

## **Chapter 2.80 PROCUREMENT POLICY**

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### **2.80.010 Purpose.**

The purpose of this chapter is to:

- A. Establish consistent procurement principles for all agencies of the city;
- B. Maximize to the fullest extent practicable the purchasing value of city funds;
- C. Clearly define authority for the purchasing function within the city organization; and
- D. Encourage local industry, strengthen and stabilize the economy, decrease unemployment, and strengthen the tax and revenue base of the city. (Ord. 12-09 § 1 (part); Ord. 09-05 § 1 (part); Ord. 93-19 § 1: prior code § 20-1)

### **2.80.020 Definitions.**

As used in this chapter:

“Bid” means any response to a public solicitation for the purpose of acquiring goods or services that provides an opportunity for qualified vendors to compete, either monetarily or based on other predetermined criteria.

“Construction” means the on-site erection, alteration, extension, repair, improvement or demolition of any public structure, building, facility, road or highway, or other improvements of any kind to any public real property. This includes painting and redecorating of structures, buildings or real property, but does not include routine operation, minor repair or maintenance.

“Contract” means all types of city agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, professional services or construction services.

“Contract amendment” means any change or modification in the terms of a contract accomplished by agreement of the parties, including change orders.

“Contractor” means the person or firm who has entered into a binding contract or agreement with the city to provide supplies, services, professional services, construction or disposal of surplus supplies.

“Contractual services” means services performed for the city by persons not in the employment of the city and may include the use of equipment or the furnishing of commodities in connection with such services under express or implied contract. Contractual services shall include travel; freight; express; parcel post; postage; telephone; telegraph; utilities; rents; printing and binding; repairs; alterations and maintenance of buildings, equipment, streets, bridges and other physical facilities of the city; and other services performed for the city by persons not in the employment of the city.

“Crisis” means an unanticipated event or set of circumstances that requires immediate action to avoid threats to life or property or to avoid an immediate, significant liability to the city.

“Local bidder” means:

1. For a period of eighteen consecutive months immediately prior to the opening of a competitive city bid for which the bidder wishes to utilize the local bidder preference:
  - a. if the bidder is a corporation or limited liability company, the bidder’s primary business address has a City of Valdez postal zip code, as reflected on the bidder’s State of Alaska business license or the records of the State of Alaska, Department of Commerce, Community, and Economic Development, Division of Corporations;
  - b. if the bidder is an individual, the bidder’s primary business or residential address has a City of Valdez postal zip code, as reflected on the Bidder’s State of Alaska business license;
  - c. if the bidder is a general partnership, a limited partnership, or a joint venture, at least one of the general partners has a postal zip code compliant with subsection 1.a or 1.b above.
2. The bidder is not delinquent in the payment of any taxes, fees, assessments, or other charges owing the city.

“Person” means an individual, group of individuals, business, entity, nonbusiness association, other governmental entity, or advisory board created by the city.

“Procurement” means buying, purchasing, renting, leasing or otherwise acquiring supplies, services, professional services or construction services, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

“Professional services” means all advisory, consulting, technical, research or other services, such as architectural, engineering, land surveying, legal and financial, which involve the

exercise of discretion and independent judgment together with an advanced or specialized knowledge, expertise or training gained by formal studies or experience.

“Supplies” means any tangible personal property or consumables. (Ord. 12-09 § 1 (part): Ord. 10-04 § 1 (part): Ord. 09-05 § 1 (part): Ord. 93-19 § 2; prior code § 20-2)

**2.80.030 Manner of making procurements generally.**

A. The procurement of all supplies, materials, equipment and contractual services for the offices, departments and agencies of the city government shall be made by the city manager or by other personnel in accordance with purchase authorizations issued by the city manager.

B. All provisions of this chapter are subject to, and subordinate to, procurement requirements of the state or federal government when state or federal grant revenues are used. (Ord. 12-09 § 1 (part): Ord. 09-05 § 1 (part): prior code § 20-3)

**2.80.040 Approval of city council required—Procurements.**

Every contract for, or procurement of, budgeted supplies, materials, equipment or contractual services for more than forty thousand dollars shall require the approval of the city council. (Ord. 12-09 § 1 (part): Ord. 09-05 § 1 (part): prior code § 20-4)

**2.80.045 Emergency procurements.**

The provisions of this chapter may be waived during times of emergency or disaster when operating under a declaration of emergency issued by the mayor. The city manager or authorized successor shall have the responsibility to protect the interest of the city consistent with prudent and appropriate emergency responses. All provisions of this chapter waived while operating under a declaration of emergency shall be reported to the city council as soon as practicable. (Ord. 12-09 § 1 (part): Ord. 09-05 § 1 (part))

**2.80.050 Approval of city council required—Change orders.**

A. A proposed modification or change order to an existing city contract shall require the approval of the city council when the change order increases the contract amount by forty thousand dollars or more.

B. The council shall be advised at its next regular meeting of any modification or change order to an existing city contract that did not require council approval if such modification or change order is in excess of fifteen thousand dollars.

C. Modifications and change orders shall not be arbitrarily divided into smaller amounts to avoid council approval thereof.

D. Notwithstanding any of the foregoing provisions of this section, the city may make modifications or change orders in any city contract without council approval where in the

judgment of the city manager a crisis as defined in Section 2.80.020 exists which requires immediate action to remedy and where there is insufficient time or it is impractical to obtain council approval. Such crisis modifications or change orders shall be presented to the council no later than its next regular meeting. (Ord. 12-09 § 1 (part): Ord. 09-05 § 1 (part): Ord. 03-02 § 1; Ord. 99-18 § 1; prior code § 20-4.1)

**2.80.060 Competitive procurement procedure.**

- A. Before the procurement of, or contract for, supplies, materials, equipment or contractual services in an amount of forty thousand dollars or less is made, except as otherwise provided in this chapter, the city procurement authority shall attempt to submit to at least three persons dealing in and able to supply the same a request for quotation (or invitation to bid) and specifications to give them opportunity to bid. In the event that three suppliers cannot reasonably be found, fewer may be used when it is deemed to be in the best interest of the city.
- B. For procurement of, or contract for, supplies, materials, equipment or contractual services in an amount greater than forty thousand dollars, an invitation to bid will be published in a newspaper of general circulation within the city. In lieu of the foregoing, if items and/or services being procured are not available from a source within the city, the invitation to bid will be published in a newspaper or other publication circulated to reach prospective bidders. Requests for bids, quotations, qualifications, and/or proposals shall be made both inside and outside the city when this may be necessary to create competitive conditions, or when a savings can be made for the city. The city may repeatedly reject all solicitations, and again may submit to the same or other persons the request for solicitation, or again publish notice of the proposed purchase.
- C. The city shall procure from the supplier or contractor whose offer is most advantageous to the city. This determination does not have to only consider price, but may also account for quality, date of delivery, or any other factor(s) deemed relevant by the city manager to the particular procurement.
- D. Except where prohibited by state or federal grant requirements, a local bidder, as defined in Section 2.80.020, may be given consideration as low bidder where the offer is the lesser of ten percent or fifty thousand dollars in excess of the lowest offer received from a bidder having its place of business located outside the city. The city may split the award between two or more suppliers in any manner the city deems to be in its best interest.
- E. Procurement of, or contract for, supplies, materials, equipment, contractual services, or capital projects that could be subject to potential future grant reimbursements may be restricted to the procurement requirements of such grants as understood at the time of procurement. (Ord.

14-01 § 1: Ord. 12-09 § 1 (part): Ord. 10-04 § 1 (part): Ord. 09-05 § 1 (part): Ord. 05-04 § 1: Ord. 93-19 § 3; prior code § 20-5)

**2.80.070 Open market purchases/procurements.**

The following may be purchased without competitive bidding:

- A. Supplies, materials, equipment or contractual services when combined cost does not exceed five thousand dollars in a single transaction;
- B. Supplies, materials, equipment or contractual services which can only be furnished by a single dealer, or which has a uniform price wherever bought;
- C. Supplies, materials, equipment or contractual services procured from another unit of government at a price deemed below that obtainable from private dealers, including war surplus;
- D. Contractual services procured from a public utility corporation at a price or rate determined by state or other government authority;
- E. Contractual services of a professional nature, such as medical services, or insurance policies whose nature demands immediate action;
- F. Supplies, materials or equipment which cannot be procured locally and which can be procured from a source selected by another unit of government pursuant to competitive bidding procedures to provide the same or similar supplies, materials or equipment if:
  - 1. The award was made by the governmental unit; and
  - 2. The item(s) can be procured at the same price plus additional freight or delivery charges if applicable;
- G. The local supplier preference set forth in Section 2.80.060(D) may be applied by the city to purchases made under this section;
- H. Professional services, provided that the procedures set forth in Section 2.80.75 are followed.. (Ord. 12-09 § 1 (part): Ord. 09-05 § 1 (part): Ord. 96-03 § 1: prior code § 20-6)

**2.80.075 Professional services.**

- A. Due to the nature of professional services, it is in the best interest of the city to use a qualitative selection process when in need of these services.
  - 1. For professional services estimated by the city manager to be one hundred thousand dollars or less, direct solicitation of contractors or consultants may be made from a roster maintained by the city, or to such other vendors who may be known to the city as possessing the required expertise. These solicitations will seek to evaluate the qualifications, experience, and availability of particular vendors. When more than one vendor is considered, the city

manager will appoint a selection panel to evaluate the potential vendors and offer a recommendation for selection.

2. For professional services estimated by the city manager to be more than one hundred thousand dollars, a formal request for qualifications will be solicited, except as provided below. Public notice of requests for qualifications will be given in accordance with the same procedures used to advertise competitive bids. The city manager will develop and publish qualitative selection criteria for evaluating all responses to requests for qualifications received. In multi-phase projects the city may contract with a professional services provider that has provided professional services in an earlier phase of the same project, without the solicitation of formal request for qualifications, in order to maintain project continuity or to otherwise promote the best interest of the city.

B. The provisions of Sections 2.80.040 and 2.80.050 apply to all professional services contracts. (Ord. 12-09 § 1 (part); Ord. 09-05 § 1 (part))

**2.80.080 Contractor bonding requirements.**

A. Before a contract exceeding one hundred thousand dollars for the construction, alteration, or repair of a public building or public work is awarded to a general or specialty contractor, the contractor shall furnish to the city the following bonds, which become binding upon the award of the contract to that contractor:

1. A performance bond with a corporate surety qualified to do business in the state, or at least two individual sureties who shall each justify in a sum equal to the amount of the bond; the amount of the performance bond shall be equivalent to the amount of the payment bond.

2. A labor and materials payment bond with a corporate surety qualified to do business in the state, or at least two individual sureties who shall each justify in a sum equal to the amount of the bond, for the protection of all persons who supply labor and material in the prosecution of the work provided for in the contract. When the total amount payable by the terms of the contract is not more than one million dollars, the labor and materials payment bond shall be in a sum of one-half the total amount payable by the terms of the contract; when the total amount payable by the terms of the contract is more than one million dollars and not more than five million dollars, the labor and materials payment bond shall be in a sum of forty percent of the total amount payable by the terms of the contract; when the total amount payable by the terms of the contract is more than five million dollars, the labor and materials payment bond shall be in the sum of two million five hundred thousand dollars.

B. The city hereby exercises its option to exempt contractors from compliance with the provisions of subsection A of this section and AS 36.25.010(a) if the estimated cost of the project does not exceed four hundred thousand dollars and:

1. The contractor is, and for two years immediately preceding the award of the contract has been, a licensed contractor having its principal office in the state;
2. The contractor certifies that it has not defaulted on a contract awarded to the contractor during the period of three years preceding the award of a contract for which a bid is submitted;
3. The contractor submits a financial statement, prepared within a period of nine months preceding the submission of a bid for the contract and certified by a public accountant or a certified public accountant licensed under AS 08.04, demonstrating that the contractor has a net worth of not less than twenty percent of the amount of the contract for which the bid is submitted;
4. The total amount of all contracts that the contractor anticipates performing during the term of performance of the contract for which a bid is submitted does not exceed the net worth of the contractor reported in the certified financial statement prepared and submitted under subsection (B)(3) of this section by more than seven times. (Ord. 12-09 § 1 (part); Ord. 09-05 § 1 (part); prior code § 20-7)

**2.80.090 Award of contract for competitively bid procurements.**

Contracts awarded through a competitive bid process shall be awarded to the lowest responsible bidder. In determining "lowest responsible bidder," in addition to price, there shall be considered:

- A. The ability, capacity and skill of the bidder to perform the contract;
- B. Whether the bidder can perform the contract within the time specified, without delay or interference;
- C. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- D. The quality of performance by the bidder of previous contracts;
- E. The previous and existing compliance by the bidder with laws and ordinances relating to the contract;
- F. The sufficiency of the financial resources and ability of the bidder to perform the contract;
- G. The number and scope of conditions attached to the bid. (Ord. 12-09 § 1 (part); Ord. 09-05 § 1 (part); Ord. 05-04 § 2; Ord. 93-19 §§ 4, 5; prior code § 20-8)