

ORDINANCE NO. 05-01-07
PURCHASING POLICY

AN ORDINANCE TO ESTABLISH AND IMPLEMENT RULES AND REGULATIONS FOR PURCHASING AND TO REPEAL ALL OTHER ORDINANCES IN REGARD TO THE PURCHASING POLICY.

ARTICLE 1 – GENERAL PROVISIONS

A. The underlying purposes of this policy are:

1. To ensure fair and equitable treatment of all persons who wish to, or to conduct business with Emery Town.
2. To provide for the greatest possible economy in Town procurement activities.
3. To foster effective broad-based competition within the enterprise system to ensure that the Town will receive the best possible service or product at the lowest possible price.

B. Compliance – Exemptions from this policy

1. This policy shall not prevent the Town from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.
2. When a procurement involves the expenditure of federal assistance funds, the Town shall comply with applicable federal law and regulations.

C. Definitions

1. "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
2. "Change order" means a written order signed by the purchasing agent, directing the contractor to suspend work or make changes, which the appropriate clauses of the contract authorize the Purchasing Agent to order without the consent of the contractor or any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
3. "Contract" means any Town agreement for the procurement or disposal of supplies, services, or construction.
4. "Invitation for bids" means all documents, whether attached or incorporated by reference, used for soliciting bids.
5. "Person" means any business, individual, union, committee, club, other organization, or group of individuals.

6. "Procurement" means buying, purchasing, renting, leasing, leasing with an option to purchase, or otherwise acquiring any supplies, services, or construction.
7. "Purchasing agent" means the person duly authorized by the Town Council of the Town enter into and administer contracts and make written determinations with respect thereto.
8. "Purchase description" means the words used in a solicitation to describe the supplies, services, or construction to be purchased, and includes specifications attached to or made a part of the solicitation.
9. "Request for proposals" means all documents, whether attached or incorporated by reference, used for soliciting proposals.

ARTICLE 2 - OFFICE OF THE PURCHASING AGENT

The Purchasing Agent shall be responsible to make procurements, solicit bids and proposals, enter into and administer contracts, and make written determinations for the Town. The Mayor and/or the Town Council of the Town shall act as the Purchasing Agent.

ARTICLE 3 – SOURCE SELECTION AND CONTRACT FORMATION – GENERAL PROVISIONS

.A. Purchases not requiring sealed bids.

1. Purchases costing less than \$5,000.00 in total, shall not require bids of any type. (Purchases shall not be artificially divided so as to constitute a small purchase under this section.)
2. Purchases costing more than \$5,000.00 but less than \$25,000.00 shall require – (2 to 3) telephone bids.
3. Purchases made through the cooperative purchasing contracts administered by the State Division of Purchasing.
4. Purchases made from a single-source provider.
5. Purchases required during an emergency, i.e., an eminent threat to the public's health, welfare or safety. However, as much competition as practical should be obtained; and, such purchases should be limited to amounts necessary to the resolution of the emergency.
6. Purchases in excess of \$1,000.00 require Town Council approval.

B. Purchases requiring sealed bids

1. Contracts shall be awarded by competitive sealed bidding except as otherwise provided by this policy.

2. Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared and shall be open for public inspection after contract award.
 3. The request for proposals shall state the relative importance of price and other evaluating factors.
 4. 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 prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
 5. Award shall be made to the person whose proposal is determined, in writing, to be the most advantageous to the Town, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.
- E. Architect-Engineer services are qualification-based procurements. Requests for such services should be publicly announced. Contracts should be negotiated by the Town based on demonstrated competence at fair and reasonable prices. See Utah State Code.
- F. Determination of non-responsibility of bidder.
- Determination of non-responsibility 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 non-responsibility 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 purchasing division without prior written consent by the bidder or offeror.
- G. Cost-plus-a percentage-of-costs contracts prohibited.
- Subject to the limitations of this section, any type of contract which will promote the best interests of the Town may be used, provided that the use of 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 that such contract is likely to be less costly to the Town than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.
- H. Required contract clauses.
1. The unilateral right of the Town to order, in writing, changes in the work within the scope of the contract and changes in the time of performance of the contract that do not alter the scope of the contract work.
 2. Variations occurring between estimated quantities of work in a contract and actual quantities.
 3. Suspension of work ordered by the Town.

ARTICLE 4 – SPECIFICATIONS

All specifications shall seek to promote overall economy and best use for the purposes intended and encourage competition in satisfying the Town's needs, and shall not be unduly restrictive. Where practical and reasonable, and within the scope of this Article, Utah products shall be given preference.

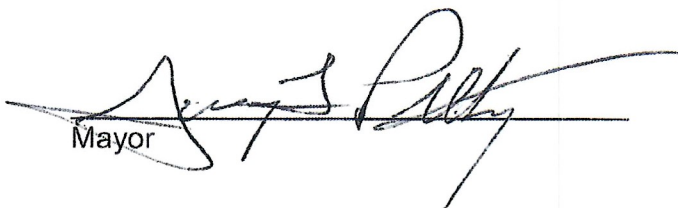
ARTICLE 5 – APPEALS

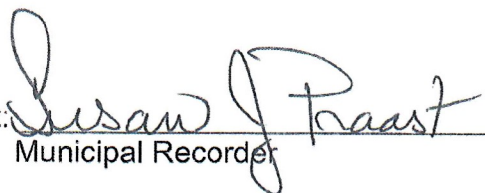
- A. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may appeal to the purchasing agent. An appeal shall be submitted in writing within five (5) working days after the aggrieved person knows or should have known of the facts.
- B. The Purchasing Agent shall promptly issue a written decision regarding any appeal, if it is not settled by a mutual agreement. The decision shall state the reasons for the action taken and inform the protestor, contractor, or prospective contractor of the right to appeal to the Town Council.
- C. The Town Council shall be the final appeal on the Town level.
- D. All further appeals shall be handled as provided in Utah State Code.

ARTICLE 6 – ETHICS IN PUBLIC CONTRACTING

- A. No person involved in making procurement decisions may have personal investments in any business entity which will create a substantial conflict between their private interests and their public duties.
- B. Any person involved in making procurement decisions is guilty of a felony if the person asks, receives, or offers to receive any emolument, gratuity, contribution, loan, or reward, or any promise thereof, either for the person's own use or benefit of any other person or organization from any person or organization interest in selling to the Town.

ADOPTED THIS 1ST DAY OF MAY, 2007.


Mayor

Attest: 
Municipal Recorder