

# Title 6

## Purchasing and Contracts

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### Chapter 6.04 General Provisions

### Sections:

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**6.04.010 Definitions.** A. "Contractor" means that person who contracts with the City to perform construction projects, for sale or purchase of personal property, or to perform personal services.

B. "Department head" means the chief administrative officer of a city department.

C. "Officer" or "purchasing/contracting officer" means the City Manager or his/her designee. (Ord.89-10)

D. "Project engineer" means that engineer designated by the City Manager or Council for purposes of administering and coordinating any construction project.

E. "Proprietary item" or "proprietary service" means those items or personal property or those services of any nature that can be supplied by only one contractor because of the singular characteristics of the item or service.

F. "Using agency" or "agency" or department" means any department, division, utility or agency of the City concerned with a construction project, or the procurement or sale of personal property, or acquiring personal services from any

contractor. (Ord. 78-2(part), 1978; Ord. 89-10 Sec. 1, 1989)

G. "Real Property" as used in this Title includes any estate in land, easement, right-of-way, lease, permit, license, franchise, future interest, building, fixture, or any other right, title or interest in land or improvements. (Ord.78-2(part), 1978)

**6.04.015 Purpose.** A. The purposes of this Title are to:

1. Maximize the purchasing value of public funds;
2. Provide for a procurement system of quality and integrity;
3. Clearly define the authority for purchasing within the city organization;
4. Establish consistent procurement principles for all departments of the city;
5. Establish methods and procedures for the purchase, lease, sale and disposal of Real Property; and
6. Provide for a method of awarding architectural and engineering service contracts.

B. This Title shall be construed and applied to promote the purposes stated in this section.

**6.04.020 Policy statement.** A. It is the declared policy of the City to discourage collusive bidding by contractors and to encourage full and open competition whenever practical between all city contractors by competitive bidding practices.

B. It is unlawful for any city officer, employee or agent to contract contrary to the provisions for this title. (Ord. 78-2(part), 1978, Ord 89-10 Sec. 1, 1989)

**6.04.030 Purchasing division and Purchasing Officer established.** There is established in the finance department the division of purchasing. The Purchasing Officer shall have general supervision of the division of purchasing, subject to general supervision of the Chief Fiscal Officer. (Ord. 78-2(part), 1978)

**6.04.040 Purchasing Officer--Scope of authority.** The Purchasing Officer shall have the power, and it shall be his duty to purchase or contract for construction, supplies and contractual services needed by the City, and to sell surplus personal property in accordance with purchasing procedures as prescribed by this title. (Ord. 78-2(part), 1978)

**6.04.050 Purchasing Officer--Other powers and duties.** In addition to any other powers and duties the officer shall:

B. Minimum Expenditure. Act to procure for the City the highest quality in construction, supplies and contractual services at least expense to the City;

C. Purchasing Analysis. Keep informed of current development in the field of purchasing, prices, market conditions and new products, and secure for the City the benefits of research done in the field of purchasing by other governmental jurisdictions, national technical societies, trade associations having national recognition, and by private businesses and organizations. (Ord. 78-2(part), 1978)

## Chapter 6.08 Purchase, Sale and Contract Administration

### Sections:

- 6.08.010 Definitions
- 6.08.020 Purchasing agent.
- 6.08.030 Contracting authority.
- 6.08.040 Contracts enforceable against city.
- 6.08.050 Availability of funds.
- 6.08.060 Rejection of bids or proposals.
- 6.08.070 Execution of contracts.
- 6.08.080 Contract amendments.
- 6.08.090 Competitive sealed bidding required; exceptions.
- 6.08.100 Competitive sealed bidding.
- 6.08.110 Competitive sealed proposals; negotiated procurement.
- 6.08.120 Limited competition procurement.
- 6.08.130 Sole source procurement.
- 6.08.140 Emergency procurement.
- 6.08.150 Award to responsible bidder or proposer.
- 6.08.160 Rejection of bids or proposals.
- 6.08.170 Bonds.
- 6.08.180 Local vendor preference.
- 6.08.190 Ethics of contracting and purchasing.
- 6.08.200 Federal or state assistance.
- 6.08.210 Violations of tax ordinances.

**6.08.010 Definitions.** When used in this chapter, the following words and phrases shall have the meanings set forth in this section:

A. "Construction" means the on-site field surveying, erection, rehabilitation, alteration, extension or repair including painting or redecorating buildings, highways or other improvements to real property under contract for the city.

B. "Contract" includes all types of agreements, regardless of what they may be called, for the procurement of supplies, services or construction.

C. "Contract amendment" means any change in the terms of a contract accomplished by agreement of the parties, and includes a change order.

D. "Professional service" means a service which involves the exercise of discretion and independent judgment together with advanced or specialized knowledge, expertise or training gained by formal studies or experience, and includes without limitation a service provided by an engineer, architect, attorney or accountant.

E. "Service" means a contract performance whose principal element is not the furnishing of tangible or intangible property.

F. "Supplies" means tangible or intangible personal property.

**6.08.020 Purchasing agent.** A. The City Manager or the City Manager's designee shall be the purchasing agent.

B. The purchasing agent shall have the following authority and responsibilities:

1. To procure all supplies, services and construction required by the city;
2. To sell, trade or otherwise dispose of surplus supplies belonging to the city;
3. To maintain all records pertaining to the procurement of supplies, services and construction, and the disposal of supplies, by the city;
4. To join with other units of government in cooperative purchasing ventures where the best interests of the city would be served thereby; and
5. Any other authority and responsibilities that this chapter assigns to the purchasing agent.

C. The City Manager may delegate a department head authority to act as purchasing agent for the awarding of contracts for supplies, services and construction for that department, under which the city is obligated to pay no more than five thousand dollars (\$5,000.00) and the contract price can be paid out of the department's budget.

**6.08.030 Contracting authority.** The city may, pursuant to an award in accordance with this chapter, contract with any person to acquire any supplies, services or construction required by the city. Only persons authorized by this chapter have authority to contract on behalf of the city.

**6.08.040 Contracts enforceable against city.** No contract for supplies, services or construction, or any amendment thereto, may be enforced against the city unless its terms have been approved in accordance with this chapter and unless the contract or amendment thereto has been set forth in writing executed in accordance with this chapter.

**6.08.050 Availability of funds.** No contract for supplies, services or

construction, or any amendment thereto that increases the contract price, may be approved or executed unless the finance director has certified that funds are available for the city's performance under the contract. Approval of contracts; report to Council.

A. The City Manager may execute a contract for supplies, services or construction under which the city is obligated to pay no more than forty thousand dollars (\$40,000.00) without Council approval. The City Manager shall provide quarterly reports to the Council of all expenditures over ten thousand dollars (\$10,000.00).

B. No contract for supplies, services or construction under which the city is obligated to pay more than forty thousand dollars (\$40,000.00) may be executed unless the Council has approved a memorandum setting forth the following essential terms of the contract:

1. The identity of the contractor;
2. The contract price; The nature and quantity of the performance that the city shall receive under the contract;
3. The using department; and
4. The time for performance under the contract.

C. Notwithstanding subsection B of this section, the City Manager may execute a contract awarded as an emergency procurement under Section 6.08.140 without Council approval; provided, that the contract may not continue after the next regular Council meeting without Council approval.

D. Notwithstanding subsection B of this section, the City Manager is allowed to purchase or make payments for budgeted routine and ongoing contracts for public utility services without Council approval; provided, that the terms and conditions of service are determined by a tariff on file with a state or federal regulatory agency.

**6.08.060 Rejection of bids or proposals.** If the City Manager or Council determines that it is in the best interest of the city to do so, the city may reject all bids.

**6.08.070 Execution of contracts.** All contracts for supplies, services and construction, and any amendments thereto, that oblige the city to pay five thousand dollars (\$5,000.00) or more shall be signed by the City Manager.

**6.08.080 Contract amendments.** A. Contract amendments shall not be used to avoid procurement by the competitive procedures established under this chapter.

B. A contract amendment may not be executed unless the Council has approved a memorandum setting forth the changes to the essential terms of the contract if the amendment will cause the price of the contract, as amended, to exceed:

1. Forty thousand dollars (\$40,000.00); or
2. One hundred ten (110) percent of the original contract price or forty thousand one dollars (\$40,001.00), whichever is greater, if the original contract price exceeded forty thousand dollars (\$40,000.00).

C. As in subsection B above, no combination of contract amendments may be executed unless the Council has approved a memorandum setting forth the changes to the essential terms of the contract if the combination of amendments will cause the price of the contract, as amended in aggregate, to exceed:

1. Forty thousand dollars (\$40,000.00); or
2. One hundred ten (110) percent of the original contract price or forty thousand one dollars (\$40,001.00), whichever is greater, if the original contract price exceeded forty thousand dollars (\$40,000.00).

**6.08.090 Competitive sealed bidding required; exceptions.** A. Except as this section provides otherwise, all city contracts for supplies, services and construction shall be awarded by competitive sealed bidding under the procedure in Section 6.08.100

B. In addition to awarding contracts by competitive sealed bidding, the city may award a contract:

1. By competitive sealed proposals under the procedure in Section 6.08.100, where authorized by that section;
2. By limited competition under the procedure in Section 6.08.120, where authorized by that section,
3. To a sole source supplier as authorized by Section 6.08.130,
4. Under an expedited procurement procedure in the event of an emergency, as authorized by Section 6.08.140; Under the procedure prescribed by the source of funding for the contract;
5. For professional services without competition in an amount not to exceed fifty thousand dollars (\$50,000.00);
6. Under which the city is obligated to pay no more than ten thousand dollars (\$10,000.00), without competition;
7. To a vendor under the terms of a contract awarded to that vendor under a competitive bidding procedure by the government of the United States, the state of Alaska or another state, or an agency, instrumentality or political subdivision of them.

**6.08.100 Competitive sealed bidding.** A. The purchasing agent shall initiate competitive sealed bidding by issuing an invitation for bids. The invitation for bids shall state, or incorporate by reference, all specifications and contractual terms and conditions applicable to the procurement.

B. The purchasing agent shall give public notice of the invitation for bids at least fourteen (14) days before the last day on which bids will be accepted, by publication in a newspaper of general circulation in the city, and posting in a location at the city offices that the City Manager designates for this purpose. The contents of the notice shall be sufficient to inform interested readers of the general

nature of the supplies, services or construction being procured, where to obtain a copy of the invitation to bid, and the procedure for submitting a bid.

C. The terms of an invitation for bids may be modified or interpreted only by written addendum issued by the purchasing agent. Each addendum to an invitation for bids shall be sent to each recipient of the invitation for bids. A bid is responsive only if it acknowledges receipt of all addenda to the invitation for bids.

D. The city shall not accept bids that are received after the time for receipt of bids stated in the invitation for bids. A timely bid is subject to unconditional acceptance without alteration or correction, except that:

1. A bidder may withdraw a bid before the time for receipt of bids;
2. After the time for receipt of bids, the city, in its discretion, may permit a bidder to correct an error in a bid that is apparent from examination of the bid document.

E. Bids shall be opened publicly at the time and place designated in the invitation for bids. The purchasing agent shall tabulate the amount of each bid and shall record such other information as may be appropriate for evaluation, together with the name of each bidder. The tabulation shall be open to public inspection, and a copy of the tabulation shall be furnished to each bidder.

F. If the lowest responsive and responsible bid exceeds the amount of funds certified by the finance director to be available for the procurement, and if sufficient additional funds are not made available, the scope of the procurement may be reduced to bring its estimated cost within the amount of available funds. The purchasing agent shall issue a new invitation for bids for the reduced procurement, or, upon a finding that the efficient operation of the city government requires that the contract be awarded without delay; he may negotiate with one or more of the lowest responsive and responsible bidders. The city may award the reduced contract to the bidder that agrees to the best negotiated terms.

**6.08.110 Competitive sealed proposals; negotiated procurement.** A. The purchasing agent may procure supplies, services or construction by competitive sealed proposals under this section, if the purchasing agent determines that it is not practicable to develop sufficiently detailed contract terms or specification for procurement by competitive sealed bidding, or that either vendor qualifications or the means and methods that a vendor will use are material to vendor selection.

B. The purchasing agent shall solicit competitive sealed proposals by issuing a request for proposals. The request for proposals shall state, or incorporate by reference, all specifications and contractual terms and conditions to which a proposal must respond, and shall state the factors to be considered in evaluating proposals and the relative importance of those factors. Public notice of a request for proposals shall be given in accordance with subsection 6.08.090.

C. The terms of a request for proposals may be modified or interpreted only by written addendum issued by the purchasing agent. Each addendum to a request

for proposals shall be sent to each recipient of the request for proposals. A proposal is responsive only if it acknowledges receipt of all addenda to the request for proposals.

D. The city shall not accept proposals that are received after the time for receipt of proposals stated in the request for proposals. A timely proposal is subject to unconditional acceptance without alteration or correction, except that:

1. A proposer may withdraw a proposal before the time for receipt of proposals.

2. After the time for receipt of proposals, the city, in its discretion, may permit a proposer to correct an error in a proposal that is apparent from examination of the proposal document.

E. The city shall evaluate each proposal submitted by a responsible proposer under the criteria set forth in the request for proposals. The purchasing agent may award a contract to the responsible proposer that the city determines has submitted the best proposal, or the purchasing agent may negotiate final contract terms with one or more responsible proposers that the city determines have submitted the most responsive proposals. Such negotiations may include solicitation from proposers of best and final offers. The purchasing agent shall provide all proposers that are selected to participate in negotiations with an equal opportunity to discuss and revise proposals. In conducting negotiations or requesting revisions, neither the purchasing agent nor any other city officer or employee shall disclose any information derived from competing proposals. After conducting negotiations, the purchasing agent shall award the contract to the highest ranked proposer deemed eligible for negotiations that agrees to contract terms acceptable to the city.

F. The contents of a proposal shall not be disclosed to any competing proposer until the purchasing agent has issued a written notice of intent to award to all responding proposers. After the issuance of the notice of intent to award, the proposal selected for award shall be open to public inspection.

**6.08.120 Limited competition procurement.** A. The purchasing agent may procure supplies, services and construction having an estimated value not exceeding fifty thousand dollars (\$50,000) by soliciting bids or proposals from a limited number of potential contractors under this section.

B. The purchasing agent will identify vendors that are qualified and available to provide the supplies, services or construction, and solicit bids or proposals from at least three vendors or from all vendors if there are no more than three. The solicitation must be in writing and shall be in a form reasonably calculated to yield the lowest responsive bid by a responsible bidder. In soliciting bids or proposals, the purchasing agent shall allow each vendor that submits a bid an equal opportunity to negotiate price, delivery schedule and terms.

C. The purchasing agent shall award the contract to the lowest responsive and responsible bidder. The purchasing agent shall keep a record of all solicitations



of bids under this section, the bids received, and the awards made thereon.

**6.08.130 Sole source procurement.** The purchasing agent may award a contract for supplies, services or construction without competition where the purchasing agent determines in writing that the city's requirements reasonably limit the source for the supplies, services or construction to one vendor.

**6.08.140 Emergency procurement.** The purchasing agent may award a contract for supplies, services or construction without competition, formal advertising or other formal procedure where the City Manager determines in writing that an emergency threatening the public health, safety or welfare requires that the contract be awarded without delay. Whenever possible, emergency procurement contracts should not obligate the city to perform beyond the next regularly-scheduled Council meeting.

**6.08.150 Award to responsible bidder or proposer.** A. A contract award under this chapter shall be made only to a responsible bidder or proposer. The purchasing agent shall determine whether a bidder or proposer is responsible on the basis of the following criteria:

1. The skill and experience demonstrated by the bidder or proposer in performing contracts of a similar nature;
2. The bidder's or proposer's record for honesty and integrity;
3. The bidder's or proposer's capacity to perform in terms of facilities, personnel and financing; The bidder's or proposer's past performance under city contracts. If the bidder or proposer has failed in any material way to perform its obligations under any contract with the city, the bidder or proposer may be deemed not responsible.

**6.08.160 Rejection of bids or proposals.** If the City Manager or Council determines that it is in the best interest of the city to do so, the city may reject all bids.

**6.08.170 Bonds.** A. The purchasing agent may require that each vendor that submits a bid or proposal for procurement accompany its bid or proposal with a bid bond in an amount and in a form acceptable to the purchasing officer. The bid bond shall secure the obligation of the vendor to enter into a contract if the city accepts its bid or proposal. The bid bond shall be issued by a company qualified by law to do business as a surety in the state, or shall be in the form of a cash deposit.

B. The purchasing agent may require in an invitation for bids or request for proposals that the successful bidder or proposer provide a performance and payment bond as a condition to entering into a contract with the city. The performance and payment bond shall secure the performance under the contract, and payment for all labor and materials provided under the contract. The bond shall be in the amount and form specified in the invitation for bids or request for proposals, and shall be issued by a company qualified by law to do business as a surety in the state, or shall be in the form of a cash deposit.

**6.08.180 Local vendor preference.** A. The city may specify in an invitation for bids or request for proposals that it will reduce the bid or proposal price of a local vendor by five (5) percent for purposes of bid or proposal evaluation.

B. If the city has specified that an invitation for bids or request for proposals is subject to the local vendor preference authorized by subsection A of this section, the city will reduce the price bid or proposed by each local vendor by five (5) percent before evaluating bid or proposal prices for purposes of contract award. The reduction authorized by this subsection is applied only for bid or proposal evaluation, and is not applied to the awarded contract price.

C. A local vendor is a person who:

1. Holds current Alaska and City of Seldovia business licenses;
2. Submits a bid or proposal under the name which appears on its current Alaska and City of Seldovia business licenses; and
3. Has maintained a place of business within the city, staffed by the vendor or an employee of the vendor, continuously for a period of at least twelve months immediately preceding the date of submission of the bid or proposal.

**6.08.190 Ethics of contracting and purchasing.** A. All city purchases and contracts shall be made solely for the public benefit of the city. In accordance with this policy:

1. A city officer or employee who has a direct or indirect financial interest in any bid or proposal for a city contract shall disclose that interest by filing a written notice of the interest with the clerk not less than ten (10) days before submission of the bid or proposal in which the officer or employee has an interest. The clerk shall post the written notice at the place maintained for the posting of public notices at city hall.
2. No city officer or employee who has a direct or indirect financial interest in any bid or proposal for a city contract may participate in the city's decision to award the contract.
3. No city officer or employee may solicit or receive any form of compensation from any party other than the city in connection with the awarding of a city contract.

B. A city officer or employee who willfully violates subsection A of this section is guilty of malfeasance in office, and shall forfeit office with the city.

C. If the contracting party is aware, or reasonably should have been aware that the contract was entered into in violation of subsection A of this section the contract is voidable by the Council.

**6.08.200 Federal or state assistance.** If a procurement involves the expenditure of federal or state funds and there is a conflict between a provision of this section and a federal or state statute pertaining to the expenditure of the funds, the federal or state statute shall prevail. If there is a conflict between the federal and state statutes pertaining to the expenditure of the funds, the federal

statute shall prevail.

**6.08.210 Violations of tax ordinances.** Violations may include;

1. The city may decline, in the city's interest, to award a contract to any business or individual who is delinquent with respect to city property and sales taxes. The delinquency of the taxpayer and the determination of the city's interest are left to the exclusive discretion of the city.

2. Any contract may be terminated for cause if it is determined that the individual or business is in violation of any taxation ordinance of the city and if such violation is not cured within ten days of notification by regular mail. If the delinquency arises due to non-filing of sales tax, no payment will be made to the individual or business until all filings have been made and all amounts due are remitted. If the delinquency arises out of a good-faith dispute as to the amount of tax owed, the taxpayer has paid the amount not in dispute and has a reasonable basis for the dispute the city shall not terminate a contract until a final determination of the amount of tax owed is made. The city, at its sole discretion, may withhold payment under the contract up to the amount of the delinquent taxes.

3. The city reserves any right it may have to set off amounts owed by its vendors for delinquent city taxes against any amount owing to the vendor(s) under a contract between the city and the vendor(s).

## Chapter 6.16 Real Property--Purchase

### Sections:

- 6.16.010 Acquisition and ownership.
- 6.16.020 Real property defined
- 6.16.030 Acquisition--Form.
- 6.16.040 Acquisition--Bidding.
- 6.16.050 Acquisition and ownership--Rights and powers.
- 6.16.060 Acquisition--Procedure.
- 6.16.070 Purchase by agreement.
- 6.16.080 Industrial sites.
- 6.16.090 Acquisition--Federal and state aid.
- 6.16.100 Uniform real property acquisition policy.

**6.16.010 Acquisition and ownership.** The City may acquire, own and hold any real property. The City may acquire and hold real property as sole owner or as tenant in common or other lawful tenancy, with any other person or governmental body for any public purpose. The City may hold real property in trust for any public purpose. (Ord. 78-2(part), 1978)

**6.16.020 Real property defined.** As used in this chapter, "real property" includes any estate in land, easement, right-of-way, lease, permit, license, franchise,

future interest, building, fixture, or any other right, title or interest in land or improvements. (Ord. 78-2(part), 1978)

**6.16.030 Acquisition--Form.** The City may acquire, own and hold real property by purchase, gift, devise, exchange, redemption, purchase of equity of redemption, operation of law, tax or lien foreclosure, adverse possession, condemnation or declaration of taking, annexation, warranty or quitclaim deed, easement, grant, permit, license, deed of trust, mortgage, contract of sale, plat dedication, lease, or any other lawful method or mode of conveyance. Real property shall be held in the name of "The City of Seldovia." Any instrument requiring execution by the City shall be signed by the Mayor and attested by the Clerk. The form of any conveyance to the City shall be approved by the attorney. (Ord. 78-2(part), 1978)

**6.16.040 Acquisition--Bidding.** Because of the unique nature of real property, acquisition by a competitive bid process is not required. However, the Council may require such a procedure when more than one parcel would satisfy city requirements. (Ord. 78-2(part), 1978)

**6.16.050 Acquisition and ownership--Rights and powers.** The City shall have and may exercise all rights and powers in the acquisition, ownership and holding of real property as if the City were a private person. (Ord. 78-2(part), 1978)

**6.16.060 Acquisition--Procedure.** A. The Council shall approve all acquisitions of real property, provided acquisitions for no consideration require no such approval. Council approval shall be presumed where the acquisition is a part of a budgeted capital improvement or acquisition program or the result of tax or assessment foreclosure. Where funds are available, approval for the acquisition of real property for a cash consideration or exchange of real property shall be by resolution.

B. Where a fee interest is to be acquired, the City Manager shall establish fair value of the interest to be acquired by the use of qualified independent professional appraisers.

C. In the case of emergency and where the public interest so requires, the Mayor may authorize eminent domain proceedings. The Mayor shall inform the Council of such proceedings and the justification therefore as soon as practicable.

D. Where a fee interest is to be acquired, the City shall purchase marketable title in the real property unless otherwise provided by the Council. (Ord. 78-2(part), 1978)

**6.16.070 Purchase by agreement.** The Council shall approve and authorize by ordinance the purchase of real property by contract of sale, deed of trust, or mortgage. (Ord. 78-2(part), 1978)

**6.16.090 Acquisition--Federal and state aid.** Legislative assent to federal

or state aid for the City, including aid given to the City through a department or agency of the federal or state government, is given. The City may apply for, contract and do all things necessary for the acquisition, holding, improvement, or development of real property within and outside the city boundaries. (Ord. 78-2(part), 1978)

**6.16.100 Uniform real property acquisition policy.** The City, in acquiring real property for any project or program, shall comply to the greatest extent practicable with the following policies:

A. Every reasonable effort shall be made expeditiously to acquire real property by negotiation.

B. Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

C. Before the initiation of negotiations for real property, an amount shall be established which is reasonably believed to be just compensation for the real property, and that amount shall be offered for the property. In no event shall the amount be less than the approved appraisal of the fair market value of the property. A decrease or increase in the fair market value of the real property before the property is acquired or by the likelihood that the property would be acquired for the improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The owner of the real property to be acquired shall be provided with a written statement of, and a summary of the basis for, the amount established as just compensation.

D. No owner may be required to surrender possession of real property before the City pays the agreed purchase price or deposits with the court in accordance with applicable law, for the benefit of the owner, any amount not less than the approved appraisal of the fair market value of the property, or the amount of the award of compensation in the condemnation proceeding for the property.

E. The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property may be required to move from a dwelling (assuming a replacement dwelling will be available), or to move his business or farm operation, without at least ninety days written notice of the date by which the move is required.

F. No tenant of property to be acquired shall be contacted regarding the term of his occupancy until after execution of a purchase agreement with the owner. If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the City on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

G. In no event may the time of condemnation be advanced or negotiations or condemnation and the deposit of funds in court for the use of the owner be

deferred, nor may any other coercive action be taken in order to compel an agreement on the price to be paid for the property.

H. If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted following Council approval. The City shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

I. If the acquisition of only part of the property would leave its owner with an uneconomic remnant, an offer to acquire the entire property shall be made. Such offers shall follow the same procedures as required for the original purchase offer.

J. Notwithstanding any other provision of law, if the City acquires any interest in real property, it must acquire at least an equal interest in all buildings, structures or other improvements located upon the real property which the municipality requires to be removed from the real property or which it determines will be adversely affect by the use to which the real property will be put.

K. For the purpose of determining just compensation to be paid for a building, structure or other improvement required to be acquired under subsection J of this section, the building, structure or other improvement is considered to be a part of the real property to be acquired, notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove the building, structure or improvement at the expiration of his term, and the fair market value which the building, structure or improvement contributes to the fair market value of such building, structure or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant.

L. Except in cases of emergency, nothing in this section shall authorize the City to acquire or condemn any property the acquisition or condemnation of which the Council has not authorized. (Ord. 78-2(part), 1978)

## Chapter 6.18 Real Property--Sale or Disposal

### **Sections:**

- 6.18.010 Authority--City.
- 6.18.030 Form.
- 6.18.040 Rights and powers.
- 6.18.050 Public and charitable conveyances.
- 6.18.060 Property exchanges.
- 6.18.070 Grants for federal and state programs.
- 6.18.080 Sale or disposal of industrial sites.
- 6.18.090 Change of use.
- 6.18.100 Real property as security.

- 6.18.110 Appraisal required.
- 6.18.120 Methods of disposal and fees.
- 6.18.130 Public notice.
- 6.18.140 Conditions of sale.
- 6.18.150 General sales procedures.
- 6.18.160 Sales by public auction or sealed bid.
- 6.18.170 Best bidder--Defined.
- 6.18.180 Rejection of bids for sale--Subsequent actions.
- 6.18.190 Negotiated sales and exchanges.
- 6.18.200 Negotiated Leases.
- 6.18.210 Leases for space in City buildings.

**6.18.010 Authority--City.** A. The City may sell, convey, exchange, transfer, donate, dedicate, direct or assign to use, or otherwise dispose of city-owned real property by any lawful mean or conveyances or reserve the right to refuse to sell property to anyone owing the City taxes, property taxes, sales tax, assessments or any other taxes levied by the City of Seldovia. (Ord. 95-07)

B. The City Manager shall be the agent of the City for all such dispositions. (Ord. 78-2(part), 1978)

**6.18.030 Form.** The City may sell or dispose of real property by warranty or quitclaim deed, easement, grant, permit, license, deed of trust, mortgage, contract of sale of real property, plan dedication, lease, certificate of redemption, or any other lawful method or mode of conveyance. Any instrument requiring execution by the City shall be signed by the Mayor and attested by the Clerk. The form of any instrument shall be approved by the attorney. (Ord. 78-2(part), 1978)

**6.18.040 Rights and powers.** The City shall have and may exercise all rights and powers in the sale and disposal of real property as if the City were a private person. The City may sell or dispose of any real property, including property acquired or held for or devoted to a public use, when, in the judgment of the Council, it is no longer required for City purposes. (Ord. 78-2(part), 1978)

**6.18.050 Public and charitable conveyances.** The City may sell, donate or exchange with the United States, the state of Alaska, any political subdivision, or a non-profit organization, municipally owned real property without a public sale and for less than the fair market value, whenever in the judgment of the Council expressed by ordinance it is advantageous to the City to make the conveyance. (Ord. 78- 2(part), 1978)

**6.18.060 Property exchanges.** The Council may approve after public notice the conveyance and exchange of a parcel of city property for an equivalent parcel of property owned by another person subject to such conditions as the Council may impose on the exchange, whenever in the judgment of the Council expressed by ordinance it is advantageous to the City to make the property exchange. (Ord. 78- 2(part), 1978)

**6.18.070 Grants for federal and state programs.** The Council, by ordinance, may grant or devote real property no longer held for a public purpose to the United States, the state of Alaska, a political subdivision, or an agency of any of these governments, for a consideration agreed upon between the City and the grantee without a public sale if the grant or devotion is advantageous to the City. Any approval of a federal or state program providing for the participation or cooperation of the City by grant or devotion of the real property is a sale of that real property for the consideration stated in the program. (Ord. 78-2(part), 1978)

**6.18.080 Sale or disposal of industrial sites.** A. The City may sell, lease, or dispose of sites acquired for new industries benefiting the City upon the terms and conditions as the Council considers advantageous to the civic welfare of the City, to a person who agrees to install, maintain and operate a beneficial new industry.

B. The City, in order to make sites available for new commercial developments which promote a substantial public interest, may acquire and hold real property, either inside or outside the corporate limits, and may sell, lease or dispose of it, on terms and conditions the Council considers advantageous to the City, to persons who agree to construct or operate such new commercial developments. (Ord. 78-2(part), 1978)

**6.18.090 Change of use.** Real property acquired or purchased for one city purpose may be appropriated, transferred, assigned or directed without public sale to another city purpose, whenever the Council determines that the purpose for which the property was acquired or purchased no longer exists, or the property is no longer used or useful for the purpose. No formal conveyance is necessary to dispose of the real property to another city purpose, and the disposition may be made to another purpose with or without legal consideration for the disposition. The City may sell, convey or otherwise dispose of real property no longer used or useful in the operation of a city-owned utility. Real property no longer needed for the purpose for which the real property was acquired or purchased, or utility property no longer used or useful in the operation of a city-owned utility, is no longer property owned, held for or devoted to a public use, and may be sold or disposed of as provided in this title if the Council determines the real property is not useful to the City for any other purpose. (Ord. 78-2(part), 1978)

**6.18.100 Real property as security.** The Council may pledge, mortgage, or otherwise secure city real property for the payment of city bonded or other indebtedness when required as authorized by law. (Ord. 78-2(part), 1978; Ord. 89-5 Sec. 2, 1989)

**6.18.110 Appraisal required.** No lands or any interest in land shall be sold or exchanged unless the same has been appraised by a qualified appraiser within six months prior to the date fixed for the sale or exchange. The City Manager shall be responsible for having such appraisal made and it shall reflect any restrictions on the use of the land as offered for sale. Alternatively, the latest available Kenai Peninsula Borough assessed value may be used. No land shall be sold or exchanged for less than the approved minimum appraised or assessed value.



**6.18.120 Methods of disposal and fees.** Land or any interest in land may be disposed of under one of the following procedures as approved by the City Council:

1. By public auction or sealed bid to the highest qualified bidder.
2. By negotiated sale, lease or exchange.
3. By over-the-counter sales.
4. Through the use of real estate brokers.
5. By any other means permitted by law.

**6.18.130 Public notice.**

A. Sale or Lease of Land. Except as otherwise provided in this chapter, public notice shall be given of any sale of lands or any interest therein. Notice shall be published shall be posted in three public places for three consecutive weeks preceding the time of sale or lease stated in the in the vicinity in which the land or interest therein is to be sold or leased. In no event shall the sale or lease be held less than nine days nor more than three weeks following the last date of publication. Such notice shall set forth a description of the land and the interest therein to be sold or leased and the time, place and general terms of the sale or lease and limitations.

B. Negotiated Sales, Leases and Exchanges. If disposal of land or interest in land is authorized by negotiated sale or lease, or by exchange of lands, public notice or the ordinance approving the disposal shall be given in the same manner as for other ordinances and a public hearing shall be held.

**6.18.140 Conditions of Sale.** Any sale or other disposition of City lands or any interest in lands shall be subject to terms and conditions as set forth in this chapter and in the City ordinance or resolution approving the disposition. The City Manager may impose additional conditions, limitations and terms for the protection of the interest of the City and the public.

**6.18.150 General Sale Procedures.** All applications for purchase or lease of City land shall be filed with the City on appropriate forms provided by the City. The filing of an application for purchase shall not in any way vest any right in the applicant to the land or to the use of the land applied for. Applications for purchase must include the following items:

1. Land use plans;
2. Plot plans;
3. Building plans to include elevations;
4. Timetable for development. (Ord. 83-4, 1983)

**6.18.160 Sales by public auction or sealed bid.**

A. Public auctions shall be held by the City Manager or his or her representative. At the completion of the auction of each tract of land, the City Manager or his or her representative shall indicate the apparent high bidder. The City Manager may reject all bids in the best interest of the City.

B. Upon deposit of the required sum by the apparent high bidder, the City Manager or his or her representative shall immediately issue a receipt containing a description of the land or interest therein sold, the price bid and the terms of the sale, which receipt shall be acknowledged in writing by the bidder. Upon completion of the final payment on the contract of purchase, the City Clerk will issue to the purchaser a quitclaim deed. A contract of sale or lease in a form approved by the City Attorney shall be signed by the purchaser or lessee.

C. Sealed bids, if required by the notice, shall be submitted personally or by mail to the clerk, and shall be identified as bids on the envelope. Mailed bids shall not be accepted unless postmarked prior to closing time for submission or verified by other means to closing time for submission or verified by other means of communication. The property or interest in property to be sold shall be sold to the best bidder if sealed bids are required, or to the highest bidder if the sale is conducted by public auction; no bid under the established fair value may be accepted except as provided in this chapter.

D. Terms. The purchaser at a competitive bid sale, public auction, or over the counter sale shall immediately pay to the City ten percent (10%) or more of his bid or in case of a lease offering, an amount equal to the annual rent. Lands to be purchased for a principal sum of \$500.00 or less will not be sold on contract but will be paid for in full. The balance of the purchase price shall be paid within thirty (30) days or all rights to the property shall be forfeited. (Ord. 83-4, 1983; Ord. 89-5 Sec. 3, 1989)

**6.18.170 Best bidder--Defined.**

A. "Best bidder," in Section 6.18.160(D), means that bidder whose bid and whose submitted plans for the use of the property to be sold are considered to have best met the land use plans of the City and the financial interest of the City as property owner. In evaluating the bids and plans, the City Manager shall be consulted and the following shall be considered:

1. The bid price for the property;
2. The compatibility of the proposed use with the general land use plan of the City; and
3. The ability of the bidder to meet his financial obligation and to carry out the plan.

B. If any bid other than the highest bid is accepted, there shall be submitted to the unsuccessful higher bidder or bidders a written statement setting forth the reason for refusing the bid or bids, within ten days. The minutes of the Council relating to the matter are a sufficient statement. (Ord. 78-2(part), 1978)

**6.18.180 Rejection of bids for sale--Subsequent actions.** Council Powers. If the sale is by sealed bid, the Council may:

- A. Reject defective or nonresponsive bids;
- B. Reject all bids;
- C. Authorize negotiation by the City Manager with bidders whose bids and plans are substantially equal and most approximate best bids; or
- D. Reschedule the sale for bidding, after making substantial changes in the

specifications for plans to give sufficient notice of the deficiencies found in the proper submitted bids.

E. Provide for over the counter sales. (Ord .83-4, 1983; Ord. 78-2(part), 1978)

**6.18.190 Negotiated sales and exchanges.**

A. The City Manager may, with the approval of the City Council by ordinance, negotiate a sale or exchange of City land without public auction or sealed bid if the following conditions exist:

1. The application to purchase or exchange City land is:

a. By an owner of property contiguous on a side with the City land applied for and the purchase is necessary for the proper utilization of the owner's contiguous property;

b. By the United States, the state or a political subdivision;

c. By a public utility for facilities serving the general public;

d. For a beneficial new industry; or

e. For a particular, stated purpose in the best interests of the City, and the Council approves the sale with appropriate findings and conditions;

2. The land so sold or exchanged shall not be used by the purchaser, his or her heirs or assigns for any purpose other than that for which it has been classified by the City Council at time of sale or unless otherwise zoned subsequent to sale;

3. No such sale or exchange shall be made if the result of such sale or exchange were to hinder or prevent the utilization of a larger parcel of City land to its best advantage;

4. Such sale or exchange is in the best interest of the City.

B. Negotiated sales shall be subject to all other requirements and conditions applicable to sales under this chapter.

**6.18.200 Negotiated leases.**

A. The City Manager may, with the approval of the Council by ordinance, negotiate a lease of City land without public auction or sealed bid and without voter ratification under one or more of the following conditions:

1. The lease is for property the fair annual rental value of which is \$2,500 or less for a term not exceeding 10 years and an annual rental value not less than eight percent of the appraised value; or

2. The lease is for a beneficial new industry, subject to the terms of this chapter; or

3. The lease is for a public purpose, to a governmental agency or not-for-profit corporation formed for the purpose of carrying on the public service; or

4. The lease is to a public utility, for a site for public utility facilities, in which case no appraisal of the leased property is required.

B. Leases approved under this section shall be subject to all other requirements and conditions applicable to leases under this chapter.

C. Leases for Public Purpose. Application for a lease for public purposes shall be made in the same manner as other applications and shall contain a plan for development and use of the property requested. The Council shall, in each case, determine that the proposed usage of City property is for a worthwhile public service, that there will be no discrimination in providing service, and the usage is nonprofit. The City may, from time to time, make such other requirements as it deems proper before the issuance of such leases. Failure to carry out such plan as submitted and agreed upon may result in revocation of the lease.

**6.18.210 Leases for space in City buildings.** Notwithstanding any other provisions of this chapter, the City Manager may, subject to the approval of the City Council by resolution, award a lease for space in a building owned by the City either by negotiation or to the person that submits the best proposal in response to a request for proposals. Any such leases shall be restricted to the following uses:

A. Government agencies or nonprofit organizations providing a public service.

B. The provision of goods or services, on either a for-profit or nonprofit basis, that support or complement the public uses or functions for which the building is used.

C. Provide revenue to the City from the productive use of building space that would otherwise not be required for any public purpose during the lease term.

**6.18.220 Leases--Duration.** Leases issued shall not exceed five years in duration, but are renewable at the option of the City Council. All leases shall be revocable when used contrary to the conditions under which they are granted, or when Council in its judgement determines that the best interest of the City would be served by revocation. (Ord. 19-04)

## Chapter 6.28 Architectural, Engineering and Other Professional Services Contracts

### **Sections:**

- 6.28.010 Definitions.
- 6.28.020 Award of contracts without bids.
- 6.28.030 Policy.
- 6.28.040 Selection.
- 6.28.045 Projects using grant funds.
- 6.28.050 Negotiation.
- 6.28.060 Record of negotiation.
- 6.28.070 Prohibition against contingent fees.
- 6.28.080 Official not to benefit.
- 6.28.090 Truth in negotiation.

**6.28.010 Definitions.** A. "Agency head" means the Mayor, City Manager, or head of a department division, agency or utility of the city government.

B. "Architectural-engineering services" mean those professional services associated with research, development, design and construction, alteration or repair of real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, inspections, shop-drawing reviews, sample recommendations, preparation of operating and maintenance manuals, and other related services.

C. "Other professional services" may mean for example but not limited to attorneys, accountants or medical professionals.

D. "Firm" means any individual, partnership, corporation, association or other legal entity permitted by law to practice the professions of architecture or engineering. (Ord. 78-2(part), 1978)

**6.28.020 Award of contracts without bids.** The Council shall execute, award and approve contracts for legal, medical and other professional services for the City without competitive bidding. Architectural and engineering contracts shall be awarded according to this chapter. The City Manager may execute and award, without prior approval of the Council, any contract for professional services having an estimated value of one thousand five hundred dollars (\$1,500) or less, subject to the availability of funds. (Ord. 80-7 Sec. 2(part), 1980)

**6.28.030 Policy.** It is declared policy of the City to announce publicly all requirements for architectural and engineering services, on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices. To ensure the broadest publicity

concerning the City's interest in obtaining architectural engineering services, the City Manager shall announce publicly, in a uniform and consistent manner, all announcements shall include a general description of the project, and shall indicate how interested architects and engineers can apply for consideration. (Ord. 78-2(part), 1978)

**6.28.040 Selection.** In the procurement of architectural and engineering services, the City Manager shall encourage firms engaged in the lawful practice of their profession annually to submit a statement of qualifications and performance data. An agency head, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the City Manager, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services, and then shall recommend that the Council select from, in order of preference, based upon criteria established and published by him, no less than three of the firms deemed to be the most highly qualified to provide the services required. In addition to any criteria set forth in the public announcement, the agency head shall consider, among other factors:

- A. Specialized experience and technical competence of the firm (including joint venture or association) with the type of service required;
- B. Capacity of the firm to perform the work (including any specialized services) within the time limitations;
- C. Past record and performance on contracts with government agencies and private industry with respect to such factors as control of costs, quality of work, and ability to meet schedules; and
- D. Familiarity with the area in which the project is located. (Ord. 78-2(part)D. 1978).

**6.28.045 Projects using grant funds.** When grant funds from the State or Federal governments are used to provide for services as described in this chapter, the regulations and requirements of the funding agency will apply when contracting for architectural, engineering and other professional services contracts. (Ord. 94-3)

**6.28.050 Negotiation.** A. The City Manager, by direction of the City Council, shall negotiate a contract for architectural and engineering services at compensation which the City Council determines is fair and reasonable to the City after taking into account the estimated value of the services to be rendered, the scope, complexity, and professional nature thereof. If the City Manager determines he is unable to negotiate a satisfactory contract with the firm considered, upon approval of the City Council he may terminate negotiations and enter into negotiations with a Council-approved alternate.

- B. Contract negotiations shall be directed toward:
  - 1. Making certain that the architect-engineer has a clear understanding of the essential requirements;

2. Determining that the architect-engineer will make available the necessary personnel and facilities to accomplish the work within the required time; and
3. Arriving at a contract price considered to be fair and reasonable to the City. (Ord. 78-2(part) 1978)

**6.28.060 Record of negotiation.** At the conclusion of each negotiation, a memorandum setting forth the principal elements of the negotiation shall be prepared for use by the Council and for inclusion in the contract file. The memorandum shall contain sufficient detail to reflect the significant considerations controlling the establishment of the price and other terms of the contract. (Ord. 78-2(part), 1978)

**6.28.070 Prohibition against contingent fees.** Each contract entered into by the City for architectural engineering services shall contain a prohibition against contingent fees as follows:

"The licensed architect or registered engineer (as applicable) warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the licensed architect, or professional engineer, to solicit or secure this agreement and that he has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the licensed architect or professional engineer, to solicit or secure this agreement and that he has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the licensed architect or professional engineer, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this agreement. For breach or violation of this warranty, the municipality shall have the right to annul this agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration. (Ord. 78-2(part), 1978)

**6.28.080 Officials not to benefit.** Any public officer or employee who offers to solicit or secure, or solicits or secures a contract for architectural-engineering services to be paid, or is paid, any fee, commission, percentage, gift, or any other consideration, contingent upon the award or making of such a contract for professional services between the agency and any individual person, company, firm, partnership or corporation shall, upon conviction by a court of competent authority, be found guilty of a misdemeanor and shall be punished as provided by law. (Ord. 78-2(part), 1978)

**6.28.090 Truth in negotiation.** For all lump-sum or cost-plus-affixed-fee architectural-engineering contracts over ten thousand dollars (\$10,000), the City shall require the firm receiving the award to certify that factual costs supporting the estimated compensation are accurate, complete and current at the time of contracting. Any architectural-engineering contract under which such a certificate is required shall contain a provision that the contract price shall be adjusted to exclude any significant sums where the agency determines the contract price was increased due to inaccurate, incomplete or noncurrent costs. (Ord. 78-2(part), 1978)