Delta City Purchasing Policy and Procedures

Dated: February 7, 2013

ARTICLE I
GENERAL PROVISIONS

A. The underlying purposes of this policy are:

1. To ensure fair and equitable treatment of all persons who wish to, or do conduct business with Delta City (the "City").

2. To provide for the greatest possible economy in the City procurement activities.

3. To ensure that purchases made and services contracted are in the best interest of the public and acquired in a cost effective manner.

B. General Policy/Rules

1. All City purchases for goods and services and contracts for goods and services shall be subject to these rules.

2. No contract or purchase shall be so arranged, fragmented, or divided with the purpose or intent to circumvent these rules. All thresholds specified in this policy are to be applied to the total cost of a contract over the entire terms of the contract, as opposed to annualized amounts.

3. City departments shall not engage in any manner of barter or trade when procuring goods and services from entities both public and private.

4. Subject to federal, state, and local procurement laws when applicable, reasonable attempts should be made to support Millard County businesses by purchasing goods and services through local vendors and service providers.

5. All reasonable attempts shall be made to publicize anticipated purchases or contracts in excess of $10,000.00 to known vendors, contractors, and suppliers.

6. All contracts for services shall be approved as to form by the City Attorney

7. When it is advantageous to the City, annual contracts for services and supplies regularly purchased should be initiated

8. City Employees, Officers, or Officials or anyone acting on behalf of the

City may not receive or accept any gift or loan if the gift or loan could influence a reasonable person in the discharge of that person's official duties including but not limited to the granting of City contract. The prohibition does not apply to any occasional non-pecuniary (non-cash-equivalent) gifts with a value of less than $50.00.

9. No person involved in making procurement decisions may have personal investments in any business entity which will create a substantial conflict between his or her private interests and his or her public duties.

10. The following items require City Council approval unless otherwise exempted in these rules:

    i. All items or contracts over $10,000.00.

    ii. Any item or contract over $5,000.00 that is not anticipated in the current budget.

11. Any and all written invitations for bids, request for proposals, or any other written statement issued by the City intended to provide notice that the City is contemplating the purchase of goods or services shall contain the following language, **in bold font**:

    i. "**It is the policy of Delta City to provide preference to local businesses. The specifics of this policy are contained in the Delta City Purchasing Policy and Procedures, which is available for public inspection from the Delta City Recorder.**"

C. Definitions:

1. Business: any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

2. Change order: 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. City**:** Delta City Municipal Corporation and all other reporting entities controlled by or dependent upon the City's governing body, its City Council.

4. Contract: any City agreement for the procurement or disposal of supplies, services, or construction.

5. Invitation for bids: all documents, whether attached or incorporated by reference, used for soliciting bids.

6. Local Business/Bidder/Vendor: a business having:

    a. A commercial office, store, distribution center or other place of business located within the boundaries of Millard County, with an intent to remain on a permanent basis;

    b. A current Millard County or Delta City business license; and

    c. At least one employee physically present at the local business outlet.

7. Person: any business, individual, union, committee, club, other organization, or group of individuals.

8. Procurement: buying, purchasing, renting, leasing, leasing with an option to purchase, or otherwise acquiring any supplies, services, or construction.

9. Purchase: the acquisition of goods (supplies, services, construction, equipment, etc.) in a single transaction such that payment is made prior to receiving or upon receipt of the goods.

10. Purchasing agent: the person duly authorized by the governing body of the City to enter into and administer contracts and make written determinations with respect thereto.

11. Purchase description: the words used in a solicitation to describe the supplies, services, construction, equipment, etc. to be purchased, and includes specifications attached to or made a part of the solicitation.

12. Request for proposals: all documents, whether attached or incorporated by reference, used for soliciting proposals.

13. Sole Source Procurement: when a required or desired proprietary item is only available from one potential bidder or offeror of that item. Examples of single source procurement are, but are not limited to:

    a. where the compatibility of equipment, accessories, replacement parts, or service is the paramount consideration;

    b. where a sole supplier's item is needed for trial use or testing;

c. procurement of items for resale;

d. procurement of public utility services.

D. Compliance - Exemptions from this policy: Certain contract for goods and services shall be exempt from this policy. The purchasing agent shall determine whether or not a particular contract or purchase is exempt as set forth herein.

1. This policy shall not prevent the City from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

2. When the proposed purchase involves the purchase of a tangible item that will carry a warranty greater than one year in duration, the tangible item is available from more than one Local Business/Bidder/Vendor, and the warranty service will be provided by selling vender, then the requirements of publication contained in Article4(b) shall not be applicable and invitations for sealed bids may be provided only to Local Business/Bidder/Vendors. An example would be the purchase of a vehicle that will carry a warranty greater than one year. In that case, the City's interests are furthered if the selling dealership is local to provide warranty service as needed.

3. When procurement involves the expenditure of federal assistance funds, the City shall comply with applicable federal law and regulations.

4. Purchases made from grant funds must comply with all provisions of the grant.

5. Purchases made via public auction.

ARTICLE 2
OFFICE OF THE PURCHASING AGENT

The Delta City Recorder shall serve as the purchasing agent for the City. The Mayor shall review and oversee 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 City. The purchasing agent shall also serve as a point of contact with the public in requesting information relevant to the City's purchasing needs and procedures and to oversee the City's compliance with this Purchasing Policy and Procedures.

ARTICLE 3
PURCHASE ORDERS

A. Purchase order procedures:

1. Each item purchased will require a pre-approved purchase order, except as set forth in subsection B below.

2. The purchaser will determine the appropriate vendor, quantity of material, supplies, goods, or services and the price estimate.

3. The estimate will be submitted to the department head for approval. A purchase order will be prepared containing a description and cost of items to be purchased.

4. The purchase order is submitted to the purchasing agent for approval.

5. When all required approvals and signatures have been obtained, the purchase order will be returned to the appropriate department head.

6. The materials, supplies, goods, or services can then be purchased and/or ordered.

7. After purchase is completed and payment is due, the invoice shall be attached to the back of the purchase order. After the purchase is completed, a small, colored dot label shall be affixed to the front of the purchase order and initialed by the person authorizing payment.

8. Any invoice greater than the purchase order will need to be reviewed, initialed, and dated by the appropriate department head and/or purchasing agent.

9. Any invoice less than the purchase order shall be conspicuously noted on the purchase order to give notice to the person entering the data.

B. Purchase orders which shall not require preapproval are as follows:

1. Emergency purchases (see Article 4(A)(4))

2. Items purchased which are not normally inventoried for day to day maintenance and/or construction materials costing less than $100.00 may be purchased subject to the department head's authorization. A purchase order will then be generated on returned invoices.

ARTICLE 4
SOURCE SELECTION AND CONTRACT FORMATION - GENERAL PROVISIONS

A. Purchases not requiring sealed bids:

1. Purchases costing less than $1,500.00, in total, shall not require bids of any type.

    a. Purchases shall not be artificially divided so as to constitute a small purchase under this section.

    b. The purchasing agent shall conduct negotiations, as appropriate, as to price, delivery, and terms.

2. Purchases costing more than $1,501.00 but less than $10,000.00, in total, shall require 2 to 3 telephone bids.

    a. The purchase shall be made from the lowest of the 2 to 3 telephone bids.

    b. Local Bidder Preference: If the bid of a nonlocal bidder is lowest and there was a local bidder who also submitted a bid which was within seven and one-half percent (7.5%) of the low bid, then the contract shall be awarded to the local bidder if the local bidder agrees in writing within forty-eight (48) hours after being notified of the low bid, that the local bidder will meet the bid price while still meeting all the prescribed requirements set forth in the bid documents. If there is more than one local bidder who is within 5% of the low bid, then the contract shall be awarded to the local bidder which had the lowest original bid according to the procedure above.

3. Purchases made through the cooperative purchasing contracts administered by the State Division of Purchasing.

4. 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.

5. Sole Source Procurement

    a. Sole source procurement shall be used only if a requirement is reasonably available from a single supplier.

    b. The determination as to whether a purchase shall be made as a

sole source shall be made by the purchasing agent. In cases of reasonable doubt, competition should be solicited.

c. The purchasing agent shall conduct negotiations, as appropriate, as to price, delivery, and terms.

6. Contracts for Professional Services

a. Professional services are usually contracts for services performed by an independent contractor, in a professional capacity, which produces a service predominately of an intangible nature. These include, but are not limited to, the services of an attorney, engineer, accountant, architectural consultant, artist, appraiser, photographer, etc.. Professional service contracts are exempt from competitive bidding. The selection of professional service contracts in an amount exceeding $50,000 shall be based on an a formal documented evaluation process such as Request for Proposals (RFP), Statement of Qualifications (SOQ), Qualification Based Selection (QBS), etc. The evaluation process should include an objective assessment, preferably by multiple reviewers, of the services needed, the abilities of the contractors, the uniqueness of the service, the cost of the service, and the general performance of the contractor. Special consideration may also be given to local businesses during the evaluation in instances where knowledge of local issues, geography, statutes, etc., may enhance the quality of service rendered. The lowest quote need not necessarily be the successful contractor. Usually, emphasis will be placed on quality, with cost being the deciding factor when everything else is equal. The purchasing agent shall determine which contracts are professional service contracts. Major professional service contracts ($30,000.00 and over) must be approved by the City Council.

7. Contracts for Professional Services, where the Service Provider is responsible for Building Improvements/Public Works Project (Construction Manager / General Contractor “CMGC” Method)

a. CMGC are contracts where the City contracts with a "Construction Manager/General Contractor" which is a contractor who enters into a contract for the management of a construction project when that contract allows the contractor to subcontract for additional labor and materials that were not included in the contractor's cost proposal submitted at the time of the procurement of the CMGC's services. It excludes a contractor whose only subcontract work not included in the contractor's cost proposal submitted as part of the procurement of construction is

to meet subcontracted portions of change orders approved within the scope of the project. The CMGC contract is exempt from competitive bidding. The selection of CMGC contracts shall be based on an a documented evaluation process such as a Request for Proposals (RFP), Statement of Qualifications (SOQ), Qualification Based Selection (QBS), etc.. The evaluation process should include an objective assessment, preferably by multiple reviewers, of the services needed, the abilities of the contractors, the uniqueness of the service, the cost of the service, and the general performance of the contractor. Special consideration may also be given to local businesses during the evaluation in instances where knowledge of local issues, geography, statutes, etc., may enhance the quality of service rendered. The lowest quote need not necessarily be the successful contractor. Usually, emphasis will be placed on quality, with cost being the deciding factor when everything else is equal. The purchasing agent shall determine which contracts are CMGC contracts. Major CMGC contracts ($30,000.00 and over) must be approved by the City Council. The selected CMGC will then implement all bid packages and subcontractors under a competitive bid requirement as required herein.

8. Purchases in excess of $10,000.00 that are not exempted in this Purchasing Policy and Procedures, shall be made pursuant to Article (4)(B) below.

B. Purchases requiring sealed bids:

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

2. An invitation for bids shall be issued when a contract is to be awarded by competitive sealed bidding. The invitation shall include a purchase description and all contractual terms and conditions applicable to the purchase. Public notice of the invitation for bids shall be given at least 20 days prior to the date set forth therein for the opening of bids. The notice may include publication in a newspaper of general circulation.

3. Any purchase in excess of $10,000.00 shall require a legal notice published at least once in a local newspaper of general circulation.

4. Any purchase in excess of $25,000.00 shall require a legal notice published at least twice in a local newspaper of general circulation.

5. 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, together with the name of

each bidder, shall be recorded. The record and each bid shall be open to public inspection.

6. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this policy. Bids shall be evaluated based on the requirements set forth in the invitation for bids.

7. 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. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the City or fair competition shall be permitted. All decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes shall be supported by a written determination made by the purchasing agent.

8. The contract shall be awarded with reasonable promptness, by written notice, to the lowest bidder whose bid meets the requirements and criteria set forth in the invitation for bids subject to the following:

    a. Local Bidder Preference: If the bid of a nonlocal bidder is lowest and there was a local bidder who also submitted a bid which was within five percent (5%) of the low bid, then the contract shall be awarded to the local bidder if the local bidder agrees in writing within forty-eight (48) hours after being notified of the low bid, that the local bidder will meet the bid price while still meeting all the prescribed requirements set forth in the bid documents. If there is more than one local bidder who is within 5% of the low bid,then the contract shall be awarded to the local bidder which had the lowest original bid according to the procedure above.

9. Cancellation and rejection of bids: 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, when it is in the best interests of the City. The reasons shall be made part of the contract file.

C. Determination of nonresponsibility of bidder.

1. Determination of nonresponsibility of a bidder or offeror shall be made in writing. 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 purchasing division without prior written consent by the bidder or offeror.

D. Cost-plus-a-percentage-of-cost contracts prohibited.

1. Subject to the limitations of this section, any type of contract which will promote the best interests of the City 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 City than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.

E. Required contract clauses.

1. The unilateral right of the City 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 City.

ARTICLE 5
SPECIFICATIONS

All specifications shall seek to promote overall economy and best use for the purposes intended and encourage competition in satisfying the City'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 6
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 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. 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 governing board.

C. The City's governing board shall be the final appeal on the City level.

D. All further appeals shall be handled as provided in §§ 63-56-58 through 64, Utah Code Annotated, or any successor statute(s) thereto enacted hereinafter.