal purchasing process where procurement staff solicit documented pricing information from multiple sources.

(CBJ Code 1970, § 53.50.010; Serial No. 71-45, § 4, 1971; Serial No. 80-23, § 6, 1980; Serial No. 85-99, § 2, 1985; Serial No. 90-12, § 3, 1990; Serial No. 93-11am, §§ 4, 5, 1993; Serial No. 93-44, § 2, 1993; Serial No. 96-31, §§ 3, 4, 1996; Serial No. 96-41, § 21, 1996; Serial No. 99-03, § 2, 1999; Serial No. 2006-05(c), § 2, 4-3-2006; Serial No. 2009-39, § 2, 2-12-2009; Serial No. 2020-23(b), § 2, 6-8-2020, eff. 7-9-2020 ; Serial No. 2022-60(b), § 2, 12-11-2023, eff. 1-11-2024)

Cross reference(s)—Definitions generally, CBJ Code § 01.15.010.

53.50.040 Public improvement contracts.

- (a) Except as provided in subsection (c) of this section, contracts for public improvements for an amount estimated to exceed \$50,000.00 shall be by competitive sealed bid and be awarded to the lowest qualified bidder.
- (b) Contracts for public improvements for an amount estimated to be \$50,000.00 or less may be made when feasible and when in the best interest of the City and Borough by binding competitive written bid, without observing the procedure prescribed for the award of formal sealed bid purchases and contracts.
- (c) Supplemental agreements. A supplemental agreement shall be approved only as provided in this subsection (c). Competitive sealed bids shall not be required for public improvement projects procured by supplemental agreement. A supplemental agreement may be approved only if the manager makes a written finding that procuring a particular public improvement by supplemental agreement would be in the best interests of the City and Borough because doing so would save substantial and verifiable amounts of money for the City and Borough. In making this finding, the manager shall consider bid preparation costs, contractor mobilization costs, similarity of work, schedule savings, weather or environmental factors, site constraints, inspection and administration efficiencies, and other factors found relevant by the manager. The manager may approve supplemental agreements not greater than \$250,000.00 or 25 percent of the contact amount, whichever is less, per contract. The manager shall notify the assembly, at its next regular meeting, of any supplemental agreement approved. Prior assembly approval shall be required for any supplemental agreement greater than \$250,000.00. Nothing in this subsection shall be applied or construed in any manner inconsistent with the requirements of CBJ Charter Section 9.13. The manager shall seek an appropriation or transfer of funds by the assembly prior to incurring any obligation for any supplemental agreement unless the manager ascertains that there is a sufficient unencumbered balance in an appropriation for the project the agreement supplements, and that sufficient funds are or will be available to cover the obligation. As used in this subsection, "manager" shall have the meaning set forth in CBJ Charter Section 4.1.

(CBJ Code 1970, § 53.50.040; Serial No. 71-45, § 4, 1971; Serial No. 83-32, § 3, 1983; Serial No. 93-11am, § 7, 1993; Serial No. 2005-08c, § 2, 4-25-2005; Serial No. 2006-05(c), § 3, 4-3-2006; Serial No. 2020-23(b), § 3, 6-8-2020, eff. 7-9-2020)

53.50.050 Contract amounts.

Unless otherwise prohibited by this Code:

- (a) All contracts for an amount estimated to be \$5,000.00 or less shall be made on the open market with such competition as is reasonable and practical in the circumstances.
- (b) All goods and services, other than professional services, shall be purchased as follows:
 - (1) Contracts in an amount estimated to be greater than \$5,000.00 but not more than \$25,000.00 shall be made, when practicable, in the open market by written quotation, without observing the procedure prescribed for the award of formal competitive sealed bid purchases. Such open market contracts, whenever practicable, shall be based on at least three quotations, gathered by staff, and shall be awarded to the lowest qualified bidder. The basis for determining the lowest qualified bidder shall be the same as that used in formal competitive sealed bid purchases, including any preferences established by law.
 - (2) Contracts in an amount estimated to be greater than \$25,000.00 but not more than \$50,000.00 shall be made, when practicable, in the open market by informal public solicitation without observing the procedure prescribed for the award of formal competitive sealed bid purchases. After public notice and whenever practicable, such informal public solicitation shall be based on

at least three quotations and shall be awarded to the lowest qualified bidder. The basis for determining the lowest qualified bidder shall be the same as that used in formal competitive sealed bid purchases, including any preferences established by law.

- (3) Contracts in an amount estimated to be more than \$50,000.00 shall be by formal competitive sealed bid after public notice.
- (c) All professional services shall be purchased as follows:
- (1) Contracts in an amount estimated to be greater than \$5,000.00 but not more than \$25,000.00 shall be made when practicable in the open market by written proposal, without observing the procedure prescribed for the award of formal competitive sealed bid purchases. Such open market contracts, whenever practicable, shall be based on at least three proposals and shall be awarded to the responsive and responsible offeror whose proposal is determined to be the most advantageous to the City and Borough. The method for determining the most advantageous proposal shall be set forth in the request for proposals, shall be based upon a numerical point score, and shall, unless contrary to applicable state or federal statute, regulation, or grant requirements, provide that five percent of the total points possible for each proposal be awarded if and only if the proposal is submitted by a Juneau proposer.
 - (2) Contracts in an amount estimated to be more than \$25,000.00 but not more than \$50,000.00 shall be by written proposal and follow the informal public solicitation process. After public notice, contracts shall be awarded to the responsive and responsible offeror whose proposal is determined to be the most advantageous to the City and Borough. The method for determining the most advantageous proposal shall be set forth in the request for proposals, shall be based upon a numerical point score, and shall, unless contrary to applicable state or federal statute, regulation, or grant requirements, provide that five percent of the total points possible for each proposal be awarded if and only if the proposal is submitted by a Juneau proposer.
 - (3) Contracts in an amount estimated to be more than \$50,000.00 shall be by formal competitive sealed proposal after public notice and shall be awarded to the responsive and responsible offeror whose proposal is determined to be the most advantageous to the City and Borough. The process shall be as described in 53.50.060. The method for determining the most advantageous proposal shall be set forth in the request for proposals, shall be based upon a numerical point score, and shall, unless contrary to applicable state or federal statute, regulation, or grant requirements, provide that five percent of the total points possible for each proposal be awarded if and only if the proposal is submitted by a Juneau proposer.

(CBJ Code 1970, § 53.50.050; Serial No. 71-45, § 4, 1971; Serial No. 80-23, § 2, 1980; Serial No. 93-11am, § 8, 1993; Serial No. 93-44, § 3, 1993; Serial No. 2004-25, § 2, 7-29-2004; Serial No. 2005-08c, § 3, 4-25-2005; Serial No. 2020-23(b), § 4, 6-8-2020, eff. 7-9-2020 ; Serial No. 2022-60(b), § 3, 12-11-2023, eff. 1-11-2024)

53.50.060 Competitive sealed bid procedure.

- (a) *Publication.* Where competitive sealed bidding is required, sealed bids shall be solicited by public notice in a manner calculated to reach prospective bidders. Such publication shall contain at least a general description of the item or work required and shall designate the place where detailed requirements and specifications may be obtained and the time and place where the sealed bids will be opened. The bids shall be opened publicly. Such publication shall be made at least twice, with at least a week and not more than two weeks intervening between publications, and there shall be sufficient time between the date of last publication and the opening of bids for preparation of bids, which time shall not be less than two weeks unless the manager finds that an emergency exists. The manager may also solicit bids by sending notice by mail or electronic mail to any active prospective bidders known to him or her.

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- (b) *Bid bond on deposit.* All bids for the construction or reconstruction of public improvements required to be submitted by competitive sealed bid shall be accompanied by either cash, a certificate of deposit or certified check or draft, or a cashier's check, or draft on some responsible bank in the United States, in favor of and payable at sight to the City and Borough, in an amount not less than five percent of the aggregate amount of the bid. If the bidder to whom the contract is awarded, for 15 days after the award of the contract, fails or neglects to enter into the contract and file the required bonds, the City and Borough treasurer shall draw the money due on the certificate of deposit or check or draft and pay the same or any cash deposited into the treasury, and under no circumstances shall it be returned to the defaulting bidder. In lieu of the foregoing, any bid may be accompanied by a surety bond in such amount furnished by a surety authorized to do a surety business in the state, guaranteeing that the bidder will enter into the contract and file the required bonds within such period. The manager may require bid bonds in an amount appropriate for any bid not required by this subsection to be accompanied by a bid bond.
- (c) *Pre-bid conference.* The purchasing officer may conduct a pre-bid conference for any competitively bid contract or purchase. Notice of the conference shall be provided to all bidders. Bidders shall be responsible for acquiring all information announced or distributed at a pre-bid conference.
- (d) *Opening of bids.* All bids shall be submitted to the purchasing agent at the place and time specified in the public notice inviting bids. Bids shall be opened by the purchasing agent publicly, at the time and place designated in the notice inviting bids. Bids received after the specified time shall not be accepted.
- (1) *Sealed paper bids.* All paper bids shall be sealed and identified as bids on the envelope. Bids received after the specified time shall be returned to the bidder unopened.
- (2) *Electronic bids.* When specified by the purchasing officer, bids may be received electronically in addition to or instead of by sealed paper bids. Procedures for receipt of electronic bids shall be designed to ensure the security, authenticity, and confidentiality of the bids to the same or greater extent as is provided for with sealed paper bids.
- (e) *Award.* A contract or purchase for which competitive bids are required shall be awarded by the manager to the lowest qualified bidder taking into consideration conformity with the specifications, terms of delivery, and other conditions imposed in the call for bids, except that:
- (1) For bids in excess of \$750,000.00 for contracts, and \$1,500,000.00 for public improvement contracts, the award shall not be made until after assembly approval; and
- (2) A bid shall be awarded to a Juneau bidder if its bid is not more than five percent higher than the lowest responsive nonresident bidder's, but shall be awarded to a bidder with disabilities if its bid is not more than ten percent higher than the lowest responsive nondisabled bidder's, unless the bid is for a capital construction improvement or such an award is contrary to state or federal law or regulations. A bid shall be rejected if it contains a material alteration or an erasure. The manager may reject the bid of a bidder who failed to perform on a previous contract with the City and Borough. The manager may reject any and all bids and waive any informalities or minor irregularities in the bids. Where all bids are rejected, and new bids are called for on substantially the same purchase or contract, each of the bidders whose bids were rejected shall be timely notified of the new call for bids and of changes, if any, in the specifications and requirements.
- (f) *Disposition of bid bond or deposit.* All deposits and bonds shall be returned to the unsuccessful bidders after execution of the contract and the deposit of the required bonds by the successful bidder.
- (g) *Approval of faithful performance and labor and materials bonds.* Faithful performance or labor and material bonds required by the City and Borough specifications or contract shall be approved as to form by the City and Borough attorney.

(CBJ Code 1970, § 53.50.060; Serial No. 71-45, § 4, 1971; Serial No. 75-11, § 3, 1975; Serial No. 80-23, § 3, 1980; Serial No. 83-32, §§ 2, 4, 1983; Serial No. 83-74, § 2, 1983; Serial No. 84-83, § 2, 1984; Serial No. 85-70, § 2, 1985;

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Serial No. 86-81, § 2, 1986; Serial No. 89-12, § 2, 1989; Serial No. 90-12, § 2, 1990; Serial No. 93-11am, §§ 9, 10, 1993; Serial No. 2005-09, § 2, 4-25-2005; Serial No. 2020-23(b), § 5, 6-8-2020, eff. 7-9-2020 ; Serial No. 2022-60(b), § 4, 12-11-2023, eff. 1-11-2024)

53.50.061 Bidding review board.

- (a) There is established a bidding review board. The bidding review board shall consist of five persons appointed by the assembly. To the extent possible, one of the members shall be an attorney licensed to practice law in the state. The members of the bidding review board shall serve three-year terms. The bidding review board shall adopt written rules of procedure for the purpose of ensuring the expeditious resolution of protests. No member of the bidding review board who has served for three consecutive terms or nine years shall again be eligible for appointment until one full year has intervened, provided, however, that this restriction shall not apply:
 - (1) If there are no other qualified applicants at the time reappointment is considered by the assembly human resources committee, or
 - (2) To qualified board members serving in board seats for which a specific occupation or expertise is set forth by ordinance.
- (b) The bidding review board shall hear protests as provided in this chapter and may perform such other related duties as the manager or assembly may, from time to time, request.

(Serial No. 93-11am, § 11, 1993; Serial No. 99-03, § 3, 1999; Serial No. 2004-08, § 7, 3-22-2004)

53.50.062 Protests.

- (a) A party may protest award to any other party of a competitive sealed bid or competitive sealed proposal, but such protest shall be heard only if protests have also been filed against the award recommended by the purchasing officer and against any other bid or proposal having a higher ranking than that of the party filing the protest.
- (b) A party shall provide written notice of intent to protest. Notice of intent to protest shall be delivered to the purchasing officer by 4:30 p.m. Alaska time the working day following posting by the purchasing officer of a notice of apparent low bidder or successful proposer. Late notices of intent to protest shall not be considered. The notice of intent to protest shall include the name and address of the protestor and a brief description of the grounds for the protest.
- (c) A written protest shall be filed with the purchasing officer within five working days after posting of notice of apparent low bidder or successful proposer.
- (d) A written protest shall, at a minimum, contain the following:
 - (1) The name, address, and telephone number of the interested party filing the protest;
 - (2) The signature of the interested party or the interested party's representative;
 - (3) Identification of the proposed award at issue;
 - (4) A statement of the legal or factual grounds for the protest;
 - (5) Copies of all relevant documents; and
 - (6) The fee required by section 53.50.080.
- (e) The purchasing officer shall reject an untimely or incomplete protest.

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- (f) If a timely and complete protest is filed, the award of the contract shall be stayed until the protest is resolved, unless the manager determines in writing that award of the contract pending resolution of the protest is in the best interests of the City and Borough.
 - (g) The purchasing officer shall issue a written response to the protestor within ten working days of the date the protest is filed. If multiple protests have been filed, they may be consolidated for purposes of the response. Copies of the response shall be provided to any other protestor requesting one. The response may include an amendment of all or any part of the recommended award. The manager may, upon written request of the purchasing officer, for good cause shown, extend the date for the purchasing officer's response for such additional period as may be necessary.
 - (h) A protestor aggrieved by the purchasing officer's response pursuant to subsection (g) of this section may request review by the bidding review board.
 - (i) The protestor may seek review of the purchasing officer's response by providing written notice of intent to request review. The protestor shall notify the purchasing officer of the intent to request review by 4:30 p.m. Alaska time the working day following issuance of the purchasing officer's response. Late notices shall not be considered. A written request for review shall be filed within five working days after the response is issued by the purchasing officer. The notice of intent to request review and the written request for review shall be in the same form as provided in subsections (b), (c), and (d) of this section.
 - (j) Upon receipt of a timely and complete request for review of the purchasing officer's response, the matter shall be forwarded to the bidding review board and a hearing date shall be established. Once the hearing date has been established, all bidders or proposers shall be notified of the hearing in writing.
 - (k) The bidding review board shall conduct a hearing and issue a recommendation within seven calendar days of the date the referral is made to the board. The bidding review board may, by written notice to all bidders or proposers, extend this seven-day period to a maximum of 30 days. Hearings shall be conducted informally, with due regard for the rights of the parties involved. Hearings shall be recorded.
 - (l) The bidding review board's recommendation shall be based on the provisions of this Code interpreted in light of applicable state case law and generally accepted principles of government purchasing as set forth in standard treatises, decisions of the United States Comptroller General, and similar authorities. The recommendation shall contain findings of fact and conclusions of law.
 - (m) The recommendation:
 - (1) May include the following:
 - a. A recommendation that a designated bid in a competitive sealed bid or proposal process be accepted as the lowest qualified bid or proposal; or
 - b. A recommendation that one or more bids or proposals be considered or rejected or that the procurement process at issue be canceled;
 - (2) Shall not, except to the extent necessary to correct a failure to follow the procedures required by this chapter, include a recommendation for:
 - a. An amendment of the specifications for a bid or request for proposals;
 - b. A change in the criteria for selection of a proposal; or
 - c. An amendment, reordering, or reassessment of any qualitative judgment in the rating of a proposal;
 - (3) Shall not include a recommendation for:
 - a. Selection or rejection of any additive or deductive alternate; or

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- b. The payment of money, including attorney's fees, by the City and Borough or any party, provided that the recommendation may recommend a refund of protest fees or payment of bid preparation costs by the City and Borough to one or more bidders or proposers;
 - (4) Shall be forwarded to the manager or assembly, as appropriate, for consideration in the award of the contract.
 - (n) The protest procedures established by this section, may be adapted for a procurement as necessary to maintain eligibility for state or federal funding for that procurement, provided that no such adaptation may authorize the board to grant a form of relief prohibited by subsection (m)(3) of this section.

(Serial No. 93-11am, § 12, 1993; Serial No. 95-20, § 2, 1995; Serial No. 96-31, § 5, 1996; Serial No. 97-11, § 2, 1997; Serial No. 99-03, § 4, 1999; Serial No. 2001-38, § 2, 7-2-2001; Serial No. 2019-43, § 2, 11-25-2019, eff. 12-25-2019)

53.50.080 Administration of protest.

There is established a fee of \$750.00, payable by each person filing a bid protest, pursuant to section 53.50.062, which shall be refunded in full if the protest is granted.

(CBJ Code 1970, § 53.50.080; Serial No. 71-45, § 4, 1971; Serial No. 80-23, § 5, 1980; Serial No. 93-11am, § 14, 1993; Serial No. 99-03, § 5, 1999)

53.50.090 Exceptions to competitive sealed bidding and submission of quotations.

The restrictions and provisions of this chapter shall not apply:

- (a) To contracts involving the obtaining of professional or specialized services such as those rendered by architects, attorneys, engineers, and others requiring advanced training and the exercise of independent judgment and discretion; such services shall be obtained by competitive proposal except as authorized in writing by the purchasing officer;
- (b) Where calling for bids on a competitive basis is unavailing or impossible, including situations where rates are set by statute or ordinance or where like items are traded in, or where used items are being purchased;
- (c) Where the City and Borough's requirements can be met solely by an article or process obtainable from a known single source. No purchase shall be made pursuant to this subsection except upon written authorization of the purchasing officer certifying that there is no reasonable substitute for the article or process, and that it is clearly obtainable only from a known single source. Notice of the authorization shall be prominently posted in a public place at the offices of the purchasing officer;
- (d) To placement of insurance coverage;
- (e) When public work is performed by the City and Borough with its own employees;
- (f) When it is advantageous to the City and Borough to enter into a contract with a bidder for the same supplies or services such bidder is providing another Alaskan local government, the State of Alaska, a cooperative purchasing association composed of government agencies, or the United States where such supplies or services are being provided to the other governmental unit or association on the basis of competitive bids submitted, and where the City and Borough contract is on substantially the same terms as those bid; or to contract with or through such other governmental unit or association so that the benefit of the responsible bid accrues to the City and Borough; according to regulations adopted by the Manager pursuant to CBJ 01.60;

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- (g) When either competitive procedure has been followed, but no bids or quotations are received. In such a case, the manager may proceed to have the services performed or the supplies purchased without further competitive bidding or quotation;
 - (h) *Reserved*;
 - (i) *Reserved*;
 - (j) To software systems, and related information technology hardware, that are intrinsic to cross-departmental CBJ business operations;
 - (k) To the selection and commission of artists and the purchase and execution of works of art for municipal facilities;
 - (l) To purchases of supplies, services or construction items during, and for the purpose of alleviating, a class 2 emergency; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the selection of a particular emergency contractor shall be included in the contract file. A record of all emergency procurements shall be made and shall set forth each contractor's name, the amount and type of the contract, a listing of the items procured under the contract, the record of the manager's justification for the procurement, and the identification number of the contract file;
 - (m) To contracts involving lobbying services;
 - (n) To services provided by personnel of government agencies, schools, and nonprofit agencies, as authorized by Section 9.14(b) of the Charter. Any contract issued pursuant to this section, including those issued by the docks and harbors department and the Airport, must be approved by the city manager;
 - (o) To the purchase of supplies, materials, or equipment by Bartlett Regional Hospital through a Group Purchasing Organization;
 - (p) To the purchase of supplies, materials, equipment, or contractual services that are medical in nature and necessary to providing medications, treatment procedures, medical diagnosis, or rehabilitation;
 - (q) To the purchase of any goods or services upon a written finding by the manager that competitive purchasing would not be practicable based on cost, timing, and other relevant criteria.

(CBJ Code 1970, § 53.50.090; Serial No. 71-45, § 4, 1971; Serial No. 84-92, § 2, 1984; Serial No. 85-50, § 3, 1985; Serial No. 85-99, § 3, 1985; Serial No. 93-11am, §§ 15—17, 1993; Serial No. 95-32, § 2, 1995; Serial No. 98-31, § 2, 1998; Serial No. 98-35, § 2, 1998; Serial No. 2002-03(am), § 2, 2-11-2002; Serial No. 2005-10, § 2, 4-25-2005; Serial No. 2022-60(b), § 5, 12-11-2023, eff. 1-11-2024)

State law reference(s)—Employment preferences, AS 36.10.005 et seq.

53.50.095 Contracts with disadvantaged business enterprises.

Notwithstanding the provisions of this chapter, the manager is authorized to establish policies and procedures concerning disadvantaged business enterprises. Such policies and procedures may include the following:

- (1) Designation of a disadvantaged business enterprise liaison officer;
- (2) Setting of disadvantaged business enterprise contracting goals and procedures required by state or federal law; and
- (3) Development of a local bonus program in support of disadvantaged business enterprises. The bonus program shall apply to work performed by disadvantaged business enterprises contracting with prime

contractors on City and Borough capital improvement contracts funded with state or local funds only. The bonus program shall include the following:

- a. A certification process to identify disadvantaged business enterprises;
- b. Criteria to confirm whether one or more disadvantaged business enterprises performed commercially useful functions on the contract for which a bonus is sought; and
- c. Payment of a bonus by the City and Borough to the prime contractor. The amount of the bonus shall vary according to the value of the work performed on the contract by disadvantaged business enterprises and according to whether each disadvantaged business enterprise performed work as a subcontractor, manufacturer, or supplier on the contract; but in no event shall the total amount of the bonus to the prime contractor exceed two percent of the original contract award amount.

(Serial No. 80-26, § 2, 1980; Serial No. 90-25, § 2, 1990)

State law reference(s)—Preference for economically disadvantaged minority residents, AS 36.10.180.

53.50.110 Lease of personal property.

- (a) Leases of personal property for a term of one year or less may be negotiated if:
 - (1) The lease is for property which is exempt from competitive bidding purchase requirements; or
 - (2) The cost of acquiring all the property which it would be reasonable to place on the lease is less than \$15,000.00 and the manager has obtained quotations in the manner required for purchases under \$15,000.00. A lease containing a clause giving the municipality an option, at its complete discretion, to renew for terms of one year or less falls under subsection (a)(1) of this section.
- (b) Leases of personal property which do not meet the requirements of subsection (a)(2) of this section or are for terms in excess of one year may be negotiated or entered into subject to the terms of a bid on the lease, as appropriate, if:
 - (1) Bidding procedures applicable to the purchase of the property have been followed to determine the lowest qualified bidder for either the sale or lease of the property; and
 - (2) The manager and the director of the department for which the property is being acquired both certify that:
 - a. The property is necessary to perform a municipal function;
 - b. They believe the property will be required for a period of time which equals or exceeds the term of the lease; and
 - c. They presently anticipate no need for, and have no present intention of, using other property in lieu of the subject property during the term of the lease. Such leases shall contain a clause making continuation of the lease in subsequent fiscal years subject to the appropriation by the assembly of funds for rental payments for such future fiscal years. A lease under this subsection (b) of this section may take any form approved by the attorney and may be denominated a lease, an agreement, or by any other name.
- (c) A lease of personal property may contain, without limitation, one or more provisions relating to the following:
 - (1) Option to purchase;
 - (2) Allocation of a part of the rent to equity;

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- (3) Allocation of a part of the rent to interest;
 - (4) Transfer of legal title to the municipality before or after an exercise of a purchase option;
 - (5) Execution of a financing statement by the municipality;
 - (6) A disclaimer that the lease does not constitute a pledge of the full faith, credit, or taxes of the municipality.

(Serial No. 80-52, § 3, 1980)

53.50.200 Authority to dispose of surplus property.

The manager shall have authority to sell, transfer, or destroy surplus property that cannot be used by any department or that has become unsuitable for City and Borough use, as provided in this chapter.

(CBJ Code 1970, § 53.50.200; Serial No. 71-45, § 4, 1971; Serial No. 2002-38, § 2, 11-4-2002; Serial No. 2014-13, § 2, 5-19-2014, eff. 6-19-2014)

53.50.210 Disposal of surplus property.

- (a) Except as provided in subsection (b) of this section, all surplus property unsuitable for City and Borough use shall be disposed of in accordance with written policies and procedures established by the manager, when the disposal is determined by the manager to be in the best interests of the City and Borough.
- (b) Upon a determination by the manager that the best interests of the public would be served, the manager may transfer any surplus City and Borough property to another governmental or quasi-governmental unit, or to a charitable, civic or non-profit organization, except that where the estimated value of the property to be transferred exceeds \$50,000.00, the transfer may be made only after approval by the assembly by resolution.

(CBJ Code 1970, § 53.50.210; Serial No. 71-45, § 4, 1971; Serial No. 2002-38, § 3, 11-4-2002; Serial No. 2014-13, § 2, 5-19-2014, eff. 6-19-2014)

53.50.220 Reserved.

Serial No. 2014-13, § 2, adopted May 19, 2014, effective June 19, 2014, repealed § 53.50.220, which pertained to exceptions to disposal procedure. See also the Code Comparative Table.

53.50.310 Nonapplicability of sections 53.50.200 through 53.50.210.

The provisions of sections 53.50.200 through 53.50.210 of this chapter shall not be deemed to apply to property or money subject to confiscation under the laws of the state or of the United States of America, and shall apply to property or money held as evidence only when the same is unclaimed by any person and no other provisions of law are applicable concerning its disposition.

(CBJ Code 1970, § 53.50.310; Serial No. 71-45, § 4, 1971; Serial No. 2014-13, § 2, 5-19-2014, eff. 6-19-2014)

53.50.400 Authority to debar or suspend.

- (a) *Debarment.* After consultation with the City and Borough attorney, notice pursuant to section 53.50.420, and an opportunity for a hearing conducted according to section 53.50.425, the manager may for cause debar a

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person from consideration for award of contracts for goods, services, or both. The debarment may not be for a period of more than three years.

- (b) *Suspension.* After consultation with the City and Borough attorney and notice pursuant to section 53.50.420, the manager may suspend a person from consideration for award of contracts for goods, services, or both if there is probable cause for debarment and compelling reasons require suspension to protect City and Borough interests. Suspension shall not be imposed as a punitive measure. The suspension may not be for a period exceeding three months and may not be extended or renewed upon the same cause.

(Serial No. 99-33, § 3, 12-6-1999)

53.50.402 Causes for debarment or suspension.

The causes for debarment or suspension include the following:

- (a) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
- (b) Conviction of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a City and Borough contractor;
- (c) Conviction or civil judgment finding a violation under state or federal antitrust statutes;
- (d) Violation of contract provisions of a character that is regarded by the manager to be so serious as to justify debarment action, such as:
 - (1) Knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (2) Failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for debarment.
- (e) A violation of this chapter punishable under section 53.50.430; or
- (f) A pending petition for protection in bankruptcy, or other evidence that the vendor is unable to meet contractual obligations.

(Serial No. 99-33, § 3, 12-6-1999)

53.50.420 Notice.

- (a) The manager shall issue written notice of a suspension, proposed debarment or both. The notice must:
 - (1) State the reasons for the action taken; and
 - (2) Inform the person of rights to a hearing.
- (b) A copy of the notice under subsection (a) of this section shall be mailed or otherwise furnished immediately to the person suspended or proposed for debarment.
- (c) A suspension is effective upon issuance of the notice under this section.
- (d) A debarment is effective upon issuance of a final decision under section 53.50.428.

(Serial No. 99-33, § 3, 12-6-1999)

53.50.423 Hearing.

- (a) A person issued notice under section 53.50.400 is entitled to a hearing conducted according to section 53.50.425 if the person files a written request for a hearing with the manager within seven days after issuance of the notice.
- (b) If the person requests a hearing, the manager shall promptly schedule one unless the City and Borough attorney determines that a hearing at the proposed time is likely to jeopardize a criminal investigation. A hearing may not be delayed longer than six months after notice is provided under section 53.50.420.

(Serial No. 99-33, § 3, 12-6-1999)

53.50.425 Hearing procedures.

- (a) The manager shall act as a hearing officer or appoint a hearing officer for a hearing conducted under this chapter. The hearing officer shall notify the parties in writing of the time and place of the hearing. The hearing shall be conducted in an informal manner. The appeal procedures of chapter 01.50 do not apply to a hearing conducted under this section.
- (b) The hearing officer may:
 - (1) Hold prehearing conferences to settle, simplify, or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;
 - (2) Require parties to state their positions concerning the various issues in the proceeding;
 - (3) Require parties to produce for examination those relevant witnesses and documents under their control;
 - (4) Rule on motions and other procedural matters;
 - (5) Regulate the course of the hearing and conduct of the participants;
 - (6) Establish time limits for submission of motions or memoranda;
 - (7) Impose appropriate sanctions against a person who fails to obey an order of the manager, including:
 - a. Prohibiting the person from asserting or opposing designated claims or defenses or introducing designated matters into evidence;
 - b. Excluding all testimony of an unresponsive or evasive witness; and
 - c. Excluding a person from further participation in the hearing.
 - (8) Take official notice of a material fact not appearing in evidence, if the fact is among the traditional matters subject to judicial notice;
 - (9) Administer oaths or affirmations.
- (c) A transcribed record of the hearing shall be made available at cost to a party that requests it.

(Serial No. 99-33, § 3, 12-6-1999)

53.50.427 Recommendation by a hearing officer.

- (a) If the manager is not acting as hearing officer, the hearing officer shall recommend a decision to the manager based on the evidence presented. The recommendation must include findings of fact and conclusions of law.

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- (b) The manager may remand the matter to the hearing officer with instructions, or take other appropriate action.

(Serial No. 99-33, § 3, 12-6-1999)

53.50.428 Final decision by the manager.

The manager shall issue a final decision after the hearing or upon failure of the person to timely request a hearing. The decision shall be issued within 20 days of the hearing or exhaustion of the time within which a hearing may be requested. A decision takes effect immediately. Upon a decision imposing debarment, the contractor remains debarred until a court or the manager orders otherwise, or until the debarment period specified in the decision expires.

(Serial No. 99-33, § 3, 12-6-1999)

53.50.429 Judicial appeal.

A final decision of the manager under section 53.50.428 may be appealed to the superior court in accordance with the Alaska Rules of Appellate Procedure.

(Serial No. 99-33, § 3, 12-6-1999)

53.50.430 Civil and criminal penalties.

The following penalties apply to violations of this chapter:

- (a) A person who contracts with the City and Borough in a manner the person knows to be contrary to the requirements of this chapter is liable for all costs and damages to the City and Borough arising out of the violation;
- (b) A person who intentionally or knowingly bids, proposes, or contracts for goods or services under a scheme or artifice to avoid the requirements of this chapter is guilty of a Class A misdemeanor.

(Serial No. 99-33, § 3, 12-6-1999)

53.50.435 List of persons debarred or suspended.

The manager shall maintain a list of all persons debarred or suspended from consideration for award of contracts. The manager shall, for the period of debarment or suspension, remove such persons from the lists of vendors maintained under section 53.50.050.

(Serial No. 99-33, § 3, 12-6-1999)

53.50.437 Limited participation.

The manager may permit a debarred person to participate in a contract on a limited basis during the debarment period if the manager determines in writing that the participation is advantageous to the City and Borough. The determination shall specify the factors on which it is based and the limits imposed on the debarred person.

(Serial No. 99-33, § 3, 12-6-1999)

53.50.440 Reinstatement.

- (a) The manager may, at any time after a final decision to debar a person from consideration for award of contracts, reinstate the person after determining that the cause for which the person was debarred no longer exists or has been substantially mitigated.
- (b) A debarred person may request reinstatement by submitting a petition to the manager supported by evidence showing that the cause for debarment no longer exists or has been substantially mitigated.
- (c) The manager may require a hearing on a reinstatement petition. A decision on reinstatement shall be made in writing within seven days after a reinstatement petition is submitted. The decision must specify the factors on which it is based.

(Serial No. 99-33, § 3, 12-6-1999)