

ORDINANCE NO. 01-99

ROLL CALL

VOTING	YES	NO
MAYOR DALE R. BARNEY <i>(votes only in case of tie)</i>		
SHERMAN E. HUFF <i>Councilmember</i>	X	
LILLIAN J. SHEPHERD <i>Councilmember</i>	X	
THORA L. SHAW <i>Councilmember</i>	<i>(absent)</i>	
CLYDE A. SWENSON <i>Councilmember</i>	X	
EVERETT KELEPOLO <i>Councilmember</i>	X	

I MOVE this ordinance be adopted: Councilmember Huff

I SECOND the foregoing motion: Councilmember Shepherd

ORDINANCE 01-99

AN ORDINANCE REPEALING AND REENACTING THE SPANISH FORK PURCHASING SYSTEM

WHEREAS, Spanish Fork City, as a political subdivision of the State of Utah, is required to follow certain mandates of State law concerning purchasing of property and attendant bids; and

WHEREAS, Spanish Fork City has adopted a purchasing system in order to give guidance and direction for the purchasing of products and the awarding of contracts; and

WHEREAS, it has been many years since the purchasing system has been updated; and

WHEREAS, updating the purchasing policy will clarify any confusion between the requirements of State law and the City practices, and streamline the process in order to accomplish

the saving of tax dollars; and

WHEREAS, obtaining competitive prices for the purchase of products or the awarding of contracts is a benefit to the residents of the City;

NOW THEREFORE, be it ordained and enacted by the Spanish Fork City Council as follows:

Section I.

Chapter 3.08 entitled "Purchasing System" of the Spanish Fork City Municipal Code is hereby repealed and re-enacted as follows:

Chapter 3.08. Purchasing System.

3.08.010. System Adopted.

3.08.020. Definitions.

3.08.030. Administration.

3.08.040. Bid Processes.

3.08.050. Choice of Bid Process.

3.08.060. Awarding of Bids and RFPs.

3.08.070. Exceptions to Bidding Requirements.

3.08.080. Inter-local Agreements in Letting of Contracts for Commodities or Services.

3.08.090. Disposal or Lease of Public Property.

3.08.100. Penalties.

3.08.010. System Adopted.

Pursuant to Utah Code Annotated §10-6-122, §10-7-20, §10-8-1, §10-8-2, and other pertinent provisions of the laws of the state of Utah, there is adopted and established a purchasing system for Spanish Fork City Corporation which shall be based on the following principles.

3.08.020. Definitions.

Unless the context requires otherwise, the terms as used in this chapter, shall have the following meanings:

"Adequate Appropriation Balance" means sufficient fund balance which must exist in the line item appropriation in the approved budget against which the purchase order is to be charged.

"Bidding" means the procedure used to solicit quotations on price and delivery from various prospective suppliers of supplies, equipment and contractual services.

"Bid process": means the process used by the City to solicit and award bids or contracts. Examples of bid processes used in this chapter include formal competitive bidding, competitive

sealed proposals in lieu of bids and open market procedure.

“Capital Improvements Projects” means any construction which adds to or improves infrastructure or buildings of the City.

"Construction" means the process of building, renovating or demolishing any public structure or building, major developmental work, or landscaping of public real property. It does not include the routine operations, routine repair, or routine maintenance of existing structures, buildings or real property.

"Local Bidder" means a firm or individual who regularly maintains a place of business and transacts business in, or maintains an inventory of merchandise for sale in, or is licensed by, or pays business taxes to the city.

“Professional Services” means, but not be limited to, the following: auditing, architecture, banking, insurance, engineering, appraisals, legal services, and other consulting services.

"Public Property" Any item of real or personal property owned by the city.

"Responsible Bid" means an offer, submitted by a responsible bidder to furnish supplies, equipment or contractual services in conformity with the specifications, delivery terms and conditions, and other requirements included in the invitation for bids.

"Lowest Responsible bidder" means a person or firm who has the capability in all respects to perform fully the contract requirements and who has the integrity and reliability which will assure good faith performance. The lowest responsible bidder is a bidder who has submitted the lowest bid to furnish supplies or contractual services to the City, and who meets the standards set forth in this definition. The lowest responsible bidder's bid shall comply with the specifications, delivery terms and conditions, and other qualifications and requirements included in the invitation for bids, and shall be accompanied by any bonds required by the City or other applicable law. In determining the lowest responsible bidder, the City shall give primary emphasis to bid price, but may also consider the following items in addition to the actual bid price:

1. The ability, capacity, experience and skill of the bidder to perform the service required.
2. Whether the bidder can perform the contract or provide his or her services within the time specified.
3. The quality and performance of previous services by the bidder, either to the City or another entity.
4. Quality, availability and adaptability of the supplies or contractual services to the particular use required.
5. The ability of the bidder to provide future maintenance and service.
6. The number and scope of conditions attached to the bid or price quotation.
7. The maintenance history of the product, the parts and service costs of the product, existing inventory, mechanic's expertise, and ease of maintenance.

All bidders shall furnish information and data requested by the City that will assist the City in determining whether or not a particular bidder is the "lowest responsible bidder".

"Supplies, Materials and Equipment" means any tangible and all articles of personal property or things which shall be furnished to or used by any city department or by any City employee in the performance of his or her duties. For purposes of brevity, supplies, materials and equipment shall hereafter be collectively referred to as "supplies".

3.08.030. Administration.

The city manager, who shall function as chief procurement officer, or his/her designee, shall administer the purchasing system provided by this chapter. S/he shall perform the duties and have powers concerning purchasing matters as follows:

- A. Administer and maintain the purchasing system;
- B. Recommend to the city such new or revised purchasing requirements as are deemed desirable and in conformance with other statutory requirements;
- C. Negotiate and recommend execution of contracts for the purchase of supplies, equipment and contractual services;
- D. Seek to obtain as full and open competition as possible on all purchases;
- E. Keep informed of current developments in the field of purchasing, i.e., prices, market conditions, new products, etc.;
- F. Prescribe and maintain such forms as are reasonably necessary to the operation of this chapter and other rules and regulations;
- G. Supervise the inspection of all supplies and equipment to assure conformance with specifications;
- H. Transfer surplus or unused supplies and equipment between departments as needed;
- I. Maintain a bidders' list, vendors' catalog file, and other records needed for the efficient operation of the purchasing system.

3.08.040. Bid Processes.

The City shall substantially comply with the following guidelines for the specific bid process used:

A. Formal competitive bidding. (Bids)

1. Notice inviting bids issued.

- a. Notice includes a general description of the articles to be purchased or the work to be performed, the location where bid blanks and specifications may be secured, and the time and place for opening bids.
- b. The notice inviting bids shall be:
 - i. In cases involving capital improvements projects over \$25,000:
 - 1. Published twice (2) in a newspaper of general circulation within the city five (5) days before the date of the opening of the bids and, at the discretion of the City, may be;
 - 2. Delivered to all known responsible prospective bidders, including those whose names are on a bidders' list or who have made a written request that their names be added to the bidders' list.
 - ii. In cases involving capital improvements projects of \$25,000 or less, or the purchase of any supplies, materials and equipment:
 - 1. Published once (1) in a newspaper of general circulation within the City at least five (5) days before the date of the opening of the bids, or;
 - 2. Delivered to all known responsible prospective bidders and/or suppliers, including those whose names are on a bidders' list

or who have made a written request that their names be added to the bidders' list.

2. **State bid list.** If there is a quotation for the item desired to be purchased on the State bid list, the City may invite prospective bidders to bid against the price quoted in the State bid list.
3. **Bid procedure.**
 - a. Sealed bids shall be submitted as designated in the notice with the statement "Bid for (item or project)" on the envelope.
 - b. Bids shall be opened in public at the time and place stated in the public notice.
 - c. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than thirty (30) days after the bid opening.
 - d. Bids submitted to the City shall be evaluated on the basis of compliance with specifications and other relevant criteria.
4. **Bid Award.** Bids shall be awarded or rejected as set forth in Section 3.08.060.

B. Competitive sealed proposals in lieu of bids. (RFP)

This bid process may only be used when the City Manager or his/ her designee determines that the use of formal competitive bidding is either impractical or not advantageous to the City, or for professional service contracts.

1. **Notice** shall be given by:
 - a. Solicitation through a request for proposals. Request are to be delivered to all known responsible prospective bidders or suppliers, including those whose names are on a bidders' list or who have made a written request that their names be added to the bidders' list, and/or
 - b. Public notice of the request for proposals may be given by publication once in a newspaper, magazine or journal likely to give notice to qualified bidders or suppliers five (5) days prior to the date of bid opening.
2. **Request for proposals.** The request for proposals shall state the relative importance of price and other evaluating factors.
3. **Opening of proposals.**
 - a. Proposals shall be opened so as to avoid disclosure of contents to competing bidders during the process of negotiation.
 - b. A register of proposals shall be maintained by the City for thirty (30) days after the contract award and shall be open for public inspection.
4. **Revision of proposals.**
 - a. As provided in the request for proposals, discussions may be conducted with responsible bidders who submit proposals determined to be reasonably susceptible of being selected for award. The purpose of the discussion is to assure full understanding of and responsiveness to the solicitation requirements.
 - b. Bidders shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Any revision may be

permitted after submissions and prior to award for the purpose of obtaining best and final offers.

- c. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing bidders.
5. **Award of Proposal.** Award shall be made to the responsible bidder whose proposal is determined to be the most advantageous to the City, taking into consideration price, the evaluation factors set forth in the request for proposals, and other criteria set forth herein. The award shall be in accordance with section 3.08.060.

C. Open market procedure.

1. Purchases shall, whenever possible, be based on at least three (3) bids (price quotations) and shall be awarded to the lowest responsible bidder.
2. Bids (price quotations) shall be solicited from prospective vendors by written or oral request.
3. The City Manager or his/her designee may award purchase on the open market.

3.08.050 Choice of Bid Process.

Except as otherwise provided in this Chapter or by provisions of State or Federal law, purchases of supplies or services shall follow one of the bid processes outlined below for the appropriate dollar amount. In cases where more than one alternative is listed as acceptable for a given dollar amount, any of the listed alternatives shall be acceptable, and the City shall not incur any liability for choosing one alternative over another. The choices of bid process are as follows:

- A. Purchases of supplies or services having an estimated value in excess of twenty five thousand dollars (\$25,000.00) shall be pursuant to one of the following procedures:
 1. Formal competitive bidding.
 2. Competitive sealed proposals in lieu of bids.
- B. Purchases of supplies or services having an estimated value of greater than one thousand dollars (\$1,000.00) but less than or equal to twenty-five thousand dollars (\$25,000.00) shall be pursuant to one of the following procedures:
 1. Formal competitive bidding.
 2. Competitive sealed proposals in lieu of bids.
 3. Open market procedure.
- C. Whenever the supplies or services have an estimated value of \$1,000.00 or less, all bid processes and price solicitation procedures may be dispensed with.

3.08.060 Awarding of Bids and RFPs.

- A. Except as otherwise required by law, bids on capital improvement projects more than \$25,000 shall be accepted and awarded by the City Council. Except as otherwise required by law, capital improvement projects less than \$25,000, which are also within the adequate appropriation balance, shall be accepted and awarded by City Manager or designee. All

purchases of “supplies, materials and equipment”, which are within the adequate appropriation balance may be accepted and awarded by the City Manager or designee.

- B. Contracts for professional services in an estimated amount greater than \$25,000 are to be accepted and awarded by the City Council. Contracts for professional services in the estimated amount of \$25,000 or less may be accepted and awarded by the City Manager or designee.
- C. **Rejection of Bids.** The City Council or the City Manager or his/her designee, depending on who may accept and award the bid, may reject any and all bids presented, and may resolicit for bid as set forth in this Chapter.
- D. **Lowest Responsible Bidder.** Except as otherwise allowed or required, the City shall award the contract or bid to the lowest responsible bidder.
- E. **Negotiation of Bids.** Where a bid exceeds available funds and time or economic considerations preclude resolicitation of work or purchase of a reduced scope or quantity, the City Manager or Designee may negotiate an adjustment of the bid price, including changes in the bid requirements with the lowest responsible bidder, in order to bring the low bid within the amount of available funds.
- F. **Tie Bids.** If two (2) or more of the bids received are for the same total amount or list price, quality and service being equal, the City Manager or his or her designee may negotiate with the bidders and obtain the best bid possible and/or give a preference to a local bidder.
- G. **Single Bids.** The City Manager or his/her designee may require a price or cost analysis if only one bid is received. The bidder may be required to furnish a detailed cost proposal, and the bid award shall be subject to subsequent negotiation.
- H. **Bonds.** Before entering a contract, the City shall have authority to require performance, payment and other bonds in such amounts as deemed necessary to protect the interests of the City. The types and amounts of the bonds to be required shall be described in the notice inviting bids.

3.08.070. Exceptions to Bidding Requirements

Unless otherwise required by State or Federal law, the bid process requirements set forth in section 3.08.050 do not apply in the following situations.

- A. **Professional service contracts.**
 - 1. Professional services shall include, but not be limited to, the following: auditing, architecture, banking, insurance, engineering, appraisals, legal services, and other consulting services. Professional service contracts shall be awarded based on professional qualifications, service ability, cost of service, and other criteria deemed important by the City.

2. A professional service contract for the annual fiscal year financial audit shall only be awarded by the City Council. This contract may be awarded for consecutive years; however, the performance of the auditing firm shall be reviewed by the City Council at the end of three (3) years, and the Council shall at that time determine whether to continue the contract for an additional two (2) years maximum or put it back out to bid. The contract must be awarded to a different firm after it has been with the same firm for five (5) years.
- B. **Contracts not suited to competitive bidding.** Contracts, which by their nature are not suited to award by competitive bidding, shall not be subject to the competitive bidding requirements of Section 3.08.040. These contracts include:
1. Contracts for items which may only be purchased from a single or sole source.
 2. Contracts for additions to and repairs and maintenance of equipment owned by the City which may be more efficiently added to, repaired or maintained by a particular person or firm.
 3. Contracts for equipment which, by reason of the training of City personnel or the inventory of replacement parts maintained by the City, is more compatible with the existing equipment owned by the City.
- C. **Library purchases.** The purchase of library books, records, tapes, films, publications, periodicals and subscriptions are specifically exempted from competitive bidding requirements.
- D. **Auction, closeout, bankruptcy sales.** If the City Manager or his or her designee determines that supplies, materials or equipment can be purchased at any public auction, closeout sale, bankruptcy sale or other similar sale, and if the City Manager or his/her designee finds that a purchase at any such auction or sale will be made at a cost below the market cost in the county, a contract or contracts may be let, or the purchase made, without complying with the competitive bidding requirements of this Chapter.
- E. **Exchanges.** Exchanges of supplies, material or equipment between the City and any other public agency which are not by sale or auction shall be by mutual agreement of the respective public agencies
- F. **Projects performed by City employees.** City employees may be used to complete City projects, provided that the City complies with State statutory requirements governing contracts for municipal public improvements.
- G. **State bid list.** The City may purchase supplies from the vendor who has submitted the lowest bid price for such items to the State of Utah Purchasing Office at the quoted price, without any solicitation or price quotation or invitation to bid. For such purposes, the quoted price shall be deemed to be the lowest price available for such items and the City need not follow any other bidding requirements.

- H. **Utah Correctional Industries Division.** Goods and services produced by the Utah Correctional Industries Division may be purchased from the Utah Correctional Industries Division without following any of the bidding requirements set forth herein.
- I. **Emergency Purchases.** Notwithstanding any other section of this Chapter, competitive bidding may be suspended in the event of an emergency when supplies, services, and/or contracts are needed immediately in order to respond to the emergency. A state of emergency must have been declared by the Mayor, City Manager, Public Safety Director, or Public Works Director, or their next in command if they are not available. In order to suspend competitive bidding, the emergency must require immediate action and/or response in order to protect the life, health, or safety of persons or property, or, in the event of an improvement bond forfeiture, the need to complete the bonded improvements in a certain time frame, given all factors, including weather considerations.

3.08.080. Inter-local Agreements in Letting of Contracts for Commodities or Services.

The city shall have the power to enter into joint purchase agreements with any or all other public agencies within the state for the purchase of any commodity or service, whenever it is determined by the city council to be in the best interest of the city.

3.08.090. Disposal or Lease of Public Property.

- A. No public property having an estimated value in excess of one hundred dollars (\$100.00) shall be disposed of or released to anyone other than the City, unless such property has been declared surplus by the City Manager or his/her designee.
- B. Whenever public property is surplus, unused, obsolete, unsuitable or otherwise no longer needed, the department head having control of such property shall notify the City Manager or his/her designee. The City Manager or designee may notify other city departments of the availability of such property. The City Manager or designee shall supervise any transfer of such property to any other department. If no use can be made or can be expected to be made within the reasonably foreseeable future, the property shall be disposed of in accordance with this section.
- C. The City Manager or designee shall prepare a listing of all city-owned property which s/he feels is no longer needed by the City and which can be declared surplus. After an item has been declared surplus, the property may be disposed of or leased. If an item has an estimated salvage value over five thousand dollars (\$5,000), the City Council shall approve its disposal. All disposals, leases and/or subleases of public property shall be made, in accordance with law, under the direction of the City Manager or designee.
- D. Except as otherwise required by State law, boundary line agreements and deeds conveying unneeded portions of rights-of-way or easements may be executed without declaring the property surplus.

3.08.100. Penalties.

A. It is unlawful:

1. For any bidder or prospective bidder, or any employee or officer thereof, in restraint of freedom of competition or otherwise, by agreement with any other person, bidder, or prospective bidder, to bid a fixed price, or to "rotate" bidding practices among competitors.
2. For any person to offer or to give to any elected official, officer or employee of the City or any member of his immediate family, any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, promise, or other form, under circumstances in which it could reasonably be intended to influence him/her or could reasonably be expected to influence him/her in his/her duties concerning the award of any contract or order of purchase, or for any elected official, officer or employee to directly or indirectly solicit or directly or indirectly accept any such gift for such purpose.
3. For any elected official, officer or employee to disclose, in advance of the opening of the bids, the content of any bid invited through the formal competitive bidding procedure.
4. For any elected official, officer or employee to actively participate in the awarding of a contract from which s/he will directly benefit, without fully disclosing any interest s/he has therein.
5. For any elected official, officer or employee or other person to appropriate for personal or private use any item of public property.
6. To purchase supplies or equipment for the personal use of any elected official, officer or employee unless the item or items are required parts of a worker's equipment and are necessary to the successful performance of the duties of such official, officer or employee. Other personal purchases shall not be permitted and will be cause for disciplinary action.

B The following contracts are, in the discretion of the City Manager, voidable:

1. Contracts which result from a conflict of interest under this Chapter or other applicable law.
2. Contracts awarded to a person or firm that tried to influence the award of such contract by offering something of value to any elected official, officer or employee.

C. A violation of this section by a city employee shall be cause for disciplinary action. A violation of this section by an elected official shall be malfeasance in office.

Proof of Publication

J. Lane Henderson being first duly sworn according to law, disposes and says that he is the Publisher of *THE SPANISH FORK PRESS*, a weekly newspaper printed and published at Spanish Fork, Utah County, Utah and of general circulation therein; that the Notice, a copy of which is hereto attached, was printed and published in said paper.

ORDINANCE 01-99

AN ORDINANCE REPEALING AND REENACTING THE SPANISH FORK PURCHASING SYSTEM

A Purchasing System Ordinance has been enacted by Spanish Fork City. A summary containing the headings of the ordinance follows:

3.08. Purchasing System.
3.08.010. System Adopted.
3.08.020. Definitions.
3.08.030. Administration.
3.08.040. Bid Processes.
3.08.050. Choice of Bid Process.
3.08.060. Awarding of Bids and RFPs.
3.08.070. Exceptions to Bidding Requirements.
3.08.080. Inter-local Agreements in Letting of Contracts for Commodities or Services.
3.08.090. Disposal or Lease of Public Property.
3.08.100. Penalties.

A full copy of the ordinance is available for inspection at the City Office, 40 South Main, Spanish Fork.

PASSED AND ORDERED PUBLISHED BY THE SPANISH FORK CITY COUNCIL OF SPANISH FORK, UTAH, this 5th day of January, 1999.

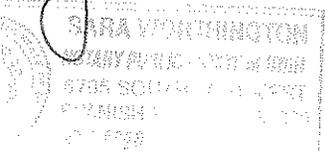
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for consecutive One weeks,
 the first publication on the 14 day
 of January 1999
 and the last on the 14 day of
January 1999

Jane Henderson

Subscribed and sworn to before me this 14 day of January 1999

Sara Worthington
 Notary Public



Residing at Spanish Fork, Utah - My Commission expires 3-14-99