

ORDINANCE NO. 2022-15

**AN ORDINANCE OF THE PLEASANT VIEW CITY COUNCIL AMENDING
PLEASANT VIEW CITY CODE § 2.33 – PURCHASING POLICY.**

WHEREAS, Utah Code Ann. § 10-6-122 provides for the establishment of purchasing procedures by ordinance or resolution; and

WHEREAS, Pleasant View City finds that an update to the City Code is needed to modify the purchasing policy to provide new procedures to increase efficiencies while maintaining records and adjusting practices to require bids, formal and informal dependent on the amount, for any transactions exceeding \$2,500; and

WHEREAS, Proposed ordinance changes include of the requirement to receive City Council approval to request bidding for projects that have received prior City Council funding, with the approval of the City Administrator, Mayor or Mayor Pro Tem; and

WHEREAS, Pleasant View City finds that such a code change is in keeping with the desires and intents of the City.

NOW THEREFORE, Be it hereby ordained that the Pleasant View City Council adopts amendments to Pleasant View City Code § 2.33 – Purchasing Policy as outlined in Exhibit A. This ordinance shall take effect immediately upon approval.

DATED this 14th day of June 2022.

PLEASANT VIEW CITY, UTAH

Leonard M. Call, Mayor

Attest:

Laurie Hellstrom, City Recorder

Posted this ____ day of _____, 2022

This ordinance has been approved by the following vote of the Pleasant View City Council:

_____ Councilmember Arrington
_____ Councilmember Marriott
_____ Councilmember Gibson
_____ Councilmember Nelsen
_____ Councilmember Urry

Chapter 2.33 - Purchasing Policy

2.33.010 Purchasing Agents. Department heads are hereby appointed as purchasing agents for the departments over which they have direct responsibility. The City Recorder may act as purchasing agent for all functions not overseen directly by a department head. The City Administrator has purchasing agent authority for all City functions and departments. (Ord.2009-9, dated 6/23/09; prior code: Ord.2008-15, dated 10/28/08)

2.33.020 Purchasing Agent Duties and Powers.

A. All purchasing agents shall administer the purchasing system provided by this chapter. By the provisions in this chapter and by other applicable laws, the purchasing agents shall perform the duties and have powers concerning purchasing matters as follows:

1. Administer and maintain the purchasing system and other rules and regulations established by this chapter and its authority;
2. Encourage competition: discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases and sales;
3. Negotiate and recommend execution of contracts for the purchase of supplies, equipment and contractual services;
4. Supervise the inspection of all supplies and equipment to assure conformance with specifications;
5. Transfer surplus or unused supplies and equipment between departments as needed;
6. Maintaining a bidders' list, vendor's catalog file and other records needed for the efficient operation of the purchasing system;
7. Authorize purchases and payments of all goods, supplies and contractual services needed by the city and any agency or department which derives its support wholly or in part from the city.
8. Exploit the possibilities of buying "in bulk" so as to take full advantage of discounts;
9. Maintain adequate appropriation balance, a sufficient fund balance existing in the line item appropriation of the account number against which the purchase order is to be charged;
10. Authorized to approve change orders through a signed written order. Change orders with an increase in the contract or bid amount is subject to city council approval for anything greater than 5% or the City Administrator, Mayor or Mayor Pro Tem for anything 5% or less. (Ord.20~~2208~~-15, dated 10/28/08)

2.33.030 Summary of the purchasing procedure and levels of authority for purchases at various prices.

| APPROVING BODY | AMOUNTS | LEVEL OF AUTHORITY |
|--|---|--|
| <u>City Administrator or Mayor or Mayor Pro Tem</u> | \$0 - \$999 <u>2,500</u> | Does not require a Price Quotation. Any purchasing agent of the city can purchase. |
| | \$1,000 <u>2,501</u> - \$40,000 <u>15,000</u> | Requires an Informal Price Quotation. |
| | \$40,001 <u>15,001</u> - \$25,000 <u>30,000</u> | Require Formal Price Quotation. |
| | \$25,001 - \$50,000 | Requires Sealed Bids by invitation. |
| <u>City Council</u> | \$50,001 <u>30,001</u> and above | Requires Sealed Bids or Proposals and newspaper advertisement. |
| \$10,001 and above requires City council approval | | |

(Ord.~~2009~~2022-9 __, dated 6/~~23~~14/~~09~~22; prior code: Ord.2008-15, dated 10/28/08)

2.33.040 Purchases Requiring City Council Approval. The city council shall approve one-time machinery and equipment purchases ~~\$10,001~~30,001 and above. (Ord.2009-9, dated 6/23/09; prior code: Ord.2008-15, dated 10/28/08)

2.33.050 Purchases Not Requiring Price Quotation. A Price Quotation is not required for purchases up to ~~\$999~~2,500 per item. Purchases shall not be artificially divided so as to constitute a small purchase under this section. (Ord.2008-15, dated 10/28/08)

2.33.060 Purchases Requiring Informal Price Quotation. Informal Price Quotations are required for purchases between ~~\$1,000~~2,501 and ~~\$40,000~~15,000. Informal price quotations shall be obtained by telephone or via the Internet from at least three vendors. Quotations shall be recorded on an "Informal Price Quotation Record." One copy of the quotation record shall ~~remain with the department and one copy shall~~ be attached to the invoice for payment. When it is determined the vendor is a sole source supplier, the "Informal Price Quotation Record" shall contain information on how the determination of sole source was made. If the

pricing of three vendors was reviewed ~~ere called~~ and only one had the product, the record shall contain the names of the vendors contacted or considered. Reasons for including less than three quotations shall be stated on the record. The "Informal Price Quotation Records" may be reused as long as the price charged by the vendor remains the same as the price quoted. The quotation shall be redone when the vendor's price changes or annually, whichever comes first. State of Utah contract prices may be used in lieu of obtaining price quotations. (Ord.2009-9, dated 6/23/09; prior code: Ord.2008-15, dated 10/28/08)

2.33.070 Purchases Requiring Formal Price Quotation. Formal Price Quotations are required for purchases between ~~\$10,001~~15,001 and ~~\$25,000~~30,000 ~~and obtained through a "Request for Quotation Form" ten working days prior to the order date.~~ ~~Prior to seeking a "Request for Quotation",~~ funding for the purchase must be allocated in a budget that has been approved by action of the eCity eCouncil and approval is required from the City Administrator, Mayor or Mayor Pro Tem. ~~shall be required to approve the purchase.~~ Copies of the quotations and award shall be ~~kept on file with the requesting department and~~ attached to the invoice for payment. State of Utah contract prices may be used in lieu of obtaining price quotations. (Ord.2009-9, dated 6/23/09; prior code: Ord.2008-15, dated 10/28/08)

2.33.080 Purchases Requiring Sealed Bids. Sealed Bids are required for purchases above ~~\$25,001~~30,001 and annual contracts.

A. Procedure for obtaining sealed bids:

1. Prior to seeking sealed bids, action of the city shall be required to approve the purchase or annual contract
2. State of Utah contract prices may be used in lieu of obtaining sealed bids.
3. An invitation for bids shall be issued. ~~The invitation shall include a purchase description, all contractual terms and conditions applicable to the procurement, state where blank bids and specifications may be secured, and the time and place for opening bids. The form and amount of the bond shall be described in the notice inviting bids.~~
 - a. ~~For purchases between \$25,001 and 50,000, public notice of the invitation for bids shall be given a reasonable time prior to the date set forth therein for the opening of bids. The notice may include publication in a newspaper of general circulation.~~
 - b. For purchases above ~~\$50,001~~30,001, public notice of the invitation for bids shall be published at the City Building and on the City's website at least ten days before the opening of the bids. ~~The notice shall be published at least once in a newspaper of general circulation.~~
4. Bids shall be opened publicly in the presence of two or more

witnesses, one being the city recorder or his or her designee, at the time and place designated in the invitation for bids. The amount of each bid and any relevant information, together with the name of each bidder, shall be recorded. The record and each bid shall be open to public inspection.

5. Bids shall be unconditionally accepted without alteration or correction, except as authorized in the policy. Bids shall be evaluated by the requesting department based on the requirements set forth in the invitation for bids.

6. Corrections or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the city or fair competition shall be permitted. All decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes shall be supported by a written determination made by the requesting department.

7. Contracts shall be awarded by the city council to the lowest responsible bidder whose bid meets all the following requirements.

a. The ability, capacity and skill of the bidder to perform the contract or provide the service required;

b. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;

c. The character, integrity, reputation, judgment, experience and efficiency of the bidder;

d. The quality of performance of previous contracts or services;

e. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;

f. The sufficiency of the financial resources and ability of the contractor to provide the service;

g. The quality, availability and adaptability of the supplies, or contractual services to the particular use required;

h. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract.

8. Award to Other than Lowest Bidder. When the award is not given to the lowest bidder, a full and complete statement of the reasons for placing the order elsewhere shall be prepared by the purchasing agent and filed with the other papers relating to the transaction.

9. Performance Bonds. Before entering a contract, the city council shall have the authority to require a performance bond in such an amount as it shall find reasonably necessary to protect the best interests of the city. The form and amount of the bond shall be described in the notice inviting bids. The city understands that the state requires performance and payment bonds in every situation but allows the city the ability to waive the performance and payment

bond requirements. As part of the bid process, the city may waive the requirement for performance and payment bonds. The waiver may be made by the city council for reasons found in 2.33.080 (7). When there is a waiver made, the city council shall clearly state the reasons for the waiver of the performance and payment bond requirements.

10. Received bids shall be ~~kept on file in the requesting department. A summary of the bids and award shall be~~ attached to invoice for payment. (Ord.2017-5, dated 2/28/17 and Ord.2008-15, dated 10/28/08)

2.33.090 Use of Competitive Sealed Proposal in Lieu of Bids. When it is determined that the use of competitive sealed bidding is either not practicable or not advantageous to the City, a contract may be entered into by competitive sealed proposals. Competitive sealed proposals are most appropriately used for professional service-type contracts i.e. attorney, architect, engineering, etc. subject to eCity eCouncil approval.

A. Procedures for obtaining competitive sealed proposals are as follows:

1. Proposals shall be solicited through a request for proposals. Public notice of the request for proposals shall be given at least fourteen days prior to the advertised date of the opening of the proposals.

2. Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared and shall be open for public inspection after contract award.

3. The request for proposal shall state the relative importance of price and other evaluating factors.

4. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

5. Award shall be made to the person or firm whose proposal is determined, in writing, to be the most advantageous to the city, taking into consideration price and the evaluation factors set forth in the request for proposals. The contract file shall contain the basis on which the award is made. (Ord.2008-15, dated 10/28/08)

2.33.100 Competitive Bidding Requirements-Exemptions.

A. Auction-Closeout, Bankruptcy Sales. If the purchasing agent determined that supplies, materials or equipment can be purchased at any public auction, closeout sale bankruptcy sale or other similar sale, and if ~~a majority of the city council at a regular or special meeting~~ the City Administrator, Mayor or Mayor Pro Tem provides approval ~~concurs~~ in such determination and makes a finding that a purchase at any such auction or sale will be made at a cost below the market cost in the community, contract or contracts may be let, or the

purchase made without complying with the competitive bidding requirements of this chapter.

B. Exchanges. Exchanges of supplies, material or equipment between the city and any other public agency which are not for sale or auction shall be by mutual agreement of the respective public agencies and approved by the city council.

C. Emergency Purchases. In case of apparent emergency which requires immediate purchase of supplies or contractual services, the purchasing agent shall be empowered to secure at the lowest obtainable price, any supplies or contractual services regardless of amount of the expenditure. A full report of the circumstances of an emergency purchase shall be filed with the city council. In case of actual emergency the purchasing agent or any representative of that department, may purchase directly any supplies whose immediate procurement is essential to prevent delays in the work of the department which may vitally affect the life, health or convenience of any employee or citizen of the city. The representative of the department shall send to the purchasing agent a full written report of the circumstances of the emergency. The report shall be filed with the council as provided. (Ord.2008-15, dated 10/28/08)

2.33.110 Cost-plus-a-percentage-of-cost contract prohibited. Subject to the limitations of this chapter, any type of contract which will promote the best interests of the city may be used; provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the city than any other type or that is impracticable to obtain the supplies, services, or construction required except under such a contract. (Ord.2008-15, dated 10/28/08)

2.33.120 Circumstances Justifying Award of Contract Without Competition. A contact may be awarded for a supply, services, or construction item without competition when the purchasing agent determines in writing and recorded on an Informal Price Quotation Record that there is only one source for the required supply, service, or construction item; or the award to a supplier, service provider, or contractor is a condition of a donation that will fund the full cost of the supply, service, or construction item. (Ord.2008-15, dated 10/28/08)

2.33.130 Cancellation and rejection of Bids. An invitation for bids, a request for proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected, in whole or in part, as may be specified in the solicitation, when it is in the best interest of the city. ~~There r~~Reasons shall be made part of the contract file. (Ord.2008-15, dated 10/28/08)

2.33.140 Unauthorized Purchases. Except as provided in this chapter, it shall be unlawful for any city officer or officers or employees to order the purchase of any supplies or make any contract within the purview of this chapter other than

through or with the tentative approval of the appropriate purchasing agent and the city council when appropriate and any purchase ordered or contract made contrary to the provisions of this chapter shall not receive approval by the appropriate officials, and the city shall not be bound thereby. Utah State Code prohibits officers and employees of the city from incurring expenditures and encumbrances in excess of the total appropriation for any department. Prior approval for a budget adjustment must be received before purchase is made for any item which will put a department in violation of the budget. (Ord.2008-15, dated 10/28/08)

2.33.150 Interlocal Agreements-Contracts for Commodities or Services. The city shall have the power to enter into joint purchase agreements with any or all other public agencies within the state for the purchase of any commodity or service, wherein it is determined by the city council to be in the best interest of the city. (Ord.2008-15, dated 10/28/08)

2.33.160 Ethics in Public Contracting.

A. Any purchase order to contract within the purview of this chapter in which any officer or employee of the city is financially interested, directly or indirectly, shall be void, except that before the execution of a purchase order or contract the council shall have the authority to waive compliance with this section when it finds such action to be in the best interests of the city.

B. Any person involved in making purchasing decisions is guilty of a felony if the person asks, receives, or offers to receive any emolument, gratuity, contributions, loan, or reward, or any promise thereof, either for the person's own use or the use or benefit of any other person or organization from any person or organization interested in selling to the city. (Ord.2008-15, dated 10/28/08)

2.33.170 Personal Purchases.

A. Purchases of supplies or equipment for the personal use of an official or employee of the city shall be made only when the item or items are required as part of a worker's equipment and are necessary to the successful performance of the duties of such city official or employee. Other personal purchases shall not be permitted and will be cause for disciplinary action.

B. Personal Liability. Purchases made by employees of the city without direct authorization from the city council or purchasing agent shall become the personal obligation of the employees. Such purchases, unless ratified by the purchasing agent or city council as provided in this chapter shall be grounds for disciplinary action, including dismissal. (Ord.2008-15, dated 10/28/08)

2.33.180 Appeals.

A. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may appeal to the purchasing agent. Any appeal shall be submitted in writing within five working days after the aggrieved person knows or should have known of the facts.

B. The purchasing agent shall promptly issue a written decision regarding any appeal, if it is not settled by a mutual agreement. The decision shall state the reasons for the action taken and inform the protestor, contractor, or prospective contractor of the right to appeal to the city council.

C. The city council shall be the final appeal on the city level.

D. All further appeals shall be handled as provided in section 63-56-58 through 64 of the Utah Code. (Ord.2008-15, dated 10/28/08)

2.33.190 Violations.

A. Conflicts of Interest. No member of the city council, or a city employee may be interested directly or indirectly in any contract entered into by the city. A violation of this provision shall be cause for removal or other disciplinary action.

B. Collusion Among Bidders. Any agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition, by agreement to bid a fixed price, or otherwise, shall render the bids of such bidders void.

C. Advance Disclosures. Any disclosure in advance of the opening of bids whether in response to advertising or an informal request for bids, made or permitted by a member of the city council or a city employee shall render void the advertisement or request for bids.

D. Gifts and Gratuities. The acceptance or soliciting by any official or employee of the city of any gift, gratuity, favor, entertainment, loan or item of monetary value from any person, persons or company seeking to obtain business with the City of Pleasant View, or from any person, persons or company within or outside the City of Pleasant View employment whose interests may be affected by the employees' or any official performance or nonperformance of official duties is prohibited. Gifts or gratuities will not be accepted except under circumstances allowed by the Utah Employee Ethics Act, U.C.A. § 67-16-1 et seq. The following exceptions are allowed:

1. An occasional nonpecuniary gift, having a value of not in excess of \$50;
2. Gifts collected for sponsored city functions;
3. An award publicly presented in recognition of public services;
4. Any bona fide loan made in the ordinary course of business; or
5. A political campaign contribution. (Ord.2008-15, dated 10/28/08)