

Chapter 3.20

PURCHASING

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3.20.010 Purchasing Agent. The City Administrator or his designee shall be the City Purchasing Agent.

3.20.020 Purchasing Agent -- Scope of Authority.

A. The purchasing agent shall have the power, and it shall be his duty, to purchase or contract for supplies and contractual services needed by any using agency of the City and to sell surplus personal property of such using agencies in accordance with the ordinances of the City and such rules and regulations as shall be prescribed by the Mayor and approved by the City Council.

B. The purchasing agent shall have the authority to join with other units of governments in cooperative purchasing ventures when the best interests of the City would be served thereby, and same is in accordance with City and state law.

3.20.030 Purchasing Agent -- Other Powers and Duties. The purchasing agent shall:

A. Act to procure for the City the highest quality in supplies and contractual services at least expense to the City;

B. Recommend the establishment, and amendment when necessary, of all rules and regulations relating to purchasing;

C. Prescribe and maintain such forms as he shall find reasonably necessary; and

D. Act so as to procure for the City all state and federal tax exemptions to which it is entitled.

6.24.040 Inspection and testing.

A. The purchasing agent may designate each department head to inspect, as far as possible, and/or supervise the inspection of all deliveries of supplies or contractual services to determine their conformance with the specifications set forth in the order or contract as it pertains to that department.

B. The purchasing agent shall have the authority to authorize using agencies having the staff and facilities for adequate inspection to inspect all deliveries made to such using agencies, under rules and regulations which the purchasing agent shall prescribe.

C. The purchasing agent shall have the authority to require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with the specifications. In the performance of such tests, the purchasing agent shall have the authority to make use of laboratory facilities of any agency of the City government or of any outside laboratory.

3.20.050 Authority of City Administrator. The City Administrator may transfer supplies, materials and equipment to or between agencies, offices and departments.

3.20.060 Public Improvement Contracts. Contracts for public improvements shall be by competitive, sealed bid and may be awarded to the lowest qualified bidder.

3.20.070 When Prior Approval by the City Council is Required. Every contract for, or purchase of, supplies, materials,

equipment, or contractual services for more than fifteen thousand dollars shall require the prior approval of the City Council, and under no circumstances may such contract or purchase be made without first obtaining the approval of the City Council.

3.20.080 Requisitions and Estimates.

A. All agencies of the City which use supplies or services shall, either by or with the authorization of the department head under which the using agency operates, file with the purchasing agent requisitions or estimates of their requirements in supplies and contractual services in such manner, at such times, and for such future periods as the purchasing agent shall prescribe.

B. A using agency shall not be prevented from filing, in the same manner, with the purchasing agent at any time a requisition or estimate for any supplies and contractual services, the need for which was not foreseen when the detailed estimates were filed.

C. The purchasing agent shall examine each requisition or estimate and shall have the authority to recommend revisions as to quantity, quality or estimated cost.

3.20.090 Contracts Over Fifteen Thousand Dollars. Unless otherwise prohibited or exempted by the ordinances of the City, all contracts and purchases for an amount estimated to exceed fifteen thousand dollars shall be by competitive, sealed bid.

6.24.100 Bids -- Notice Inviting.

A. Notice inviting competitive, sealed bids shall be published once in a newspaper of general circulation published in the Borough, or if there is no such newspaper by posting in three separate places in the Borough at least fourteen days preceding the last day set for the receipt of bids. The notice required herein shall state a general description of the work, materials or services, where bid forms and specifications may be secured, the closing time for submission of bids, the place of submission of bids and the time and place for opening bids. Bid deposits, if required, shall be prescribed in the public notices inviting bids.

B. The City shall also invite sealed bids from all responsible prospective contractors who have requested their names be added to a "bidders' list" which the City shall maintain, by sending such contractors a copy of such notice or such other notice as will acquaint them with the proposed

contract. In any case, invitations sent to the contractors on the bidders' list shall be limited to work that is similar in character and ordinarily performed by the contractors. Failure of any person on the "bidders' list" to receive such invitation to bid shall not invalidate the bidding procedures.

3.20.110 Changes and Addenda in Contract Documents. No official or officer shall make any oral interpretations which may affect the substance of the contract documents, nor shall make any oral change in the contract documents. The bid documents shall so state this. Addenda shall be issued when questions arise which might affect the bids. The purchasing agent shall be certain that all bidders receive the addenda, which should be delivered by certified mail (receipt requested), telegraph, or hand. When delivered by hand, receipt of the addenda should be obtained. When an addendum is issued less than four working days before the time for receipt of bids, the addendum shall contain a new bid date which shall be at least four working days after the normal receipt of the addendum by the prospective bidder. Receipt of addenda should be acknowledged as part of the bid submitted.

3.20.120 Pre-bid Conference. Department heads or the purchasing agent, upon their own initiative or at the request of a bidder, may provide for a pre-bid conference at least seven days prior to the time for submission of bids. All points of clarification and questions answered at the conference which may affect the bid shall be issued in the form of addenda.

3.20.130 Bids -- Opening Procedure.

A. Sealed bids shall be submitted personally or by mail to the officer designated in the notice inviting bids and shall be identified as bids on the envelope.

B. Bids shall be opened in public at the time and place stated in the public notices, which shall be immediately after the closing time for submission of bids. The time of closing should preferably be on a Tuesday, Wednesday, Thursday or Friday afternoon. Bids not received by the City prior to the bid opening shall not be opened and considered. Any bidder may review all bids immediately after opening and prior to tabulation or summary.

C. A tabulation of all bids received shall be forwarded to the City Council by the purchasing agent with appropriate recommendations for acceptance or rejection of bids. A copy of the tabulation shall be furnished to each bidder.

3.20.140 Bids -- Rejection.

A. Upon receipt of the bids, the City Council or its delegate shall have the authority to:

1. Reject defective or nonresponsive bids;
2. Reject all bids;
3. Negotiate with the three lowest responsible bidders, if bid prices are in excess of the money available; and/or
4. Readvertise the project for bidding, after making substantial changes in the project plans to bring the cost within the limit of the money available.

B. If the lowest and best bid exceeds the budgeted amount and the City Council does not make additional funds available, the proposed contract for purchase or sale or for services or for a construction project shall be reduced in scope sufficiently to bring the estimate of cost within the fund available.

3.20.150 Bids -- Waiver of Irregularities. The City Council shall have the authority to waive any and all irregularities on any or all bids.

3.20.160 Award of Contract to Lowest Bidder -- Exception.

A. Contracts may be awarded to the lowest responsible bidder. In determining the "lowest responsible bidder," in addition to price, there shall be considered:

1. The ability, capacity and skill of the bidder to perform the contract;
2. Whether the bidder can perform the contract within the time specified, without delay or interference;
3. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
4. The quality of performance of previous contracts;
5. The previous and existing compliance by the bidder with laws and ordinances relating to the contract;
6. The sufficiency of the financial resources and ability of the bidder to perform the contract;
7. The number and scope of conditions attached to the bid; and
8. If some bids are approximately equal, some preference may be given to local bidders.

B. When the award is given to other than the lowest bidder, a full and complete written statement of the reasons therefor shall be delivered to the unsuccessful low bidder or bidders and filed with the other papers relating to the

transaction. The minutes of the City Council relating to the matter may be used as the required written statement.

3.20.170 Exceptions to Competitive Sealed Bidding and Submission of Bid. The restrictions and provisions of this Chapter requiring competitive bidding shall not apply:

A. To contracts involving the obtaining of professional or specialized services, such as, but not limited to, services rendered by architects, attorneys, engineers and other specialized consultants;

B. Where calling for bids on a competitive basis is unavailing or impossible, including, but not limited to, 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 Council's requirements can be met solely by an article or process obtainable only from a single source;

D. To placement of insurance coverage;

E. When public work is performed by the City with its own employees;

F. When it is advantageous to the City 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, or the United States, where such supplies or services are being provided the other governmental unit on the basis of formal bids submitted, and where the City contract is on substantially the same terms as those bid; or to contract with or through such other governmental unit so that the benefit of the responsible bid accrues to the City;

G. When competitive procedure has been followed, but no bids or quotations are received. In such a case, the purchasing agent may proceed to have the services performed or the supplies purchased without further competitive bidding;

H. To supplies, materials, equipment or contractual services purchased from another unit of government at a price deemed below that obtainable from private dealers, including war surplus; and

I. To contractual services purchased from a public utility corporation at a price or rate determined by state or other government authority.

J. To contracts which are procured by competitive sealed proposals pursuant to Section 3.20.175 of this Chapter, when the conditions for use of competitive sealed proposals under that section are met.

K. To purchases of fuel, and related container, transportation and delivery services, by the City's

electrical utility, provided that the purchasing agent ascertains, through reasonably sufficient and commercially practicable efforts, that the fuel is being purchased by the Borough at the lowest cost available to the Borough taking into account all related expenses. Purchases made under this paragraph do not require Assembly approval under section 6.24.070 of this Chapter.

6.24.175 Competitive Sealed Proposals.

A. When the Borough Purchasing Agent determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the Borough, a contract may be entered into by competitive sealed proposals.

B. When the purchasing agent determines that it is advantageous to the Borough, the purchasing agent may issue a request for proposals requesting the submission of offers to provide construction in accordance with a design provided by the offeror. The request for proposals shall require that each proposal submitted contain a single price that includes the design/build.

C. A request for competitive sealed proposals must contain the date, time, and place for delivering proposals, a specific description of the supplies, construction, services, or professional services to be provided under the contract, and the terms under which the supplies, construction, services, or professional services are to be provided. The request must require the offeror, no later than five working days after the proposal that is the most advantageous to the Borough is identified, to list subcontractors the offeror proposes to use in the performance of the contract. The list must include the name and location of the place of business for each subcontractor, the work to be subcontracted to each subcontractor, and evidence of the subcontractor's valid Alaska business license. An offeror for a construction contract shall also submit evidence of the offeror's registration under AS 08.18 and evidence of registration for each listed subcontractor.

D. A request for proposals must contain that information necessary for an offeror to submit a proposal, or contain references to any information that cannot reasonably be included with the request. The request must provide a description of the factors that will be considered by the purchasing agent when evaluating the proposals received, including the relative importance of price and other evaluation factors.

E. Notice of a request for proposals shall be given in accordance with procedures under Section 6.24.100. The

purchasing agent may use additional means considered appropriate to notify prospective offerors of the intent to enter into a contract through competitive sealed proposals.

F. If a subcontractor on an offeror's list did not have a valid Alaska business license and a valid certificate of registration under AS 08.18 at the time the proposal was opened, the offeror may not use the subcontractor in the performance of the contract, and shall replace the subcontractor with a subcontractor who had a valid Alaska business license and a valid certificate of registration under AS 08.18 at the time the proposal was opened.

An offeror may replace a listed subcontractor if the subcontractor

- (1) fails to comply with AS 08.18;
- (2) files for bankruptcy or becomes insolvent;
- (3) fails to execute a contract with the offeror involving performance of the work for which the subcontractor was listed and the offeror acted in good faith;
- (4) fails to obtain required bonding;
- (5) fails to obtain insurance acceptable to the City;
- (6) fails to perform the contract with the offeror involving work for which the subcontractor was listed;
- (7) must be substituted in order for the offeror to satisfy required state and federal affirmative action requirements;
- (8) refuses to agree or abide with the offeror's labor agreement; or
- (9) is determined by the purchasing agent not to be a responsible subcontractor.

G. A bidder who attempts to circumvent the requirements of subsection (C) hereof by listing as a subcontractor another contractor who, in turn, sublets the majority of the work required under the contract violates this section.

H. If a contract is awarded to an offeror who violates the requirements of subsection (C) hereof, the purchase agent may

- (1) cancel the contract; or
- (2) after notice and a hearing, assess a penalty on the offeror in an amount that does not exceed 10 percent of the value of the subcontract at issue.

I. The offeror must have a valid Alaska business license at the time its proposal was opened.

J. The purchasing agent shall open proposals so as to avoid disclosure of contents to competing offerors during the process of negotiation. The proposals are open for public

inspection after the notice of intent to award a contract is issued. To the extent that the offeror designates and the purchasing agent concurs, trade secrets and other proprietary data contained in the proposal documents are confidential.

K. Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors reasonably susceptible of being selected for award 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 before the award of the contract for the purpose of obtaining best and final offers. In conducting discussions, the purchasing agent may not disclose information derived from proposals submitted by competing offerors.

L. The purchasing agent or, if the contract is for more than fifteen thousand dollars, the City Council, shall award a contract under competitive sealed proposals to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the City taking into consideration price and the evaluation factors set out in the request for proposals. In determining whether a proposal is advantageous to the City, the purchasing agent or City Council shall take into account whether the offeror is a local bidder who has maintained a place of business within the Borough for a period of six months preceding the date of the request for proposals. For the purpose of evaluating cost factors, the proposed costs of an offeror who qualifies as a local bidder shall be reduced by five percent (5%). Factors and criteria other than those set forth in the request for proposals may not be used in the evaluation. The contract file must contain the basis on which the award is made. The minutes of the City Council relating to the award decision may be used as the basis for the award.

M. The purchasing agent or, if the contract is for more than fifteen thousand dollars, the City Council, may either make an award or reject all proposals and resolicit proposals.

N. A contract awarded under competitive sealed proposals must contain

(1) the amount of the contract stated on its first page;

(2) the date for the supplies to be delivered or the dates for construction, services, or professional services to begin and be completed; and

(3) a description of the supplies, construction, services, or professional services to be provided.

3.20.180 Contracts of Five Thousand Dollars or Less.
Unless otherwise prohibited by the ordinances of the City, purchases of materials, supplies, equipment or contractual services, where the actual cost is five thousand dollars or less, may be made on the open market without competitive bidding.

6.24.190 Contracts Between Five and Fifteen Thousand Dollars.

A. All purchases of supplies, materials, equipment and contractual services of a total estimated value of more than five thousand dollars and less than fifteen thousand dollars shall be made in the open market without newspaper advertisement and without observing the procedure prescribed by this title for formal purchasing or sale procedures.

B. Open market purchases or sales made under this section shall, whenever possible, be based on at least three competitive bids and shall be awarded to the lowest responsible bidder in accordance with the standards set forth in Sections 3.20.090 through 3.20.170 of this Chapter.

C. The purchasing agent may solicit either oral or written bids for open market purchases or sales.

D. The purchasing agent shall keep a record of all open market bids submitted in competition thereon, and such records shall also be open to public inspection.

3.20.200 Insurance Policies.

A. The City shall purchase policies of insurance by the open market procedures provided in this Chapter.

B. Open market procedures may not be required for a policy which:

1. Has an annual premium or charge of less than two hundred fifty dollars;
2. Provides liability coverage for a single event;
3. Is for property title insurance; or
4. Has its premium or charge fixed by state statute.

C. Open market procedures may not be required for a change in an insurance policy in effect, or to acquire policies supplemental to an existing policy if the policies in effect cannot be changed, provided that the change or supplemental policies are approved by the Assembly.

3.20.210 Subdivision of Specifications Prohibited. No project or contract specifications shall be subdivided to avoid the requirements of this title. This provision shall not preclude the use of alternate deductible items.

3.20.220 Emergency Contracts. Whenever, because of any emergency, it is deemed necessary and in the public interest by the Mayor to enter into any contract without following the competitive bidding procedures as may be required by this title, the Mayor shall authorize such emergency contract if the estimated sum involved is less than fifteen thousand dollars. If the estimated contract sum involved is greater than fifteen thousand dollars, the Mayor shall refer any proposed emergency contract to the City Council for its approval and authorization to waive the competitive bidding procedures.

3.20.230 Encumbrance of Funds. Except in cases of emergency declared by the Mayor or the City Council as provided in this chapter, no contract or any change order to an existing contract shall be authorized unless there is a sufficient unencumbered balance in the budget appropriation of the using agency or sufficient bond funds available, in excess of actual expenditures or commitments, to cover such contract or change order.

3.20.240 State or Federal Procurement Code. If the bidding procedures set out in the State Procurement Code (AS 36.30.005 et seq.) are applicable to any contract to which the City is a party, then those procedures shall govern in the case of any inconsistency between those procedures and the procedures set out in this Code. Additionally, specific laws affect certain procurements. As an example, when using Federal funds, the Uniform Guidance (2 CFR 200) prevail as the authoritative policy and procedure.