

Chapter 11.20

COMPETITIVE BIDDING PURCHASING PROCEDURES AND CONTRACTS

Sections:

- 11.20.010 Competitive bidding procedures.**
- 11.20.020 Bids – Notice inviting.**
- 11.20.030 Pre-bid conference.**
- 11.20.040 Bids – Security.**
- 11.20.050 Bids – Readvertisement.**
- 11.20.060 Bids – Waiver of irregularities.**
- 11.20.070 Award of contract to lowest responsible bidder.**
- 11.20.080 Local bidder preference award.**
- 11.20.090 Performance and payment bonds.**
- 11.20.100 Requests for proposals.**
- 11.20.110 Procedures for award.**
- 11.20.120 Contract changes – Change orders – Procedures.**
- 11.20.130 Contract changes – Emergency change order.**
- 11.20.140 Emergency contracts or purchases.**
- 11.20.150 Award of contracts or purchases without competitive bids.**
- 11.20.160 Appeals.**

Prior Legislation – Ord. No. [600](#), §2; Ord. No. [650](#), §§3, 4; Ord. No. [710](#), §1; and Ord. No. [790](#), §1.

11.20.010 Competitive bidding procedures.

(a) Except for professional services as provided in Chapter [11.30](#) KGBC, emergency procurements as referred to in KGBC [11.20.140](#), or as otherwise provided in the KGB Code or by law:

(1) All supplies, materials, equipment, construction and contractual services estimated by the manager, after including 10 percent for contingencies, to be in excess of \$50,000 shall be purchased by formal, competitive sealed bid; and

(2) All purchases and contracts shall be awarded by the assembly, except where the amount of the purchase or contract does not exceed the amount provided in subsection [\(a\)\(1\)](#) of this section.

(b) Notwithstanding any other provisions herein, whenever, because of the nature of the supplies, materials, equipment, construction or contractual services required, or the availability or circumstances thereof, the manager finds and determines it is in the best interest of the borough to not solicit sealed, competitive bids, the

manager may issue requests for proposals in accordance with KGBC [11.20.100](#), and to negotiate a scope of work, specifications, price or other terms or conditions, with persons or firms who respond thereto. The award, if any is made, shall be made by the assembly unless the assembly authorizes the manager to make the award, and shall be based upon the response deemed to be in the best interest of the borough.

(c) Portions of work or purchases may be allocated by the assembly and separate purchases made or contracts awarded as deemed to be in the best interest of the borough. [Ord. No. 1855, §4, 5-7-18; Ord. No. 1253, §3, 3-3-03; Ord. No. 1214, §3, 5-6-02. Code 1974 §41.30.010.]

11.20.020 Bids – Notice inviting.

(a) *In General.* Unless otherwise determined by the assembly, or the manager determines in writing that due to an emergency a shorter time is necessary, notice inviting formal, competitive sealed bids shall be published at least 14 calendar days preceding the last day set for the receipt of bids. If posted on the Internet, the post shall remain until the date and time for acceptance of bids has passed. The notice required herein shall include: a general description of the supplies, materials, equipment, construction or contractual services involved; a statement where bid forms, specifications, and other contract documents may be obtained; the closing time and place for submission of bids; the date, time and place for opening of bids; and the amount of bid security, if required. Nothing herein shall preclude advertisement in areas in addition to the Ketchikan Gateway Borough.

(b) In addition to the general requirements of subsection [\(a\)](#) of this section, bids for construction shall require the following:

(1) A contractor is required to provide documentation to show proof that it is in compliance with licensing, apprenticeship standards and wage rates required by State and federal laws;

(2) A contractor must provide the verification of licensing and/or certificates required by law for all craftspersons employed on projects for federal, State or local government prior to that person beginning work on a construction project. The borough may, at its option, disqualify any contractor failing to meet the requirements of this section from future borough contracts for a period of two years; and

(3) *Safety and Compliance with Codes.* In the interests of protecting the safety of citizens in our community, the borough will utilize qualified and competent inspectors to inspect each project. Persons with a license or certification from the state in a particular contracting specialty are presumed to be competent to inspect that aspect of the work. Examples include but are not limited to the following: [8 AAC 90.130](#) through [90.140](#) regarding plumbing; [8 AAC 90.160](#) through [90.165](#) relating to electricians or such comparable provisions as the State of Alaska may adopt in the future. Otherwise, inspectors without license or specialty must have their qualifications to inspect established to the satisfaction of the manager or designee. [Ord. No. 1827, §11, 4-3-17; Ord. No. 1214, §3, 5-6-02. Code 1974 §41.30.020.]

11.20.030 Pre-bid conference.

The manager or designee may provide for a pre-bid conference to be held at least seven days before the last day for submitting bids. At the pre-bid conference or at other times deemed appropriate by the manager or designee, the terms of an invitation for bids may be modified or interpreted only by written addenda issued by the manager or designee. Addenda to bids shall be sent to each recipient of the original bid documents. Only a bid acknowledging receipt of all addenda may be considered responsive, unless the addendum, in the opinion of the manager or designee, would have no material effect on the terms of the bid. If an addendum is issued less than five working days before the last day on which bids are to be accepted, the time for accepting bids shall be extended to at least five working days after the date on which the addendum was sent. Each prospective bidder must have a representative at the pre-bid conference who is authorized to speak for the bidder. [Ord. No. 1214, §3, 5-6-02. Code 1974 §41.30.025.]

11.20.040 Bids – Security.

(a) Except as provided in subsection (b) of this section, all bids shall be accompanied by either certified check or a cashier's check drawn in favor of and payable to the Ketchikan Gateway Borough on some bank or other financial institution acceptable to the borough manager in an amount not less than five percent of the amount of the bid, or a surety bond in such amount satisfactory in form to the municipal attorney and furnished by a corporate surety authorized to do business in the state of Alaska, guaranteeing that if awarded the contract the bidder will enter into the required form of contract and file the required bonds, insurance policies, and other required documents within the time required by the bid and contract documents. A bidder awarded a contract shall forfeit the bond or cash deposit upon failure to enter into the contract within the time and in the manner required.

(b) Notwithstanding the requirements set forth in subsection (a) of this section, the manager may in writing waive, reduce or modify such bid security requirements in situations where the manager deems the interest of the borough and the public to be adequately protected without observing the requirements of subsection (a) of this section or, in the case of purchase of equipment, it is deemed not practical to enforce such requirements. [Ord. No. 1214, §3, 5-6-02. Code 1974 §41.30.030.]

11.20.050 Bids – Readvertisement.

If the lowest responsible bid exceeds the amount budgeted, the manager may:

- (a) Make additional funds available and proceed with the purchase or award the contract;
- (b) Reject all bids;
- (c) Readvertise the purchase or contract with or without a change in the scope of work or other terms, conditions or specifications;

(d) Upon a finding that the efficient operation of the municipal government requires that the contract be awarded without delay, the manager may negotiate with the lowest responsive and responsible bidder or up to the three lowest bidders, and may award or recommend to the assembly for award, the reduced contract to the best negotiated proposal; or

(e) Take such other action as deemed to be in the best interest of the borough. [Ord. No. 1214, §3, 5-6-02. Code 1974 §41.30.040.]

11.20.060 Bids – Waiver of irregularities.

The manager, on bids of \$50,000 or less, and the assembly as to any contract or purchase, shall have the authority to waive any informality or irregularity, except that the timeliness of filing and signature requirements shall not be waived. [Ord. No. 1855, §5, 5-7-18; Ord. No. 1253, §4, 3-3-03; Ord. No. 1214, §3, 5-6-02. Code 1974 §41.30.050.]

11.20.070 Award of contract to lowest responsible bidder.

(a) *Lowest Responsible Bidder.* Contracts and purchases shall be awarded to the lowest responsible bidder, as determined by the borough. In determining the lowest responsible bidder, in addition to price, the following may be considered:

- (1) The ability, capacity and skill of the bidder to perform the contract or terms of the purchase.
- (2) Whether the bidder can perform the contract or terms of the purchase within the time specified, and without delay.
- (3) The character, integrity, reputation, judgment, experience and efficiency of the bidder.
- (4) The bidder's past performance. If the bidder has failed in any material way to perform its obligations under any contract with any federal, State or local governmental entity within the borough, the bidder may be deemed to be a non-responsible bidder.
- (5) The previous and existing compliance by the bidder with laws and ordinances relating to this or other contracts or purchases.
- (6) The sufficiency of the financial resources and ability of the bidder to perform the contract or purchase.
- (7) The number and scope of conditions attached to the bid.
- (8) The quality, terms and conditions of any warranties.
- (9) Local bidder's preference, as set forth in KGBC [11.20.080](#), if any, applicable to the contract or purchase.

(10) Such other matters that are of assistance in determining whether award is in the best interest of the borough.

(b) *Award to Other Than Low Bidder.* When the award is made to other than the lowest bidder, a full and complete written statement of the reasons therefor shall be mailed or delivered to the unsuccessful low bidder and filed with the other papers relating to the contract or purchase.

(c) *Notice to All Firms Submitting a Bid.* Written notice of the bid results shall be given to all persons or firms submitting a bid in response to a particular invitation to bid. [Ord. No. 1214, §3, 5-6-02. Code 1974 §41.30.060.]

11.20.080 Local bidder preference award.

(a) A contract or purchase shall be awarded to a local bidder where the bid by such local bidder is, in all material respects, comparable to the lowest responsible nonlocal bid if the amount bid by such local bidder does not exceed the lowest nonlocal bid by more than the following percentages, unless such an award is contrary to State or federal law or regulation, or unless the assembly, at its discretion, determines prior to giving notice soliciting bids that the provisions of this section shall not apply to the contract or purchases:

Nonlocal bid is:	Local bid is not more than:
\$0 – \$5,000,000	5 percent higher than nonlocal bid
Over \$5,000,000	2.5 percent higher than nonlocal bid

(b) “Local bidder,” for purposes of this section, means a person or firm who:

(1) Holds a current Alaska business license to provide such goods or services, and such other Alaska regulatory licenses as are required to provide such goods or services;

(2) Submits a bid for goods or services under the name appearing on the person’s or firm’s current Alaska business license;

(3) Has maintained a place of business within the boundaries of the Ketchikan Gateway Borough for a period of six months immediately preceding the date of the bid; and

(4) Is not delinquent in the payment of any taxes, charges, or assessments owing to the city of Ketchikan or the Ketchikan Gateway Borough on account of that business.

(c) The manager may require such documentation or verification by the person or firm claiming to be a local bidder as is deemed necessary to establish the requirements of subsection (b) of this section. [Ord. No. 1214, §3, 5-6-02. Code 1974 §41.30.070.]

11.20.090 Performance and payment bonds.

The manager may require performance and payment bonds in such circumstances and in such amounts as deemed appropriate or as are otherwise required by law. [Ord. No. 1214, §3, 5-6-02. Code 1974 §41.30.080.]

11.20.100 Requests for proposals.

- (a) If the manager determines that use of competitive sealed bidding is not practicable, the borough may procure supplies, professional services, general services or construction by competitive sealed proposals under this section. Any proposal for construction shall be subject to KGBC [11.20.020\(b\)](#).
- (b) The manager shall solicit competitive sealed proposals by issuing a request for proposals. The request for proposals shall state, or incorporate by reference, all specifications and contractual terms and conditions to which a proposal must respond, and shall state the factors to be considered in evaluating proposals and the relative importance of those factors. Public notice of a request for proposals shall be given in accordance with the time applicable to bids in KGBC [11.20.020](#). One or more pre-proposal conferences may be held in accordance with the same procedures for pre-bid conferences in KGBC [11.20.030](#).
- (c) Sealed proposals shall be designated as such on an outer envelope and shall be submitted by mail or in person at the place and no later than the time specified in the request for proposals. Proposals not submitted at the place or within the time so specified shall not be opened or considered.
- (d) Proposals shall be received at the time and place designated in the request for proposals, and shall be opened so as to avoid disclosing their contents to competing proponents during the process of negotiation. Notwithstanding Chapter [2.120](#) KGBC, proposals, tabulations and evaluations thereof shall be open to public inspection only after the issuance of a notice of intent to award the contract. The manager shall issue a notice of intent to award to all responding proposers at least seven days prior to assembly approval.
- (e) In the manner provided in the request for proposals, the manager may negotiate with those responsible proponents whose proposals are determined by the manager to be reasonably responsive to the request for proposals. Negotiations shall be used to clarify and assure full understanding of the requirements of the request for proposals. The manager may permit proponents to revise their proposals after submission and prior to award to obtain best and final offers. Proponents deemed eligible for negotiations shall be treated equally regarding any opportunity to discuss and revise proposals. In conducting negotiations or requesting revisions, neither the manager nor any other borough officer or employee shall disclose any information derived from proposals of competing proponents.
- (f) If fair and reasonable compensation, contract requirements and contract documents can be agreed upon with the most qualified proponent, the contract shall be awarded to that firm.
- (g) If fair and reasonable compensation, contract requirements and contract documents cannot be agreed upon with the most qualified proponent, the manager shall advise the proposer of the termination of negotiations. If the proposals were submitted by one or more other proponents determined to be qualified, negotiations may be

conducted with such other proposers in the order of their respective rankings. The contract may be awarded to the proponent then determined to be most advantageous to the borough.

(h) Awards shall be made by written notice to the proponent whose final proposal is determined to be most advantageous to the borough. No criteria other than those set forth in the request for proposals may be used in proposal evaluation. If the manager determines that it is in the best interest of the borough to do so, the borough may reject all proposals.

(i) When the service is routine and repetitious, costs of the anticipated service shall be considered during evaluation of proposals. This subsection shall not apply to a qualifications-based selection process. [Ord. No. 1855, §6, 5-7-18; Ord. No. 1483, §1, 5-5-08; Ord. No. 1214, §3, 5-6-02. Code 1974 §41.30.090.]

11.20.110 Procedures for award.

(a) *Award by the Manager.* Contracts which do not require assembly action shall be awarded by written notice issued by the manager or designee to the lowest responsive and responsible bidder. If the manager determines that it is in the best interest of the borough to do so, the manager may reject all bids.

(b) *Award by the Assembly.* Contracts which require assembly action shall be placed on the agenda with a notice of intent to award and an agenda item for the assembly to approve the award. [Ord. No. 1214, §3, 5-6-02. Code 1974 §41.30.100.]

11.20.120 Contract changes – Change orders – Procedures.

(a) All contract changes shall be by written change order on a form as required by the manager and approved by the municipal attorney.

(b) Subject to the availability of funds, changes in contracts, including price, may be made as follows:

(1) All changes which do not substantially modify the project and do not result in any net increase in the contract amount may be made by the manager without prior approval of the assembly. Other contract changes may be made as provided in subsections [\(b\)\(2\)](#) and [\(b\)\(3\)](#) of this section in addition to emergency change orders authorized under KGBC [11.20.130](#).

(2) Changes in contracts awarded by the assembly may be made by the manager, provided the change does not substantially modify the project and the total net amount of increase in the contract as a result of all change orders does not exceed 15 percent of the original contract amount.

(3) Changes in contracts awarded by the manager may be made by the manager provided the total amount of the contract, including all change orders, does not exceed \$57,500.

(4) When a proposed contract change will exceed the limits set forth above, or will substantially modify the project, the proposed change order, together with the manager's recommendations, shall, except an emergency change order under KGBC [11.20.130](#), first be forwarded to the assembly which shall determine whether the proposed change order shall be approved. [Ord. No. 1855, §7, 5-7-18; Ord. No. 1253, §5, 3-3-03; Ord. No. 1214, §3, 5-6-02. Code 1974 §41.30.110.]

11.20.130 Contract changes – Emergency change order.

Whenever a contract change is required immediately due to an emergency affecting life or property requiring immediate action, the manager shall have the authority to immediately order such change by written change order provided funds are available. The emergency nature and need for such change order shall be determined by the manager. If the change order is subject to the limitations of the manager's authority set forth in KGBC [11.20.120\(b\)\(3\)](#), a full report shall be made to the assembly not later than the next regular meeting following the issuance of the change order. [Ord. No. 1214, §3, 5-6-02. Code 1974 §41.30.120.]

11.20.140 Emergency contracts or purchases.

Whenever, because of an emergency affecting life or property requiring immediate action, it is deemed necessary and in the public interest by the manager to enter into any contract or purchase without following the procedures otherwise required, the manager may enter into such emergency contract or make such purchase without complying with competitive bidding or other procedures or requirements, if the estimated amount involved does not place undue financial hardship on the borough. The manager shall make written findings setting out those conditions which are determined to constitute an emergency. [Ord. No. 1214, §3, 5-6-02. Code 1974 §41.30.130.]

11.20.150 Award of contracts or purchases without competitive bids.

Unless otherwise required by the assembly, contracts and purchases may be made without competitive bidding for the following:

- (a) For professional or specialized services such as, but not limited to, services rendered by accountants, architects, appraisers, engineers, land surveyors, financial consultants, attorneys, planning consultants, economists, computer programmers and system analysts, insurance consultants and risk analysts, and other specialized consultants, which services shall be purchased as provided in Chapter [11.30](#) KGBC, Professional Services Contracts.
- (b) For purchase of insurance and banking services.
- (c) For contractual services purchased from a public utility at a rate determined by law, regulation or ordinance.

- (d) For supplies, materials, equipment, construction, or contractual services which can be furnished only by a single provider or dealer or which have a uniform price wherever bought.
- (e) When calling for and obtaining bids on a competitive basis is unavailable, impractical or impossible, including, but not limited to, when rates are set by statute or ordinance, or when like items, equipment or vessels are traded in, or when used items, equipment or vessels are being purchased.
- (f) For work and services on public works or projects performed by employees of the borough.
- (g) When it is advantageous to the borough to enter into a contract or purchase with a bidder for the same supplies, materials, equipment, construction or contractual services, such bidder is providing another local government, the State of Alaska, or the United States when such supplies, materials, equipment, construction or contractual services are being provided to the other governmental unit on the basis of formal competitive sealed bids submitted, and when the borough contract is on substantially the same terms as those bid; or to a contract with or through such other governmental unit so that the benefit of the responsible bid accrues to the borough.
- (h) Supplies, materials, equipment, construction or contractual services which must be purchased from a specific source in order to prevent incompatibility with previously purchased supplies, materials, equipment, construction or contractual services. For purposes of this subsection, the term "incompatibility" is defined as the inability to (1) interconnect, combine, interchange or join; or (2) that which causes or necessitates maintenance expertise or training where such acquisition would result in substantial duplication. Any purchase which is to be excluded from competitive bidding by the authority of this subsection which exceeds \$50,000 must be first approved by the assembly.
- (i) When competitive procedures have been followed but only one bid is received or no bids are received. In such a case, the manager may proceed to negotiate with the single bidder as to price, scope of work or other terms or conditions or, if no bids were received, to have the supplies, materials, equipment, construction or contractual services purchased or performed without further competitive bidding or quotation.
- (j) For high technology procurements including, but not limited to, computer systems, provided such purchases are made in accordance with Chapter [11.30](#) KGBC, Professional Services Contracts.
- (k) Legal services shall be procured in accordance with this section. No negotiations or contracts for the services of legal counsel may be pursued or awarded without the prior approval in writing of the borough attorney. The borough attorney shall review the responses received by the manager and shall be assisted by the manager in the selection process. [Ord. No. 1855, §8, 5-7-18; Ord. No. 1551, §1, 2-16-10; Ord. No. 1253, §6, 3-3-03; Ord. No. 1214, §3, 5-6-02. Code 1974 §41.30.140.]

11.20.160 Appeals.

- (a) *Bids.* Within five days (Saturdays, Sundays and borough holidays excluded) of issuance of a notice of award or a notice of intent to award, an unsuccessful bidder may appeal a bid award to the assembly by delivering a written protest to the borough clerk.

(b) *Requests for Proposals.* Within five days (Saturdays, Sundays and borough holidays excluded) of issuance of a notice of award or a notice of intent to award, an unsuccessful proposer may appeal a proposal award to the assembly by delivering a written protest to the borough clerk on a form provided by the clerk.

(c) *Protests.* A protest under subsection (a) or (b) of this section must include the following:

(1) Filing fee in the amount of \$200.

(2) State which provision of the KGB Code is alleged to have been violated or misapplied by the proposed award.

(3) The protest must state the basis for the protest, explaining how the conduct described establishes that an error has occurred.

(4) The protest must also include copies of any documents or other information which the protesting party believes shows that an error has been made.

(d) *Clerk Review of the Protest.* If the clerk determines that the protest filed timely in accordance with subsection (a) or (b) of this section, or of KGBC [11.15.050](#), is incomplete or lacking in sufficient detail, the clerk shall notify the appellant in writing specifying the deficiencies. The appellant shall have an additional five days from the date such notice is sent to correct such deficiencies by filing a supplement to the protest correcting such deficiencies or adding additional information. Any protest filed after the time provided above shall not be considered.

(e) *Effect of Protest.* If a timely protest is filed, the award will be suspended until the assembly has met and issued a decision. Any award which is timely protested must be confirmed by approval or rejection of the award by the assembly after the appeal is decided. [Ord. No. 1855, §9, 5-7-18; Ord. No. 1338, §1, 2-22-05; Ord. No. 1214, §3, 5-6-02. Code 1974 §41.30.150.]

The Ketchikan Gateway Borough Code is current through Ordinance 2030, passed February 26, 2024.

Disclaimer: The borough clerk's office has the official version of the Ketchikan Gateway Borough Code. Users should contact the borough clerk's office for ordinances passed subsequent to the ordinance cited above.

[Borough Website: www.kgbak.us](http://www.kgbak.us)

[Hosted by Code Publishing Company, A General Code Company.](#)