

## Appendix A

### Chapter 4.04 - PURCHASING<sup>[1]</sup>

#### Footnotes:

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Editor's note— [Ordinance No. 2013-10, § 3, adopted August 5, 2013](#), transferred and incorporated Chapter 4.04 to read as herein set out as a borough ordinance. See Ordinance List and Code Comparative Table and Disposition List for complete derivation from City Code.

#### 4.04.010 - Definitions.

The following words, terms and phrases when used in this chapter and chapter 4.08 shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

"Nonresident" means a person, firm, corporation, partnership or sole proprietorship not having a principal place of business in the Borough for at least six months immediately preceding a bid opening date.

"Principal place of business" means a firm, corporation, partnership or sole proprietorship having its main business office located in the corporate limits of Petersburg Borough.

"Professional services contract" is a formal written and executed document expressing expected services that may include analysis, evaluation, prediction, planning or recommendations resulting in the production of a report, plan, drawings or completion of a task.

"Public interest," also referred to as "interest of the Borough," means the greatest benefit, right or advantage to be obtained for the Borough population as a whole.

"Purchase" means and includes buying personal property and contracting for the construction, extension and repair of public improvements.

"Purchasing agent" means the borough manager or the manager's delegee.

"Resident" means a person, firm, corporation, partnership or sole proprietorship having a principal place of business in the borough for at least six months immediately preceding a bid opening date.

( [Ord. No. 2013-10, § 3, 8-5-2013](#) )

#### 4.04.020 - Authorization and when competitive bidding is required.

- A. An administrative officer or their designee shall be authorized to make purchases costing \$5,000.00 or less without a written purchase order. The coding and approval for the purchases shall be the responsibility of the administrative officer or their designee.
- B. A purchase costing more than five thousand dollars but less than thirty thousand dollars shall be authorized by the borough manager. In the event of the borough manager's absence, the manager shall delegate the authority to the acting borough manager with the approval of the mayor, or in the mayor's absence, the deputy mayor.
- C. Purchases costing \$30,000.00 or more shall be made only after competitive bids or request for proposals have been solicited. The borough assembly, by resolution, may waive bid requirements for purchases costing \$30,000.00 or more, but less than \$150,000.00, subject to section 4.04.040.
- D. Competitive bid or request for proposal procedures for purchases estimated to cost \$150,000.00 or more may not be waived by the assembly except if the borough manager, as incident commander, implements the Petersburg emergency preparedness plan.

( [Ord. No. 2013-10, § 3, 8-5-2013](#) )

#### 4.04.030 - Funding required before purchase.

Unless specific borough assembly approval is given by budget revision, no purchase shall be made, or change order authorized, unless it can be paid for from non-obligated and unexpended funds from the current approved budget.

( [Ord. No. 2013-10, § 3, 8-5-2013](#) )

4.04.040 - Exceptions to bidding.

Competitive bidding or request for proposals shall not be required for the following:

- A. Purchases at a sales price of \$30,000.00 or more, but less than \$150,000.00, upon assembly resolution as set out in section 4.04.020 C.;
- B. Emergency purchases. "Emergency" as used in this chapter shall be defined as (1) an unforeseen occurrence or condition, usually a sudden, unexpected happening, and is something more than expediency or convenience. In an emergency, the assembly shall waive the bid procedure by resolution which shall identify the emergency; or (2) if the borough manager, as incident commander, implements the Petersburg emergency preparedness plan as provided in chapter 3.72 of this Code;
- C. Single supplier. When there is a single supplier of goods or product to be purchased, the assembly may waive the bid procedure by resolution. This may occur when it is believed that a product is uniquely suitable, only a specific brand is compatible with an existing borough supply or system, is specified in capital construction contracts or manufacturer's warranties, or when it is determined to be in the borough's best interest and most cost-effective to purchase from a single supplier;
- D. Contracts for equipment maintenance and repair. Contracts for the maintenance, repair or overhaul of borough equipment do not require the public bid process when the furnishing of parts or materials is incidental to furnishing of services or labor. The term "equipment" for these purposes shall mean a single unit whether or not attached as a fixture;
- E. Contracts for professional services, as set out in section 4.04.080;
- F. Placement of insurance contracts;
- G. When it is advantageous to the borough to enter into a contract with a bidder for the same supplies or services such bidder is providing another Alaskan local government, the state of Alaska, a cooperative purchasing association composed of government agencies, or the United States, where such supplies, equipment or services are being provided to the other governmental unit or association on the basis of competitive bids submitted; and where the borough contract is on substantially the same terms as those bid; or to contract with or through such other governmental unit or association so that the benefit of the responsible bid accrues to the borough;
- H. When competitive procedures have been followed, but no bids or quotations are received. In such a case, the borough manager may proceed to have the services performed or the supplies purchased without further competitive bidding; and
- I. Where contracts are to be awarded by competitive proposals under section 4.04.070.

( [Ord. No. 2013-10, § 3, 8-5-2013](#) )

4.04.050 - Bid preference for residents.

- A. Unless contrary to federal or state law, regulation or funding stipulations, a contract or purchase for supplies, materials, equipment or contractual services may, at the discretion of the borough assembly, be awarded to a resident bidder where the bid by such resident bidder is in all material respects comparable to the lowest responsible nonresident bid and the amount bid by such resident bidder does not exceed the lowest responsible nonresident bid by more than five-ten percent. The borough assembly may, after consideration of the bids and other relevant factors, including the public interest, elect not to grant a resident preference.



- B. No resident bidder preference will be allowed if the lowest responsible nonresident bid exceeds \$500,000.00. The assembly may by motion, adopted prior to bid opening, exempt any other contract or purchase from a resident bidder preference.
- C. A preference may only be given to a resident bidder who:
  - 1. Holds a current Alaska business license;
  - 2. Submits a proposal for goods and services under the name on the Alaska business license;
  - 3. Is a resident as defined in this chapter;
  - 4. Is incorporated or qualified to do business under the laws of the state of Alaska with its principal place of business in the borough, is a proprietorship and the proprietor is a resident of the borough or is a partnership and all partners are residents of the borough;
  - 5. Is not in arrears to the borough for payment of utilities, sales tax or real property tax; and
  - 6. If a joint venture, all joint venture partners must qualify under subsections (1) through (5) of this section.

( [Ord. No. 2013-10, § 3, 8-5-2013](#) )

4.04.060 - Bid procedure.

- A. All competitive bids shall be solicited by the borough manager or manager's designee, who shall give prospective bidders a notice of invitation to bid not less than two weeks before the date of the opening of bids. Invitations to bid shall be solicited by publication in a newspaper, [borough website, industry website or social media outlet](#) calculated to reach prospective bidders. The publication shall contain at least a general description of the item to be purchased or of the work required and shall designate the place where detailed requirements and specifications may be obtained and the time and place where the sealed bids will be opened. The manager may also solicit bids by sending notice electronically or by mail to any known prospective bidder. The invitation to bid may include criteria to determine the acceptability of bids such as inspection, testing, quality, delivery and suitability for a particular purpose.
- B. All bids shall be submitted in sealed envelopes that show clearly on the outside of the envelope the item bid and the time for opening. All bids shall be in writing. Bids submitted in electronic form will not be accepted, but modifications to bids already submitted to the borough and not yet opened may be submitted electronically. Modifications shall not reveal the total amount of the original or revised bid. Modifications shall state a plus or minus to the affected bid item or items only.
- C. Bids received after the due date and time noticed shall not be accepted and shall be returned to the bidder unopened.
- D. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the borough shall not be permitted.
- E. Bids shall be opened at the time and place designated in the invitation to bid. Bid openings shall be open to the public and a record made of the bidder name and amount bid.
- F. Bids shall not be open for public inspection until after the notice of intent to award is given.
- G. The borough shall accept only that responsible bid which it finds to be most advantageous to the borough, regardless of price; but all other factors being equal, the lowest bid shall be accepted. In determining the lowest responsible bidder, the assembly may consider, in addition to price:
  - 1. The ability, capacity and skill of the bidder to perform the contract;
  - 2. Whether the bidder can perform the contract within the time specified, without delay or interference;
  - 3. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
  - 4. The quality of performance of previous contracts;

5. The previous and existing compliance by the bidder with laws and ordinances relating to the contract;
  6. The sufficiency of the financial resources and ability of the bidder to perform the contract; and
  7. The number and scope of conditions attached to the bid.
- H. The Borough may waive any irregularity in a bid if it determines that the acceptance of the bid is in the public interest.
  - I. An invitation to bid, a request for proposal or other solicitation may be postponed or cancelled or the date for opening bids or proposals may be delayed if it is determined by the manager that it is in the best interest of the borough.
  - J. The borough may reject bids from a bidder who failed to adequately perform on a previous contract with the borough. If a contractor has had a contract terminated by the borough for cause, the contractor may not bid on a borough contract for a period of two years, commencing from the date of the termination of the contract.
  - K. The borough shall, with reasonable promptness, give notice to the bidders of intent to award the contract to the lowest responsible and responsive bidder whose bid materially conforms to the requirements set out in the invitation to bid. Notice of intent to award the contract shall be made seven days prior to the award.
  - L. If, in response to an invitation for bids, there is no bid received which is responsive to the invitation, or if all of said bids are unsatisfactory to the borough, then the assembly may authorize the purchase be made on the open market by the borough manager.
  - M. The borough reserves the right to reject any and all bids or proposals in whole or in part, to waive bid or proposal informalities and irregularities and award bid or proposal in the best interest of the borough.

( [Ord. No. 2013-10, § 3, 8-5-2013](#) )

#### 4.04.070 - Competitive proposals.

- A. If not awarded by bidding, the borough may make purchase and award contracts by competitive proposals when the borough manager determines the request for proposals is more advantageous to the borough than competitive sealed bids. Competitive proposals allow the borough to subjectively evaluate proposals made for a purchase, or specific scope of work, with award of the purchase or contract based upon qualitative criteria detailed in the request for proposal as well as a proposed price.
- B. A request for proposal must contain the date and time for delivering proposals, a specific description of the supplies, construction, services or professional services to be provided and the terms under which the purchases are provided. The request shall provide a description of the factors that will be considered by the borough when evaluating the proposals received including the relative importance of price and other evaluation factors.
- C. Notice of request for proposal shall be given in the same manner as notice of invitation to bid.
- D. All proposals shall be submitted in sealed envelopes or via email that show clearly on the outside of the envelope, or on the subject line of the email, the request for proposal title and the deadline for submission. All proposals shall be in writing and shall conform to the requirements of the request for proposals to be considered responsive. Proposals submitted in electronic form will ~~not~~ be accepted as email attachments only. ~~but Modifications or additions to proposals already submitted to the borough and not yet opened may be submitted electronically will be accepted by mail, in person or electronically and must be received prior to the request for proposal deadline.~~ Modifications or additions shall not reveal the total cost of the original or revised proposal. Modifications to proposed costs shall state a plus or minus to the affected proposal item or items only. Submitted proposals shall be ~~opened, in public received prior to, at the designated time and place deadline advertised in the request for proposal. A proposal summary shall be posted following a request for proposal deadline~~



which identifies the proposer(s) to the solicitation, the location of their business, and the estimated completion date of the proposal evaluation period.

- E. The contents of ~~the requests for each competitive~~ proposal shall not be disclosed to competing offerors or the public before the notice of intent to award is issued.
- F. The borough shall give notice of intent to award to the most favorable proposal made by a responsible and responsive offeror whose proposal is the most advantageous to the borough, taking into consideration ~~price and~~ the evaluation factors set forth in the request for proposal. Notice of intent to award shall be given at least seven days prior to the award.
- G. The borough may waive any irregularity in a ~~request for~~ proposal if it determines that the acceptance of such proposal is in the public interest. The borough reserves to itself the power to waive irregularities regarding proposals and to accept or reject any or all proposals in whole or in part.

( [Ord. No. 2013-10, § 3, 8-5-2013](#) )

4.04.080 - Professional service contracts.

- A. Contracts for professional services may be entered into without soliciting requests for sealed competitive bids or competitive proposals when the borough manager determines that there is qualified and experienced service provider that is available to perform the work, there is a single source of the expertise or knowledge required, that one person or firm can clearly perform the required task more satisfactorily because of the person's or firm's prior work experience with the borough, or that public necessity will not permit delay in conducting a formal request for competitive sealed bids or competitive proposals. The non-solicitation of professional services is at the discretion of the borough manager with notice to the borough assembly.

( [Ord. No. 2013-10, § 3, 8-5-2013](#) )

4.04.090 - Protest and remedies.

- A. A party may protest the award of a contract, the proposed award of a contract, or a solicitation for supplies, services, professional services or construction. The protest shall be filed with the borough manager, in writing, and shall include the following information:
  - 1. The name, address and telephone number of the protester;
  - 2. A description of the contract or proposed contract at issue;
  - 3. A detailed description of the legal and factual grounds for the protest including copies of relevant documents;
  - 4. The form of relief requested;
  - 5. The signature of the protester or the protester's representative; and
  - 6. A protest filing fee of \$1,000.00, which shall be returned to the protester only if the protester is successful in its protest.
- B. A protest alleging impropriety or ambiguities in a solicitation must be filed at least seven days before the due date of the bid or proposal. If a solicitation is revised less than seven days before the due date of the bid or proposal, a protest to the revision must be filed at least 24 hours prior to the bid or proposal opening. If a solicitation is made on shortened time, the protest must be made before the bid or proposal is due.
- C. A protest alleging impropriety in the award of a contract or proposed award of contract must be made within five days after a notice of intent to award is issued by the purchasing agent. If a protester shows good cause, the borough manager may consider a protest that is not timely. The manager may reject an untimely or incomplete protest.

- D. The manager shall give notice of the protest to the contractor if a contract has been awarded and if no award has been made, to all interested parties.
- E. If a timely and complete protest is filed, the award of the contract shall be stayed until the protest is resolved, except where the manager, in his or her discretion, determines that:
  - 1. There is no reasonable probability that the protest will be sustained; or
  - 2. Stay of the award is not in the best interest of the borough.
- F. The manager with concurrence of the borough attorney shall issue a written decision containing the basis of the decision within ten days after the protest is filed.
- G. If the manager sustains the protest, the appropriate remedy shall be based on:
  - 1. The circumstances surrounding the solicitation, including the seriousness of the deficiencies;
  - 2. The degree of prejudice to other interested parties;
  - 3. The integrity of the procurement system;
  - 4. The good faith or bad faith of the parties;
  - 5. The extent to which the purchase has been accomplished;
  - 6. The cost to the Borough of a proposed remedy; and
  - 7. The urgency of the procurement to the welfare of the borough.
- H. Notwithstanding other remedies set forth above, if a protest is sustained in whole or part, the protester's damages are limited to reasonable bid or proposal preparation costs.

( Ord. No. 2013-10, § 3, 8-5-2013 )

4.04.100 - Appeal.

- A. The manager's decision granting or denying the protest may be appealed to the assembly.
- B. A protester who intends to file an appeal of the manager's decision must provide written notice of intent to file an appeal to the borough clerk. The notice of intent shall be filed by the end of the working day following issuance of the manager's decision on the protest. If no timely notice of intent is filed, the right to file a written appeal under paragraph C. below is waived.
- C. A written appeal shall be filed within five working days after the manager's decision on the protest. The appeal shall include the following information:
  - 1. The name, address and telephone number of the protester;
  - 2. A description of the contract or proposed contract at issue;
  - 3. A detailed description of the legal and factual grounds for the appeal including a specific description of the error, if any, in the factual and legal conclusions of the manager's decision on the protest;
  - 4. The form of relief requested; and
  - 5. The signature of the person making the appeal or that person's representative.
- D. The assembly shall schedule and conduct a hearing on the appeal within seven days of receipt. Hearings shall be conducted informally, with due regard for the rights of the parties and shall be recorded.
- E. The assembly shall decide whether to grant or reject the appeal based on the provisions of this Code, applicable state case law and generally accepted principles of governmental purchasing as set forth in standard treatises, decisions of the United States Comptroller General and similar authorities. The decision shall contain findings of fact and conclusions of law. The assembly's decision shall be appealed to the superior court only if the appeal is made within 30 days.

- F. The protest and appeal provisions established by this section may be adopted for a particular procurement as necessary to maintain eligibility for state or federal funding.

( [Ord. No. 2013-10, § 3, 8-5-2013](#) )