



# City and Borough of Sitka

100 Lincoln Street Sitka, Alaska 99835

*Coast Guard City, USA*

**September 18, 2013**

**TO: Mayor and Assembly**

**FR: Members Michelle Putz and Matt Hunter**

Several months ago a local business owner asked me if the City would consider supporting local businesses by trying to increase the level of local purchasing. As stated in one of the attachments, they "want our tax dollars to circulate more thoroughly in our own community, generating more local business revenues, quality jobs and available tax revenue for public services provided."

This person provided multiple suggestions. In some cases the suggestions ask for reporting of non-local purchases, so that the Assembly may learn how much City money is being spent locally and how much is being spent on businesses outside the City. They suggest giving local businesses the opportunity to try to meet or beat online quotes. They also provided examples of preferential public procurement policies for both small purchases (\$5,000+) and for larger bid items. In many cases the policies provide a 1 to 10% price or point preference. Some also include provisions for starting a list of interested businesses. All require the businesses to provide information proving their local connections.

Communities across the United States have adopted preferential policies. One of the examples provided is from Ketchikan, Alaska.

We had hoped to bring forward an ordinance proposing local procurement, but we wanted to give the Assembly and staff an opportunity to discuss the concepts prior to drafting any ordinances or policies. If the Assembly is amenable, a combination of Madison, WI and Ketchikan's policies, or other cities' policies (from the Public-Procurement-Preferences/Localizing Government Contracts documents) might best meet the desired outcome of supporting local businesses, recirculating local money, and increasing local tax revenues.

If the Assembly is generally supportive, we'd like to recommend further review and work by the staff to draft appropriate policy. Jay Sweeney, as Interim Municipal Administrator, and Robin Koutchak, Municipal Attorney, have briefly reviewed these policies but have not provided recommendations to adjust the examples to fit Sitka's situation.

## Ways the City can help Local Businesses

### The Situation

1. We're a typical business and the amount of purchases by the city at our business over the past 3-4 years has dropped by 60%
2. Every single city office and department uses computers and computer-related products. A vast majority of purchases by 100 Lincoln St, Sitka Community Hospital, Sitka School District and all the varied departments are made off island.
3. Bids for computer systems are solicited from companies like Dell, and we used to be asked if we could meet or beat the quote and that is no longer even asked. We used to supply computers for the city and the feedback that we got is that people were pleased with the quality, pricing, and support. We aren't even asked and no one ever said why that changed.
4. There are no incentives, rewards, or premiums for shopping locally, nor are there policies or controls to assure local purchases are made first. Pots of trees don't revitalize downtown.
5. Spend a week in front of 100 Lincoln St. and watch the number of UPS, FedEx, and USPS deliveries being made for products purchased outside of Sitka. An interesting survey would be to ask City Officials, Department Heads and Project Managers to submit their receipts for local purchases.
6. We contribute significant amounts of money in support of local non-profits and charities in this community and their priority is to shop online assuming that will be the lowest price without even checking locally first.
7. There are companies that lowball prices because they make their money by charging excess in the shipping. We don't do that. We pass through actual shipping costs, and our prices can often meet or beat what people are seeing online.
8. The city and other tax exempt organizations, like AMSEA, don't pay sales tax, that way there is some equity between local business and online retailers.
9. In the instance of taxable individuals and organizations a local business has a 5% or 6% "penalty" added to the prices that they offer by the addition of the local sales tax. Online retailers don't collect and forward this tax to the City.
10. Most people have no idea that the profit margin in electronics is VERY slim. In order to compete with such slim margins it is imperative to have sales in large volume to make up for not having much profit in any one item.
11. The City doesn't make any money in the form of sales tax by shopping here, but their shopping here helps us to stay in business so that other people shopping here are paying sales tax to the city.
12. I'm a taxpayer and I pay taxes; as a retailer I am required to collect, record, and submit sales tax for the city(for free); I resent having my money sent out of town in the form of

city purchases online and I resent having it spent with online retailers that are putting bricks and sticks retailers out of business.

### **Suggestions**

13. Make it part of the City Manager's and Department Head's responsibilities to report the number of local purchases versus online purchases on a monthly basis and to make these reports available to the Assembly. I think the utilization of credit cards over Purchase Orders in the last couple of years has seriously increased online versus local purchases.
14. Make it a requirement that a Department Head approve making an online purchase only after an attempt is made to make the purchase locally. Department Heads should follow the same procedure.
15. For significant purchases, local merchants should be offered the opportunity to meet or beat whatever price the city has received in a quote.
16. Online purchases made by the City should be subject to City sales tax by adding 5% to the purchase price of the online product.
17. Require local organizations applying for funds/grants/loans to show that they are making local purchases or at least have requested competitive bids in order to qualify for receiving local money

# Localizing Government Contracts

## *A Key Strategy to Fortify Jackson County's Local Economy*

May 2011

Offered by PROJECT ROGUE VALLEY  
A project of the Jackson County Local Action Coalition  
[www.jclac.org](http://www.jclac.org)

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## Overview

This report aims to make a positive contribution to the ongoing public discussion on the desirability and viability of increasing the participation of locally-owned businesses in providing contracted government goods and services. In line with consistent research proving the strong economic benefits to communities of patronizing local businesses, the Jackson County Local Action Coalition (JCLAC) strongly supports policies that increase participation of local businesses and employees in government contracts. We want our tax dollars to circulate more thoroughly in our own community, generating more local business revenues, quality jobs and available tax revenue for public services. This is a priority issue for JCLAC's newly formed Project Rogue Valley ([www.jclac.org](http://www.jclac.org)).

On April 11, 2011, a letter from Commissioner Smith on behalf of the Board of Commissioners appeared in the *Mail Tribune* newspaper, responding to appeals to increase local content in government contracting. The letter's main point was that the U.S. Constitution and other laws prohibit preferential treatment of local bidders, or at least makes preferential policies highly risky for the county. "Instead of risking fruitless litigation over regulatory preferences," the letter concluded, "the county will aggressively pursue other, legal ways to help the local economy."

We believe Commissioner Smith's letter cited some important legal issues, and that caution is essential in formulating new policies. At the same time, we respectfully suggest that the letter overlooks some fully legal approaches to increasing local content in

government purchasing, some of which have already been developed and implemented by local jurisdictions around the country.

**We offer this report as a sampler of policy approaches that the Board can consider, because we want Jackson County to be among the growing number of jurisdictions that are finding ways to more effectively put tax dollars to work strengthening their local economies and communities.**

## The Case for Preferential Policies

According to the National Association of State Procurement Officials, the use and breadth of preference policies by State governments is increasing. Twenty-seven states provide legal preference for in-state bidders. Thirty-nine use the location of a firm as a tiebreaker if all other aspects of the bid are equal (e.g. price, performance). Twenty-one states have “Buy American” laws that affect public procurement.<sup>1</sup>

At the municipal level, several dozen cities favor local businesses and products in government purchasing, according to the government watchdog organization New Rules Organization.<sup>2</sup> These include

- Los Angeles, California
- Columbus, Ohio
- San Jose, California
- San Francisco, California
- Albuquerque, New Mexico
- Ketchikan, Alaska
- Madison, Wisconsin

Some have several levels of preference. San Francisco allows higher bids from in-city vendors (five percent), and an additional five percent price preference for women- or minority-owned local businesses. Many cities have a cap on the size of a contract that don't have to be awarded to the lowest bidder. Others reduce the bid differential allowed as the contract size increases.

We have appended the specific procurement ordinances of these six cities in the back of this document.

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<sup>1</sup> [http://www.naspo.org/documents/2009\\_Survey\\_of\\_State\\_Government\\_Procurement\\_Exec\\_Summary.pdf](http://www.naspo.org/documents/2009_Survey_of_State_Government_Procurement_Exec_Summary.pdf)

<sup>2</sup> <http://www.newrules.org/retail/rules/local-purchasing-preferences>

## ***Legal Challenges***

The constitutionality of state and local governments favoring local businesses in their procurement practices has been challenged in the courts. Out-of-state companies argue that such favoritism conflicts with the Commerce Clause of the Constitution (Article 1, §8), as well as the equal protection and due process clauses of the 14th Amendment. But courts have generally upheld local preference statutes. This is especially true if the state or city can make a reasonable case that the statutes will achieve a legitimate state or local interest (e.g., expanding the local economy).

One case, for example, involved a South Carolina policy that allowed in-state firms to be awarded a contract even if their bid price was five percent higher. Smith Setzer & Sons, a manufacturer of reinforced concrete pipes headquartered in North Carolina, was the lowest bidder on many South Carolina contracts that were awarded to in-state companies because of the preference statute. The company sued.

The Fourth Circuit Court of Appeals concluded that states could discriminate in favor of local or in-state firms when they act as "market participants" — that is, when they themselves were the customers. In this case, in reviewing the statute the "legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest."

The Court went on to note, "rules stating a preference that such (tax) monies (i.e., generated from the citizens of the state) be recycled within the local economy, either through the purchase of locally-produced products or through purchases from local vendors, rather than funneled out of state, reflect legitimate state concerns." And it pointed to an econometric study done by the state showing that although South Carolina could save \$50,000 by purchasing Smith Seltzer's product, the state's economy would suffer an overall economic loss (in terms of lost jobs, tax revenue, etc.) of \$2.1 million if it did so.

Another legality involves international treaty law, particularly that of the World Trade Organization agreements regarding "free trade and equal access to markets."

## ***Nominal Bid Price versus Total Economic Impact***

An important approach to favoring local business has been to focus on the total economic impact resulting from awarding a business the public contract. Here the bid price given by a vendor is only part of the total price of the contract. The total economic impact, particularly tax revenues to the county generated by contracting with local business, should be factored into the total price of the vendor's bid. The true price of a bid, therefore, is the nominal price **minus** expected tax receipts.

This method is specifically crafted to avoid violation of federal or international treaty law. It neutralizes charges of unfairness because non-local companies, with extensive use of local employees and suppliers in fulfillment of their contract, can often demonstrate the lowest cost alternative to the purchasing government. The Colorado legislature is currently considering legislation to adopt this formula for evaluating vendors for state contracts.

### ***The Screening Criteria***

The method to enact this approach entails the establishment of a list of economic impact questions to be included in all invitations for bids or requests for proposals (RFPs). The information solicited to determine the economic impact of each bid may include

1. Whether the bidder is headquartered in Jackson County.
2. The percentage ownership of the bidder's company that is owned by one or more Jackson County residents.
3. The number or percentage of employees who will likely be assigned to the proposed project who live in Jackson County .
4. The estimated percentage of purchases that the bidder will make in connection with the proposed project that are from Jackson County sources.
5. The estimated percentage of operating expenses that will be incurred by the bidder in connection with the proposed project that will be paid to Jackson County-based sources.

From this information, the county can devise a system for determining the minimum economic impact to the county for the following variables:

1. County or city taxes and fees to be generated and paid by the bidder as a result of the proposed project.
2. County property tax to be generated and paid by the bidder as a result of the proposed project.

### **Closing Comments**

The policy specifics described above are intended merely to suggest some of the practical alternatives already available to jurisdictions who are committed to increasing contract with their local business communities. Any new policy adopted by the Board will of course have to fit the particular circumstances of Jackson County.

The absence of a sales tax in Oregon makes the element of tax revenues returning to County coffers more difficult to calculate. Nonetheless, increased income and job security for county residents strengthens the commercial and residential real estate markets, and therefore property values and property tax receipts. Also, income and job

security leads to larger income tax revenue that supports Oregon State services that are delivered in Jackson County.

We hope our efforts to assemble the work of other jurisdictions, detailed in the following Appendix, provide a helpful foundation for the formulation of a legally sound, economically beneficial policy to enhance local procurement.

**In summary, we urge Jackson County leadership to actively explore and build on the advances made by other jurisdictions to enhance locally-sourced government procurement.** We ask that this focus be given very high priority in the mix of county efforts to improve the economic prospects of our citizens. We view the economic benefits of fortifying the circulation of local dollars within the community economy as undeniable, and believe those benefits will only increase in months and years to come.

JCLAC stands ready to support and cooperate with the county's progress towards local procurement in any possible way, and thanks the Board of Commissioners for its consideration of this vital matter.



## **Appendix: Preferential Public Procurement Policies in the USA**

### ***Madison, WI***

On purchases over \$5,000, the city of Madison, Wisconsin, grants local businesses a 1% price preference on bids and a 5% point preference on RFPs (request for proposal). To qualify as "local," a business must meet at least two of three criteria involving the portion of its employees working at facilities in the local area (at least 50%), portion of ownership vested with local residents (at least 50%), and portion of sourcing within the local area (at least 15%). Businesses are ranked based on these factors so that some may be listed as more local than others. (On purchases under \$5,000, city staff are encouraged, but not required, to buy local.)

City of Madison - Legislative File Number 05943

Adopting the Local Preference Purchasing Policy dated March 20, 2007.

#### **PREAMBLE**

Local preference purchasing policies, or Buy Local policies, have been adopted by various municipalities to provide a formal preference for acquiring goods and services for their operations through local vendors.

A subcommittee of members from the Board of Estimates and the Economic Development Commission (EDC) have considered the issue of potential Buy Local policies for the City of Madison and made several recommendations.

The subcommittee's findings and recommendations, as modified by EDC and Mayor Dave Cieslewicz, are embodied in the policy document.

NOW, THEREFORE, BE IT RESOLVED, that the Common Council of the City of Madison hereby adopts the following Local Preference Purchasing Policy dated March 20, 2007. These provisions would become effective four months after Council adoption.

SUBJECT: Local Preference Purchasing Policy

DATE: March 20, 2007

Public purpose. There are two primary potential public benefits to the City of Madison adopting a local preference purchasing, or Buy Local, policy. First, buying locally retains and circulates more money in the local economy. Second, the City's adoption of a Buy Local policy would encourage area residents, businesses and other units of government to also buy locally.

Current condition. The City has a primarily decentralized approach to purchasing and delegates authority to agency staff for many of its purchases. Current purchasing oversight falls into three categories:

Purchases less than \$5,000 are made by agency staff using their best judgment. This informal process has limited oversight by staff in the Comptroller's Office. These purchases are typically paid for using P-Cards and limited purchase orders (LPOs).

## Localizing Government Contracts in Jackson County, Oregon

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Purchases from \$5,000 to \$25,000 involve formal written quotes that seek three bidders. Agency managers typically determine which vendor to use. Comptroller staff rarely oversee such purchases. Payment is typically made via purchase order.

Purchases over \$25,000 are coordinated and reviewed by purchasing staff in the Comptroller's Office. This is the most formal purchasing process under current practices.

Payment is typically made via purchase order.

Address is the only data currently collected that can be used to determine whether a business is local. About 70% of purchase orders currently involve an address within Dane County. About half of P-Card purchases are made at a Dane County address.

Specific policies. The City will implement a simple policy that can be easily followed by vendors and administered by City staff.

Reflecting current purchasing practices, the City will adopt two policies: one that applies to purchases under \$5,000 and another that applies to purchases over \$5,000. These policies will apply based on the dollar amount of the purchase, not the method of payment (P-Card vs. purchase order vs. LPO).

The "local area" is defined as Dane County and any other county participating in the regional economic development entity that has a policy providing preference to vendors located in at least its county and Dane County. This reciprocal arrangement applies on a county-wide basis. If a municipality within a certain county implements a policy that provides preference to vendors in the county in which it is located and Dane County, then the City of Madison local preference applies to vendors in that county.

Purchases under \$5,000. Given the decentralized and informal nature of such purchases, holders of City P-Cards will be encouraged, but not required, to use local vendors.

To facilitate the identification of local vendors, the City will provide an opportunity for vendors to identify themselves as local according to several criteria. First, they must have a physical address within the local area. In addition, a vendor may self identify its:

Portion of its employees working at facilities in the local area (minimum 50% to be considered local);

Portion of ownership vested in residents of the local area (minimum 50% to be considered local);

Portion of business sourcing within the local area (minimum 15% to be considered local). Sourcing includes the local acquisition of supplies and raw materials or support services like contract employees, accounting, advertising, banking, printing, etc.

Only businesses that meet the minimum level for two of the three additional criteria are considered local. Resulting scores will result in a ranking of businesses, which is to say that some businesses on the list may be ranked as more local than others.

Any person or organization may voluntarily contribute to this list via the Internet. The resulting list will be provided to authorized holders of City P-Cards as well as to citizens to help guide their buying decisions. The City's Information Services Department will be consulted on how this list will best be made available for this purpose.

Purchases over \$5,000. To determine if a vendor is local, questions will be incorporated into formal bid documents and requests for proposal. A vendor must have a physical address within the local area and meet two of the three minimum criteria above to be considered local. Based on these criteria, a vendor is either considered local or non-local. There are no varying degrees or rankings applied.

For these more formal purchases, there are two sets of policies that depend on the method used to make the purchase.

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## Localizing Government Contracts in Jackson County, Oregon

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**Bids.** The acquisition of commodities over \$5,000 is typically done by bids. Generally, the only criteria used in making the determination is purchase price. For these purchases, local vendors are provided a 1% preference. If a local vendor submits a bid within 1% of the lowest non-local bidder, the purchase is awarded to that local vendor.

**Requests for Proposal.** RFP's are typically used to acquire services over \$5,000. They are evaluated against criteria in addition to purchase price that can include timeliness of delivery, past performance and other factors. RFP's are scored against these established criteria. Local vendors are provided with a bonus equal to 5% of total available points.

**Exemptions and limitations.** This policy is subject to certain prescribed exemptions. Due to state law, Buy Local policies may not apply to public works projects. Due to federal restrictions, federally funded programs are also exempt. Exemptions will also be made for emergencies, sole source purchases, cooperative purchasing agreements and cases in which a local vendor is not qualified as determined by City staff. If it is determined by City staff that a vendor has misrepresented its local status, it will be ineligible to receive preference.

**Reporting requirements.** Purchasing staff will conduct a review of purchasing transactions and report annually to the Common Council at their first meeting in March on the dollar amount of procurements made from local vendors included in the City's database and the increase from year to year in the amount of locally purchased supplies and commodities. Purchasing staff will provide a similar report regarding purchases of commodities and services over \$5,000 using the bid and RFP processes.

### Fiscal Note

Implementation of this local preference purchasing policy will establish new administrative responsibilities for staff in Information Services, central Purchasing and in the many operating departments who participate in the daily purchasing activities of City government. IS would be responsible for developing an on-line system for vendors to identify themselves as "local" and to maintain a list of these vendors on the City's web site for use by City staff and the public. Central Purchasing would be responsible for modifying current bid and RFP document formats to incorporate local preference criteria into the standard vendor selection processes for purchases over \$25,000. Staff in all City agencies that make purchasing decisions over \$5,000 would be responsible for incorporating the same criteria into their competitive selection processes when making vendor selections. Based on the proposed policy structure and the 4-month implementation timeline, it is likely that the necessary implementation work can be accomplished with available staff resources.

The policy also creates a 1% price preference or a 5% scoring preference for local vendors responding to non-public works bids, requests for quotations and requests for proposals. To the extent that these preferences result in the award of bids and contracts to other than the lowest price or highest scoring vendors, there is likely to be an increase in the price paid by the City for products and services. The extent of this potential increase is not known at this time, but Central Purchasing staff does not anticipate a substantial increase in costs given past experience. Following implementation of this policy, staff would attempt to accumulate and report the extent to which the award of bids and contracts has been influenced by the new policy.

More information:

City's Local Purchasing Database [1] - Madison maintains an online directory of local businesses to help city staff identify local options for purchases.

Wisconsin

<http://www.cityofmadison.com/business/localPurchasing/index.cfm>

## **San Jose, CA**

San Jose grants local small businesses (those with 35 or fewer employees) a 5% price preference in the awarding of city contracts. For services provided through a request-for-proposal process, local small businesses receive a 10% point advantage. (Local businesses of all sizes also receive a 2.5% preference, but the city defines a "local" business as any business with a location in Santa Clara County.)

From the City of San Jose Code of Ordinances:

### Part 4 AWARD OF CONTRACTS

#### 4.12.320 Application of preference in award of contracts.

A. Prior to the issuance of a solicitation, the procurement authority shall make a determination of whether price shall be the determinative factor in the award of the solicitation.

B. For solicitations where price has been chosen as the determinative factor, the preferences granted under this chapter shall be applied as follows:

1. Bidders who qualify as a local business shall be given a credit of two and one-half (2.5) percent of the cost bid; and

2. Bidders who qualify as a small business shall be given a credit of two and one-half (2.5) percent of the cost bid.

C. For solicitations where price has not been chosen as the determinative factor the preferences granted under this chapter shall be applied as follows:

1. Bidders who qualify as a local business enterprise shall be given a credit equal to five (5) percent of the total points used to determine the most advantageous quote or proposal.

2. Bidders who qualify as a small business enterprise shall be given a credit equal to five (5) percent of the total points used to determine the most advantageous quote or proposal.  
(Ord. 27980.)

### Part 1 DEFINITIONS

4.12.060 Small business enterprise. As used in this title, "small business enterprise" means a local business enterprise that has thirty-five (35) or fewer total employees. With respect to bids or proposals submitted by partnerships or joint ventures, the number of employees for purposes of qualifying as a small business enterprise shall be determined by the total number of employees of each of the members of the partnership or joint venture combined. (Ord. 27980.)

4.12.030 Local business enterprise. "Local business enterprise" means a business enterprise, including but not limited to a sole proprietorship, partnership, or corporation, which has a legitimate business presence in the County of Santa Clara, California. Evidence of legitimate business presence in San José shall include:

A. Having a current San José business tax certificate; and

B. Having either of the following types of offices operating legally within the County of Santa Clara:

1. The contractor's principal business office; or

2. The contractor's regional, branch or satellite office with at least one (1) full-time employee located in the County of Santa Clara.

(Ord. 27980.)

More information: <http://www.sjeconomy.com/businessassistance/smallbiz.asp>  
[1]

Small Business Opportunity Program [1] — San Jose's procurement preference is part of this larger city initiative to increase opportunities for small local enterprises to do business with the city.

### ***Ketchikan, Alaska***

Ketchikan provides a 10% preference for local businesses on bids valued at up to \$100,000 and a 7% preference on those between \$100,000 and \$200,000. No preference is awarded on contracts above that amount.

3.12.040 Purchases of supplies, materials, equipment or services -- when competitive bidding or quotations are required.

(4) Local Bidder Preference Award.

(A) Unless contrary to federal or state law or regulation, a contract or purchase for supplies, materials, equipment or contractual services the amount of which is less than two hundred thousand dollars shall be awarded to a local bidder where the bid by such local bidder is in all material respects comparable to the lowest responsible non-local bid if the amount bid by such local bidder does not exceed the lowest responsible non-local bid by more than:

(i) Ten percent (10%) of the amount bid by the lowest responsible non-local bidder if that non-local bidder's bid is \$100,000 or less;

(ii) Seven percent (7%) of the amount bid by the lowest responsible non-local bidder or \$10,000, whichever is less, if that non-local bidder's bid is greater than \$100,000 but less than or equal to \$200,000.

No local bidder preference will be allowed if the lowest responsible non-local bidder's bid exceeds \$200,000. The council may by motion adopted prior to bid opening exempt any contract or purchase from the local bidder preference set forth in the preceding sentence.

(B) "Local bidder," for purposes of the preceding paragraph means a person who:

(i) Holds a current Alaska business license;

(ii) Submits a bid for goods or services under the name appearing on the person's current Alaska business license;

(iii) Has maintained a place of business within the boundaries of the Ketchikan Gateway Borough for a period of six months immediately preceding the date of the bid; and

(iv) Is not delinquent in the payment of any taxes, charges or assessments owing to the city of Ketchikan or the Ketchikan Gateway Borough on account of that business.

(C) The manager may require such documentation or verification by the person claiming to be a local bidder as is deemed necessary to establish the requirements of (B) above.

Note: The complete text of the city's purchasing policy can be found under Title 3 of the Ketchikan Municipal Code [1]. <http://www.city.ketchikan.ak.us/>



**Attached**

Title 3

REVENUE AND FINANCE

Chapter 3.12

PURCHASES AND SALES

Sections:

- 3.12.010 Contractual services defined.
- 3.12.012 Public improvement defined.
- 3.12.020 City manager or authorized personnel to make purchases.
- 3.12.030 When prior approval by the council is required.
- 3.12.035 Purchase of public improvements - when competitive bidding or quotations are required.
- 3.12.040 Purchases of supplies, materials, equipment or services -- when competitive bidding or quotations are required.
- 3.12.041 Awarding of competitive bids.
- 3.12.042 Competitive bid appeals process.
- 3.12.043 Competitive sealed proposals.
- 3.12.050 Purchasing--When competitive bidding or quotations are not required.
- 3.12.051 Professional service contracts.
- 3.12.055 Acquisition of real property, leases, easements and permits.
- 3.12.060 Sale or other disposition of real property or interest therein.
- 3.12.070 Sale or other disposition of personal property, or interest therein.

**3.12.010 Contractual services defined.** "Contractual services," for the purpose of this chapter, means services performed for the city by persons not in the employment of the city, and may include the use of equipment or the furnishing of commodities in connection with said services under express or implied contract. Contractual services include travel; freight; express, parcel post, postage; telephone; telegraph; utilities; rents; printing and binding; repairs, alterations, and maintenance of buildings, equipment, streets and bridges, and other physical facilities of the city; and other services performed for the city by persons not in the employment of the city. (Ord. 822 §1(part). 1975)

**3.12.012 Public improvement defined.** "Public improvement," as used in this Chapter, means the erection, building, construction, placement, creation or expulsion of an improvement to land. (Ord. 822 §1(part). 1975)

**3.12.020 City manager or authorized personnel to make purchases.** All purchases of supplies, materials, equipment, and contractual services for the offices, departments, and agencies of the city government, shall be made by the city manager or by other city personnel in accordance with purchase authorization issued by the city manager. (Ord. 822 §1(part). 1975)

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As to the authority of the city manager to contract for the purchase and sale of needed supplies, material and equipment, see Charter §5-16, §5-17 and §5-19.

**3.12.030 When prior approval by the council is required.** Every contract for, or purchase of, supplies, materials, equipment, contractual services, or public improvements for more than fifty thousand dollars shall require the prior approval by motion or resolution of the council; and under no circumstances may such contract or purchase be made without first obtaining the approval of the council. (Ord.1151, §1, 1988. Ord. 822 §1(part), 1975)

**3.12.035 Purchases of public improvements - when competitive bidding or quotations are required.** (a) Purchases of or contracts for public improvements with a cost of \$5,000 or less may be made on the open market without competitive bidding quotations, or solicitations, provided that such purchases or contracts are for budgeted items or items previously approved by the council.

(b) Purchases of or contracts for public improvements with a cost in excess of \$5,000, but not more than \$50,000, shall, at the option of the purchasing authority, be awarded either by solicitation for written quotations made to at least three contractors or through the competitive bidding or proposal process described in section 3.12.040(c), section 3.12.041, section 3.12.042, and section 3.12.043.

(c) Except as provided in (d) below, purchases of or contracts for public improvements with a cost in excess of \$50,000 shall be awarded through the competitive bidding or proposal process described in section 3.12.040(c), section 3.12.041, section 3.12.042, and section 3.12.043.

(d) Purchases of or contracts for public improvements may be awarded without notice and without competitive bidding or proposals:

(1) When the public improvement can only be provided by a single contractor;  
(2) When the public improvement can be purchased from another unit of government at a price or rate determined by government authority;

(3) When the public improvement is purchased from a public utility;  
(4) When the public improvements should be purchased from a specific contractor in order to prevent incompatibility with previously purchased supplies, materials, equipment or public improvements. For purposes of this subparagraph, the term "incompatibility" is defined as: (A) the inability to interconnect, combine, interchange, or join, or (B) that which causes substantial duplication in maintenance, expertise, or training or in the stocking of parts, materials, supplies or replacements. Any purchase which is to be excluded from competitive bidding by the authority of this subparagraph must be first approved by the council.

(5) When the public improvements are required on an emergency basis, provided, however, that to the extent practical under the conditions of the emergency, the council shall declare the emergency;

(6) When it is advantageous to the city to enter into a contract with a person, firm or corporation for the same public improvement under substantially the same terms as such person, firm or corporation is providing another municipal or state government, or the United States, where such public improvements are being provided the other unit of government on the basis of competitive bidding, or pursuant to a contract with or through such other government unit so that the benefit of the competitive bidding accrues to the city;

(7) When competitive bidding has been followed, but only one, or no bids are received, or all bids are rejected. In such a case, after council approval, the manager may proceed to have the public improvements constructed without further competitive bidding;

(8) When additional public improvements beyond the scope of an existing contract can be obtained by change order to the contract provided, however, that the existing contract was awarded through the competitive bidding process, that the change order for each additional public improvement does not exceed fifteen percent of the original bid price, and that the council approves the change order;

(9) Notwithstanding any provision of this chapter, the council may also exempt any particular purchase from competitive bidding or other requirements by a non-emergency ordinance adopted pursuant to and as provided for in sections 5-16 and 5-17 of the city charter. (Ord. 1632, §1, 2009; Ord. 1291 §2, 1994)

**3.12.040 Purchases of supplies, materials, equipment or services – when competitive bidding or quotations are required.** (a) Purchases of, or contracts for, supplies, materials, equipment, or contractual services, with a cost of ten thousand dollars or less in a single transaction may be made on the open market without competitive bidding, quotations, or solicitations, provided that such purchases or contracts are for budgeted items or items previously approved by the council.

(b) Except as otherwise provided in section 3.12.043 or section 3.12.050, purchases of or contracts for supplies, materials, equipment, or contractual services, with a cost in excess of ten thousand dollars but not more than fifty thousand dollars in a single transaction shall, at the option of the city's purchasing authority, be made in the open market by written quotation or through the competitive bidding process set out in subsection (c) of this section, section 3.12.041 and section 3.12.042, the competitive sealed proposals process set out in section 3.12.043 or the professional services process set out in section 3.12.050. The city's purchasing authority shall solicit quotations or offers from at least three persons, firms or corporations.

(c) Contracts over fifty thousand dollars.

(1) Except as otherwise provided in section 3.12.043 or section 3.12.050, before any purchase of, or contract for, supplies, materials, equipment, or contractual services is made, when the cost thereof is estimated to exceed fifty thousand dollars, the city purchasing authority shall submit specifications and invitations to bid to at least three persons, firms, or corporations dealing in and able to supply the same, or to a lesser number if there are not three dealing in and able to supply the same. The purchasing authority shall also publish notice of the proposed purchase and invitations to bid in a newspaper of general circulation within the city.

(2) When there are at least three persons, firms, or corporations that qualify as local, as defined in subsection (c)(4) of this section, the purchasing authority is not required to, but may submit invitations to bid to non-local persons, firms, or corporations. The purchasing authority shall, however, submit invitations to bid to non-local persons, firms, or corporations when the purchasing authority determines such action is necessary to secure bids or to create competitive conditions, or when such action may result in a savings for the city.

(3) All bids shall be sealed and shall be opened in public at a time and place designated in the notice inviting bids. Information which would reveal the number of bids received and the identity of bidders shall not be released until after the time for submission of bids has passed. The purchasing authority may repeatedly reject any and all bids, may proceed under subsection 3.12.050(10) or may call for new bids as in the first instance, except that as an additional requirement each of the bidders whose bids were rejected shall be timely notified of a call for new bids and of the changes, if any, in the specifications or other requirements for such new bids.

(4) Local Bidder Preference Award. (A) Unless contrary to federal or state law or regulation, a contract or purchase for supplies, materials, equipment or contractual services the amount of which is less than two hundred thousand dollars shall be awarded to a local bidder where the bid by such local bidder is in all material respects comparable to the lowest responsible non-local bid if the amount bid by such local bidder does not exceed the lowest responsible non-local bid by more than:

(i) Ten percent (10%) of the amount bid by the lowest responsible non-local bidder if that non-local bidder's bid is \$100,000 or less;



(ii) Seven percent (7%) of the amount bid by the lowest responsible non-local bidder or \$10,000, whichever is less, if that non-local bidder's bid is greater than \$100,000 but less than or equal to \$200,000.

No local bidder preference will be allowed if the lowest responsible non-local bidder's bid exceeds \$200,000. The council may by motion adopted prior to bid opening exempt any contract or purchase from the local bidder preference set forth in the preceding sentence.

(B) "Local bidder," for purposes of the preceding paragraph means a person who:

(i) Holds a current Alaska business license;  
(ii) Submits a bid for goods or services under the name appearing on the person's current Alaska business license;

(iii) Has maintained a place of business within the boundaries of the Ketchikan Gateway Borough for a period of six months immediately preceding the date of the bid; and

(iv) Is not delinquent in the payment of any taxes, charges or assessments owing to the city of Ketchikan or the Ketchikan Gateway Borough on account of that business.

(C) The manager may require such documentation or verification by the person claiming to be a local bidder as is deemed necessary to establish the requirements of (B) above. (Ord. 1632, §2, 2009; Ord. 1379 §1 & 2, 1997; Ord. 1296 §1, 1994; Ord. 1291 §3, 1994; Ord. 1255 §1, 1993; Ord. 1241 §1, 1992; Ord. 1053 §1, 1985; Ord. 1048 §1, 1984; Ord. 1031 §1, 1984; Ord. 956 §1, 1981; Ord. 886 §2, 1977; Ord. 822 §1 (part), 1975)

**3.12.041 Awarding of competitive bids.** (a) All requests for bids or proposals shall include clear and precise discussion of the specific evaluation factors to be used in awarding bids.

(b) All requests for bids or proposals shall be as detailed as possible without preventing qualified bidders or proposers from submitting bids or proposals. Individual brand names will not be specified in requests for bids or proposals unless no functionally equivalent products exist.

(c) All purchases that are competitively bid under Section 3.12.040 shall be awarded to the responsive bidder whose bid or proposal is determined to be most advantageous to the city, taking into consideration price and other evaluation factors as set out in the request for bid or request for proposal. (Ord. 1184, §1, 1990)

**3.12.042 Appeals process.** (a) Unless it is decided to reject all bids or proposals, all bidders or proponents under the competitive bidding or competitive sealed proposal procedures of this chapter will be given a notice of intent to award the bid or proposal. The notice shall identify the bidder or proponent whose bid or proposal is recommended for award, shall contain information relating to all submitted bids or proposals, and shall inform the bidder or proponent of the appeals process set forth in this section.

(b) Any bidder or proponent which has any objection to the recommended award of bid or proposal and which claims to be the lowest responsible bidder or more qualified proponent shall file a written notification of appeal with the city clerk. The notification of appeal shall specifically state all of the reasons for the appeal, the specific action requested by the bidder or proponent, the specific parts of the bid or proposal or bid or proposal documents on which the appeal is based, the reasons the bidder or proponent claims to be the lowest responsible bidder or most qualified proponent, and all statements, documents and other relevant materials which the bidder or proponent will submit in support of its appeal. The notification of appeal shall be filed with the city clerk by either:

(1) 5:00 p.m. on the Thursday one week prior to the city council meeting where the bid or proposal is to be awarded; or

(2) within five calendar days from the date the notice of intent to award was delivered to the bidder or proponent which filed the notification of appeal, whichever is earlier. In no event, however, shall a bidder or proponent have less than two weekdays from the time it receives the notice of intent to award until the time it is required to have filed a notification of appeal. Not later than two days before the city council meeting where the bid or proposal is to be awarded, the city clerk shall notify all other bidders or proponents of the appeal and of their right to contest the appeal.

(c) The council shall hear the appeal and any responses or information from other bidders or proponents. The council may then, without further opportunity for appeal, award the contract to any bidder or proponent.

(d) A bidder or proponent which objects to the notice of intent to award a bid or proposal, but which fails to timely and completely file a notification of appeal with the city clerk shall have no right to appeal or contest the award of bid or proposal, and shall have no claim or cause of action relating to the bid or proposal process, the bid or proposal documents and specifications, the bids or proposals themselves, or the award. A bidder or proponent which has submitted the bid or proposal recommended for award but which does not respond to a notification of appeal by either submitting a written response to each of the reasons for appeal or by presenting such response at the council meeting when the appeal is heard, shall have no right to appeal or contest the award of bid or proposal, and shall have no claim or cause of action relating to the bid or proposal process, the bid or proposal documents and specifications, the bids or proposals themselves or the award. The council may, in its discretion, consider any objection whether or not a complete or timely notification of appeal or response has been filed or presented but any such consideration shall be final and not subject to appeal, contest, claim or cause of action.

(e) The council or the manager may at any time exempt any award of bid or proposal from all or any part of the appeals process set forth in this section provided that all bidders or proponents are timely notified in writing of the exemption, the reasons for exempting the particular award, the process which will be used in awarding a bid or proposal, the time at which any objection to the award may be made, and the time at which an award of bid or proposal may be made. (Ord. 1632, §3, 2009; Ord. 1291 §4, 1994; Ord. 1184, §2, 1990)

**3.12.043 Competitive sealed proposals.** (a) Subject to any prior approval by the council under section 3.12.030, if the manager determines that use of competitive sealed bidding or other procurement process under this chapter is not practicable, the city may procure supplies, materials, equipment, public improvements, or contractual services by competitive sealed proposals under this section.

(b) The manager 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 requested for proposals shall be published in a newspaper of general circulation within the city together with such other public notice as the manager may deem appropriate.

(c) Sealed proposals shall be designated as such on an outer envelope and shall be submitted by mail or in person at the place and no later than the time specified in the request for proposals. Proposals not submitted at the place or within the time so specified shall not be opened or considered.

(d) Proposals shall be received at the time and place designated in the request for proposals, and shall be opened so as to avoid disclosing their contents to competing proponents during the process of negotiation. Proposals, tabulations, and evaluations thereof shall be open to

public inspection only after the issuance of a notice of intent to award the contract. Unless all proposals are rejected, the manager shall issue a notice of intent to award the contract.

(e) In the manner provided in the request for proposals, the manager may negotiate with those responsible proponents whose proposals are determined by the manager to be reasonably responsive to the request for proposals. Negotiations shall be used to clarify and assure full understanding of the requirements of the request for proposals. The manager may permit proponents to revise their proposals after submission and prior to award to obtain best and final offers. Proponents deemed eligible for negotiations shall be treated equally regarding any opportunity to discuss and revise proposals. In conducting negotiations or requesting revisions, neither the manager nor any other city officer or employee shall disclose any information derived from proposals of competing proponents.

(f) If fair and reasonable compensation, contract requirements, and contract documents can be agreed upon with the most qualified proponent, the contract shall be awarded to that proponent.

(g) If fair and reasonable compensation, contract requirements, and contract documents cannot be agreed upon with the most qualified proponent, the manager shall advise the proponent of the termination of negotiations. If the proposals were submitted by one or more other proponents determined to be qualified, negotiations may be conducted with such other proponents in the order of their respective rankings. The contract may be awarded to the proponent then determined to be most advantageous to the city.

(h) Awards shall be made by written notice to the proponent whose final proposal is determined to be most advantageous to the city. No criteria other than those set forth in the request for proposals may be used in proposal evaluation. If the manager determines that it is in the best interest of the city to do so, the city may reject all proposals. (Ord. 1632, §4, 2009)

**3.12.050 Purchasing--When competitive bidding or quotations are not required.** (a)

The following may be purchased or contracted for without competitive bidding or soliciting quotations:

(1) Supplies, materials, equipment, contractual services, the cost of which does not exceed ten thousand dollars in a single transaction;

(2) Supplies, materials, equipment or contractual services which can be furnished only by a single dealer, which have a uniform price wherever purchased or which are telecommunications supplies, materials, or equipment purchased by KPU for retail sale or lease;

(3) Supplies, materials, equipment or contractual services purchased from another unit of government at a price or rate determined by governmental authority;

(4) Supplies, materials, equipment or contractual services purchased from a public utility at a price or rate determined by governmental authority;

(5) Contractual services of a professional nature, such as engineering, architectural, legal, medical or consulting services;

(6) Supplies, materials, equipment or contractual services which should be purchased from a specific source in order to prevent incompatibility with previously purchased supplies, materials, equipment or contractual services. For purpose of this subparagraph, the term "incompatibility" is defined as:

(A) the inability to interconnect, combine, interchange, or join; or

(B) that which causes substantial duplication in maintenance, expertise or training or in the stocking of parts, materials, supplies or replacements. Any purchase which is to be excluded from competitive bidding by the authority of this subparagraph which exceeds ten thousand dollars, must first be approved by the council;

(7) Supplies, materials, equipment or contractual services which are required on an emergency basis, provided, however, that to the extent practical under the conditions of the emergency, the council shall declare an emergency.

(8) Placement or purchase of insurance;

(9) When it is advantageous to the city to enter into a contract with a person, firm or corporation for the same supplies or services under substantially the same terms as such person, firm or corporation is providing another municipal or state government, or the United States, where such supplies or services are being provided the other government unit on the basis of formal bids, price quotations or other competitive proposal procedure or pursuant to a contract with or through such other government unit so that the benefit of the price quotation or other competitive proposal accrues to the city;

(10) When competitive bidding has been followed, but only one, or no bids or quotations, are received, or the bids or quotations are rejected. In such a case, after council approval, the manager may proceed to have the supplies, materials, or equipment purchased, the services performed or the public improvements constructed without further competitive bidding or quotation;

(11) The purchase of used vehicles or equipment when such purchase has been determined by the manager to be in the best interest of the city;

(12) The purchase of new equipment to be used at or in connection with the Ketchikan Shipyard, when and under such terms and conditions as the council, in its sole judgment, deems advantageous to the city;

(13) Notwithstanding any provision in this chapter, the council may also exempt any particular purchase from competitive bidding or other requirements by a non-emergency ordinance adopted pursuant to and as provided for in Sections 5-16 and 5-17 of the city charter. (Ord. 1291 §5-8, 1994; Ord. 1104 §1-3, 1987; Ord. 1103 §1, 1987; Ord. 822 §1(part), 1975)

### **3.12.051 Professional service contracts.** (a) Definitions.

(1) Professional services as used in this section shall mean professional, technical or consultant services that are predominantly intellectual in character and that:

(A) Include analysis, evaluation, prediction, planning or recommendations, and

(B) Result in the production of a report, plan, drawings, or the completion of a task.

Examples of professional service contractors include, but are not limited to: accountants, architects, appraisers, engineers, land surveyors, financial consultants, attorneys, planning consultants, economists, computer programmers and system analysts, insurance consultants and risk analysts, insurance providers, and other specialized consultants.

(2) Request for proposals means a written solicitation for contract proposals by prospective contractors that sets out the nature of the services to be performed or product to be secured with sufficient information for a qualified prospective contractor to prepare a responsive contract proposal for consideration and evaluation by the city.

(b) Professional service contracts generally; contract authority.

(1) The manager may award and sign, without prior approval of the council, any contract for professional services if adequate funding is budgeted, except as provided in this subsection.

(2) Any proposed professional service contracts with an estimated cost in excess of fifty thousand dollars shall be awarded by the council.

(3) The manager shall utilize a selection committee including the manager or manager's designee, a department head, members of the American Society of Civil Engineers,

American Society of Mechanical Engineers, American Institute of Architecture and/or other professional organizations and interested citizens as the manager deems appropriate to evaluate proposals and select the best qualified professional services contractor to provide the required service. All meetings of selection committees shall be open to the public.

(c) Solicitation of proposals.

(1) When the city proposes to enter into a contract for professional services, it shall:

(A) Publish a public notice soliciting proposals for the proposed professional services contract at least two times in a newspaper of general circulation in the city and post notice in such other location as the manager deems appropriate. The first notice shall be published not less than twenty-one days before the deadline for submittal of proposals as announced in the public notice and the second notice shall be published not less than seven days thereafter. The notice shall include:

(1) A brief description of the proposed project for which the city is seeking professional services;

(2) The procedure by which a person or firm interested in the professional services contract may make a proposal to the city for consideration for the contract; and

(3) The deadline for submittals.

(2) The provisions of this section do not apply if:

(A) The manager demonstrates to the council that there is a single source of the expertise or knowledge required, or that one person or firm can clearly perform the required tasks more satisfactorily because of the person's or firm's prior work;

(B) The manager makes a determination that public necessity will not permit delay incident to the procedures otherwise required by this section; or

(C) The service is to be provided by another government agency; or

(D) The estimated cost of the contract does not exceed fifty thousand dollars.

(3) In addition to other criteria set forth in the request for proposals, the following selection factors shall be considered by the city when it evaluates the proposals received:

(A) Specialized experience and technical competence of the person or firm (including a joint venture or association) with the type of service required;

(B) Capacity of the person or firm to perform the work including any specialized services, within the time limitations;

(C) Character, integrity, reputation, judgment, experience and efficiency of the person or firm;

(D) Past record and performance on contracts with the city or other governmental agencies and private industry with respect to such factors as control of costs, quality of work and ability to meet schedules;

(E) Familiarity with the details of the project;

(F) Degree of local employment to be provided by the person or firm in the performance of the contract by the person or firm; and

(G) Estimated cost of services.

(d) Professional services contract terms. Contracts may be lump sum, cost plus a fixed fee, unit price, cost times a multiplier, or on such other terms as are deemed appropriate to the project involved. (Ord. 1291 §9, 1994; Ord. 1186, §1, 1990)

**3.12.055 Acquisition of real property, leases, easements and permits.** (a) No real property may be acquired by the city without first being specifically approved by the council. No lease, easement or permit to use land may be acquired by the city for a payment in excess of five

thousand dollars without first being specifically approved by the council. The manager is authorized to acquire from budgeted funds and without further council approval, leases, easements or permits priced at less than the amount set forth above. For the purposes of this section the term "price" means the cash paid to the seller plus the value of goods and services provided to the seller which:

- (1) Are given in consideration for the lease, easement or permit; and
- (2) were not otherwise needed by the city at any time for its use of the lease, permit or easement.

The provisions of this section shall not apply to land exchanges under section 3.12.060. (Ord. 1266 §1, 1993)

**3.12.060 Sale or other disposition of real property or interest therein.** (a) No real property, or interest therein, of any value may be sold, leased, exchanged or otherwise disposed of until the council has declared by motion or resolution that the real property, or interest therein, is surplus, or unneeded, or that the transaction is otherwise in the best interest of the city.

(b) Except as otherwise provided in this chapter, the manager may sell, lease, exchange or otherwise dispose of real property, or an interest therein, only after appraisal of the fair market value thereof by a qualified appraiser obtained by the city, and the price shall be not less than the fair market value plus the cost of the appraisal plus survey, platting, recording and other costs to the city attendant to the transaction.

(c) Except when the disposition is otherwise exempt from competitive bidding, the proposed disposition of real property, or interest therein, shall be advertised in a newspaper of general circulation in the city to advise prospective buyers of the proposed disposition and to provide an opportunity to submit such bids. All bids shall be sealed and shall be opened in public at a designated time and place, except when the sale is by auction. The manager may repeatedly reject all bids and advertise or give notice again. If a responsive bid at the minimum price set forth in paragraph (b) is not received, the city manager may, within one year from the date bids were to be opened, dispose of the property at such minimum price without further advertisement, bidding or authorization. After one year from the date bids were to be opened, the city manager may dispose of such property without further advertising, bidding or authorization if the price for the property is not less than the fair market value as determined by an appraisal performed within one year prior to the date of disposal by a qualified appraiser plus the costs of appraisal, survey, platting, recording and other costs to the city attendant to the transaction.

(d) The manager, after council approval by motion or resolution, may sell, lease, exchange or otherwise dispose of the following real property, or an interest therein, without giving an opportunity for competitive bidding, subject to compliance with the provisions of section 5-17 of the city charter:

(1) Real property, or an interest therein, to be exchanged for other real property, or an interest therein, which is determined by an appraisal prepared by a qualified appraiser obtained by the city to be at least equal in value to the city property or the interest therein that is to be exchanged, or if the city's property is determined to be greater in value, if the difference is made up in cash to the city. The person receiving the city property or interest to be exchanged shall pay the cost of the appraisal, plus survey, platting, recording and all other costs to the city attendant to the transaction;

(2) Sale, lease, donation, exchange or other transfer of real property, or an interest therein, to or with another municipality, a state, or the United States, when and under such terms and conditions as the council, in its sole judgment, deems advantageous to the city;

(3) Parcels of real property that are substandard in size or configuration under existing zoning, which may be disposed of by sale or exchange to the legal owner of adjoining

property, with such adjoining parcel to be then replatted to incorporate therein such substandard parcel sold or exchanged; provided, however, that the sale price or exchange value shall be at least equal to the fair market value of the city property or interest therein transferred, which may be determined by using the current assessed value of the property, or a comparable portion of such property, as established by the Ketchikan Gateway Borough assessor, plus survey, platting, recording and other costs to the city attendant to the transaction;

(4) Easements may be released to the legal owner of the servient property when and under such terms and conditions as the council, in its sole judgment, deems advantageous to the city.

(e) Notwithstanding any other provision herein, a sale, lease or other disposal of real property, or interest therein, the value of which is more than thirty thousand dollars, must meet and comply with all of the requirements of section 5-17 of the city charter.

(f) Real property sold, traded, or exchanged shall be conveyed by the city without warranty.

(g) Notwithstanding any provision in this chapter, the council may also exempt any particular contract, sale, lease, exchange, disposal or other transaction from competitive bidding or other requirements by a non-emergency ordinance adopted pursuant to and as provided for in sections 5-16 and 5-17 of the city Charter. (Ord. 1209, §1, 1991; Ord. 1142, §1, 1988; Ord. 1103, §3, 1987)

**3.12.070 Sale or other disposition of personal property, or interest therein.** (a) The manager may sell or otherwise dispose of any surplus, obsolete or unneeded supplies, materials, equipment or other personal property with a value of two thousand dollars or less, by giving notice of each proposed disposition in such manner as he deems reasonable and appropriate; provided, however, the manager shall not be required to give notice if the cost of giving notice exceeds the value of the supplies, materials, equipment or other personal property.

(b) No supplies, materials, equipment or other personal property of a value of more than two thousand dollars other than scrap metal may be sold or otherwise disposed of until the council has declared, by motion or resolution, such property surplus, obsolete, unneeded, or that the transaction is otherwise in the best interest of the city. (Ord. 1610, §1, 2008)

(c) Except as provided in subsection (a) of this section, or when the disposition is otherwise exempt from competitive bidding, the proposed disposition of personal property, or interest therein, shall be advertised in a newspaper of general circulation in the city to advise prospective buyers of the proposed disposition and to provide an opportunity to submit such bids. All bids shall be sealed and shall be opened in public at a designated time and place, except when the sale is by auction. The manager may repeatedly reject all bids and advertise or give notice again.

(d) Personal property, or an interest therein, may, subject to the provisions of section 5-17 of the city charter, be sold or otherwise disposed of without competitive bidding as follows:

(1) Supplies, materials, equipment or other personal property, or any interest therein, may be sold or otherwise disposed of by the manager when the total value thereof, as estimated by the manager, does not exceed collectively two thousand dollars.

(2) The manager may sell, lease, donate, exchange or otherwise dispose of personal property, or an interest therein, to or with another municipality, a state or the United States when and under such terms and conditions as the council, in its sole judgment, deems advantageous to the city.

(e) Notwithstanding any other provision in this chapter, the council may also exempt any particular contract, sale, lease, exchange, disposal or other transaction from competitive bidding or other requirements by a nonemergency ordinance adopted pursuant to and as provided for in Sections 5-16 and 5-17 of the city Charter. (Ord. 1103 §5, 1987)

## **Los Angeles, CA**

On contracts of \$100,000 or less, the city of Los Angeles grants a 10% preference to small, local businesses. A small, local business is defined as one that is independently owned and operated, located in the county of Los Angeles, and not "dominant in its field of operations."

Los Angeles County also grants small, local businesses a 5% preference on county contracts.

### Sec. 10.25. Small, Local Business.

A business entity shall qualify as a "Small, Local Business" as used in this ordinance if it:

(a) Is not (or together with an affiliate) dominant in its field of operations.

(b) Is independently owned and operated, with its principal office located in the County of Los Angeles and holds a City business license issued by the Tax and Permit Division of the City Clerk's office, if this firm is subject to the City Business Tax.

(c) Has requested classification as a Small, Local Business and has been approved as such by the City. In order to be so approved, a business entity shall set forth, under penalty of perjury, such information as is requested by the City on either electronic or hardcopy forms supplied by the City as part of the supplier registration process and/or not less than five (5) calendar days before the last day for submission of the bid or proposal as to which the business entity seeks to qualify as a Small, Local Business. The forms containing the required information shall be submitted to the Department of Public Works, Bureau of Contract Administration. Among the criteria the City shall consider in determining whether a business entity so qualifies is whether the business entity, together with any affiliate, has annual receipts which are less than \$3 million for the previous fiscal year. The City may in the alternative request such information for the previous calendar year.

#### SECTION HISTORY

Added by Ord. No. 153,662, Eff. 6-1-80.

Amended by: Ord. No. 157,595, Eff. 5-15-83, Ord. No. 169,059, Eff. 10-24-93; Ord. No. 173,186, Eff. 5-22-00; Subsec. (c), Ord. No. 174,048, Eff. 8-5-01.

### Sec. 10.28. Award of Contracts.

Any supplier or contractor who qualifies as a "Small, Local Business" and is a responsible bidder or proposer shall be granted a preference as to all contracts of \$100,000 or less, for which bids or proposals were solicited, in an amount equal to 10% of the bid or proposal of the lowest and best responsible bidder or proposer, if that latter bidder or proposer has not qualified as a Small, Local Business. If, after deduction of the 10% preference from the bid or proposal of the Small, Local Business, the bid or proposal is equal to or less than the lowest bid or proposal, the bid or proposal of that Small, Local Business shall be deemed to be the lowest bid or proposal.

#### SECTION HISTORY

Added by Ord. No. 153,662, Eff. 6-1-89.

Amended by: Ord. No. 165,973, Eff. 7-23-90; Ord. No. 173,186, Eff. 5-22-00; Ord. No. 174,048, Eff. 8-5-01.

#### More Information:

City of Los Angeles Small Local Business Program Fact Sheet & Application [1]

Los Angeles County also grants a 5% preference to local small businesses through its Local Business Enterprise Preference Program [2].



## ***Columbus, OH***

Columbus grants a 5% preference to local businesses for the procurement of supplies valued at \$20,000 or less, other than construction and professional services, and a 1% preference to local businesses otherwise.

Excerpts from the Columbus City Code:

### 329.04 Definitions.

(k) Local Bidder. An individual or business entity: (1) whose principal place of business is located within the corporation limits of the city of Columbus or the county of Franklin as registered in official documents filed with the Secretary of State, state of Ohio, or Franklin County recorder's office; or (2) who holds a valid vendor's license which indicates that its place of business is located within the corporation limits of the city of Columbus or county of Franklin.

### 329.06 Competitive sealed bidding.

(a) The establishment of universal term contracts and/or the procurement of all materials, supplies and equipment shall be conducted under this section as follows:

(8) In determining the lowest bid for purposes of awarding a contract under this section, a local bidder shall receive a credit equal to one (1) percent of the lowest bid submitted by a non local bidder or twenty thousand dollars (\$20,000.00), whichever is less.

(b) The procurement of all service contracts except construction, custodial, landscaping, guard and security services, cleaning and recycling services, and professional services shall be conducted under this section as follows:

(8) In determining the lowest bid for purposes of awarding a contract under this section, a local bidder shall receive a credit equal to one (1) percent of the lowest bid submitted by a non local bidder or twenty thousand dollars (\$20,000.00), whichever is less.

(c) The procurement of all custodial, landscaping, guard and security service, cleaning and recycling service contracts shall be conducted under this section as follows:

(9) In determining the lowest bid for purposes of awarding a contract under this section, a local bidder, as defined in Section 329.04(k), shall receive credit equal to one (1) percent of the lowest bid submitted by a non-local bidder or twenty thousand dollars (\$20,000.00), whichever is less.

### 329.07 Exceptions to competitive sealed bidding.

(d) Procurement of Materials, Supplies, Equipment, and Services Other Than Construction and Professional Services not Exceeding Twenty Thousand Dollars (\$20,000.00).

(3) In determining the lowest bid for purposes of awarding a contract under this section, a local bidder (as defined in Section 329.04(k)), shall receive credit equal to five (5) percent of the lowest bid submitted by a non-local bidder, where bids do not exceed twenty thousand dollars (\$20,000.00).

## **Albuquerque, NM**

Albuquerque provides a 5% preference to local businesses and small businesses (under 20 employees).

From the Albuquerque City Code:

§ 5-5-17 RESIDENT, LOCAL AND SMALL BUSINESS PREFERENCES.

(A) Application of Preferences.

(1) A local preference shall be applied to all requests for bids, requests for proposals, and requests for quotes for the purchase of goods or services or for the award of concession contracts.

(2) A small business preference shall be applied to all requests for bids, requests for proposals, and requests for quotes for the purchase of goods or services.

(3) The state's Resident Contractor Preference shall be applied to all requests for bids or requests for proposals for the award of construction, in accordance with state law.

(4) A resident preference based on the state's Resident Business Preference shall be applied to a request for bids or request for proposals for the purchase of goods or services, but only if no offers have been received in response to the solicitation from offerors eligible for the local preference.

(5) The local, small business and resident preferences shall not be applied to any solicitation for a purchase or concession contract in excess of \$5,000,000, for a federal aid construction project, or when the expenditure of federal funds designated for the contract is involved.

(6) The local, small business and resident preferences shall be applied by multiplying the amount bid or quoted or the proposal score of all eligible offers by the appropriate Preference Factor in determination of the recommended offeror for the solicitation.

(B) Definitions.

(1) LOCAL BUSINESS shall mean a business that maintains its principal office and place of business in the Greater Albuquerque Metropolitan Area, defined in Section 3 of this Article.

(2) PREFERENCE FACTOR shall mean .95 when applied to bids and quotes, which factor shall be multiplied times the amount of the eligible bid, and shall mean 1.05 when applied to proposals, and shall be multiplied times the total score given each eligible proposal during evaluation.

(3) RESIDENT CONTRACTOR PREFERENCE shall mean the preference described in Section 13-4-2 NMSA 1978, as currently enacted or hereafter amended.

(4) RESIDENT BUSINESS PREFERENCE shall mean the preference described in Section 13-1-21 NMSA 1978, as currently enacted or hereafter amended.

(5) SMALL BUSINESS shall mean a local business which employs an average of fewer than 20 full-time employees in a calendar year.

(C) Eligibility for Preferences.

(1) To qualify for a local or small business preference, the offeror must submit verifiable information certified by the offeror with its offer, unless an alternative method of pre-offer certification is established by the City Purchasing Officer.

(2) To qualify for a resident preference and the state's Resident Contractor Preference, an offeror must submit a valid number issued by the State of New Mexico with its offer.

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(3) If necessary the Central Purchasing Office may seek additional information or proof to verify the offeror's eligibility.

(4) Only the principal offeror or one of the principal offerors, not a subcontractor, may qualify an offer for a preference.

(D) Small Business Goal. Each fiscal year the Central Purchasing Office shall strive to award to small businesses competed city purchases for goods and services processed through that office equivalent to 10% of the total value of such purchases for the prior fiscal year.

('74 Code, § 5-7-17) (Ord. 6-1991; Am. Ord. 30-1998; Am. Ord. 33-2002; Am. Ord. 33-2007) Penalty, see § 1-1-99

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