

ORDINANCE NO. 26-05

AN ORDINANCE OF ELK RIDGE CITY, UTAH, AMENDING TITLE 1, CHAPTER 10, “PURCHASING POLICY,” OF THE ELK RIDGE CITY CODE; AMENDING PROCUREMENT AND APPROVAL REQUIREMENTS FOR BUILDING IMPROVEMENT, PUBLIC WORKS, AND CLASS C ROAD PROJECTS; INCORPORATING APPLICABLE STATE BID LIMITS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Elk Ridge City is a municipal corporation and political subdivision of the State of Utah; and

WHEREAS, the City Council has previously adopted purchasing and procurement procedures codified in Title 1, Chapter 10 of the Elk Ridge City Code; and

WHEREAS, the City Council desires to update the City’s purchasing procedures to provide greater flexibility and efficiency in completing City projects while maintaining appropriate competitive procurement requirements and compliance with applicable State law; and

WHEREAS, the City Council desires to utilize the applicable State bid limits established by Utah law for building improvement, public works, and Class C road projects and to clarify the procedures applicable to such projects; and

WHEREAS, the City Council finds that the amendments to Title 1, Chapter 10 contained in Exhibit A, attached hereto and incorporated herein by this reference, are in the best interests of Elk Ridge City and its residents.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF ELK RIDGE CITY, UTAH, AS FOLLOWS:

SECTION 1. AMENDMENT AND ADOPTION

Title 1, Chapter 10, “Purchasing Policy,” of the Elk Ridge City Code is hereby amended as set forth in Exhibit A, attached hereto and incorporated herein by this reference.

The amendments contained in Exhibit A are hereby adopted as part of the Elk Ridge City Code.

SECTION 2. CONTINUING EFFECT

Except as amended by this Ordinance and Exhibit A, all other provisions of the Elk Ridge City Code shall remain in full force and effect.

SECTION 3. SEVERABILITY

If any section, clause, sentence, or provision of this Ordinance or Exhibit A is declared invalid or unconstitutional by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

SECTION 4. CONFLICTING PROVISIONS

All ordinances, resolutions, policies, and provisions of the Elk Ridge city Code that conflict with this Ordinance or Exhibit A are hereby repealed or amended to the extent of such conflict.

SECTION 5. EFFECTIVE DATE

This Ordinance shall take effect upon passage and posting or publication as required by law.

PASSED AND ADOPTED by the City Council of Elk Ridge City, Utah, this ____ day of _____, 20 ____.

Approved by the Mayor:

Mayor – Robert Haddock

Councilmember Jared Peterson	Voted _____
Councilmember Tanya Willis	Voted _____
Councilmember Cory Thompson	Voted _____
Councilmember Melanie Paxton	Voted _____
Councilmember Charles Wixom	Voted _____

ATTEST

Spencer Foster - City Recorder

EXHIBIT A

CHAPTER 10 PURCHASING POLICY

SECTION:

- 1-10-1: System Adopted
- 1-10-2: Compliance
- 1-10-3: Definitions
- 1-10-4: Administration
- 1-10-5: Bid Process
- 1-10-6: Choice Of Bid Process
- 1-10-7: Awarding Of Bids and RFP's
- 1-10-8: Exceptions To Bidding Requirements
- 1-10-9: Penalties

1-10-1: SYSTEM ADOPTED:

Pursuant to Utah Code Annotated §§ 10-6-122, 10-8-1, §10-8-2, 63G-6a-103(58)(a), and 63G-6a-103(47)(a) and other pertinent provisions of the laws of the state of Utah, there is adopted and established a purchasing system for Elk Ridge City which shall be based on the following principles. (Ord. 21-03, 2-9-2021)

1-10-2: COMPLIANCE:

A. It shall be the general policy of the city council, and the departments, agencies, committees, commissions, officials and employees of the city, to abide by the terms and provisions of this chapter.

B. This chapter shall not prevent the city from complying with the terms and conditions of any grant, gift or bequest that is otherwise consistent with law.

C. When procurement involves the expenditure of federal assistance funds, the city shall comply with applicable federal laws and regulations.

D. In any such case, the spirit of this chapter shall guide the determination and actions of such person or entity.

E. Procurements with a dollar amount of five hundred dollars (\$500.00) or less may be approved by the individual department heads.

F. Procurements with a dollar amount greater than five hundred dollars (\$500.00) and not more than fifty thousand dollars (\$50,000.00) shall be approved by the department head and Mayor or City Clerk. **Notwithstanding the foregoing, building improvement, public works, and Class C road projects that have been approved and appropriated as part of the City Council's adopted budget may be approved by the department head and Mayor or City Clerk up to the applicable State bid limit established by Utah law, as amended from time to time, provided that the procurement is conducted**

in accordance with Sections 1-10-5 and 1-10-6 of this Chapter and all applicable requirements of State law.

G. For all procurements not otherwise budgeted, such determination may only be approved by the city council. (Ord. 21-03, 2-9-2021)

1-10-3: DEFINITIONS:

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

ADEQUATE APPROPRIATION BALANCE:

Sufficient fund balance which must exist in the line item appropriation in the approved budget against which the purchase order is to be charged.

BIDDING:

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

BID PROCESS:

The process used by the City to solicit and award bids or contracts. Examples of bid processes used in this chapter include formal competitive bidding; competitive sealed proposals in lieu of bids and open market procedure.

CAPITAL IMPROVEMENTS PROJECTS:

Any construction which adds to or improves infrastructure or buildings of the City.

CONSTRUCTION:

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

LINE ITEM CHANGE ORDER:

Changes to the quantities of existing line items with unit pricing approved according to the purchasing system.

LOCAL BIDDER:

A firm or individual who regularly maintains a place of business and transacts business in, or maintains an inventory of merchandise for sale in, or is licensed by, or pays business taxes to the City.

LOWEST RESPONSIBLE BIDDER:

A person or firm who has the capability in all respects to perform fully the contract requirements and who has the integrity and reliability which will ensure good faith performance. The lowest responsible bidder is a bidder who has submitted the lowest bid to furnish supplies or contractual services to the City, and who meets the standards set forth in this definition. The lowest responsible bidder's bid

shall comply with the specifications, delivery terms and conditions, and other qualifications and requirements included in the invitation for bids and shall be accompanied by any bonds required by the City or other applicable laws. In determining the lowest responsible bidder, the City shall give primary emphasis to bid price, but may also consider the following items in addition to the actual bid price:

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

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

PROFESSIONAL SERVICES:

Means, but not be limited to, the following: auditing, architecture, banking, insurance, engineering, appraisals, legal services, program management, and other consulting services.

PUBLIC PROPERTY:

Any item of real or personal property owned by the City.

RESPONSIBLE BID:

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

RESPONSIVE BID:

A bidder or offeror who submits a response to an invitation for bids or a request for proposals that conforms in all material respects to the invitation for bids or request for proposals.

STATE BID LIST:

An approved cooperative contract through the Utah Division of Purchasing.

SUPPLIES, MATERIALS AND EQUIPMENT:

Any tangible and all articles of personal property or things which shall be furnished to or used by any City department or by any City employee in the performance of his or her duties. For purposes of brevity, supplies, materials and equipment shall hereafter be collectively referred to as "supplies". (Ord. 21-03, 2-9-2021)

1-10-4: ADMINISTRATION:

The Mayor or City Clerk shall function as the chief procurement officer for the City, shall administer the purchasing system provided by this chapter, and shall perform the duties and have the powers concerning purchasing as follows:

- A. Administer and maintain the purchasing system;
- B. Recommend to the City such new or revised purchasing requirements as deemed desirable and in conformance with other statutory requirements;
- C. Negotiate and recommend execution of contracts for the purchase of supplies, equipment and contractual services;
- D. Seek to obtain as full and open competition as possible on all purchases;
- E. Keep informed of current developments in the field of purchasing, i.e., prices, market conditions, new products, etc.;
- F. Prescribe and maintain such forms as are reasonably necessary to the operation of this chapter and other rules and regulations;
- G. Supervise the inspection of all supplies and equipment to ensure conformance with specifications;
- H. Transfer surplus or unused supplies and equipment between departments as needed;
- I. Maintain a bidders' list, vendors' catalog file, and other records needed for the efficient operation of the purchasing system. (Ord. 21-03, 2-9-2021)

1-10-5: BID PROCESS:

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

- A. Formal Competitive Bidding:
 - 1. Notice Inviting Bids Issued: Notice includes a general description of the articles to be purchased or the work to be performed, the location where bid plans and specifications may be secured, and the time and place for opening bids. The notice inviting bids shall be:
 - a. In cases involving building improvements or public works projects ~~that exceed the applicable bid limit established by Utah Code Ann. § 11-39-101, the City shall comply with the applicable competitive bidding and notice requirements of Utah Code Ann. Title 11, Chapter 39, as amended. over the bid limit as defined in Utah Code Ann. §11-39-101 by requests for bids or proposals. Such notice shall be published twice (2) in a newspaper of general circulation within the City at least fourteen (14) days before the date of the opening of the bids and shall be posted on an electronic bid page which is accessible to large numbers of potential bidders. At the discretion of the City, the notice inviting bids may be delivered to all known responsible prospective bidders, including those~~

~~whose names are on a bidders' list or who have made a written request that their names be added to the bidders' list~~

b. In cases involving building improvements or public works projects less than the applicable bid limit defined in Utah Code Ann. § 11-39-101, or the purchase of any supplies, materials and equipment:

I. The City may perform the work itself;

II. The City may purchase off the State Bid List; or,

III. The City may solicit at least three (3) written bids from responsible prospective bidders or suppliers. Bid requests may be delivered directly to all known responsible prospective bidders and/or suppliers, including those whose names are on a bidders' list or who have made a written request that their names be added to the bidders' list, or post on an electronic bid page which is accessible to large numbers of potential bidders.

c. Class C Road Improvement Projects. Construction, maintenance, or improvement projects involving Class C roads shall be governed by Utah Code Ann. § 72-6-108 and 72-6-109, as amended. Projects exceeding the applicable bid limit established therein shall be competitively bid in accordance with State law. Projects that do not exceed the applicable bid limit may be performed by City employees or procured by obtaining at least three (3) written bids, subject to other applicable provisions of this Chapter and State law.

2. State Bid List: If there is a quotation for the item desired to be purchased on the State Division of Purchasing cooperative contracts ("Bid List"), the City may invite prospective bidders to bid against the price quoted in the State Bid List.

3. Bid Procedure:

a. Sealed bids shall be submitted as designated in the notice with the statement "Bid for (item or project)" on the envelope.

b. Bids shall be opened in public at the time and place stated in the notice.

c. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than thirty (30) days after the bid opening.

d. Bids submitted to the City shall be evaluated on the basis of compliance with specifications and other relevant criteria.

4. Bid Award: Bids shall be awarded or rejected as set forth in Section 1-10-7.

B. Competitive Sealed Proposals In Lieu Of Bids (RFP): This process may only be used when the Mayor or City Clerk determines that the use of formal competitive bidding is either impractical or not advantageous to the City, or for professional service contracts.

1. Notice:

a. Public notice of the request for proposals shall be given by publication twice in a newspaper, magazine or journal likely to give notice to qualified proposers, bidders or suppliers fourteen (14) days prior to the date of opening the proposals, and

b. Notice shall be posted on an electronic bid page which is accessible to large numbers of potential bidders.

2. Request For Proposals: The RFP shall state the relative importance of price and other evaluating factors.

3. Opening Of Proposals:

a. Proposals shall be opened so as to avoid disclosure of contents to competing proposers during the process of negotiation.

b. A register of proposals shall be maintained by the City for thirty (30) days after the contract award and shall be open for public inspection.

4. Revision Of Proposals:

a. As provided in the request for proposals, discussions may be conducted with responsible bidders who submit proposals determined to be reasonably susceptible of being selected for award. The purpose of the discussion is to assure full understanding of and responsiveness to the solicitation requirements.

b. Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Any revision may be permitted after submissions and prior to award for the purpose of obtaining best and final offers.

c. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing bidders.

5. Award of Proposal: Award shall be made to the responsible proposer whose proposal is determined to be the most advantageous to the City, taking into consideration the evaluation factors set forth in the request for proposals, and other criteria set forth herein. The City may further negotiate terms in order to comply with budgets, specific services/products sought, and other matters beneficial to the City. The award shall be in accordance with Section 1-10-7.

C. Open Market Procedure:

1. Supplies may be purchased through supplier accounts the City has opened with various vendors. Employees are encouraged to use sales events for those common supplies sold through various public vendors.

2. Purchases shall be based on at least three (3) bids (price quotations) and shall be awarded to the lowest responsible bidder.

3. Bids (price quotations) shall be solicited from prospective vendors by written or oral request.

4. The Mayor or City Clerk may approve purchases on the open market. (Ord. 21-03, 2-9-2021)

1-10-6: CHOICE OF BID PROCESS:

Except as otherwise provided in this Chapter or by provisions of State or Federal law, purchases of supplies, services, or equipment shall follow one of the bid or RFP processes outlined below for the appropriate dollar amount. In cases where more than one alternative is listed as acceptable for a

given dollar amount, any of the listed alternatives shall be acceptable. The City shall not incur any liability for choosing one alternative over another. The choices of bid process are as follows:

A. Building Improvement and Public Works Projects.

Building improvements and public works projects, as those terms are defined by Utah law, shall be subject to the applicable bid limits established by Utah Code Ann. § 11-39-101, as amended.

1. ~~A. Projects Purchases exceeding the applicable State bid limit in excess of fifty thousand dollars (\$50,000.00) shall be procured in accordance with Utah Code Ann. Title 11, Chapter 39, as amended, and the applicable provisions of this Chapter. pursuant to one of the following procedures:~~
2. Projects that do not exceed the applicable State bid limit may be:
 - a. Performed by City employees when permitted by State law;
 - b. Procured through an applicable State or cooperative purchasing contract; or
 - c. Procured through the open-market procedure by obtaining at least three (3) written bids from responsible prospective contractors.

B. Class C Road Projects.

Class C road construction, maintenance, and improvement projects shall be subject to the requirements and applicable bid limit established by Utah Code Ann. 72-6-108 and 72-6-109, as amended. Projects exceeding the applicable State bid limit shall be competitively bid as required by State law. Projects that do not exceed the applicable State bid limit may be performed by City employees when permitted by State law or procured through the open market procedure by obtaining at least three (3) written bids from responsible prospective contractors.

C. Other Purchases.

Purchases of supplies, services, or equipment not governed by Subsections A or B shall be made pursuant to the following procedures:

1. Purchases in excess of fifty thousand dollars (\$50,000.00):
 - a. ~~1. State Bid.~~
 - b. ~~2. Formal competitive bidding; or with the requirement of publishing notice.~~
 - c. ~~3. Competitive sealed proposals in lieu of bids.~~
2. ~~B. Purchases greater than two thousand five hundred dollars (\$2,500.00) but not more than fifty thousand dollars (\$50,000.00) shall be pursuant to one of the following procedures:~~
 - a. ~~1. State Bid.~~
 - b. ~~2. Formal competitive bidding without publication; the requirement of publishing notice.~~
 - c. ~~3. Competitive sealed proposals in lieu of bids; or~~

- d. ~~4.~~ Open market procedure (three (3) written bids).
- 3. ~~6.~~ For purchases of two thousand five hundred dollars (\$2,500.00) or less, all bid processes and price solicitation procedures may be dispensed with. (Ord. 21-03, 2-9-2021)

1-10-7: AWARDING OF BIDS AND RFP'S:

A. Bids/Purchases in Relation to Budget: Except as otherwise required by law, building improvement or public works projects and supplies, services, and equipment, no more than ten percent (10%) in excess of the appropriation balance, and within the scope of the project, as budgeted by the City Council, may be accepted and awarded by the Mayor or City Clerk. Bids which exceed the budgeted amounts by more than ten percent (10%) of the appropriation balance must be approved and awarded by the City Council.

B. Professional Services: Contracts for professional services in an estimated amount that exceeds the appropriation balance by no more than 10%, and within the scope of or related to the project, as budgeted by the City Council, may be accepted and awarded by the Mayor or City Clerk. Proposals which exceed the budgeted amount by more than ten percent (10%) of the appropriation balance must be approved and awarded by the City Council.

C. Rejection Of Bids: The City Council or the Mayor or City Clerk, or others authorized to accept and award bids may reject any and all bids presented and may resolicit for bids as set forth in this Chapter.

D. Lowest Responsible Bidder: Except as otherwise allowed or required, the City shall award the contract or bid to the lowest responsible bidder.

E. Negotiation Of Bids: Where a bid exceeds available funds and time or economic considerations preclude re-solicitation of work or purchase of a reduced scope or quantity, the Mayor or City Clerk may negotiate an adjustment of the bid price, including changes in the bid requirements, with the lowest responsible bidder, in order to bring the low bid within the amount of available funds.

F. Tie Bids: If two (2) or more of the bids received are for the same total amount or list price, quality and service being equal, the Mayor or City Clerk may negotiate with the bidders and obtain the best bid possible and/or give a preference to a local bidder.

G. Single Bids: The Mayor or City Clerk may require a price or cost analysis if only one bid is received. The bidder may be required to furnish a detailed cost proposal, and the bid award shall be subject to subsequent negotiation.

H. Bonds: Before entering a contract, the City shall have authority to require performance, payment, or other bonds in such amounts as deemed necessary to protect the interests of the City. The types and amounts of the bonds to be required shall be described in the notice inviting bids.

I. Change Orders: Change orders which increase the contract price in an amount up to ten percent (10%) of the contract amount may be approved by the Mayor or City Clerk, as long as the overall project budget is not exceeded by ten percent (10%) of the contract price, and provided further that the sum of all change orders does not increase the contract price by more than ten percent (10%) of the contract amount. Line-item change orders may be approved by the Mayor or City Clerk as long as the overall project budget is not exceeded by more than ten percent (10%) of the contract price. (Ord. 21-03, 2-9-2021)

1-10-8: EXCEPTIONS TO BIDDING REQUIREMENTS:

Unless otherwise required by State or Federal law, the bid process requirements set forth in Section 1-10-5 do not apply in the following situations.

A. Professional Service Contracts:

1. Professional services shall include, but not be limited to, the following:

a. Auditing, architecture, banking, insurance, engineering, appraisals, legal services, program management, and other consulting services. Professional service contracts shall be awarded based on professional qualifications, service ability, cost of service, and other criteria deemed important by the City.

2. A professional services contract for the annual fiscal year financial audit shall only be awarded by the City Council. This contract may be awarded for multiple years. The performance of the auditing firm may be reviewed periodically to determine whether to continue the contract or put it back out to bid.

B. Contracts Not Suited to Competitive Bidding: Contracts, which by their nature are not suited to award by competitive bidding, shall not be subject to the competitive bidding requirements of Section 1-10-5. These contracts include, but are not necessarily limited to:

1. Contracts for items which may only be purchased from a single or sole source.

2. Contracts for additions to and repairs and maintenance of equipment owned by the City which may be more efficiently added to, repaired or maintained by a particular person or firm.

3. Contracts for equipment which, by reason of the training of City personnel or the inventory of replacement parts maintained by the City, is more compatible with the existing equipment owned by the City.

C. Cooperative Purchasing Agreements: The City shall have the power to enter into joint or cooperative purchase agreements with any or all other public agencies within the state or out of state for the purchase of any commodity or service, whenever it is determined by the City Council to be in the best interest of the City.

D. Auction, Closeout, Bankruptcy Sales: If the Mayor or City Clerk determines that supplies, materials or equipment can be purchased at any public auction, closeout sale, bankruptcy sale or other similar sale, and if the City Finance Director or his/her City Clerk finds that a purchase at any such auction or sale will be made at a cost below the market cost in the county, a contract or contracts may be let, or the purchase made, without complying with the competitive bidding requirements of this Chapter.

E. Surplus: The City may purchase items from the Utah Division of Purchasing and General Services Surplus Property or other surplus property agencies or clearinghouses.

F. Exchanges: Exchanges of supplies, material or equipment between the City and any other public agency which are not by sale or auction shall be by mutual agreement of the respective public agencies.

G. Projects Performed by City Employees: City employees may be used to complete City projects, provided that the City complies with State statutory requirements governing contracts for building improvements and public works projects.

H. State Bid List: The City may purchase supplies from the vendor who has submitted the lowest bid price for such items to the State of Utah Purchasing Office at the quoted price, without any solicitation or price quotation or invitation to bid. For such purposes, the quoted price shall be deemed to be the lowest price available for such items and the City need not follow any other bidding requirements.

I. Utah Correctional Industries Division: Goods and services produced by the Utah Correctional Industries Division may be purchased from the Utah Correctional Industries Division without following any of the bidding requirements set forth herein.

J. Emergency Purchases: Notwithstanding any other section of this Chapter, competitive bidding may be suspended in the event of an emergency when supplies, services, and/or contracts are needed immediately in order to respond to the emergency. A state of emergency must have been declared by the Mayor, Public Safety Director, City Engineer, or Public Works Director, or their next in command if they are not available. In order to suspend competitive bidding, the emergency must require immediate action and/or response in order to protect the life, health, or safety of persons or property, or, in the event of an improvement bond forfeiture, the need to complete the bonded improvements in a certain time frame, given all factors, including weather considerations.

K. Lack of Response: In cases where, despite the best efforts of City employees to obtain three written bids, fewer than three written bids are obtained, the lowest written bid obtained may be used. (Ord. 21-03, 2-9-2021)

1-10-9: PENALTIES:

A. It is unlawful:

1. For any bidder or prospective bidder, or any employee or officer thereof, in restraint of freedom of competition or otherwise, by agreement with any other person, bidder, or prospective bidder, to bid a fixed price, or to "rotate" bidding practices among competitors.

2. For any person to offer or to give to any elected official, officer or employee of the City or any member of his immediate family, any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, promise, or other form, under circumstances in which it could reasonably be intended to influence him/her or could reasonably be expected to influence him/her in his/her duties concerning the award of any contract or order of purchase, or for any elected official, officer or employee to directly or indirectly solicit or directly or indirectly accept any such gift for such purpose.

3. For any elected official, officer or employee to disclose, in advance of the opening of the bids, the content of any bid invited through the formal competitive bidding procedure.

4. For any elected official, officer or employee to actively participate in the awarding of a contract from which s/he will directly benefit, without fully disclosing any interest s/he has therein.

5. For any elected official, officer or employee or other person to appropriate for personal or private use any item of public property.

6. To purchase supplies or equipment for the personal use of any elected official, officer or employee unless the item or items are required parts of a worker's equipment and are necessary to the successful performance of the duties of such official, officer or employee. Other personal purchases shall not be permitted and will be cause for disciplinary action.

B. The following contracts are, in the discretion of the Mayor or his/her City Clerk, voidable:

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

C. A violation of this section by a City employee shall be cause for disciplinary action. A violation of this section by an elected official shall be malfeasance in office. (Ord. 21-03, 2-9-2021)