

EXHIBIT “A”

CHANGES TO REVISED ORDINANCES OF SANDY CITY TITLE 11, “PURCHASING PROCEDURES”

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 11-39-103, Utah Code Annotated, regarding contracts for new public improvements construction costs where the estimated cost exceeds \$40,000.

(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 \$40,000 - Three Written Bids.

Procurements of goods and services reasonably expected to cost more than \$5,001 but not more than \$40,000 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 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 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 \$40,000 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 \$40,000 in federal funds where bidding is not required (i.e., in State contracts, or where disbursements exceed \$40,000 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 \$7,500 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 \$7,500 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 \$7,500 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 \$40,000, 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 \$40,000 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) 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.

(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 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.