

RESOLUTION NO. 98-251

A RESOLUTION ADOPTING DELTA CITY'S PURCHASING POLICY AND PROCEDURES

The City Council of the City of Delta, Utah, referred to in this resolution as the "City Council", hereby recites the following as the basis for adopting this resolution:

W I T N E S S E T H

WHEREAS, pursuant to Section 10-6-122, Utah Code Annotated all purchases by a City shall be made or incurred according to the purchasing procedures established by the City by ordinance or resolution and only on an order or approval of the person duly authorized to act as a purchasing agent for the City.

WHEREAS, the City Council now desires to adopt a purchasing policy for the procurement of certain goods and services, and

WHEREAS, the City Council further determines to appoint a purchasing agent to be responsible to make procurements, solicit bids and proposals and enter into and administer contracts and make written determinations for the City;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Delta, Utah:

Section 1. Adoption of Delta City Purchasing Policy. The Delta City purchasing policy and procedures, attached to this resolution and incorporated herein by reference, is hereby adopted in its entirety as Delta City's purchasing and bidding procedures policy.

Section 2. Purchasing Agent. The City Council hereby appoints the Delta City Mayor as the Delta City Purchasing Agent, who shall be responsible to make procurements, solicit bids and proposals, enter into and administer contracts, and to make written determinations for Delta City. The Delta City Mayor is hereby authorized to designate one or more department heads or other personnel to act in his place and stead as purchasing agent from time to time.

Section 3. Effective Date. This resolution shall become effective upon adoption.

Section 4. Severability. In the event that any provision of this resolution less than the entire resolution is held invalid by a court of competent jurisdiction, this resolution shall be deemed severable and such finding of invalidity shall not affect the remaining portions of this resolution.

Section 5. Repeal of Conflicting Resolutions. To the extent that any ordinances, resolutions or policies of the City of Delta conflict with the provisions of this resolution, they are hereby amended to be in accordance with the provisions hereof.

PASSED AND ADOPTED this 9 day of March, 1998.

  
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R. DALE ROPER, Mayor

Attest:

  
\_\_\_\_\_  
DOROTHY JEFFERY  
City Recorder

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**DELTA CITY PURCHASING POLICY  
AND PROCEDURES**

**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 do, conduct business with Delta City (the "City").
2. To provide for the greatest possible economy in the City procurement activities.
3. To foster effective broad-based competition within the free enterprise system to ensure that the City 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 City 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 City 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 City 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 governing body of the City to 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 governing body of the City shall appoint a 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.

## **ARTICLE 3**

### **SOURCE SELECTION AND CONTRACT FORMATION - GENERAL PROVISIONS**

- A. Purchases not requiring sealed bids:

1. Purchases costing less than \$500.00, 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 \$500.00 but less than \$10,000.00, in total, 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.

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 procurement. 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.
3. Any procurement in excess of \$10,000.00 shall require a legal notice published at least once in a local newspaper of general circulation.
4. Any procurement 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 responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids.

C. Cancellation and rejection of bids:

An invitation for bids, a request for proposals, or other solicitation may be cancelled, 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. The reasons shall be made part of the contract file.

D. Use of competitive sealed proposals in lieu of bids:

When the purchasing agent determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the City, a contract may be entered into by competitive sealed proposals. Competitive sealed proposals are most appropriately used for professional service-type contracts.

1. Proposals shall be solicited through a request for

proposals. Public notice of the request for proposals shall be given at least 20 days prior to the advertised date of the opening of the proposals.

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 City, 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 City based on demonstrated competence at fair and reasonable prices. See Section 63-56-42 through 44 of the Utah Code Annotated, or any successor statute(s) thereto enacted hereafter.
- F. Determination of nonresponsibility of bidder.

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.

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

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.

H. 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 4  
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 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 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 section 63-56-58 through 64, Utah Code Annotated, or any successor statute(s) thereto enacted hereinafter.

**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 persons' own use or the use or benefit of any other person or organization from any person or organization interested in selling to the City.