

ORDINANCE # 18-07

AN ORDINANCE AMENDING THE REVISED ORDINANCES OF SANDY CITY TITLE 11, "PURCHASING PROCEDURES;" ALSO PROVIDING A SAVING CLAUSE FOR THE ORDINANCE AND AN EFFECTIVE DATE.

WHEREAS, it is necessary to amend the Revised Ordinances of Sandy City Title 11, "Purchasing Procedures"; and

WHEREAS, Section 10-8-84, Utah Code Annotated, authorizes such amendment in order to protect the public health, safety and welfare of the City;

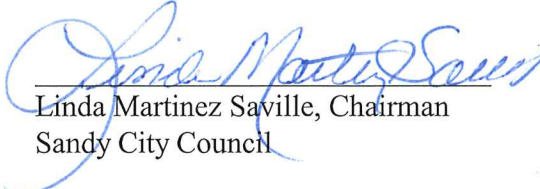
NOW, THEREFORE, BE IT ORDAINED by the City Council of Sandy City as follows:

Section 1. Amendment. Title 11 of the Revised Ordinances of Sandy City is hereby amended as set forth in **Exhibit "A"** which is attached to and incorporated in this ordinance. All former ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinance or of the Code hereby adopted are hereby repealed.

Section 2. Severable. The provisions of this ordinance shall be severable; and if any provision thereof, or the application of such provision under any circumstances is held invalid, it shall not affect any other provision of this ordinance, or the application in a different circumstance.

Section 3. Effective. This ordinance shall become effective upon publication of a summary thereof and the City Recorder is hereby directed to publish such summary as soon as practically possible.

PASSED AND APPROVED by the Sandy City Council this 13th day of March, 2018.


Linda Martinez Saville, Chairman
Sandy City Council

PRESENTED to the Mayor this 16th day of March, 2018.

APPROVED by the Mayor this 16th day of March, 2018.



Kurt Bradburn, Mayor

ATTEST:



City Recorder



RECORDED this 19th day of March, 2018.

SUMMARY PUBLISHED this 20th day of March, 2018.

EXHIBIT "A"

**TITLE 11
PURCHASING PROCEDURES**

Chapter 1 PURCHASING

11-1-1. Purpose.

The underlying purposes of this ordinance are:

- (a) To provide for the economy, efficiency, and to encourage competition in City procurement activities.
- (b) To procure the best services, materials and construction at the most reasonable cost to the City.
- (c) To provide fair treatment of persons who conduct business or wish to do business with the City.

Nothing in this statement of purposes shall create rights, interests, or causes of action against the City, its officers, agents or employees. Failure to follow the procedures set out herein shall not invalidate a procurement unless otherwise provided by law.

11-1-2. Definitions.

As used in this chapter:

"Business day" means a day when Sandy City administration offices are open for public business.

"City" means Sandy City Corporation.

"City Purchasing Agent" or "Purchasing Agent" means the purchasing agent or assistants whose duties include procurements of goods and services for the entire City.

"Department Buyer" means the person or persons charged by a City department head to make procurements for that department.

"Emergency" means an imminent threat to the public's health, welfare, safety or of an imminent and substantial risk of injury or loss to property under conditions which reasonably do not permit fulfilling all of the purchasing requirements provided for in this chapter.

"Item" means goods, services, or a combination of both, of one type.

"Professional services" includes, but is not limited to the following services: medical diagnosis or treatment; veterinary; psychological or emotional diagnosis, testing, analysis, counseling or treatment; auditing; banking; insurance; bonding; risk management; engineering; architectural; legal; public surveying and statistical analysis; hazardous substance consulting and disposal; construction management; tax consulting; financial investment; appraisal; title research; geology consulting; hydrology; history; technical writing; seismic consulting; impresarios, producers, directors, music conductors, choreographers, authors, artists, and other artistic services; and other consulting services which require a high level of training, skill and special knowledge not common among lay people.

"Provider" means a person who offers or provides goods, services, or a combination of both to the City under contract.

11-1-3. Purchasing Agent, Specifications.

The City may appoint a Purchasing Agent whose duties shall be defined by the City Administrator and the Finance Director. Those duties may include: procurement, soliciting bids and proposals, negotiating, recommending and administering contracts, advising departments on procurements, maintaining a bidders' list, vendors' catalogue files, and records needed for the efficient operation of his or her duties, making written determinations for the City, and the development and maintenance of forms as are reasonably needed for the purposes of this chapter, supervise the inspection of supplies and equipment. The Purchasing Agent may recommend rules and regulations to govern matters covered by this ordinance, including, but not limited to protests and appeals, the preparation, maintenance, and content of specifications for supplies, services and construction required by the City. One or more assistants may be employed to assist the City Purchasing Agent in performing his or her duties.

11-1-4. Specifications.

The City may prepare specifications for the purchase of goods, services and construction which contain information and detail which seeks to promote the purposes of this Chapter 11-1. The specifications shall be maintained for the period of time required by law. The Purchasing Agent may, in addition, promulgate rules and regulations to govern the preparation, maintenance, and content of specifications for supplies, services and construction required by the City for the purposes set out in this Section.

11-1-5. Scope.

(a) *Superior or More Suitable Products.* Whenever the requisitioning department head or his or her designated representative finds in a signed memorandum a copy of which shall be sent to the Purchasing Agent and the City Administrator, that a particular product significantly surpasses competing products in terms of quality, serviceability or longevity, or that such a product is better suited to the needs of the City in order to lower costs of inventory, to maintain compatibility with City equipment, or because doing so will lower the costs of service or

procurements, such a product may be procured notwithstanding the fact that a competing product could be procured at a lower cost.

(b) State or Federal Purchasing Prices. The City need not solicit competitive bids or proposals when making procurements through cooperative purchasing contracts administered by the State Division of Purchasing, or an agency of the Federal government, the benefits of which are also available to the City.

(c) Cooperative Procurements. The City may join with other units of Federal, State or local government, or with special districts, school districts, and such other similar agencies as the City Council may by resolution direct, in purchasing goods and services. In such cases the City is encouraged, but is not required to follow a competitive bidding process or request for proposals where that would be required if the service or goods were procured by the City alone. Notwithstanding the foregoing, purchases shall be made in accordance with State law, such as Section ~~40-7-20~~ 11-39-103, Utah Code Annotated, regarding contracts for new public improvements construction costs where the estimated cost exceeds \$2540,000.

(d) Goods \$2,000 or Less - No Bids. City procurements of goods and services reasonably expected to cost \$2,000 or less do not require the solicitation of bids or proposals, although bids may be solicited orally or otherwise if desired. Procurements under this subsection may be made by cash payment, but in such cases the procurer should obtain a receipt for the payment.

(e) Goods and Services Costing \$2,001 to \$5,000- Three Oral Quotes. Procurements of goods and services reasonably expected to cost more than \$2,001 but not more than \$5,000 in total shall require three telephone, oral, or written quotes for prices from proposed vendors of goods or services. The Purchasing Agent or Department Buyer shall make a signed written record of quotes and reasonably detailed product or service information about each of them, sufficient to compare and make a reasonably informed choice from among the vendors who make offers or bids, including the name of the vendor, the vendor's address, telephone number, and the price quoted. Procurements within this subsection (e) shall be made by purchase order unless made by written contract. In the event three vendors willing to provide quotes cannot reasonably be obtained, then the Purchasing Agent or Department Buyer shall make a signed written record of quotes and product and service information about each vendor willing to provide quotes, and a record of efforts to obtain other quotes. The decision about which vendor to choose for the services or goods shall be made based upon the information submitted. The Purchasing Agent or Department Buyer may allow a person who has prepared or helped to prepare specifications for use in a City procurement to bid or submit a proposal for the procurement if doing so is not unfair to other bidders or proponents, in the reasonable discretion of the Purchasing Agent or Department Buyer; otherwise, such person shall not be allowed to bid or submit a proposal.

(f) Goods and Services Costing \$5,001 to \$2540,000 - Three Written Bids. Procurements of goods and services reasonably expected to cost more than \$5,001 but not more than \$2540,000 in total shall require the receipt of three bids or proposals in writing unless three vendors willing to submit such bids or proposals cannot reasonably be obtained. In the event three vendors willing to provide quotes cannot reasonably be obtained, then the Purchasing Agent or Department Buyer shall make a signed written record of quotes and product and service information about each vendor willing to provide quotes, and a record of efforts to obtain other quotes. Procurements within this subsection 11-1-5(f) shall be made by purchase order unless made by written contract.

(g) *May Use Formal Bidding Requirements.* All formal bidding and requests for proposals shall be issued by the City Purchasing Agent or his or her assistants. The requirements contained herein are minimal requirements, and nothing in this section shall prevent the Purchasing Agent, the City Council, Mayor or the City Administrator may require that the procurement of services, supplies, materials or equipment be competitively bid or that competitive offers be solicited in cases that otherwise would not so require if it is determined that such action to be in the best interest of the City.

11-1-6. Exceptions.

The competitive purchasing requirements of this chapter need not be followed in the following circumstances. In such cases, written documentation should be made demonstrating that a procurement falls within one of the following provisions of this section.

(a) *Grant, Gift, Bequest.* In complying with the terms and conditions of any grant, gift, or bequest to the City, or to one of the City's departments or subdivisions, committees, or a community organization which functions under City auspices if such action is approved by the City Council and is otherwise consistent with law.

(b) *Federal or State Assistance.* When a procurement involves the expenditure of federal or State assistance funds, and to the extent that doing so requires that federal or State law or regulations be followed rather than City ordinances.

(1) *Suspension and Debarment Certification.* For subrecipients and contractors receiving \$~~2540~~,000 or more in federal funds from the City, request-for-bid or proposal documents will contain language notifying bidders or proponents of federal or State suspension and debarment requirements, which shall be provided in forms by which bidders or proponents can certify their status. At time of bid, bidders or proponents will be required to certify their suspension and debarment status as a mandatory element of their bids or proposals.

(2) *System for Award Management (sam.gov).* Purchases in excess of \$~~2540~~,000 in federal funds where bidding is not required (i.e., in State contracts, or where disbursements exceed \$~~2540~~,000 on existing contracts) the Purchasing Agent or the Department Buyer shall not award contracts or orders to persons suspended or debarred by the United States government, which shall be determined by checking the federal suspension and debarment website (currently, sam.gov) for a favorable suspension and debarment status for such persons before a bid or proposal is awarded, an order is placed, or a contract for goods or services with such person is signed.

(3) *Supporting Documentation.* Supporting documentation relating to suspension and debarment status shall be kept by the Purchasing Agent and/or the Department Buyer pursuant to federal, State and City laws and regulations.

(c) *Emergency Procurements.* Notwithstanding any other provision of this chapter, procurements may be made in emergencies by the Purchasing Agent, a department head, or a designee of either in instances in which the procurement could not reasonably have been made pursuant to this chapter, provided that procurements shall be made with as much competition as practicable under the circumstances. Promptly thereafter the department head of the department which made the procurement shall provide a signed written statement to the City Purchasing Agent

setting out in reasonable detail the item procurement, the price, and cause and basis for the emergency and why the procedures set out in this chapter were not followed. A copy of the statement shall be included in the contract file.

(d) *Single-Source Provider.* Procurements of products, services or construction items available only from a single provider. The Mayor, City Administrator, Department head or the Purchasing Agent shall find in writing that there is only one source for the item or service.

(e) *Compatibility, Parts, Training.* Procurements of equipment which, by reason of the training of City personnel who service such equipment, or which is an addition to or for the repair or maintenance of equipment owned by the City which may be more efficiently added to, repaired or maintained by a certain brand, person or firm.

(f) *Additional or Replacement Parts.* Equipment which, due to an inventory of replacement parts maintained by the City is compatible only with existing equipment owned, leased or used by the City, need not, where the department head or the Purchasing Agent finds in a signed writing that the City's interest is better served by so purchasing, procurement a different brand of such equipment.

(g) *Professional Services.* Contracts for professional services reasonably expected to cost more than \$5,07,500 for the services specifically set out in the contract shall be awarded at the discretion of the Mayor, or a person designated by the Mayor.

(1) *Criteria for Award.* Contracts for professional services shall be based on the evaluation of professional qualifications, service ability, cost of service, and other service-related criteria.

(2) *Manner of Selection.* Criteria for award of professional service contracts costing more than \$5,07,500 may be determined through one or more of the following methods:

- (A) Competitive bid;
- (B) Request for Proposals (RFP); or
- (C) Informal Survey.

(3) Where criteria for award of professional service contracts costing more than \$5,07,500 are determined through informal survey or through some lesser review, then award of the contract or its proposed award shall be disclosed in writing to the City Council by the department head or a person designated by the department head along with a reasonably detailed written summary of the findings of that survey.

(h) *Insufficient Bids.* Where fewer than three responses are made to a bid solicitation or request for proposals after reasonable efforts to obtain three or more bids or proposals, the Purchasing Agent or Department Buyer responsible for the purchase may, after making a signed writing setting out the circumstances thereof, a copy of which shall be placed in the contract file, make a purchase which in his or her reasonable discretion meets the purposes of this ordinance by purchasing in a manner which does not conform to the formal bidding or RFP process set out in this chapter.

(i) *City Council Determinations.* The City Council may authorize the procurement of supplies, equipment and services without complying with the provisions of this chapter when it determines that compliance with the procedure is not in the best interests of the City. A memo shall be placed in the file for the purchase setting out the reasons for doing not following the purchasing provisions which otherwise would apply.

(j) *Special Opportunity Purchases.* Where a substantial savings will be realized thereby in the purchase of goods or non-professional services costing more than \$2540,000, and provided that sufficient money has been appropriated for the purchase, a Department may avoid competitive bidding or the RFP requirements set out in Section 11-1-8, by the following streamlined procedures, provided other applicable provisions of this Chapter are met before the purchase is made:

(1) It shall, in its reasonable discretion, obtain offers from competing sources in a manner most likely to meet the purposes of this Chapter; and

(2) The Department Head shall disclose the proposed purchase in a signed written memorandum to the Mayor and City Administrator, setting out in reasonable detail the reason the purchase is recommended, the reason normal purchasing procedures are not recommended, and the proposed savings, and what efforts have been made to obtain competitive offers; and

(3) The Mayor and City Administrator each agrees in a signed memorandum that he or she believes that the purchase is justified, and that the purposes of this Chapter will be met thereby.

11-1-7. Splitting Orders to Avoid Competitive Bidding Prohibited.

No person may split or separate into smaller orders the procurement of supplies, materials, equipment or services for the purpose of evading the competitive bidding or request for proposal provisions of this ordinance.

11-1-8. Formal Bidding Procedure.

The following procedures shall apply to the procurements of all materials, supplies, equipment, public improvements, and non-professional services which cost \$2540,000 or more, and may be used for professional services. All bids and requests for proposals shall be made by the City Purchasing Agent.

(a) *General.* The Purchasing Agent shall issue Invitations to Bid or Requests for Proposals for materials, supplies, equipment, services, insurance, public contracts, and other items required for the City.

(b) *Invitations to Bid.* An invitation to Bid shall describe the material, supplies, equipment, services or insurance with sufficient particularity to allow for competitive bidding and evaluation, and shall include a procurement description, and contractual terms and conditions applicable to the procurement.

(c) *Bid and Proposal Submissions.* Bidders must submit responsive Bids and Proposals on or before the bid closing to the Purchasing Agent to be eligible for consideration. The City Purchasing Agent may in his or her discretion consider a Bid or Proposal which was timely

submitted via a delivery medium which arrives after the bid closing, provided acceptance of the Bid or Proposal is reasonably determined by the Purchasing Agent to be in the best interests of the and there is no evidence or likelihood of collusion or fraud upon the procurement process. Formal Bids shall otherwise be opened at a public bid opening.

(1) Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and any other relevant information specified by rules and regulations, together with the name of each bidder, shall be recorded. The record and each bid shall be open to public inspection.

(2) Bids shall be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, except that criteria in determining responsible bidders contained in this chapter 11-1 need not be set forth in the invitation for bids. The Purchasing Agent shall attempt to make selections based on those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable. The criteria may include discounts, transportation costs, and total or life cycle costs.

(3) Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted in the interest of the City in the reasonable discretion of the Purchasing Agent in consultation with a representative of the interested City department. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the City or to fair competition shall be permitted. Except as otherwise provided by this chapter, or rules and regulations, all decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes by a provider shall be supported by a written determination made by the Purchasing Agent.

(d) Award Under Invitation to Bid. Contracts for procurement under an Invitation to Bid shall be awarded with reasonable promptness by written notice to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids. Determinations may be based on one or more or any combination of factors which will serve to meet City requirements at the best economic advantage to the City including but not limited to: unit cost, life cycle cost, economic cost analysis, operating efficiency, warranty and quality, compatibility with existing equipment, maintenance costs (to include consideration for the cost associated with proprietary invention), experience and responsibility of bidder. In the event all bids for a construction project exceed available funds as certified by the appropriate fiscal officer, and the low responsive and responsible bid does not exceed such funds by more than 5%, the chief procurement officer or the head of a purchasing agency is authorized, in situations where time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds.

(e) *Two-Step Awards.* When it is considered impractical to prepare initially a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

(f) *Lowest Responsible Bidder.*

(1) In determining lowest responsible bidder, the Purchasing Agent may in his or her discretion consider one or more of the following criteria, which may be included as purchase criteria in the invitation for bids:

- (A) The quality of supplies offered;
- (B) The ability, capacity and skill of the bidder to perform the contract or provide the supplies or service required;
- (C) Whether the bidder can perform the contract or provide the supplies promptly, or within the time specified, without delay or interference;
- (D) The sufficiency of the bidder's financial resources and the effect thereof on his ability to perform the contract or provide the suppliers or services;
- (E) The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- (F) The quality of bidder's performance on previous orders or contracts for the City or others;
- (G) Litigation or claims by the bidder without substantial basis;
- (H) Any previous or existing noncompliance by the bidder with laws and ordinances relating to the subject of the contract;
- (I) The ability of the bidder to provide future maintenance and service, where such maintenance and service is essential; and
- (K) Price.

(2) Determination of nonresponsibility of a bidder, or written determination of nonresponsibility of a bidder or offeror shall be made in accordance with this chapter. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to the bidder or offeror. Information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside of the department making the purchase and the Purchasing Agent's office without prior written consent by the bidder or offeror.

(3) After reasonable notice to the person involved, the Purchasing Agent may debar a person for cause from consideration for award of City contracts.

(g) *Competitive Sealed Proposals.* As an alternative to the bidding process provided for this section, competitive proposals may be solicited in the discretion of the Purchasing Agent, the Mayor,

City Administrator, or a Department head, and a contract may be entered into by competitive sealed proposals.

- (1) Competitive sealed proposals may be used for the procurement of services of consultants, professionals, and providers.
- (2) Proposals shall be opened so as to avoid disclosure of the contents to competing offerors before a contract is signed with the offeror during the process of negotiation.
- (3) A register of proposals shall be prepared and shall list such information with respect to each proposal as is important in making the decision which shall be open for public inspection after award of the contract. The register shall be open for public inspection after award of the contract.
- (4) The request for proposals shall state the relative importance of price and other evaluating factors.
- (5) As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals for the purpose of assuring full understanding of, and responsiveness to, solicitation requirements. Offerors 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 contract is awarded for the purpose of obtaining best and final offers. In conducting discussions, reasonable care shall be taken to avoid the disclosure of information derived from proposals submitted by competing offerors which is not known to the competitors.

The contract file shall contain the basis on which the award is made.

(h) *Waiver of Defects, Technicalities.* The City Purchasing Agent together with the head of the department purchasing the item or service may waive defects and technicalities when doing so is in the best interests of the City. The City Purchasing Agent shall, where practicable, take reasonable efforts to notify all bidders of the determination thereof.

(i) *Bid Bond.* A bid bond may be required on items, contracts, materials and services procurement under this chapter.

(j) *Notices Inviting Bids and Quotations.* Notices inviting bids or quotations shall be published at least five (~~5~~ **10**) **business** days before the date of the opening of the bids in a manner which the Purchasing Agent determines is in the City's best interest to meet the purposes of this ordinance, including but not limited to publication on an electronic bulletin board, on the Internet, in commonly read trade publications, radio, television, cable television, or in a newspaper of general circulation in the City. Notices advertising pending procurements by bid or request for proposals under this Section 11-1-8 shall be posted on a public bulletin board in City Hall, and where practicable, shall be posted at least five days before the procurement is contracted for.

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(k) *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 Purchasing Agent determines that the City's interest is better served by not re-advertising for bids, the City may require the tie bidders to submit a rebid within five (5) days.

11-1-9. Relief Due to Computation Error.

Any bidder who seeks to withdraw or modify a Bid because of inadvertent computational error shall notify the Purchasing Agent no later than three (3) working days following the bid closing. The bidder shall provide worksheets and such other information as may be appropriate or required by the City Purchasing Agent to substantiate the claim of inadvertent error. Failure to do so may bar such relief and allow recourse from the bid surety, in the discretion of the Purchasing Agent. The burden is upon the bidder to prove such error.

11-1-10. Notice Inviting Bids or Proposals.

Notice inviting bids or proposals shall include a general description of the articles to be procurement and shall state where bid blanks and specifications may be secured, and the time and place for opening bids, along with any other information which the Purchasing Agent deems appropriate.

11-1-11. Construction Projects.

(a) Municipal construction projects are governed by Section ~~10-7-20~~ 11-39-103, Utah Code Annotated (1953), as amended. The requirement for obtaining payment bonds in municipal construction contracts is covered by Chapter 14-1, Utah Code Annotated.

(b) A City department head is authorized to approve extra work or change orders on City construction projects in an amount not to exceed 20 percent of the contract in the best interests of the City in the discretion of the department head. Notice of such provision may be included in the invitation for bids.

11-1-12. Performance and bid bonds.

Performance and bid bonds in such amounts as the Purchasing Agent determines are needed to protect the best interests of the City may be required by the Purchasing Agent. The nature, form and amount of such bonds shall be described in the notice inviting bids or in the request for competitive sealed proposals.

11-1-13. Prequalification of Bidders, Proponents and Suppliers.

Bidders, proponents and/or suppliers may be prequalified for particular types of supplies, services and construction. Solicitation mailing lists of potential contractors shall include but shall not be limited to prequalified suppliers.

(a) *Standard of Responsibility.* Factors to be considered in determining whether the standard of responsibility has been met by a bidder, supplier or proponent include:

(1) Availability of the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain them, necessary to indicate the capability of the bidder, proponent or supplier to meet all contractual requirements;

(2) A satisfactory record of performance, including, but not limited to, the record of performance for the City or other governmental agencies, and debarment by any such agency;

- (3) A satisfactory record of integrity;
- (4) Legal qualifications to contract with the City; and
- (5) Whether all necessary information has been supplied in connection with the inquiry concerning responsibility.
- (6) Those considerations in respect to low responsible bidders in Section 11-1- 8(g) above.

(b) *Information Pertaining to Responsibility.* The proponent, bidder or supplier shall supply information requested by the City concerning the responsibility of such bidder, proponent or supplier. If such information is not supplied, the City shall base the determination of responsibility upon any available information or may find the proponent, bidder or supplier nonresponsible if such failure, as determined by the City, is unreasonable.

11-1-14. Cancellation and Rejection of Bids and Proposals.

An invitation for bids, a request for proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected, in whole or in part, as may be specified in the solicitation, when it is in the best interests of the City in the reasonable discretion of the Purchasing Agent or the Department Buyer responsible for the purchase. The reasons for the cancellation shall be made part of the contract file.

11-1-15. Records.

Except when a longer minimum time is required by State law or City ordinance, the Purchasing Agent or Department Buyer making a procurement of more than ~~\$5,07,500~~ shall keep records relating to the procurement ~~for not less than one year in accordance with the State retention schedules~~ from the time of the procurement.

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11-1-16. Procurement Protests.

(a) Any actual or prospective bidder or offeror who is aggrieved in connection with the solicitation or award of a contract for procurement may protest the procurement by filing a written protest with the Purchasing Agent. The protest shall contain the following information:

- (1) The protesting party's name, mailing address and daytime telephone number, the signature of the protesting party or the attorney for the protesting party, and the date the protest is signed; and
- (2) The relief sought, a statement of facts and a recitation of the reasons and legal authority in support of the protest sufficient to permit review.

(b) Protests shall be submitted prior to the closing date for receiving bids or proposals unless the protestor did not know and could not reasonably have known of the facts giving rise to the protest prior to such time, but in any event, all protests shall be submitted within five days after the closing date for receiving bids or proposals.

(c) The City may proceed with the procurement except that the Purchasing Agent may suspend the procurement process for so long as he or she determines is appropriate.

(d) The Purchasing Agent may designate another individual to assist in reviewing the matter, which assistance may include finding facts, analyzing the protest, and making recommendations to the Purchasing Agent.

(e) The Purchasing Agent or the Purchasing Agent's designated representative may request additional information from the protesting party or from other persons to make a determination. The protesting party shall provide all information requested by the Purchasing Agent reasonably needed to decide the protest except information which is protected from disclosure by law, or which could reasonably be expected to result in unfair competitive injury to the protestor in spite of the protections for the protestor provided by law, including the Utah Government Records Access Management Act, Chapter 63-2, Utah Code Annotated.

(f) The Purchasing Agent shall review and decide protests, and shall issue a written determination to the protester party within fifteen days of receipt of the protest.

(g) The protesting party may appeal the written decision of the Purchasing Agent by filing a written appeal with the Director of Finance. The notice of appeal shall contain the following information:

(1) The petitioner's name, mailing address and daytime telephone number, the signature of the petitioner or of the attorney for the petitioner, and date; and

(2) The relief sought, a statement of facts and a recitation of the reasons and legal authority in support of the protest sufficient to permit review.

(h) The Director of Finance or another person selected by the Mayor or City Administrator shall review and hear the appeal. No later than five days after receiving a notice of appeal, the Director shall schedule a hearing on the appeal. Unless otherwise agreed to by the City and the petitioner, the hearing shall be held no sooner than five days and not later than 30 days from the date of the filing of the appeal.

(i) At the hearing before the Director, the appellant and the City's representative shall be allowed to testify, present evidence, and comment on the issues under the direction of the committee chairman. The Director may allow other interested persons to testify, comment or provide evidence on the issues.

(j) No later than fifteen business days after the hearing, the Director shall issue a signed order either granting the petition in whole or in part, or upholding the determination of the Purchasing Agent in whole or in part. The order of the Director shall include:

1. The decision, and any reasons for the decision the committee may wish to provide; and

2. A statement that any party to the appeal may appeal the decision to the State district court.

(k) If the Director fails to issue a decision within fifteen business days after the hearing, said failure shall be considered the equivalent of an order denying the appeal.

(l) The Mayor or the City Administrator may appoint a person other than the Purchasing Agent or the Director of Finance to fulfill their respective responsibilities described in this

section.

11-1-17. Ineligibility.

In addition to all other remedies permitted by law, the Mayor or the City Council may declare a bidder or contractor ineligible to bid on City procurement and public works contracts for a period not to exceed five years for any of the following grounds: two or more claims of computational error in bid submission within a two-year period; a not-reasonably-justified refusal to provide or execute contract documents; unsatisfactory performance of contract; unjustified refusal to perform or complete contract work or warranty performance; unjustified failure to honor or observe contractual obligations or legal requirements pertaining to the contract; conviction under state or federal statutes for fraud, bribery, theft, falsification or destruction of records, receiving stolen property or of any other similar crime or offense indicating a lack of business integrity and which would directly affect the reliability and credibility of performance of such a vendor or contractor with future contracts with the City; or, based on the limited department by another government agency.

11-1-18. Penalties.

Collusion among Bidders. Any agreement or collusion among bidders or prospective bidders is a restraint of freedom of competition and any agreement to bid a fixed price, or otherwise, shall render the bids of such bidders void.

11-1-19. Right to Inspect Place of Business.

Gratuities. The acceptance of any gift, benefit or gratuity in the form of cash, merchandise or any other thing of value by an official or employee of the City from a vendor or contractor, or prospective vendor or contractor, which would reasonably be expected to substantially influence the actions of the official or employee in favor of the giver in future procurements or negotiations may be deemed to be a violation of this ordinance and may be cause for removal or other disciplinary action.

11-1-20. Personal Purchases.

Procurements of goods and services ordered on City credit or paid for by the City which are for the personal use of an official or employee of the City shall not be delivered, or if delivered, may be void or voidable at the City's option. Such personal procurements shall not be permitted and may be considered cause for disciplinary action. City officers and employees may purchase goods or services for personal use from suppliers at discounted rates offered to the City where the supplier makes such goods or services available to all City officials and employees on the same terms, provided the official or employee pays for such items from the official's or employee's own money, and provided the purchase is not reasonably likely to improperly influence the official, employee or a City department in the discharge of their duties or in making purchases of supplies or services.

The City may, at reasonable times, inspect the part of the plant or place of business of a contractor, or any subcontractor which is related to the performance of any contract awarded or to be awarded by the City.

11-1-21. Allowable Incurred Costs.

The City may allow the reimbursement of costs reasonably and necessarily incurred by a contractor or according to the terms of written contract with the City.

11-1-22. Cost-Plus-Percentage-of-Cost Contract Prohibited Except When Determined Less Costly.

Subject to the limitations of this section or other applicable law, any type of contract which will promote the best interests of the City may be used; provided that a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing by the Mayor, City Administrator, or Purchasing Agent, the Department Buyer, or the department head, that such contract is likely to be less costly to the City than any other type, or that it is impracticable to obtain the supplies, services or construction required except under such a contract.

11-1-23. Sales of Goods or Services to the City by Officials or Employees.

City officials and employees may sell goods or services to the City under the following conditions:

(a) An employee or the employee's spouse, parent, children, or siblings may not sell goods or services to the employee's department unless the sale is first approved in writing by the department head, and either the Mayor or City Administrator;

(b) All such transactions are subject to applicable provisions regarding ethics or municipal officials and employees of the Utah Code Annotated.

11-1-24. Surplus Real and Personal Property.

(a) Definitions as used in this section:

(1) "Dispose" or "disposal" means to sell, lease, trade, gift, convey, or encumber surplus property.

(2) "Exchange" means transactions where surplus property is transferred as a full or partial consideration for the transfer to the City of other property.

(3) "Highest and best return" means maximizing economic return to the City as estimated by one or more of the following methods:

- (A) Competitive bid which may include electronic auction;
- (B) Evaluation by a qualified and disinterested appraiser;
- (C) Other professional publications and valuation services; or
- (D) An informal market survey by the City's Purchasing Agent (Purchasing Agent) in the case of items of property possessing readily-discernible market value.

(4) "Property" means real and personal property.

(5) "Reasonable notice" means publication in a newspaper or newsletter of general

circulation within the City, posting in public places within the City, Internet posting on the City's Website, publication on the City's government and education cable television channel, or other means of notification accessed by City residents.

(6) "Significant parcel of real property" means City owned real property whose reasonable estimated value exceeds \$40,000.

(7) "Surplus property" means City property that is so used, obsolete, depreciated, excess or is no longer necessary to current and projected needs as to be unfit or undesirable for use or retention by the City.

(b) The Purchasing Agent shall dispose of surplus property pursuant to existing State law and as follows:

(1) All department heads shall, from time to time, identify and give notice in a signed writing to the City's Chief Administrative Officer (CAO) and the Purchasing Agent of surplus property within the control of that department.

(2) Whenever the surplus property is real property, or personal property with a reasonable estimated value of more than \$2,000, prior to its disposal the CAO or his designee shall disclose the disposal to the Mayor's cabinet.

(3) Before any disposal of a significant parcel of real property, the City shall allow an opportunity for public comment on the proposed disposal providing reasonable notice at least 14 days before such public comment.

(4) The Purchasing Agent shall dispose of the surplus property in a method likely to produce the highest and best return unless in the opinion of the Purchasing Agent:

(A) the value of the surplus property is considered negligible in relation to the time, labor and expense of competitive bidding or bidding procedures are deemed unlikely to produce a competitive offer, or

(B) the surplus property is disposed to units of government or other public or charitable organizations pursuant to existing State law.

(5) When any surplus property has been disposed, the monies or credit there for shall be credited:

(A) to the City department or City office which requested its disposal if the disposal has been contemplated in the current annual budget,

(B) to the City's general fund if the disposal has not been contemplated in the current annual budget, or

(C) to a revenue account within the specific enterprise fund if originally procured from an enterprise fund or from properties attributable by the Mayor to use by an existing enterprise fund.

(6) The Finance Director shall report any disposal of surplus property to the City Council in the Comprehensive Annual Financial Report.

(c) Notwithstanding the provisions of this section:

(1) Every conveyance or encumbrance of City property shall be made by the Mayor, or under the Mayor's express written authority, and pursuant to existing State law.

(2) The City may impose limitations or conditions on the future use of surplus property, in addition to those required under other Titles of City ordinances, which limitations or conditions must be disclosed by the Purchasing Agent prior to its disposal.

(3) No provision of this section shall be construed to require or to invalidate any sale, conveyance, transaction, transfer or encumbrance by the City, nor to vest rights of action of any kind against the City, its officers, agents or employees.

11-1-25. Participation by Bidder Who Supplies Specifications.

A person other than a City employee who has prepared specifications used substantially by the City in determining from which bidder or proponent it wishes to purchase goods or services may participate in a bid or proposal procurement in the City where the Purchasing Agent determines in his or her reasonable discretion that such participation will be in the best interest of the City in light of the stated purposes of this chapter contained in Section 11-1-1. A City employee who has prepared specifications used substantially by the City in determining the bidder or proponent from which it wishes to purchase goods or services may participate as a bidder or proponent in a bid or proposal procurement by the City when the Purchasing Agent determines in his or her reasonable discretion that doing so is fair and in the best interests of the City in light of the purposes of this ordinance.

11-1-26. Period of Time for Contract of Supplies.

(1) Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the City; provided that the term of the contract and conditions of renewal or expansion, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds.

(2) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled. The contractor may apply for reimbursement for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract, which may be awarded in the reasonable discretion of the Purchasing Agent. The cost of cancellation may be paid from any appropriations available for that purpose.

11-1-27. Alternative Methods of Construction.

The City may contract for any method of construction management allowed by law in the reasonable discretion of the department head responsible for the construction, or the Purchasing Agent.

11-1-28. Failure to Follow Ordinance.

The failure to follow any provision of this ordinance shall not render a

procurement invalid, nor give a bidder or proponent a claim or right against the City or the employee responsible for such failure.

Chapter 2 LOST, ABANDONED OR UNCLAIMED PROPERTY

11-2-1. Disposition of Lost, Abandoned or Unclaimed Property.

It shall be the duty of the Chief of Police to keep all lost, abandoned or unclaimed property which comes into the possession of the Police Department or any of its members and he shall make all reasonable efforts to identify and locate the owner or owners thereof and restore said property to such owner.

11-2-2. Definitions.

- (a) Abandoned Property is personal property found under circumstances reasonably indicating that the owner does not intend to control or possess it.
- (b) Lost Property is personal property the location of which is unknown to the owner.
- (c) Unclaimed Property is personal property held by the Police Department for a period of three months or more and is unclaimed within that period by the owner; or, is personal property held by the police in connection with a court proceeding, the disposition of which is not otherwise determined by law or court order, and is unclaimed by the owner within a period of three months following the end of said court proceeding.

11-2-3. Identified Owner.

Whenever the owner of lost, abandoned, or unclaimed property is identified and located, the Chief of Police shall send by way of registered letter, written notice to the owner, describing the property, giving its present location, stating the circumstances under which he came into possession thereof, and giving notice to the owner that he must claim his property within the time provided by this notice or the property will be disposed of as hereinafter provided.

11-2-4. Advertising Property.

If the owner of lost, abandoned, or unclaimed property fails to claim such property within fifteen days after the receipt of notice, or is not identified and located within a period of three months, the Chief may compile a list of said property for distribution to other City departments as stated in the next following section. If, after thirty days of notifying other City departments of available property, there is still property for sale, the Chief may advertise the sale of such property for at least five days in a newspaper of general circulation in the City and may, on the date specified in such advertisement, offer the property to the public at public auction. The time of the public sale shall be scheduled for a date not more than thirty days after published notice of the sale has been completed.

11-2-5. Notifying City Departments.

The Chief shall also mail the above-described list of all lost, abandoned, or unclaimed property which is available for public sale to the Purchasing Department. The Purchasing Department will then notify the other City departments of the property offered for public sale.

11-2-6. Requests for Use of Property.

If a City department wishes to utilize any of the lost, abandoned, or unclaimed property offered for sale, then a written request stating which property is needed shall be forwarded to the Police Department and the Purchasing Department not later than seven days before the public sale.

11-2-7. Joint Committee to Review Requests.

A joint committee comprised of an authorized representative from the Police Department and an authorized representative from the City Purchasing Department shall then review departmental requests for the use of property and shall determine which department, if more than one request for the same property is received, shall be assigned the property. The remaining advertised property will then be offered for public sale on the published date. Provided, however, that this joint committee may authorize the Police Department to destroy or otherwise dispose of any property subject to this ordinance where such property is determined valueless or of such little value that the costs of conducting a sale and advertising would exceed the amount realized therefrom.

11-2-8. Sale of Firearms.

11-2-9. Donated or Destroyed Property.

All advertised lost, abandoned, or unclaimed property remaining unsold or unassigned for Departmental use under the preceding sections of this ordinance may then either be destroyed or donated to public or private charities as directed by the joint committee.

11-2-10. Report to the Recorder by Committee.

The joint committee shall make a report to the City Recorder, at the time of sale or disposition, containing: a listing of property sold or distributed under the provisions of this chapter; the amount of money received from public sales; and the fair market value, estimated by the joint committee, of any property distributed for use by a City department.

11-2-11. Separate Fund for Monies Received.

All money from the public sale of lost, abandoned or unclaimed property shall be kept in a separate fund credited to the City.

11-2-12. Reclaiming of Property by Owner.

If the owner, his legal representative or successor, of any lost, abandoned, or unclaimed property sold at auction or utilized by a City department demands his property within three years from the date the property was received by the Police Department, the City Treasurer shall pay to him after deducting the fees and expenses of the City in relation to the matter, the proceeds of the public sale or, if the property was assigned for use by a City department, the fair market value of the property.

11-2-13. Failure to Claim Property by Owner.

If the owner, his legal representative or successor of any lost, abandoned, or unclaimed property sold at auction does not claim the proceeds from the sale of his property within three year period, the proceeds from the public sale shall revert to the City General Fund.

11-2-14. Chief of Police to Act as Depository.

The Chief shall have the power to receive lost, abandoned, or unclaimed tangible or intangible property from a private citizen. He shall then make reasonable efforts to locate the owner of said property, but, if after three months, the owner has not been located or this property claimed, the property shall be returned to the citizen. If the citizen disclaims the property, then the property shall be distributed according to the provisions of this chapter.

Chapter 3 CONSTITUTIONAL TAKINGS

11-3-1. Purpose/Intent.

Private property owners should be treated fairly and should not be unconstitutionally deprived of real property interests without just compensation. This chapter shall be construed to provide for the objective and fair review of claims by persons asserting deprivation of vested real property rights or interests, without just compensation. Nothing contained herein shall be construed to limit the ability of the City to lawfully fulfill its duties and functions.

11-3-2. Review of Decision by Mayor.

Any owner of private real property or a real property right who claims there has been an unconstitutional taking of their property, without just compensation, shall petition for a review of a final decision of any City officer, employee, board, commission, or the Council. Consistent with the separation of powers which is integral to the City's form of government, the Council hereby designates the Mayor to hear and consider such petitions. The Mayor may delegate such responsibility to another individual or board.

11-3-3. Review Procedures.

The following procedures for review of a final decision shall be followed:

(1) Final Decision. The person petitioning for review shall obtain a final decision before requesting review.

(2) Petition for Review. Within fifteen (15) days from the date of the final decision, the person requesting the review shall file, in the office of the City Recorder, a written petition for review of that decision. A copy shall also be filed with the City Attorney.

(3) Hearing Date. The Mayor, or the Mayor's designee, shall set a time to review the decision that gave rise to the petition as soon as reasonably practical. The Mayor, or the Mayor's designee, shall hear and consider the evidence related to and submitted by the petitioner, the City, and other parties whom the City determines have an interest in the proceedings. In the discretion of the Mayor, or the Mayor's designee, the hearing may be oral or based upon written submittals.

(4) Applicant Information Submittal.

(a) *Initial Filing Information.* In addition to the petition for review, the petitioner shall submit, within 7 days prior to the date of the review, the following:

- (i) The name of the petitioner requesting review;
- (ii) The name and business address of the current owner of the property; the form of ownership, i.e. whether sole proprietorship, for-profit or not-for-profit corporation, partnership, joint venture or other; and if owned by other than a real person, the name and address of all partners or shareholders owning 10% or more of the outstanding shares;
- (iii) A detailed statement of the factual and legal grounds for the claim that there has been an unconstitutional taking, without just compensation;
- (iv) A legal description of the property allegedly taken and a detailed description of the nature of the property; and
- (v) A detailed description of the protectable property interest claimed to be affected.

(b) *Supplemental information.* If the Mayor or the Mayor's designee determines that there may be an unconstitutional taking, and additional information is needed, in his sole discretion, the Mayor, or the Mayor's designee, may further require the following to be submitted:

- (i) The evidence and documentation as to the value of the property interest claimed taken, including the date and cost at the date the property was acquired. This material should include any evidence of the value of that same property before and after the alleged unconstitutional taking; the name of the

party from whom purchased, including the relationship, if any, between the person requesting a review; and the party from whom the property was acquired;

- (ii) The terms, including sale price, of any previous purchase or sale of a full or partial interest in the property during the three years prior to the date of application;
- (iii) All appraisals of the property prepared for any purpose, including financing, offering for sale, or ad valorem taxation, within the three years prior to the date of application;
- (iv) The assessed value of and ad valorem taxes on the property for the previous three years;
- (v) All information concerning current mortgages or other loans secured by the property, including the name of the mortgagee or lender, current interest rate, remaining loan balance, term of the loan and other significant provisions, including but not limited to, the right of purchasers to assume the loan;
- (vi) All listings of the property for sale or rent, price asked and offers received, if any, within the previous three years;
- (vii) All studies commissioned by the petitioner or agents of the petitioner within the previous three years concerning feasibility of development or utilization of the property;
- (viii) For income-producing property, itemized income and expense statements from the property for the previous three years;
- (ix) Information from a title policy or other source showing all recorded liens or encumbrances affecting the property; and
- (x) The Mayor, or the Mayor's designee, may request additional information reasonably necessary, in their opinion, to arrive at a fair and well supported conclusion concerning the nature of and the value of the alleged unconstitutional taking.

11-3-4. Reviewing Guidelines.

The Mayor or the Mayor's designee shall review the facts and information presented by the petitioner, the City, and other parties whom the City determines have an interest in the proceedings, and determine if the action by the City constitutes an unconstitutional taking. The City Attorney's office may serve as the City's legal counsel. The Mayor, or the Mayor's designee shall review the facts in light of the applicable state and federal constitutional law.

11-3-5. Time for Final Decision.

If the Mayor, or the Mayor's designee, fails to hear and decide the petition within 14 days after the filing of the petition, the administrative decision of the City officer, employee, board, commission, or the Council shall be deemed approved; provided, however, the Mayor, or the Mayor's designee, may extend the time to reach a decision, not exceeding an additional 120 days following the receipt of the petitioner's submissions required in Section 11-3-3.

11-3-6. Results of Review.

After completing the review the Mayor or the Mayor's designee shall make a determination regarding the petition and may in his or her discretion make a recommendation to the Council or the appropriate officer, employee, board, commission.

11-3-7. Guidelines Advisory.

The guidelines adopted and decisions rendered pursuant to the provisions of this chapter are advisory, and shall not be construed to expand or limit the scope of the City's liability for an unconstitutional taking of a property interest. The decision rendered pursuant to the provisions of this chapter are not admissible in court for any purpose other than to demonstrate that the petitioner has exhausted the requisite administrative remedies, and in no event shall any recommended compensation be admissible into evidence.

11-3-8. Severability.

If any part of this ordinance or the application thereof to any person or circumstances shall, for any reason, be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this ordinance or the application thereof to other persons and circumstances, but shall be confined to its operation to the section, subdivision, sentence or part of the section and the persons and circumstances directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the City Council that this section would have been adopted if such invalid section, provisions, subdivision, sentence or part of a section or application had not been included.