

**CITY OF WASILLA
ORDINANCE SERIAL NO. 02-42**

AN ORDINANCE OF THE WASILLA CITY COUNCIL REPEALING AND REENACTING WASILLA MUNICIPAL CODE CHAPTER 5.08 CONCERNING CONTRACTS AND PURCHASING.

BE IT ENACTED:

- * **Section 1. Classification.** This ordinance is of a general and permanent nature and shall become part of the city code.
- * **Section 2.** WMC Chapter 5.08, Purchasing System, is reenacted to read as follows:

Chapter 5.08

CONTRACTS AND PURCHASING

5.08.010 Definitions.

In this chapter, the following terms shall have the meanings specified in this section, unless the context requires otherwise:

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

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

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

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

"Department" means a department, office or agency of the city.

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

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

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

"Supplies" means tangible or intangible personal property.

5.08.020 Purpose and interpretation of chapter.

A. The purposes of this chapter are to:

1. Maximize fair and open competition and discourage collusive bidding for city contracts consistent with the efficient operation of the city government; and
2. Maximize the purchasing value of city funds.

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

5.08.030 Purchasing agent.

A. The mayor or the mayor's designee shall be the purchasing agent.

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

1. To procure all supplies, services and construction required by the city;
2. To sell, trade or otherwise dispose of surplus supplies belonging to the city;

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3. To maintain all records pertaining to the procurement of supplies, services and construction, and the disposal of supplies, by the city;

4. To join with other units of government in cooperative purchasing ventures where the best interests of the city would be served thereby; and

5. Any other authority and responsibilities that this chapter assigns to the purchasing agent.

C. The mayor may delegate to a department head authority to act as purchasing agent for the awarding of contracts for supplies, services and construction for that department, under which the city is obligated to pay no more than \$5,000.

5.08.040 Contracting authority.

The city may, pursuant to an award in accordance with this chapter, contract with any person to acquire any supplies, services or construction required by the city.

5.08.050 Contracts enforceable against city.

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

5.08.060 Availability of funds.

No contract for supplies, services or construction, or any amendment thereto that increases the contract price, may be approved or executed unless the finance director has certified that funds are available for the city's performance under the contract.

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5.08.070 Approval of contracts; report to council.

A. The mayor may execute a contract for supplies, services or construction under which the city is obligated to pay no more than \$30,000 without council approval. The mayor shall provide quarterly reports to the council of all expenditures over ten thousand dollars (\$10,000).

B. No contract for supplies, services or construction under which the city is obligated to pay more than \$30,000 may be executed unless the council has approved a memorandum setting forth the following essential terms of the contract:

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

C. Notwithstanding subsection B of this section, the mayor may execute a contract awarded as an emergency procurement under section 5.08.150 without council approval; provided that the contract may not continue after the next regular council meeting without council approval.

5.08.080 Execution of contracts.

All city contracts for supplies, services and construction, and any amendments thereto, shall be signed by the mayor.

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5.08.090 Contract amendments.

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

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

1. \$30,000; or
2. 110 percent of the original contract price if the original contract price exceeded \$30,000.

5.08.100 Competitive sealed bidding required; exceptions.

A. Except as this section provides otherwise, all city contracts for supplies, services and construction shall be awarded by competitive sealed bidding under the procedure in section 5.08.110.

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

1. By competitive sealed proposals under the procedure in section 5.08.120, where authorized by that section.
2. By limited competition under the procedure in section 5.08.130, where authorized by that section.
3. To a sole source supplier as authorized by section 5.08.140.
4. Under an expedited procurement procedure in the event of an emergency, as authorized by section 5.08.150.
5. Under the procedure prescribed by the source of funding for the contract.

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6. For professional services without competition.
7. Under which the city is obligated to pay no more than \$5,000, without competition.
8. To a vendor under the terms of a contract awarded to that vendor under a competitive bidding procedure by the government of the United States, the State of Alaska or another state, or an agency, instrumentality or political subdivision of them.

5.08.110 Competitive sealed bidding.

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

B. The purchasing agent shall give public notice of the invitation for bids at least 14 days before the last day on which bids will be accepted, by publication in a newspaper of general circulation in the city, and posting in a location at the city offices that the mayor designates for this purpose. The contents of the notice shall be sufficient to inform interested readers of the general nature of the supplies, services or construction being procured, where to obtain a copy of the invitation to bid, and the procedure for submitting a bid.

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

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

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

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

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

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

5.08.120 Competitive sealed proposals; negotiated procurement.

A. The purchasing agent may procure supplies, services or construction by competitive sealed proposals under this section, if the purchasing agent determines that

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it is not practicable to develop sufficiently detailed contract terms or specifications for procurement by competitive sealed bidding, or that either vendor qualifications or the means and methods that a vendor will use are material to vendor selection.

B. The purchasing agent shall solicit competitive sealed proposals by issuing a request for proposals. The request for proposals shall state, or incorporate by reference, all specifications and contractual terms and conditions to which a proposal must respond, and shall state the factors to be considered in evaluating proposals and the relative importance of those factors. Public notice of a request for proposals shall be given in accordance with section 5.08.110.B.

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

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

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

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

E. The city shall evaluate each proposal submitted by a responsible proposer under the criteria set forth in the request for proposals. The purchasing agent may

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

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

5.08.130 Limited competition procurement.

A. The purchasing agent may procure supplies, services and construction having an estimated value not exceeding \$10,000 by soliciting bids or proposals from a limited number of potential contractors under this section.

B. The purchasing agent will identify vendors that are qualified and available to provide the supplies, services or construction, and solicit bids or proposals from at least three vendors, or from all vendors if there are no more than three. The solicitation may be either oral or written, and shall be in a form reasonably calculated to yield the

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lowest responsive bid by a responsible bidder. In soliciting bids or proposals, the purchasing agent shall allow each vendor that submits a bid an equal opportunity to negotiate price, delivery schedule and terms.

C. The purchasing agent shall award the contract to the lowest responsive and responsible bidder. The purchasing agent shall keep a record of all solicitations of bids under this section, the bids received, and the awards made thereon.

5.08.140 Sole source procurement.

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

5.08.150 Emergency procurement.

The purchasing agent may award a contract for supplies, services or construction without competition, formal advertising or other formal procedure where the mayor determines in writing that an emergency threatening the public health, safety or welfare requires that the contract be awarded without delay.

5.08.160 Award to responsible bidder or proposer.

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

1. The skill and experience demonstrated by the bidder or proposer in performing contracts of a similar nature.
2. The bidder's or proposer's record for honesty and integrity.

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3. The bidder's or proposer's capacity to perform in terms of facilities, personnel and financing.

4. The bidder's or proposer's past performance under city contracts. If the bidder or proposer has failed in any material way to perform its obligations under any contract with the city, the bidder or proposer may be deemed not responsible.

5.08.170 Rejection of bids or proposals.

If the mayor or council determines that it is in the best interest of the city to do so, the city may reject all bids.

5.08.180 Bonds.

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

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

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

5.08.190 Local vendor preference.

A. The city may specify in an invitation for bids or request for proposals that it will reduce the bid or proposal price of a local vendor by two and one-half percent for purposes of bid or proposal evaluation.

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

C. A local vendor is a person who:

1. Holds current Alaska, City of Wasilla and Matanuska-Susitna Borough business licenses;

2. Submits a bid or proposal under the name which appears on its current Alaska, City of Wasilla and Matanuska-Susitna Borough business licenses; and

3. Has maintained a place of business within the city staffed by the vendor or an employee of the vendor for a period of at least six months immediately preceding the date of submission of the bid or proposal.

5.08.200 Ethics of contracting and purchasing.

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

1. A city officer or employee who has a direct or indirect financial interest in any bid or proposal for a city contract shall disclose that interest by filing a written notice

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of the interest with the clerk not less than ten days before submission of the bid or proposal in which the officer or employee has an interest. The clerk shall post the written notice at the place maintained for the posting of public notices at city hall.

2. No city officer or employee who has a direct or indirect financial interest in any bid or proposal for a city contract may participate in the city's decision to award the contract.

3. No city officer or employee may solicit or receive any form of compensation from any party other than the city in connection with the awarding of a city contract.

B. A city officer or employee who wilfully violates subsection A of this section is guilty of malfeasance in office, and shall forfeit office with the city. A contract entered into in violation of subsection A of this section is voidable by the council.

* **Section 3.** WMC Chapter 5.08, Purchasing System, is repealed in its entirety and reenacted as stated in Section 2 of this ordinance:

[CHAPTER 5.08 PURCHASING SYSTEM

SECTIONS:

5.08.010 PURCHASING AGENT.

5.08.020 PURCHASING AGENT--SCOPE OF AUTHORITY.

5.08.030 AUTHORITY OF MAYOR.

5.08.040 PURCHASES BY CONTRACT.

5.08.050 COMPETITIVE BIDS.

5.08.060 BIDDING AND AWARDING OF CONTRACTS--UNIFORM PROCEDURES.

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- 5.08.070 BIDS--OPENING DATE.
- 5.08.080 BIDS--RECEIPTS.
- 5.08.090 BIDS--QUALIFYING BIDDERS.
- 5.08.100 BIDS--OPENINGS.
- 5.08.110 BIDS--REVIEW.
- 5.08.120 BIDS--READING.
- 5.08.130 BIDS--EVALUATION.
- 5.08.140 BIDS--REJECTION.
- 5.08.150 BONDS.
- 5.08.160 BIDS--RECOMMENDATIONS AS TO AWARD.
- 5.08.170 CONTRACT--AWARD MAKING.
- 5.08.180 CONTRACT--AWARD TO LOWEST RESPONSIBLE BIDDER.
- 5.08.190 BIDS AND DOCUMENTS ON FILE--CONTRACT AWARD APPEAL AND RE-DETERMINATION.
- 5.08.200 LOCAL PREFERENCE FOR PURCHASES AND CONTRACTS.
- 5.08.210 ETHICS OF CONTRACTING PURCHASING.
- 5.08.010 PURCHASING AGENT.

A. THERE SHALL BE A PURCHASING AGENT OF THE CITY TO MAKE ALL PURCHASES OF SUPPLIES, MATERIALS, EQUIPMENT AND CONTRACTUAL SERVICES FOR THE OFFICES, DEPARTMENTS AND AGENCIES OF THE CITY GOVERNMENT.

B. THE MAYOR OR HIS OR HER DESIGNEE SHALL BE THE CITY PURCHASING AGENT.

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

5.08.020 PURCHASING AGENT--SCOPE OF AUTHORITY.

A. THE PURCHASING AGENT SHALL HAVE THE POWER AND IT SHALL BE HIS OR HER DUTY TO PURCHASE OR CONTRACT FOR SUPPLIES AND CONTRACTUAL SERVICES NEEDED BY ANY AGENCY OF THE CITY AND SELL SURPLUS PERSONAL PROPERTY OF SUCH AGENCIES, IN ACCORDANCE WITH THE ORDINANCES OF THE CITY AND SUCH RULES AND REGULATIONS AS SHALL BE PRESCRIBED BY THE MAYOR AND APPROVED BY THE COUNCIL.

B. THE PURCHASING AGENT SHALL HAVE THE AUTHORITY TO JOIN WITH OTHER UNITS OF GOVERNMENTS IN COOPERATIVE PURCHASING VENTURES WHEN THE BEST INTERESTS OF THE CITY WOULD BE SERVED THEREBY, AND SAME IS IN ACCORDANCE WITH THE CITY AND STATE LAW.

5.08.030 AUTHORITY OF MAYOR.

A. THE MAYOR'S PURCHASING AUTHORITY IS TEN THOUSAND DOLLARS (\$10,000.00) UNDER THE PROCEDURES SET FORTH IN THIS CHAPTER.

1. SERVICES OR GOODS MAY BE PURCHASED OR PAID FOR BY THE MAYOR WITHOUT FURTHER COUNCIL APPROVAL IF THE PURCHASE OR PAYMENT IS:

A. AUTHORIZED FOR PURCHASE OR PAYMENT BY AN APPROVED BUDGET ORDINANCE;

B. WITHIN THE TEN THOUSAND DOLLAR (\$10,000.00) AUTHORITY STATED ABOVE; AND

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C. PROVIDED TO THE CITY UNDER PROCEDURES IN COMPLIANCE WITH THE COMPETITIVE BID REQUIREMENTS SET FORTH HEREIN, IF APPLICABLE.

2. THE AUTHORITY GRANTED TO THE MAYOR IN THIS SUBSECTION IS EXPRESSLY INTENDED TO PERMIT AND ALLOW PURCHASES OR PAYMENTS THAT MAY, WITHIN A FISCAL YEAR, EXCEED TEN THOUSAND DOLLARS (\$10,000.00) IN TOTAL AMOUNT, BUT SUCH AUTHORITY IS LIMITED TO THE TYPES OF ROUTINE AND ONGOING MATTERS NOTED HEREIN THAT ARE WITHIN A COUNCIL-APPROVED BUDGET. PURCHASES OR PAYMENTS FOR BUDGETED ROUTINE AND ONGOING AUTHORIZED CONTRACTS OR SERVICES (E.G., UTILITY BILLS, REGULAR PROFESSIONAL SERVICES, COUNCIL-APPROVED CONTRACTS, OR APPROVED MULTIMONTH CONSTRUCTION CONTRACTS, ETC.) THAT ARE OTHERWISE IN COMPLIANCE WITH THE REQUIREMENTS SET FORTH HEREIN, MAY BE PURCHASED OR PAID FOR BY THE MAYOR WITHOUT FURTHER COUNCIL APPROVAL.

3. THE MAYOR MAY AUTHORIZE ANY DEPARTMENT, OFFICE OR AGENCY OF THE CITY TO PURCHASE DIRECTLY CERTAIN SPECIFIED SUPPLIES, MATERIALS, EQUIPMENT OR CONTRACTUAL SERVICES UNDER CONDITIONS NOT LESS RESTRICTIVE THAN THOSE PRESCRIBED UNDER THIS CHAPTER, WHENEVER THE PURCHASE PRICE IS TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) OR LESS.

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

4. THE MAYOR SHALL PROVIDE QUARTERLY REPORTS TO THE COUNCIL OF ALL EXPENDITURES BETWEEN FIVE THOUSAND DOLLARS (\$5,000.00) AND TEN THOUSAND DOLLARS (\$10,000.00).

B. THE MAYOR MAY TRANSFER SUPPLIES, MATERIALS AND EQUIPMENT TO OR BETWEEN AGENCIES, OFFICES AND DEPARTMENTS.

5.08.040 PURCHASES BY CONTRACT.

ALL PURCHASES OF GOODS, SERVICES, AND CONSTRUCTION BY ANY OFFICIAL OR DEPARTMENT OF THE CITY SHALL BE BY CONTRACT AWARDED ON THE BASIS OF COMPETITIVE BIDDING, IF IN EXCESS OF TEN THOUSAND DOLLARS (\$10,000.00), AS PROVIDED FOR IN THIS SECTION.

5.08.050 COMPETITIVE BIDS.

A. A CONTRACT FOR CONSTRUCTION AND REPAIRS, OR A PURCHASE OF AND A CONTRACT FOR SUPPLIES, MATERIALS, EQUIPMENT AND CONTRACTUAL SERVICES MUST BE BASED ON COMPETITIVE BIDS. A BID AWARD SHALL BE MADE TO THE LOWEST RESPONSIBLE BIDDER AFTER ADVERTISING EXCEPT THAT A COMPETITIVE BID IS NOT REQUIRED FOR THE FOLLOWING:

1. FOR CONTRACTUAL SERVICES WHERE NO COMPETITION EXISTS;
2. FOR SALES INVOLVING FAIR TRADE ITEMS;
3. WHEN, IN THE JUDGMENT OF THE PURCHASING AGENT, FOOD, CLOTHING, OR MEDICAL SUPPLIES, OR MATERIALS FOR USE IN LABORATORY AND EXPERIMENTAL STUDIES MAY BE PURCHASED OTHERWISE TO THE BEST ADVANTAGE OF THE CITY;

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

4. WHERE RATES ARE FIXED BY LAW OR ORDINANCE;
5. FOR ITEMS TRADED IN ON LIKE ITEMS;
6. FOR PROFESSIONAL SERVICES;
7. WHERE NEW EQUIPMENT IS REQUIRED TO BE COMPATIBLE WITH EXISTING EQUIPMENT; OR

8. WHERE SUPPLIES, MATERIALS, EQUIPMENT OR CONTRACTUAL SERVICES CAN BE ACQUIRED THROUGH AN EXISTING CONTRACT OF THE STATE OF ALASKA, A POLITICAL SUBDIVISION OF THE STATE OF ALASKA, OR A FEDERAL GOVERNMENT AGENCY WHICH FOLLOWED A COMPETITIVE BIDDING PROCESS.

B. A CONTRACTUAL SERVICE, PURCHASE OR SALE WHERE THE KNOWN REQUIREMENTS ARE ESTIMATED TO BE LESS THAN TEN THOUSAND DOLLARS (\$10,000.00) MAY BE MADE UPON COMPETITIVE BID IN ACCORDANCE WITH THIS SECTION OR IN THE OPEN MARKET, AT THE DISCRETION OF THE MAYOR. OPEN MARKET PURCHASES SHALL SO FAR AS IS PRACTICABLE BE BASED ON AT LEAST THREE REQUESTS FOR PRICE QUOTATIONS. PURCHASES MADE UNDER THIS SUBSECTION WITH A VALUE OF LESS THAN TEN THOUSAND DOLLARS (\$10,000.00) DO NOT REQUIRE COUNCIL APPROVAL.

C. IF THE AMOUNT OF THE CONTRACTUAL SERVICES, PURCHASES, OR SALE IS ESTIMATED TO EXCEED TEN THOUSAND DOLLARS (\$10,000.00), SEALED BIDS SHALL BE SOLICITED BY PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION AND IN ADDITION, THE DEPARTMENT MAY ALSO

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DESIGNATE A TRADE JOURNAL FOR PUBLICATIONS OR SOLICIT BIDS BY SENDING NOTICES BY MAIL TO ALL ACTIVE PROSPECTIVE BIDDERS KNOWN.

D. ALL BIDS SHALL BE SEALED WHEN RECEIVED, AND SHALL BE OPENED IN PUBLIC AT THE HOUR STATED IN THE NOTICE. WITH COUNCIL APPROVAL THE MAYOR MAY NEGOTIATE DIRECTLY IF IT IS IN THE BEST INTEREST OF THE CITY.

5.08.060 BIDDING AND AWARDING OF CONTRACTS--UNIFORM PROCEDURES.

THERE SHALL BE UNIFORM PROCEDURES FOR BIDDING AND THE AWARDING OF CONTRACTS, AS SET OUT IN SECTIONS 5.08.070 THROUGH 5.08.170.

5.08.070 BIDS--OPENING DATE.

THE BID OPENING DATE SHALL BE SCHEDULED BY THE MAYOR OR HIS OR HER DESIGNEE, SUFFICIENT TIME BEING ALLOWED PROSPECTIVE BIDDERS TO EXAMINE PLANS, SPECIFICATIONS, AND OTHER REQUIREMENTS SO THAT THEY MAY PREPARE SOUND AND COMPREHENSIVE PROPOSALS.

5.08.080 BIDS--RECEIPTS.

THE DATE AND TIME OF RECEIPT OF BIDS BY THE CITY SHALL BE INDICATED ON THE OUTSIDE ENVELOPE OF ALL BIDS, INCLUDING LETTERS OR TELEGRAMS MODIFYING BIDS. IN GENERAL, ANY BID RECEIVED SUBSEQUENT TO THE TIME SPECIFIED FOR OPENING BIDS SHALL BE RETURNED TO THE BIDDER UNOPENED. INDIVIDUAL SITUATIONS MAY REQUIRE A DETERMINATION

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AS TO WHETHER OR NOT A DELAY IN DELIVERY OF A BID IS BEYOND THE CONTROL OF THE BIDDER.

5.08.090 BIDS--QUALIFYING BIDDERS.

IF THE NOTICE AND INSTRUCTIONS TO BIDDERS REQUIRE THAT BIDDERS SHOW EVIDENCE OF MEETING CERTAIN REQUIREMENTS, THE MAYOR AND CITY ENGINEER SHALL DETERMINE THE QUALIFICATIONS OF BIDDERS, WHENEVER PRACTICABLE, BEFORE ANY BIDS ARE OPENED.

5.08.100 BIDS--OPENINGS.

BID OPENINGS GENERALLY SHALL BE CONDUCTED IN THE PRESENCE OF THE BIDDERS, WITH OTHER CITY OFFICERS PRESENT INCLUDING THE DEPARTMENT HEAD CONCERNED.

5.08.110 BIDS--REVIEW.

AT THE TIME THE BIDS ARE OPENED THE MAYOR AND DEPARTMENT HEAD SHALL REVIEW ALL BIDS FOR IRREGULARITIES, ERRORS, AND EXCEPTIONS. IF IT APPEARS THAT MINOR IRREGULARITIES OR ERRORS WERE MADE THROUGH INADVERTENCE, THE CITY MAY AUTHORIZE THE BIDDER TO MAKE CHANGES, OR MAY WAIVE THE ERRORS AND IRREGULARITIES. IN THE EVENT OF MAJOR ERRORS AND IRREGULARITIES THE BID SHALL BE REJECTED AND THE BID PRICE NOT DISCLOSED. BID BONDS AND CERTIFIED CHECKS SHALL BE CHECKED FOR ADEQUACY.

5.08.120 BIDS--READING.

BID PRICES ARE NOT TO BE READ UNTIL THE MAYOR AND DEPARTMENT HEAD, AND THE ATTORNEY, IF NECESSARY, HAVE REVIEWED EACH BID TO

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

DETERMINE ITS VALIDITY, AND WHETHER OR NOT THERE ARE ANY EXCEPTIONS, ALTERNATES OR OTHER FACTORS WHICH MIGHT AFFECT THE BID PRICE OR THE RECOMMENDATION AS TO AWARD. THESE EXCEPTIONS ARE TO BE MADE PUBLIC AT THE TIME THE BID PRICE IS ANNOUNCED. THE ORDER OF READING BIDS SHALL BE DETERMINED BY THE MAYOR.

5.08.130 BIDS--EVALUATION.

IF FACTORS OTHER THAN THE DOLLAR VALUE OF THE BIDS ARE TO BE CONSIDERED, SUCH FACTORS ARE TO BE STATED IN THE NOTICE AND INSTRUCTIONS TO BIDDERS. IF A BID CONTAINS AN ESCALATOR OR PRICE ADJUSTMENT CLAUSE THE MAXIMUM AMOUNT OF ESCALATION OR ADJUSTMENT MUST BE ADDED TO THE BASIC BID FOR PURPOSES OF EVALUATING BIDS. ANY BID THAT DOES NOT CONTAIN A PRICE CEILING SHALL BE REJECTED.

5.08.140 BIDS--REJECTION.

A. THE COUNCIL MAY REJECT THE BID OF A BIDDER WHO IS IN ARREARS ON TAXES DUE THE CITY, OR WHO FAILED TO PERFORM ON A PREVIOUS CONTRACT WITH THE CITY. ALL BIDS MAY BE REJECTED UNDER CONDITIONS SUCH AS:

1. ACCEPTABLE PRICES NOT QUOTED;
 2. VARYING INTERPRETATIONS RESULTING FROM AMBIGUITY IN THE SPECIFICATIONS; OR
 3. AN INSUFFICIENT NUMBER OF BONA FIDE BIDS.
- B. ANY BID SHALL BE REJECTED IF:

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

1. IT IS AN UNBALANCED BID;
2. THE BIDDER IS NOT QUALIFIED IN ACCORDANCE WITH THE INSTRUCTIONS TO BIDDERS OR PROVISIONS OF THIS SECTION; OR
3. THE FACTS INDICATE THAT THE BIDDER HAS AN INTEREST CONFLICTING WITH THAT OF THE CITY.

5.08.150 BONDS.

A. BONDS REQUIRED. BEFORE A CONTRACT FOR THE CONSTRUCTION, ALTERATION OR REPAIR OF A CITY BUILDING, ROAD OR UTILITY PROJECT IS AWARDED TO A GENERAL OR SPECIALTY CONTRACTOR, THE CONTRACTOR IS TO FURNISH THE CITY PAYMENT AND PERFORMANCE BOND IN THE TOTAL AMOUNT PAYABLE BY THE CONTRACT UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000.00). FOR CONTRACTS WITH TOTAL AMOUNTS PAYABLE MORE THAN ONE HUNDRED THOUSAND DOLLARS (\$100,000.00), THE REQUIRED AMOUNT OF THE PAYMENT AND PERFORMANCE BOND MAY BE DETERMINED IN ACCORDANCE WITH AS 36.25.010.

B. BOND EXEMPTION OPTION.

1. PRIOR TO SOLICITATION OF BIDS FOR ANY CITY CONSTRUCTION PROJECT FOR WHICH THE LOWEST BID IS NOT EXPECTED TO EXCEED ONE HUNDRED THOUSAND DOLLARS (\$100,000.00), THE MAYOR SHALL DETERMINE WHETHER TO ACCEPT BIDS FROM CONTRACTORS WHO MAY BECOME EXEMPT FROM PAYMENT AND PERFORMANCE BOND REQUIREMENTS UNDER SUBSECTION (B)(2) OF THIS SECTION. THE MAYOR MAY WAIVE PAYMENT AND

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

PERFORMANCE BOND REQUIREMENTS FOR THE LOWEST QUALIFIED BIDDER IN ANY CONSTRUCTION CONTRACT IF:

A. THE MAYOR HAS DETERMINED, FOR THAT CONSTRUCTION CONTRACT THAT THE RISK ASSOCIATED WITH WAIVER OF BONDING IS OUTWEIGHED BY THE BENEFITS OF INCREASED PARTICIPATION OF LOCAL CONTRACTORS IN PUBLIC CONSTRUCTION CONTRACTS;

B. THE SUCCESSFUL LOW BIDDER FULLY QUALIFIES WITH THE REQUIREMENTS OF SUBSECTION (B)(2) OF THIS SECTION;

C. THE SUCCESSFUL LOW BID DOES NOT EXCEED ONE HUNDRED THOUSAND DOLLARS (\$100,000.00); AND

D. THE SUCCESSFUL LOW BID DOES NOT CONFLICT WITH STATE OR FEDERAL REQUIREMENTS.

2. A SUCCESSFUL CONSTRUCTION CONTRACT BIDDER MAY APPLY FOR EXEMPTION FROM PAYMENT AND PERFORMANCE BOND, CONSISTENT WITH THIS SECTION, BY DESCRIBING IN WRITING THREE PREVIOUS JOBS AND AUTHORIZING THE CITY TO REVIEW PRIOR PERFORMANCE. APPLICANTS SHALL ALSO DEMONSTRATE:

A. THE CONTRACTOR IS, AND FOR TWO YEARS IMMEDIATELY PRECEDING THE AWARD OF THE CONTRACT HAS BEEN, A LICENSED CONTRACTOR HAVING HIS OR HER OR ITS PRINCIPAL OFFICE IN THE STATE;

B. THE CONTRACTOR CERTIFIES THAT HE OR SHE HAS NOT DEFAULTED ON A CONTRACT AWARDED TO HIM OR HER DURING THE THREE YEARS PRECEDING THE CONTRACT AWARD;

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

C. THE CONTRACTOR SUBMITS A FINANCIAL STATEMENT IN A FORM SATISFACTORY TO THE MAYOR AND PREPARED WITHIN NINE MONTHS PRECEDING THE CONTRACT AWARD AND CERTIFIED BY A PUBLIC ACCOUNTANT LICENSED UNDER A.S. 08.04 DEMONSTRATING THAT THE CONTRACTOR HAS A NET WORTH OF NOT LESS THAN FIFTY (50) PERCENT OF THE AMOUNT OF THE BID;

D. THE TOTAL AMOUNT OF ALL CONTRACTS WHICH THE CONTRACTOR ANTICIPATES PERFORMING DURING THE TERM OF PERFORMANCE OF THE CONTRACT FOR WHICH A BID IS SUBMITTED DOES NOT EXCEED THE NET WORTH OF THE CONTRACTOR REPORTED IN THE CERTIFIED FINANCIAL STATEMENT PREPARED AND SUBMITTED UNDER SUBSECTION (B)(2)(C) OF THIS SECTION BY MORE THAN THREE TIMES.

3. THE MAYOR MAY, AT HIS OR HER DISCRETION, IMPOSE ADDITIONAL CONDITIONS ON CONSTRUCTION CONTRACTS LET WITHOUT PAYMENT OR PERFORMANCE BONDS, INCLUDING BUT NOT LIMITED TO THE FOLLOWING:

A. THAT NO PAYMENT SHALL BE MADE TO THE CONTRACTOR OR THE CONTRACT AWARDED UNTIL COMPLETION OF THE WORK CONTRACTED FOR UNLESS THE CONTRACT SHALL RUN LONGER THAN SIXTY (60) DAYS, IN WHICH CASE THE MAYOR MAY MAKE PERIODIC PAYMENTS;

B. THE CONTRACTOR SHALL CERTIFY THAT ALL PROVIDERS OF LABOR OR MATERIAL HAVE BEEN PAID IN FULL PRIOR TO PAYMENT FOR THE CONTRACT AWARDED.

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

5.08.160 BIDS--RECOMMENDATIONS AS TO AWARD.

IN MOST INSTANCES THE MAYOR WILL BE IN A POSITION TO MAKE KNOWN HIS OR HER RECOMMENDATIONS AT THE CONCLUSION OF THE BID OPENING. IN SOME INSTANCES IT MAY BE PREFERABLE TO ADJOURN WHILE THE MAYOR COMPLETES HIS OR HER TABULATION, ANALYSIS, AND EVALUATION OF BIDS. IF POSSIBLE, THE RECOMMENDATION OF THE MAYOR SHOULD BE ANNOUNCED WHEN THE BIDDERS HAVE REASSEMBLED AT A SPECIFIED TIME. THE MAYOR SHALL FURNISH EACH BIDDER WITH A COPY OF HIS OR HER TABULATION OF THE BIDS.

5.08.170 CONTRACT--AWARD MAKING.

CONTRACTS FOR EQUIPMENT, MATERIALS, SUPPLIES, SERVICES AND CONSTRUCTION FOR OVER TEN THOUSAND DOLLARS (\$10,000.00) SHALL BE SUBJECT TO COUNCIL APPROVAL. THE COUNCIL SHALL AT ITS NEXT REGULAR MEETING OR AT A SPECIAL MEETING, IF TOO GREAT A DELAY WOULD OTHERWISE OCCUR, TAKE ACTION ON THE MAYOR'S RECOMMENDATIONS AND DECIDE ON THE MANNER OF EXECUTING THE CONTRACT. THE MAYOR IS RESPONSIBLE FOR ESTABLISHING PROCEDURES FOR APPROVAL. MODIFICATIONS OF THE TERMS OF THIS SECTION SHALL BE MADE BY COUNCIL RESOLUTION.

5.08.180 CONTRACT--AWARD TO LOWEST RESPONSIBLE BIDDER.

CONTRACTS BASED ON COMPETITIVE BIDDING SHALL BE AWARDED TO THE LOWEST RESPONSIBLE BIDDER AFTER THE FOLLOWING REQUIREMENTS HAVE BEEN MET:

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

A. THE PROPOSAL SHALL HAVE BEEN MADE ON PLANS AND SPECIFICATIONS APPROVED BY THE MAYOR;

B. A MINIMUM OF THREE QUALIFIED BIDS SHALL HAVE BEEN RECEIVED;

C. THE SUCCESSFUL BID SHALL CONTAIN NO ERRORS OR IRREGULARITIES OTHER THAN MINOR ONES WHICH HAVE BEEN WAIVED OR CORRECTED AS PROVIDED IN SECTIONS 5.08.060 THROUGH 5.08.170;

D. THE AMOUNT OF THE BID SHALL NOT EXCEED THE MAYOR'S ESTIMATE BY MORE THAN TEN (10) PERCENT;

E. AN EXECUTED PERFORMANCE BOND, IF REQUIRED, IN THE AMOUNT SPECIFIED IN THE NOTICE AND INSTRUCTION TO BIDDERS SHALL HAVE BEEN RECEIVED;

F. COMPLIANCE SHALL HAVE BEEN MADE WITH ALL PROVISIONS SET FORTH IN THE NOTICE AND INSTRUCTIONS TO BIDDERS;

G. THE BIDDER IS QUALIFIED UNDER CITY AND STATE LAWS;

H. IF LESS THAN THREE BIDS ARE RECEIVED, THE MAKING OF AN AWARD SHALL BE SUBJECT TO UNANIMOUS APPROVAL OF THE COUNCIL;

I. AT ALL TIMES, THE BEST INTERESTS OF THE CITY SHALL BE RECOGNIZED IN AWARDING BIDS; AND

J. ALL BID AWARDS THAT CONTAIN IRREGULARITIES SHALL REQUIRE COUNCIL APPROVAL.

5.08.190 BIDS AND DOCUMENTS ON FILE--CONTRACT AWARD APPEAL AND RE-DETERMINATION.

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

ALL BIDS WITH THE NAME OF THE BIDDERS AND THE AMOUNTS OF THE BIDS, TOGETHER WITH ALL DOCUMENTS PERTAINING TO THE AWARD OF A CONTRACT, SHALL BE MADE A PART OF THE FILE OR RECORD AND RETAINED BY THE CITY FOR THREE YEARS, UNLESS REPRODUCED BY MICROFILMING, AND THESE FILES OR RECORDS SHALL BE OPEN TO PUBLIC INSPECTION AT ALL REASONABLE TIMES. AN AGGRIEVED BIDDER MAY, WITHIN FIVE DAYS AFTER AN AWARD OF A CONTRACT, APPEAL TO THE CITY FOR HEARING, WITH NOTICE TO INTERESTED PARTIES, FOR RE-DETERMINATION AND FINAL AWARD IN ACCORDANCE WITH LAW.

5.08.200 LOCAL PREFERENCE FOR PURCHASES AND CONTRACTS.

A. THE CITY MAY GRANT A PREFERENCE IN EXCESS OF THE LOWEST BID OR OFFER TO SELL RECEIVED BY THE CITY IN THE AMOUNT OF TWO PERCENT OF THE LOWEST BID OR OFFER TO SELL TO LOCAL SUPPLIERS OR BIDDERS, WHEN FUNDS ARE AVAILABLE AND LOCAL PREFERENCE IS NOT PROHIBITED BY THE FUNDING SOURCE.

B. IF LOCAL PREFERENCE IS APPLICABLE, IT SHALL BE SO SPECIFIED IN THE SOLICITATION TO PURCHASE OR INVITATION TO BID.

C. FOR THE PURPOSES OF THIS SECTION, "LOCAL SUPPLIER OR BIDDER" IS DEFINED AS A PERSON OR ENTITY WHO:

1. HOLDS A CURRENT ALASKA BUSINESS LICENSE;
2. HOLDS VALID CITY OF WASILLA AND MATANUSKA-SUSITNA BOROUGH BUSINESS LICENSES, IF REQUIRED TO DO SO;

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

3. SUBMITS THE BID OR OFFER TO SELL UNDER THE NAME WHICH APPEARS ON THE STATE, CITY AND BOROUGH BUSINESS LICENSES; AND

4. HAS MAINTAINED A PLACE OF BUSINESS WITHIN THE CITY STAFFED BY THE BIDDER OR AN EMPLOYEE OF THE BIDDER FOR A PERIOD OF AT LEAST SIX MONTHS IMMEDIATELY PRECEDING THE DATE OF THE BID OR OFFER.

5.08.210 ETHICS OF CONTRACTING PURCHASING.

ALL PURCHASES AND CONTRACTS SHALL BE FOR THE PUBLIC BENEFIT OF THE CITY: AND

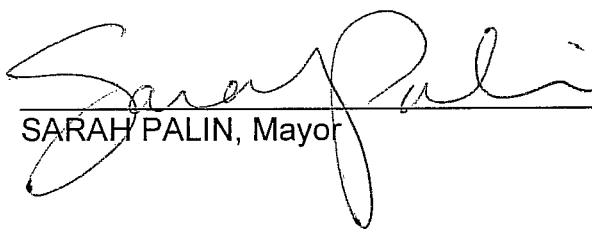
A. ANY CITY OFFICER OR EMPLOYEE WHO HAS FINANCIAL INTEREST, DIRECT OR INDIRECT, OR BY REASON OF OWNERSHIP OF STOCK IN ANY LAND, MATERIALS, SUPPLIES, GOODS, SERVICES OR CONSTRUCTION TO THE CITY OR TO A CONTRACTOR SUPPLYING THE CITY, SHALL MAKE KNOWN THAT INTEREST. HE OR SHE SHALL NOT VOTE ON THE AWARDING OF ANY CONTRACT IN WHICH HE OR SHE HAS SUCH A FINANCIAL INTEREST. ANY CITY OFFICER OR EMPLOYEE WHO WILFULLY CONCEALS SUCH A FINANCIAL INTEREST OR WILFULLY VIOLATES THE REQUIREMENTS OF THIS SECTION IS GUILTY OF MALFEASANCE IN OFFICE OR POSITION AND SHALL FORFEIT HIS OR HER OFFICE OR POSITION. VIOLATION OF THIS SECTION WITH THE KNOWLEDGE EXPRESS OR IMPLIED OF THE PERSON OR CORPORATION CONTRACTING WITH OR MAKING A SALE TO THE CITY RENDERS THE CONTRACT VOIDABLE BY THE COUNCIL; AND

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

B. THERE SHALL BE NO HIDDEN CHARGES, REMUNERATION, KICKBACK, OR ANY OTHER FINANCIAL CONSIDERATION NOT SPECIFICALLY STATED IN THE CONTRACT OR IN THE NOTICE AND INSTRUCTIONS TO BIDDERS. VIOLATION OF THIS SECTION SHALL RENDER THE CONTRACT VOIDABLE BY THE COUNCIL.]

* **Section 4. Effective date.** This ordinance shall take effect upon adoption by the Wasilla City Council, and shall govern all procurements that commence after its effective date.

ADOPTED by the Wasilla City Council, Alaska, on June 24, 2002.


SARAH PALIN, Mayor

ATTEST:


KRISTIE SMITHERS, CMC
City Clerk

[SEAL]

Bold and underline added. [CAPS AND BRACKETS, DELETED.]



CITY OF WASILLA

**290 E. HERNING AVE.
WASILLA, AK 99654-7091
PHONE: (907) 373-9090
FAX: (907) 373-9092**

TO: Wasilla City Council
THRU: Mayor Sarah Palin *ms*
FROM: Finance
DATE: June 5, 2002
SUBJECT: Ordinance Serial No. 02-42

SUMMARY: Attached please find Ordinance Serial No. 02-42, which amends WMC 5.08, Purchasing System.

This ordinance revises the code to make it more understandable and to provide for the best possible prices for goods and services received by the City of Wasilla.

Major changes include: Repeals prior code, increases Mayor's purchasing authority to \$30,000, does not require competition for purchases that are \$5,000 or less, and it clarifies requirements for change orders.

FISCAL IMPACT: No If yes, amount requested:

RECOMMENDED ACTION: Introduce ordinance and set for public hearing.

ATTACHMENTS: Ordinance 02-42