

CHAPTER 36. PURCHASING. (#1)

ARTICLE 1. ESTABLISHMENT.

SECTION 101. PURCHASING AND REGULATIONS ESTABLISHED. In accordance with Article VI, Sec. 10 of the Brewer City Charter, the City Manager is the Purchasing Agent. To guide the City Manager in this area of responsibility, the City Council, hereby establishes this Purchasing Ordinance to establish purchasing procedures.

ARTICLE 2. DEFINITIONS.

SECTION 201. DEFINITIONS. For the purpose of these regulations the following terms, phrases, words and derivations shall have the meaning given herein unless the context in which they are used clearly requires a different meaning. Any term not defined shall be given its commonly understood definition with the context of which the word is used.

SECTION 201.1. PURCHASING. Purchasing includes purchasing, renting, leasing or otherwise obtaining supplies or services.

SECTION 201.2. SUPPLIES. Supplies shall mean all supplies, materials and equipment.

SECTION 201.3. SERVICES. Services shall mean all telephone, gas, water, electrical and power service, towel service, laundry and cleaning service, leases or rentals or all grounds, buildings, offices, space or equipment required by the City, or leased or rented by the City to others, the repair or maintenance of equipment required by the City, or leased or rented by the City to others, the repair or maintenance of equipment or real property owned by, or the responsibility of the City and shall include all labor furnished to the City by persons, firms, individuals or corporations not part of or connected with the City Government. It shall also include such professional services as architect, engineer and consultant services.

SECTION 201.4. NEGOTIATE OR NEGOTIATION. Negotiation, when applied to the making of purchases, means any method of purchasing other than formal advertising.

SECTION 201.5. FORMAL ADVERTISING. Formal advertising and purchasing by sealed bid are synonymous and mean purchasing by competitive bids and awards involving the following basic steps:

SECTION 201.5.1. Preparation of the invitation for bids, describing the requirements of the City clearly, accurately and completely, but avoiding unnecessary restrictive specifications or requirements which might unduly limit the number of bidders. The term "invitation for bids" means the complete assembly of related (whether attached or incorporated by reference) material furnished prospective bidders for the purpose of submitting sealed bids. The City Manager, or his/her designee, shall determine that the requirements of the City are clearly, accurately and completely stated within the invitation to bid.

SECTION 201.5.2. Publicizing the invitation for bids using a variety of means, including distribution to prospective bidders, posting at Brewer City Hall, in the office of the department involved, and on the City's website, advertising in a newspaper with a general circulation within Brewer, and/or such other means as may be appropriate at least ten (10) calendar days prior to the time set for public opening of sealed bids;

SECTION 201.5.3. Submission of sealed bids by prospective contractors; and

SECTION 201.5.4. Awarding the contract, after the bids are publicly opened in the presence of an impartial witness, to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the City, price and other factors considered. Nothing herein shall preclude the City from rejecting any bid as provided in Article 4, Section 402.1 of this Chapter.

SECTION 201.6. BIDS. Bids or sealed bids mean responses to invitations for bids issued under formal advertising procedures. The sealed bid method is the preferred method for any construction type activity.

SECTION 201.7. QUOTATIONS. Quotations, quotes and proposals are informal replies, (written, telephonic, wire, oral, digital etc.) to price queries made during the course of a negotiated purchase.

SECTION 201.8. ARCHITECT, ENGINEER and CONSULTANT SERVICES. These services are those professional services associated with research, development, design and construction, alteration, or repair of real property, as well as, incidental services that members of these professions and those in their employ may logically or justifiably perform. They include: studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, inspections, shop drawing review, sample recommendations, preparation of operation and maintenance manuals and other related services.

ARTICLE 3. FUNCTIONS AND POLICIES.

SECTION 301. FUNCTIONS AND POLICIES. The following shall be the basic purchasing functions and policies of the City of Brewer.

SECTION 302. PURCHASING. Department Heads, if authorized in writing by the City Manager, will be responsible for the purchase of all supplies and/or services for their department.

SECTION 302.1. FORMAL ADVERTISING. Purchases shall be made by formal advertising whenever such purchases may be reasonably expected to exceed Fifteen Thousand Dollars (\$15,000.00)

SECTION 302.1.1. RECORD OF BIDS. The Department Head shall keep a record of all bids submitted and such record shall be open to proper inspection by any interested person, business, or government entity. If federal dollars are involved, these records must be maintained on file at least 3 years after the final grant expenditure report was filed. For real property or equipment the requirement is 3 years after disposition..

SECTION 302.1.2. NOTIFICATION OF BID RESULTS. All bidders shall be notified in writing of bid results within seven (7) days after the bids are opened.

SECTION 302.1.3. TIE BIDS. Tie bids shall be resolved by the City Council.

SECTION 302.1.4. APPROVAL. No purchase of supplies or services exceeding Fifteen Thousand Dollars (\$15,000.00) shall be made without the written approval of the City Council. For purchases over Ten Thousand Dollars (\$10,000.00) but less than Fifteen Thousand Dollars (\$15,000.00), the City Manager shall poll all members of the City Council for an approval by consensus.

SECTION 302.2. NEGOTIATIONS. Notwithstanding the basic policy expressed in Article 3, Section 302.1 of this Chapter. Purchases may be negotiated when one of the following circumstances is present:

SECTION 302.2.1. EMERGENCIES. When the public exigency will not permit the delay incident to advertising. In such emergencies the City Manager may authorize immediate negotiated purchase of supplies or services necessary to protect the best interest of the City.

SECTION 302.2.2. SOLE SOURCE AND SINGLE PROCUREMENTS. When the purchase of supplies or services for which it is impracticable or impossible to obtain competition because there is only one source available for the supplies or services or only one bid is received and/or anticipated, or competition is determined inadequate. If the project includes Federal funds, then express, written authorization must be obtained from the Federal awarding agency or pass through entity (State) if a noncompetitive proposal is needed for purchases exceeding \$3,500 and profit must be negotiated as a separate element of the contract price.

SECTION 302.2.3. MINIMUM PURCHASE. Negotiations may be used for the purchase of supplies and services when the estimated cost does not exceed Fifteen Thousand Dollars (\$15,000.00). For purchases over Ten Thousand Dollars (\$10,000.00) but less than Fifteen Thousand Dollars (\$15,000.00), the City Manager shall poll all members of the City Council for an approval consensus.

SECTION 302.2.4. SPECIAL SALES OR DISCOUNTS. Negotiations may be used when a business is offering supplies at a special sale or discount which is below the routine selling price which represents an opportunity for the City to take advantage of reduced selling prices on supplies that would otherwise be purchased at a higher price.

SECTION 302.2.5 CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS.

The City will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Those affirmative steps include: placing them on solicitation lists; assuring they are solicited when they are potential sources; splitting contracts, when economically feasible, to permit maximum participation; utilizing services and assistance of various small and minority business organizations and requiring contractors, if subcontracts are to be let, to take the affirmative steps listed above.

SECTION 302.3. NEGOTIATIONS PROCEDURES AND POLICIES.

Negotiated procurement shall be on a competitive basis to the maximum extent practical, and will strive to promote full and open competition.. Whenever supplies or services are procured by negotiation, price quotations or other evidence of reasonable prices and other vital matters deemed necessary by the City Manager, they shall be solicited from the maximum number of qualified sources of supplies or services consistent with the nature of and requirements for the supplies or services to be purchased, in accordance with the basic policies set forth below. In no case shall an employee attempt to circumvent these policies by the splitting of orders. The act of doing so will be cause for disciplinary action of the employee.

SECTION 302.3.1. DECENTRALIZED PURCHASES.

At the discretion of the City Manager, Department Heads or their authorized representatives may effect purchases in amounts not to exceed One Thousand Dollars (\$1,000.00), which are considered micro purchases. The City Manager shall issue such rules and regulations and prescribe forms, as he or she deems necessary to control such purchases. He or she may also permit exceeding this monetary limitation, in those instances where price, terms, conditions and contractors have been predetermined by his or her establishing open-end (estimated requirement type) contracts of where prices established by the State Public Utility Commission (electricity, telephone services, etc.)

SECTION 302.3.2. PURCHASES - NOT TO EXCEED ONE THOUSAND DOLLARS (\$1,000.00).

When the City Manager considers prices to be fair and reasonable and the total amount of the purchase does not exceed One Thousand Dollars (\$1,000.00), procedures and documentation will be simplified to the maximum degree possible. The micro purchases must be distributed equitably among qualifie3d suppliers, to the greatest extent possible. He or she shall establish such rules of procedure for such purchases, as he/she feels necessary to ensure against abuse of the public's best interest.

SECTION 302.3.3. PURCHASES ONE THOUSAND DOLLARS (\$1,000.00) TO FIFTEEN THOUSAND DOLLARS (\$15,000.00).

Negotiated purchases exceeding One Thousand Dollars (\$1,000.00), but not exceeding Fifteen Thousand Dollars (\$15,000.00) in value, must be approved by the City Manager prior to award. Approval requests will include a full statement justifying the award recommendation. For purchases over Ten Thousand Dollars (\$10,000.00). but less than Fifteen Thousand Dollars (15,000.00), the City Manager shall poll all members of the City Council for an approval by consensus.

SECTION 302.3.4. PURCHASES EXCEEDING FIFTEEN THOUSAND DOLLARS

(\$15,000.00). Negotiated purchases exceeding Fifteen Thousand Dollars (\$15,000.00) or greater in value must be approved by the City Council prior to award. Request for such approval will be accompanied by a full statement of facts justifying the recommendation for award. For purchases over Ten Thousand Dollars (\$10,000.00) but less than Fifteen Thousand Dollars (\$15,000.00), the City Manager shall poll all members of the City Council for an approval by consensus.

SECTION 302.3.5. ARCHITECT, ENGINEER AND CONSULTANT SERVICES POLICY AND PROCEDURES.

It is the policy of the City to publicly announce all requirements for such services and to award contracts on the basis of demonstrated competence and qualifications for the type of professional services required, the technical merits of offers, the ability of the service provider to do the job, to meet time constraints, the price for which services are to be rendered, and any other relevant considerations.

SECTION 302.3.5.1. FEES. No contracts shall be awarded wherein the fee is stated as a percentage of the project costs unless approved by a majority of the City Council members meeting and voting at a public meeting. The preferred method of establishing a fee shall be that of a firm fixed fee. Other methods may, at the discretion of the City Manager, be employed if it is impossible to arrive at a firm fixed fee.

SECTION 302.3.5.2. SELECTION. The City Manager shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. If the anticipated fee exceeds Fifteen Thousand Dollars (\$15,000.00) or beyond, this data together with any which may be submitted by other firms regarding a specific proposed project, shall be evaluated by a committee consisting of the Chairman of the City Council, the City Manager, the City Engineer, and the head of the concerned department. The selection committee shall conduct discussions with preferably no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select, in order of preference, no less than three firms deemed to be adequately qualified to provide the services required. If, for some sound specific and documented reason(s), the City Council decides that only one firm is adequately qualified, the City Engineer and/or City Manager will negotiate a fair and reasonable price, which will be subject to the final approval of the City Council.

SECTION 302.3.5.3. INSURANCE AND BONDS. All firms selected as being adequately qualified must provide evidence of insurance covering their entire scope of operation for any "errors or omissions" resulting from their endeavors, as well as worker's compensation insurance, if applicable.. The amounts of such insurance coverage shall be commensurate with the magnitude of the project under consideration and shall be established by the City Manager. Should timely performance be a matter of importance to the City, the firm selected may be requested to furnish an acceptable Performance Bond and/or reasonable "liquidated damages" penalty and/or such form of surety as may be mutually agreed upon to ensure adherence to a mutually agreed upon time schedule.

SECTION 302.3.5.4. AWARD. After the City Council has selected and rated those firms adequately qualified for a specific project, the City Engineer and/or City Manager shall negotiate a contract with the highest rated firm which they determine in writing to be fair and reasonable to the City. In making this decision, they shall take into account the estimated value of the services to be rendered, the scope, complexity and professional nature thereof. The City Engineer and/or City Manager will utilize the advice and counsel of whatever in-house expertise is available to him or her in making his or her decision and may, in instances wherein such in-house expertise is not available, employ the services of an outside expert for such assistance. To the maximum extent possible, firm fixed price contract awards will be made in writing to the lowest responsive and reasonable bidder. Should the City Manager be unable to negotiate a fair, reasonable and satisfactory contract with the firm considered to be the highest rated, he or she will undertake negotiations with the second rated firm. Failing accord with the second rated firm, the third rated firm will then be approached. Should the City Manager be unable to negotiate a fair, reasonable, and satisfactory contract with any of the rated firms, he or she shall request the City Council to select and rate additional firms and shall continue negotiations in accordance with this section until an agreement is reached. Oversight will be maintained to ensure contractors perform in accordance with the terms, conditions and specifications of the contract(s). All contracts wherein the fee exceeds Fifteen Thousand Dollars (\$15,000.00) shall be reviewed and approved by the City Council prior to award.

SECTION 302.3.5.5. SMALL PROJECTS. In those instances wherein the fee does not exceed Fifteen Thousand Dollars (\$15,000.00), the procedures outlined in Article 3, Section 302.3.5.2. of this Chapter may, at the discretion of the City Manager, be simplified by selecting and rating the three adequately qualified firms with whom he or she may negotiate for a fair and reasonable fee. A complete record of his or her reasons for selecting the qualified firm(s) and the negotiation proceedings shall be part of the record reviewed by the City Council if the contract exceeds Fifteen Thousand Dollars (\$15,000.00). All records shall be maintained in the department for review by any interested party for a minimum of five (5) years and until the final audit is completed.

SECTION 302.3.5.6. CONTRACT. Contracts utilizing the standard forms promulgated by any professional organization will not be utilized unless they are suitably amended to reflect the best interests and desires of the City. The City Solicitor shall approve the final form of the Contract prior to it being signed by the City Manager.

SECTION 302.3.5.7. EXCEPTION. These rules and procedures for employing engineers, architects, surveyors or other professions should not apply to those instances where (a) the City contracts for such services of in connection with the review of subdivisions or site plan reviews and where the applicant for the project has paid the City money for an escrow account to offset the City's costs for such services; (b) the cost of said services is expected to be less than Five Thousand Dollars (\$5,000.00) in any one occurrence (up to a maximum of Fifteen Thousand Dollars (\$15,000.00) in any given year); (c) when, in the judgment of the City Manager and upon polling of the members of the City Council, a delay in securing such services through public announcement and/or bid solicitation will negatively impact the City, its services, or its ability to meet project requirements in a cost-effective and/or timely way.

SECTION 303. REQUISITION. Purchases involving the immediate encumbrance of City funds shall be made only on a written requisition submitted by the head of the requesting department, in such form as prescribed by the City Manager. Requisitions involving the expenditure of One Thousand Dollars (\$1,000.00) or more shall bear written approval of the City Manager.

SECTION 303.1. UNAUTHORIZED PURCHASES. Except as herein provided, or as may be specifically authorized by the City Council or the City Manager, it shall be unlawful for any City employee or official to purchase any supplies or services other than in accordance with these regulations. The act of doing so will be cause for disciplinary action. The purchaser must avoid acquisition of unnecessary or duplicative items.

SECTION 303.2. CONFLICT OF INTEREST. No person authorized to act on behalf of the City shall enter into any agreement, contract, purchase order, etc., with any individual, firm, corporation, organization, or entity, in which said person has a financial interest. The act of doing so will be cause for disciplinary action.

SECTION 303.3. GIFTS AND GRATUITIES. Each officer and employee of the City is expressly prohibited from accepting directly or indirectly from any person, firm, corporation or organization to which any purchase order or contract is, or might be awarded, any rebate, gift, or gratuity, except where given for the use or benefit of the City. This policy is not intended to include small items which may be considered samples or other items with a minor monetary value. Other items or any monetary gratuity shall be considered by the City as an attempt to influence or bribe the officer or employee. The acceptance of gratuities of which the City does not approve will be cause for disciplinary action. All employees should understand this policy and are expected to use good moral judgment when offered any gratuity.

SECTION 303.4. OTHER ACTIONS OF CITY EMPLOYEES. Actions of each officer and employee of the City in selection, award, and administration of contracts will include: (1) The best interests of the City; (2) No personal (financial or other) interest in the bidder; and (3) Will remove themselves from the process if any conflict exists. Not adhering to the above will be cause for disciplinary action.

SECTION 304. EXEMPTIONS. The following supplies and/or services shall not be subject to this ordinance, unless Federal Funds are utilized (See Section 500):

1. Legal counsel retained by the city.
2. Traffic light maintenance.
3. General assistance.
4. Chemicals, supplies and equipment needed at the Brewer Wastewater Treatment Plant and Ozonation Plants.

SECTION 305. PRE-BID CONFERENCES. The City Manager may require a pre-bid conference for any purchases which are made for goods and/or services through the formally advertised bid process. The date, time and place of the pre-bid conference, if any, shall be determined by the City Manager. Any party who submits a bid must have a representative attend any scheduled pre-bid conference, otherwise, the bid will not be considered.

SECTION 306. CONTRACT CHANGE ORDERS. Individual Change orders to contracts that have been previously authorized by the City Council must be approved by the City Manager when an individual change order exceeds either One Thousand Dollars (\$1,000.00) and/or five percent (5%) of the original contract value. Change orders exceeding these limits will be reported to the City Council at the next regularly scheduled Council meeting. Aggregate or total change orders exceeding ten percent (10%) of a previously approved contract will be reported to the City Council at the next regularly scheduled Council meeting.

ARTICLE 4 MISCELLANEOUS REQUIREMENTS.

SECTION 401. TAX EXEMPTIONS. The City Manager will act to procure for the City all Federal or State tax exemptions to which the City is entitled.

SECTION 402. DISQUALIFICATION OF BIDDERS. The City Manager will have the authority to disqualify bidders who default on their bids, quotations, contracts or purchase orders from receiving further awards from the City. Such decisions will be subject to the right of the disqualified bidder to appeal to the City Council for a reversal or reinstatement.

SECTION 402.1. REJECTION OF BIDS. The City Council and/or the City Manager, in their sole discretion, will have the authority to reject any and all bids received in response to invitations for bids when bids are deemed non-responsive, collusive, or otherwise not acceptable and such action is in the best interest of the City.

SECTION 403. COOPERATIVE PURCHASES. The City Manager shall have the authority to join other units of government (Federal, State, County, municipal agencies subdivision, including such quasi-municipal agencies as Water Districts, Sewer Districts, regional councils of government etc.) in cooperative purchasing plans or take advantage of competitive bid prices received by other units of government when the best interest of the City would be served thereby and such action is in accordance with and pursuant to law.

SECTION 404. MODIFICATION. The City Council, by the passage of a City Council order at a regular, emergency, or special meeting, may authorize the City Manager and/or Department Head, as the case may be, to deviate from or modify the terms and conditions of this Ordinance in the purchasing of supplies and/or services on behalf of the City.

ARTICLE 5. PURCHASES UTILIZING FEDERAL MONIES.

SECTION 500. COMPLIANCE WITH UNIFORM GUIDANCE. All procurement and purchasing activities using Federal monies will be in compliance with the Federal Uniform Guidance requirements. Additional requirements will exist if the purchase exceeds \$150,000. One such requirement includes that the City must perform its own cost or price analysis in connection with every procurement action exceeding this amount.

All Federal and/or State interest(s) in the purchased item(s) and/or bonded construction projects will be protected to the greatest possible extent. These protections would include one of the following, if bonding for a project: a bid guarantee equal to 5% of the bid price; or a performance or price bond equal to 100% of the contract price.

SECTION 500.1 CONTRACT PROVISIONS UNDER FEDERAL AWARDS. Any contracts that utilize federal funding must include the following provisions, as applicable:

- a. For purchases exceeding \$2,000, competitive price quotes must be obtained.
- b. Before receiving bids or proposals, an independent estimate must be performed. An independent estimate must also be completed on any changes orders in excess of \$150,000.
- c. Contracts over \$150,000 must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- d. Contracts over \$10,000 must address termination for cause and for convenience by the entity including the manner by which it will be effected and the basis for settlement.
- e. All contracts must include an Equal Employment Opportunity statement.
- f. All construction contracts in excess of \$2,000 awarded, whereby the contractor is paying employee wages, must include a provision for compliance with the Davis-Bacon Act.
- g. Contracts awarded in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with Title 40 U.S.C. 3702 and 3704.
- h. Rights to inventions made under a contract.
- i. Contracts in excess of \$150,000 must contain a provision on compliance with the Clean Air Act and the Federal Water Pollution Control Act.
- j. All applicable contracts must contain mandatory standards and policies relating to energy efficiency in compliance with the Energy Policy and Conservation Act.
- k. Any contract awarded must not be made to parties who have been Suspended or Debarred from participating in government contracts. To verify vendor has not been excluded, sam.gov can be utilized.
- l. Contractors and all subcontractors applying or bidding on contracts exceeding \$100,000 must file the required anti-lobbying certifications under the Byrd Anti-Lobbying Amendment.
- m. All contractors must comply with Section 6002 of the Solid Waste Disposal Act.

SECTION 500.2 SUBRECIPIENT AND CONTRACTOR DETERMINATIONS. The City receives different types of federal awards/grants, which are utilized during the same time period. At times they are received directly from the Federal Government, at other times they are passed through the State of Maine. With this in mind the City could be a Federal award recipient, subrecipient (passed through the State), or could have its own subrecipients. Additional Uniform Guidance regulations exist dependent on what classification we are for each Federal award, the City will comply with any and all additional regulations.

SECTION 500.3 TIME AND MATERIAL CONTRACTS. Time & material type contracts may be used only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. These types of contracts must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

SECTION 500.4 CONTRACTOR TECHNICAL EVALUATIONS. A documented, written method for conducting technical evaluations of the proposals received and for selecting recipients must be maintained in the project file.

SECTION 500.5 MANNER OF PROCUREMENT CONDUCT. All procurement will be conducted in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.

SECTION 500.6 RECORD RETENTION REQUIREMENTS AND EXCEPTIONS. Please refer to Section 302.1.1 for these requirements. However exceptions to these rules exist and include:

- a. Litigation – must keep all records until litigation, claims, or audit findings have been resolved and final action taken.
- b. When notified by Federal awarding, cognizant, oversight agencies or the pass through entity to extend the retention period.
- c. When the specific award generates program income, records must be maintained for 3 years after the end of the audit performed on the final year that program income was earned / received.
- d. Other exceptions exist, however they would not apply to a local government agency. The City will comply with these exceptions if they do apply in the future.

END OF CHAPTER NOTATIONS

1. Enacted 06/06/2017 Effective 06/11/17 (2017-C011)(Complete Substitution)