

Title 6

PURCHASING AND CONTRACTS

Chapters:

6.04 Purpose and interpretation of chapter.

A. The purposes of this chapter are to:

1. Maximize the purchasing value of public funds;
2. Provide for a procurement system of quality and integrity;
3. Clearly define the authority for purchasing within the city organization; and
4. Establish consistent procurement principles for all departments of the city.

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6.04.22 Purpose and interpretation of chapter.

B. This chapter shall be construed and applied to promote the purposes stated in this section.

6.04.01 Definitions.

When used in this chapter, the following words and phrases shall have the meanings set forth in this section:

"Construction" means the on-site field surveying, erection, rehabilitation, alteration, extension or repair including painting or redecorating buildings, highways or other improvements to real property under contract for the city.

"Contract" includes all types of agreements, regardless of what they may be called, for the procurement of supplies, services or construction.

"Contract amendment" means any change in the terms of a contract accomplished by agreement of the parties, and includes a change order.

"Professional service" means a service which involves the exercise of discretion and independent judgment together with advanced or specialized knowledge, expertise or training gained by formal studies or experience, and includes without limitation a service provided by an engineer, architect, attorney or accountant.

"Service" means a contract performance whose principal element is not the furnishing of tangible or intangible property.

"Supplies" means tangible or intangible personal property.

6.04.02 Purchasing agent.

A. The City Manager or the City Manager's designee shall be the purchasing agent.

B. The purchasing agent shall have the following authority and responsibilities:

1. To procure all supplies, services and construction required by the city;
2. To sell, trade or otherwise dispose of surplus supplies belonging to the city;
3. To maintain all records pertaining to the procurement of supplies, services and construction, and the disposal of supplies, by the city;

4. To join with other units of government in cooperative purchasing ventures where the best interests of the city would be served thereby; and

5. Any other authority and responsibilities that this chapter assigns to the purchasing agent.

C. The City Manager may delegate a department head authority to act as purchasing agent for the awarding of contracts for supplies, services and construction for that department, under which the city is obligated to pay no more than five thousand dollars (\$5,000.00) and the contract price can be paid out of the department's budget.

6.04.03 Contracting authority.

The city may, pursuant to an award in accordance with this chapter, contract with any person to acquire any supplies, services or construction required by the city. Only persons authorized by this chapter have authority to contract on behalf of the city.

6.04.04 Contracts enforceable against city.

No contract for supplies, services or construction, or any amendment thereto, may be enforced against the city unless its terms have been approved in accordance with this chapter and unless the contract or amendment thereto has been set forth in writing executed in accordance with this chapter.

6.04.05 Availability of funds.

No contract for supplies, services or construction, or any amendment thereto that increases the contract price, may be approved or executed unless the finance director has certified that funds are available for the city's performance under the contract. Approval of contracts; report to Council.

A. The City Manager may execute a contract for supplies, services or construction under which the city is obligated to pay no more than forty thousand dollars (\$40,000.00) without Council

approval. The City Manager shall provide quarterly reports to the Council of all expenditures over ten thousand dollars (\$10,000.00).

B. No contract for supplies, services or construction under which the city is obligated to pay more than forty thousand dollars (\$40,000.00) may be executed unless the Council has approved a memorandum setting forth the following essential terms of the contract:

1. The identity of the contractor;

2. The contract price;

The nature and quantity of the performance that the city shall receive under

The contract;

3. The using department; and

4. The time for performance under the contract.

C. Notwithstanding subsection B of this section, the City Manager may execute a contract awarded as an emergency procurement under Section 6.04.14 without Council approval; provided, that the contract may not continue after the next regular Council meeting without Council approval.

D. Notwithstanding subsection B of this section, the City Manager is allowed to purchase or make payments for budgeted routine and ongoing contracts for public utility services without Council approval; provided, that the terms and conditions of service are determined by a tariff on file with a state or federal regulatory agency.

6.04.07 Execution of contracts.

All contracts for supplies, services and construction, and any amendments thereto, that oblige the city to pay five thousand dollars (\$5,000.00) or more shall be signed by the City Manager.

6.04.08 Contract amendments.

A. Contract amendments shall not be used to avoid procurement by the competitive procedures established under this chapter.

B. A contract amendment may not be executed unless the Council has approved a memorandum setting forth the changes to the essential terms of the contract if the amendment will cause the price of the contract, as amended, to exceed:

1. Forty thousand dollars (\$40,000.00); or

2. One hundred ten (10) percent of the original contract price or forty thousand one dollars (\$40,001.00), whichever is greater, if the original contract price exceeded forty thousand dollars (\$40,000.00).

C. As in subsection B above, no combination of contract amendments may be executed unless the Council has approved a memorandum setting forth the changes to the essential terms of the contract if the combination of amendments will cause the price of the contract, as amended in aggregate, to exceed:

1. Forty thousand dollars (\$40,000.00); or

2. One hundred ten (110) percent of the original contract price or forty thousand one dollars (\$40,001.00), whichever is greater, if the original contract price exceeded forty thousand dollars (\$40,000.00).

6.04.09 Competitive sealed bidding required; exceptions.

A. Except as this section provides otherwise, all city contracts for supplies, services and construction shall be awarded by competitive sealed bidding under the procedure in Section 6.04.10

B. In addition to awarding contracts by competitive sealed bidding, the city may award a contract:

1. By competitive sealed proposals under the procedure in Section 6.04.10, where

authorized by that section;

2. By limited competition under the procedure in Section 6.04.12, where authorized by that section,

3. To a sole source supplier as authorized by Section 6.04.13,

5. Under an expedited procurement procedure in the event of an emergency, as authorized by Section 6.004.14;

Under the procedure prescribed by the source of funding for the contract;

6. For professional services without competition in an amount not to exceed fifty thousand dollars (\$50,000.00);

7. Under which the city is obligated to pay no more than ten thousand dollars (\$10,000.00), without competition;

8. To a vendor under the terms of a contract awarded to that vendor under a competitive bidding procedure by the government of the United States, the state of Alaska or another state, or an agency, instrumentality or political subdivision of them.

6.04.10 Competitive sealed bidding.

A. The purchasing agent shall initiate competitive sealed bidding by issuing an invitation for bids. The invitation for bids shall state, or incorporate by reference, all specifications and contractual terms and conditions applicable to the procurement.

B. The purchasing agent shall give public notice of the invitation for bids at least fourteen (14) days before the last day on which bids will be accepted, by publication in a newspaper of general circulation in the city, and posting in a location at the city offices that the City Manager designates for this purpose. The contents of the notice shall be sufficient to inform interested readers of the general nature of the supplies, services or construction being procured, where to obtain a copy of the invitation to bid, and the procedure for submitting a bid.

C. The terms of an invitation for bids may be modified or interpreted only by written addendum issued by the purchasing agent. Each addendum to an invitation for bids shall be sent to each recipient of the invitation for bids. A bid is responsive only if it acknowledges receipt of all addenda to the invitation for bids.

D. The city shall not accept bids that are received after the time for receipt of bids stated in the invitation for bids. A timely bid is subject to unconditional acceptance without alteration or correction, except that:

1. A bidder may withdraw a bid before the time for receipt of bids;

2. After the time for receipt of bids, the city, in its discretion, may permit a bidder to correct an error in a bid that is apparent from examination of the bid document.

E. Bids shall be opened publicly at the time and place designated in the invitation for bids. The purchasing agent shall tabulate the amount of each bid and shall record such other information as may be appropriate for evaluation, together with the name of each bidder. The tabulation shall be open to public inspection, and a copy of the tabulation shall be furnished to each bidder.

F. If the lowest responsive and responsible bid exceeds the amount of funds certified by the finance director to be available for the procurement, and if sufficient additional funds are not made available, the scope of the procurement may be reduced to bring its estimated cost within the amount of available funds. The purchasing agent shall issue a new invitation for bids for the reduced procurement, or, upon a finding that the efficient operation of the city government requires that the contract be awarded without delay, he may negotiate with one or more of the lowest responsive and responsible bidders. The city may award the reduced contract to the bidder that agrees to the best negotiated terms.

6.04.11 Competitive sealed proposals; negotiated procurement.

A. The purchasing agent may procure supplies, services or construction by competitive sealed proposals under this section, if the purchasing agent determines that it is not practicable to develop sufficiently detailed contract terms or specification for procurement by competitive

sealed bidding, or that either vendor qualifications or the means and methods that a vendor will use are material to vendor selection.

B. The purchasing agent 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 subsection 6.04.09.

C. The terms of a request for proposals may be modified or interpreted only by written addendum issued by the purchasing agent. Each addendum to a request for proposals shall be sent to each recipient of the request for proposals. A proposal is responsive only if it acknowledges receipt of all addenda to the request for proposals.

D. The city shall not accept proposals that are received after the time for receipt of proposals stated in the request for proposals. A timely proposal is subject to unconditional acceptance without alteration or correction, except that:

1. A proposer may withdraw a proposal before the time for receipt of proposals.
2. After the time for receipt of proposals, the city, in its discretion, may permit a proposer to correct an error in a proposal that is apparent from examination of the proposal document.

E. The city shall evaluate each proposal submitted by a responsible proposer under the criteria set forth in the request for proposals. The purchasing agent may award a contract to the responsible proposer that the city determines has submitted the best proposal, or the purchasing agent may negotiate final contract terms with one or more responsible proposers that the city determines have submitted the most responsive proposals. Such negotiations may include solicitation from proposers of best and final offers. The purchasing agent shall provide all proposers that are selected to participate in negotiations with an equal opportunity to discuss and revise proposals. In conducting negotiations or requesting revisions, neither the purchasing agent nor any other city officer or employee shall disclose any information derived from competing proposals. After conducting negotiations, the purchasing agent shall award the contract to the highest ranked proposer deemed eligible for negotiations that agrees to contract terms acceptable to the city.

F. The contents of a proposal shall not be disclosed to any competing proposer until the purchasing agent has issued a written notice of intent to award to all responding proposers. After the issuance of the notice of intent to award, the proposal selected for award shall be open to public inspection.

6.04.12 Limited competition procurement.

A. The purchasing agent may procure supplies, services and construction having an estimated value not exceeding fifty thousand dollars (\$50,000) by soliciting bids or proposals from a limited number of potential contractors under this section.

B. The purchasing agent will identify vendors that are qualified and available to provide the supplies, services or construction, and solicit bids or proposals from at least three vendors or from all vendors if there are no more than three. The solicitation must be in writing and shall be in a form reasonably calculated to yield the lowest responsive bid by a responsible bidder. In soliciting bids or proposals, the purchasing agent shall allow each vendor that submits a bid an equal opportunity to negotiate price, delivery schedule and terms.

C. The purchasing agent shall award the contract to the lowest responsive and responsible bidder. The purchasing agent shall keep a record of all solicitations of bids under this section, the bids received, and the awards made thereon.

6.04.13 Sole source procurement.

The purchasing agent may award a contract for supplies, services or construction without competition where the purchasing agent determines in writing that the city's requirements reasonably limit the source for the supplies, services or construction to one vendor.

6.04.14 Emergency procurement.

The purchasing agent may award a contract for supplies, services or construction without competition, formal advertising or other formal procedure where the City Manager determines in writing that an emergency threatening the public health, safety or welfare requires that the contract be awarded without delay. Whenever possible, emergency procurement contracts should not obligate the city to perform beyond the next regularly-scheduled Council meeting.

6.04.15 Award to responsible bidder or proposer.

A. A contract award under this chapter shall be made only to a responsible bidder or proposer. The purchasing agent shall determine whether a bidder or proposer is responsible on the basis of the following criteria:

1. The skill and experience demonstrated by the bidder or proposer in performing contracts of a similar nature;
2. The bidder's or proposer's record for honesty and integrity;
3. The bidder's or proposer's capacity to perform in terms of facilities, personnel and financing; The bidder's or proposer's past performance under city contracts. If the bidder or proposer has failed in any material way to perform its obligations under any contract with the city, the bidder or proposer may be deemed not responsible.

6.04.16 Rejection of bids or proposals.

If the City Manager or Council determines that it is in the best interest of the city to do so, the city may reject all bids.

6.04.17 Bonds.

A. The purchasing agent may require that each vendor that submits a bid or proposal for a procurement accompany its bid or proposal with a bid bond in an amount and in a form acceptable to the purchasing officer. The bid bond shall secure the obligation of the vendor to enter into a contract if the city accepts its bid or proposal. The bid bond shall be issued by a company qualified by law to do business as a surety in the state, or shall be in the form of a cash deposit.

B. The purchasing agent may require in an invitation for bids or request for proposals that the successful bidder or proposer provide a performance and payment bond as a condition to entering into a contract with the city. The performance and payment bond shall secure the performance under the contract, and payment for all labor and materials provided under the contract. The bond shall be in the amount and form specified in the invitation for bids or request for proposals, and shall be issued by a company qualified by law to do business as a surety in the state, or shall be in the form of a cash deposit.

6.04.18 Local vendor preference.

A. The city may specify in an invitation for bids or request for proposals that it will reduce the bid or proposal price of a local vendor by five (5) percent for purposes of bid or proposal evaluation.

B. If the city has specified that an invitation for bids or request for proposals is subject to the local vendor preference authorized by subsection A of this section, the city will reduce the price bid or proposed by each local vendor by five (5) percent before evaluating bid or proposal prices

for purposes of contract award. The reduction authorized by this subsection is applied only for bid or proposal evaluation, and is not applied to the awarded contract price.

C. A local vendor is a person who:

1. Holds current Alaska and City of Seldovia business licenses;
2. Submits a bid or proposal under the name which appears on its current Alaska and City of Seldovia business licenses; and
3. Has maintained a place of business within the city, staffed by the vendor or an employee of the vendor, continuously for a period of at least twelve months immediately preceding the date of submission of the bid or proposal.

6.04.19 Ethics of contracting and purchasing.

A. All city purchases and contracts shall be made solely for the public benefit of the city. In accordance with this policy:

1. A city officer or employee who has a direct or indirect financial interest in any bid or proposal for a city contract shall disclose that interest by filing a written notice of the interest with the clerk not less than ten (10) days before submission of the bid or proposal in which the officer or employee has an interest. The clerk shall post the written notice at the place maintained for the posting of public notices at city hall.
2. No city officer or employee who has a direct or indirect financial interest in any bid or proposal for a city contract may participate in the city's decision to award the contract.
3. No city officer or employee may solicit or receive any form of compensation from any party other than the city in connection with the awarding of a city contract.

B. A city officer or employee who willfully violates subsection A of this section is guilty of malfeasance in office, and shall forfeit office with the city.

C. If the contracting party is aware, or reasonably should have been aware, that the contract was entered into in violation of subsection A of this section the contract is voidable by the Council.

6.04.20 Federal or state assistance.

If a procurement involves the expenditure of federal or state funds and there is a conflict between a provision of this section and a federal or state statute pertaining to the expenditure of the funds, the federal or state statute shall prevail. If there is a conflict between the federal and state statutes pertaining to the expenditure of the funds, the federal statute shall prevail.

6.04.21 Violations of tax ordinances.

1. The city may decline, in the city's interest, to award a contract to any business or individual who is delinquent with respect to city property and sales taxes. The delinquency of the taxpayer and the determination of the city's interest are left to the exclusive discretion of the city.

2. Any contract may be terminated for cause if it is determined that the individual or business is in violation of any taxation ordinance of the city and if such violation is not cured within ten days of notification by regular mail. If the delinquency arises due to non-filing of sales tax, no payment will be made to the individual or business until all filings have been made and all amounts due are remitted. If the delinquency arises out of a good-faith dispute as to the amount of tax owed, the taxpayer has paid the amount not in dispute and has a reasonable basis for the dispute the city shall not terminate a contract until a final determination of the amount of tax owed is made. The city, at its sole discretion, may withhold payment under the contract up to the amount of the delinquent taxes.

3. The city reserves any right it may have to set off amounts owed by its vendors for delinquent city taxes against any amount owing to the vendor(s) under a contract between the city and the vendor(s).

