

CHAPTER 3A-06. PROCUREMENT

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3A-06-010. Compliance.

All expenditures of the City shall conform to the provisions of this Chapter and applicable provisions of State law including, but not limited to, the Uniform Fiscal Procedures Act set forth at *Utah Code Ann.* §10-6-101, *et seq.*, as amended. Any expenditures of the City involving federal assistance funds shall comply with applicable federal laws and regulations. Any expenditure of the City involving the construction, maintenance or improvement project of a Class C road shall comply with applicable provisions of the State Transportation Code including but not limited to *Utah Code Ann.* §72-6-108 and -109, as amended. Any expenditure of the City involving the construction or repair of a public building or structure, or a public works project, shall comply with applicable provisions of *Utah Code Ann.* §11-39-101, *et seq.*, as amended, regarding building improvements and public works projects.

3A-06-020. Definitions.

As used in this Chapter, the following words shall mean:

(a) "Construction" means the process of building, renovation, alteration, improvement, or repair of any public building or public work. "Construction" does not mean the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

(b) "Person" means any individual, firm, partnership, trust, limited liability company, corporation, or other entity however designated.

(c) "Procurement" means buying, purchasing, renting, leasing, leasing with an option to purchase, or otherwise acquiring any supplies, services, or construction, and all functions that pertain to the obtaining of any supply, service, or construction, including the solicitation of sources, selection, award, and all phases of contract administration.

(d) "Professional Services" means the furnishing of services for auditing, banking, insurance, engineering, legal, architectural, and other forms of professional consulting.

(e) "Responsible Bidder" means a person who submits a bid to furnish supplies, services or construction for the City pursuant to and in accordance with the terms and conditions of this Chapter and who

furnishes, when requested, sufficient information and data to prove his or her financial resources, production or service facilities, service reputation and experience are adequate to the satisfaction of the City.

(f) "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. "Services" does not include employment agreements or collective bargaining agreements.

(g) "Supplies" means all property, including but not limited to equipment, materials, and printing. "Supplies" does not include real property or any interest therein.

3A-06-030. Purchasing Agent.

The City Manager is hereby designated as the Purchasing Agent for the City. The Purchasing Agent shall be subject to the direction and supervision of the City Council and shall have the powers and duties concerning procurement as established in this Chapter, including but not limited to:

(a) Administer and interpret the procurement system provided herein, in accordance with any rules and regulations established by the City;

(b) Procure or supervise the procurement of all supplies, services, and construction needed by the City, including preparation of specifications and negotiation of contracts connected therewith;

(c) Exercise general supervision and control over all inventories or supplies of the City and the inspection of and accounting for all such inventories or supplies;

(d) Prepare and maintain forms and reports as are reasonably necessary to the operation of this Chapter and other rules and regulations of the City;

(e) Keep generally informed of current developments in the field of procurement, including but not limited to, market conditions and new products; and

(f) Recommend to the City Council from time to time such new or revised procurement rules and regulations as are desirable and in conformance with other statutory requirements.

3A-06-040. Budget Limitation.

All expenditures or encumbrances made by the City for supplies, services or construction shall be made in accordance with the Uniform Fiscal Procedures Act for Utah Cities, set forth at *Utah Code Ann.* §10-6-101, *et seq.*, as amended. Except as provided in said Act or herein, no expenditure or encumbrance shall be made for any supplies, services or construction for the City in excess of total appropriations in the budget, as adopted or subsequently amended.

3A-06-050. Purchase Requisition.

Before any order may be placed for the purchase of any supply, service or construction having a unit value in excess of \$3,000, a Purchase Requisition Form shall be submitted to the Purchasing Agent. The Purchasing Agent shall review all Purchase Requisitions and determine whether the expenditure requested is for a City purpose, properly budgeted, and in compliance with City ordinances and State law. If the Purchasing Agent determines the expenditure requested complies with these requirements, he or she shall sign the Purchase Requisition and initiate the appropriate procedures set forth herein for procurement of the supply, service or construction. A Purchase Requisition shall not be required for service contracts entered into between the City and the contracting party specifying the cost of service.

3A-06-060. Pre-Qualification.

When determined necessary by the Purchasing Agent, contractors and/or suppliers may be pre-qualified for particular types of supplies, services and construction. In such cases, prospective contractors and/or suppliers will be required to demonstrate sufficient experience and capability to perform the project or work for which pre-qualification is required.

3A-06-070. Classification of Expenditures.

(a) Large Expenditures. Except as otherwise provided herein, any expenditure of the City of \$10,000 or more shall be referred to as a "large expenditure" and shall be made pursuant to formal bidding procedures set forth in Section 3A-06-080. No large expenditure shall be made without prior approval from the City Council.

(b) Small Expenditures. Except as otherwise provided herein, any expenditure of the City of less than \$10,000 shall be referred to as a "small expenditure" and may be made pursuant to formal bidding procedures set forth in Section 3A-06-080 or pursuant to informal bidding procedures set forth in Section 3A-06-090. Small expenditures may be made by the Purchasing Agent without prior approval from the City Council, but any such expenditure shall be reviewed by the City Council at its next regular meeting. It shall be unlawful to artificially divide a purchase or expenditure so as to constitute a small expenditure under this Section.

(c) Exempt Expenditures. The following expenditures of the City shall be referred to as "exempt expenditures" and may be made without formal or informal bidding procedures, but should be made with as much competition as practicable under the circumstances. The Purchasing Agent shall determine in writing that an expenditure falls within one of these exemptions, and shall maintain a record of all contracts made hereunder, including each supplier's name, the amount and type of contract, and the supplies, services, or construction procured. All exempt expenditures shall be reviewed by the City Council on at least a quarterly basis.

(1) Minor. Any expenditure amounting to less than \$3,000.00;

(2) Single Source. Any expenditure for goods or services which by their nature are not reasonably adapted to award by competitive bidding. These expenditures include, but are not limited to, goods or services which can only be purchased from a single source, contracts for additions to and repair and maintenance of equipment already owned by the City which may be more efficiently added to, repaired or maintained by a certain person or firm, and equipment which, by reason of the training of the personnel or an inventory of replacement parts is compatible with the existing equipment owned by the City.

(3) Professional Services. Any expenditure for professional services which by their nature are not reasonably adapted to award by competitive bidding. Such expenditures shall be awarded at the discretion of the City Council based on the City Council's evaluation of the professional qualifications, service ability, experience, cost of services and other applicable criteria.

(4) Emergency. Any expenditure made under the existence of an emergency condition threatening the public health, welfare, or safety.

(5) State Bidding. Any expenditure for which competitive bidding or price negotiation has already occurred on the State level.

(6) Interlocal Cooperation. Any expenditure made in conjunction with an agreement approved by resolution of the City Council between the City and another city or governmental entity.

(7) Special Sale. Any expenditure made in conjunction with any public auction, closeout sale, bankruptcy sale or other similar sale when the Purchasing Agent determines in writing that such purchase may be made at a cost below the market cost for the same or similar goods and such determination is reviewed and approved by the City Council.

(8) Exchanges. Any exchange of supplies, materials, property, or equipment between the City and any other public or private party made by mutual agreement of the respective parties.

(9) Public Convenience. Any addition to a project that was properly bid, that by adding to the contract, the City would avoid reconstruction of a state agency's newly installed road or other infrastructure and save mobilization, reconstruction, and/or other disruptions to existing construction schedules, so long as the labor costs and costs of materials are not different from the original contract.

3A-06-080. Formal Bidding Procedure.

Except as otherwise provided herein, all large expenditures shall be made by written contract between the City and the lowest responsible bidder according to the following procedure:

(a) Specifications. Specifications shall be prepared by or under the direction of the Purchasing Agent. Specifications may be submitted to the City Council for review.

(b) Invitation for Bids. An invitation for bids shall be prepared by or under the direction of the Purchasing Agent which invitation shall:

- (1) Describe the goods or services to be purchased or work to be performed;
- (2) Set forth all contract terms, conditions and bond requirements applicable to the purchase or work;
- (3) Set forth the criteria that will be used to evaluate the bid;
- (4) State where plans, specifications and other information may be obtained;
- (5) State the time and place of the bid opening; and
- (6) Reserve for the City the right to reject any and all bids for any reason without liability.

(c) Notice. The invitation for bids shall be published at least twice in a newspaper of general circulation in the jurisdiction of the City at least five (5) days prior to the opening of bids. In the event there is no newspaper of general circulation printed or published within the jurisdiction of the City, the notice shall be posted at least five (5) days prior to the opening of bids in at least five (5) public places in the City which notice shall remain posted for at least three (3) days. Notice for public building improvements and public works projects shall also publish notice in accordance with Utah Code Ann. §45-1-101, as amended, at least five (5) days before opening the bids.

(d) Amending Invitation. The invitation to bid may be amended, supplemented, or canceled at any time prior to the opening of bids when the Purchasing Agent determines that such action is in the best interest of the City. The reasons for the amendment or cancellation of the invitation shall be in writing and shall be made a part of the City's records.

(e) Sealed Bids. All bids shall be received by the City in sealed envelopes labeled "Bid for (item)" which shall not be opened prior to the time set for opening of the bids, except as provided in Subsection (f).

(f) Correction of Bids. The Purchasing Agent may permit correction or withdrawal of inadvertently erroneous bids in appropriate circumstances, provided that no changes in bid prices or other provisions of bids which are prejudicial to the interest of the City or fair competition shall be permitted. Any decision to permit the correction or withdrawal of bids shall be supported by a written determination prepared by the Purchasing Agent.

(g) Opening Bids. The bids shall be opened publicly by the Purchasing Agent in the presence of one or more witnesses at the time and place designated in the invitation for bids.

(h) Recording Bids. The amount of each bid and the name of the bidder shall be read aloud as the bids are opened, and such information shall be recorded and open to public inspection during regular business hours for a period of not less than thirty (30) days after the bid opening.

(i) Evaluating Bids. The bids shall be evaluated within a reasonable time by the Purchasing Agent to determine the lowest responsible bidder based upon the following objectively measurable criteria as set forth in the invitation for bids:

(1) Price. The total price of the bid.

(2) Quality. The overall quality of the goods or work to be provided and/or the ability, capacity and skill of the bidder to provide any services or work required.

(3) Conditions. The number and scope of any conditions or qualifications set forth in the bid.

(4) Time. The time limit within which the bidder can provide the goods, services or work.

(5) Reputation. The character, integrity, reputation, judgment, experience and efficiency of the bidder and the quality of previous goods, services or work obtained from the bidder.

(6) Compliance. The previous and existing compliance by the bidder with laws and ordinances relating to the goods, services or work.

(7) Financial Resources. The sufficiency of the financial resources and ability of the bidder to provide the goods, services or work.

(8) Future Service. The ability of the bidder to provide future maintenance and service and the local availability of parts, materials, etc.

(j) Determination. The Purchasing Agent shall determine the lowest responsible bidder and communicate such determination, in writing, to the City Council. The City Council may accept, reject, or modify the Purchasing Agent's determination and thereupon award the contract or reject any and all bids. All information relating to the selection of the lowest responsible bidder shall be retained by the City in accordance with the Utah Government Records Access and Management Act, as adopted by the City.

(k) Cancellation and Rejection of Bids. The City reserves the right to cancel an invitation for bids or to reject any or all bids for any reason. Such cancellation or rejection shall be in writing and shall be made part of the City's records. In the event all bids are rejected and the City determines to make the improvement or purchase, it shall advertise anew as provided herein. If after twice advertising, no satisfactory bid is received, the City Council may proceed to negotiate or make the improvement or acquisition or enter such other agreements as it deems necessary or desirable.

(l) Tie Bids. If two or more bids received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay of readvertising for bids, the City

Council shall accept the lowest bid made by and after negotiation with the tie bidders after the time of the bid opening.

(m) Bonds. Prior to entering any contract hereunder, the City Council may require performance and payment bonds to be provided in such form and amounts as required by law and by the City Council as reasonably necessary to protect the best interest of the City.

(n) Responsibility of Bidder. The Purchasing Agent may request additional information with respect to the responsibility of a bidder. The unreasonable failure of a bidder to promptly supply information in connection with a request of the Purchasing Agent regarding responsibility may be grounds for a determination of nonresponsibility and/or nonresponsiveness of the bidder.

3A-06-090. Informal Bidding Procedure.

Except as otherwise provided herein, all small expenditures of the City may be awarded to the lowest responsible bidder according to the formal bidding procedure set forth above or to the lowest responsible bidder according to the following procedure:

(a) Invitation of Bids. The Purchasing Agent shall invite bids from at least three (3) potential, responsible providers of the supplies, services or construction needed or desired. Such invitations may be made in writing or orally, including by telephone, and shall be made without unfair favoritism or bias. A record of all invitations and bids made hereunder shall be kept by the Purchasing Agent.

(b) Evaluation. The Purchasing Agent shall evaluate the bids to determine the lowest responsible bidder based upon the criteria set forth in Section 3A-06-080(i).

(c) Determination. The Purchasing Agent shall determine the lowest responsible bidder and award the contract to such bidder, unless otherwise directed by the City Council. All information relating to the bids obtained and the selection of the lowest responsible bidder shall be retained by the City in accordance with the Utah Government Records Access and Management Act, as adopted by the City.

3A-06-100. Additional Data.

Any additional relevant data pertaining to the selected bidder shall be added to the Purchase Requisition or contract documents. If required by law, a written contract shall be entered into between the City and the selected bidder. Contracts involving construction work shall further provide for a bid security in the amount equal to at least five percent (5%) of the amount of the bid.

3A-06-110. Bonds.

Prior to entering any contract under this Policy, the City may require performance and payment bonds to be provided in such form and amounts as required by law and by the City as reasonably necessary to protect the best interest of the City.

3A-06-120. Retention of Bids.

Whenever the City is required by State law to receive bids for purchases, construction, repairs or any other purpose requiring the expenditure of funds, the City shall keep on file all bids received together with proof of advertisement by publication or otherwise, in accordance with *Utah Code Ann.* §10-6-122, as amended.

3A-06-130. Restrictions on Architect or Engineering Services.

When the City elects to obtain architect or engineering services by using a competitive procurement process and has provided public notice of its competitive procurement process, the City may not award the contract for such services solicited to a higher education entity or any part of one, in accordance with and subject to the provisions of *Utah Code Ann.* § 10-7-20.5, as amended. When the City engages the services

of a professional architect, engineer, or surveyor and considers more than one such professional for the engagement, the City shall comply with applicable provisions of *Utah Code Ann.* § 10-7-86, as amended.

3A-06-140. Use of Recycled Goods.

The procurement officer or other person responsible for purchasing supplies for the City shall give recycled items consideration when inviting bids and purchasing supplies in accordance with applicable provisions of *Utah Code Ann.* § 10-7-87, as amended, and *Utah Code Ann.* § 11-37-101, as amended.

3A-06-150. Disposal of Surplus Property.

(a) For purposes of this Section, the following definitions shall apply:

(1) A “significant parcel of real property” shall mean a parcel of 1/4 acre or more in size or a parcel having a value of more than \$100,000 as determined by the City Council.

(2) “Reasonable notice” shall mean publishing a notice of the proposed disposition and of a public hearing before the City Council to consider such disposition once in a newspaper of general circulation within the City.

(b) The City shall have the authority to sell, lease, convey and dispose of real and personal property for the benefit of the City as provided by *Utah Code Ann.* §10-8-2, as amended.

(c) Before the City may dispose of a significant parcel of real property, the City shall:

(1) Provide reasonable notice of the proposed disposition at least fourteen (14) days before a scheduled meeting at which the City will hear public comment; and

(2) Hold a meeting at which the City Council accepts public comment on the proposed disposition.

(d) All disposal, leases, or subleases of such property of the City other than a significant parcel of real property, shall be made, as nearly as possible, under the same conditions and limitations as required by City Ordinances and State law for the purchase or sale of property.

(e) The City Council may also authorize at its discretion and under such terms and conditions as it may deem desirable, fair and appropriate, considering intended use, property tax value, and the interests of the City, the sale of any surplus property, through public auction or other method designed to best serve the interests of City residents and produce a fair return; the trade or exchange of any surplus property; and the lease or sublease of any surplus property.

3A-06-160. Ethics.

(a) Conflicts of Interest. No officer or employee of the City may have a direct or indirect pecuniary interest in any contract entered into by the City and all officers and employees are required to comply with applicable provisions of State law regarding ethics including, but not limited to, the Utah Municipal Officers’ and Employees’ Ethics Act set forth at *Utah Code Ann.* §10-3-1301, *et seq.*, as amended.

(b) Collusion. Any agreement or collusion among bidders or prospective bidders to bid a fixed price or to otherwise restrain competition shall render the bids of such bidders void.

(c) Personal Use. Any purchase of supplies or equipment by the City for the personal use of any officer or employee of the City is prohibited.

(d) Violation. Any violation of this Section by an officer or employee of the City shall be cause for disciplinary action, up to and including termination, in accordance with the disciplinary procedures of the City.

3A-06-170. Records.

All procurement records of the City shall be retained and disposed of in accordance with the Utah Government Records Access and Management Act, as adopted by the City.

3A-06-180. Violations.

Any purchase or contract executed in violation of the provisions of this Chapter or applicable State law shall be void as to the City, and any funds expended thereupon may be recovered by the City through appropriate action.

3A-06-190. Appeals.

(a) Appeal. Any person aggrieved of a determination of the Purchasing Agent or City Council in connection with the provisions of this Chapter may appeal the determination or action within ten (10) working days after the aggrieved person knows or should have known of the facts giving rise thereto by filing a written protest and the reasons therefor with the City Council. A protest with respect to an invitation for bids shall be submitted in writing prior to the opening of bids unless the aggrieved person did not know or could not have known of the facts giving rise to the protest prior to bid opening.

(b) Decision. The City Council shall promptly issue a written decision regarding any protest stating the reasons for the decision and informing the protestor of any right to judicial review as provided by law. A copy of the decision shall be provided to all parties.

(c) Settlement. The City Council shall have the authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve the protest.