

ORDINANCE 338

AN ORDINANCE ADOPTING A PROCUREMENT POLICY FOR THE CITY OF AVON

It is important to remember that all city purchasing operates in full view of the public. These general guidelines should be considered Administrative Rules and Regulations and are to be adhered to as closely as possible by all departments in the procurement of goods and services. These guidelines shall apply to all expenditures for purchases, leases, rentals, materials, supplies, equipment and professional services. No city departments may expand or change in any way these stated guidelines and procedures without the City Council's approval.

LOCAL BUYING. It is the desire of the city to purchase from City of Avon vendors whenever possible. This can be accomplished by ensuring that local vendors have goods or services available which are needed by the city and that are interested in doing business with the city are included in the competitive process which will precede most purchases. The city has a responsibility to its residents, however, to ensure that the maximum value is obtained for each public dollar spent so comparison shopping is strongly encouraged.

PLANNING. Planning for purchases should be done on both a short-term and long-term basis. Small orders and last-minute purchases should be minimized, thereby increasing the capability of each department to purchase its goods and services in larger quantities in order to obtain the maximum discounts possible. Planning will also cut down on the number of trips required to obtain materials and minimize the amount of clerical and supervisory time spent on documenting purchases. The purchasing process begins with the preparation of the Annual Budget.

OVERDRAFTS PROHIBITED. No purchase will be authorized without City Council approval which would overdraw a department budgetary expense account. Department Heads who are contemplating a purchase or recognize trends that will exceed the budget should contact the Finance Office to ensure that a provision is available and can be made for the necessary budget allocation prior to initiating the purchase. The Department Head shall also consult with their direct supervisor and City Council Committee members.

BUYING PROPER QUALITY. Quality and service are just as important as price and it is the duty of the requisitioning department to secure the best quality for the purpose intended. Quality buying is the buying of goods or services that will meet, but not excessively exceed the requirements for which they are intended. In some instances, the primary consideration are durability and reliability. With other purchases, it may be a question of immediate availability, ease of installation, frequency of repair or efficiency of operation that must be given primary consideration. In the case of motor vehicles and similar capital expenditures, departments may want to include life cycle costs or EPA mileage ratings when comparing bids as opposed to utilizing the price as the criterion for determining the lowest responsible bidder. It is the responsibility of each Department Head to become familiar enough with the available equipment to determine the appropriate quality required in order to develop specifications.

BRIBERY. Bribery in any form represents malfeasance in office and means that public funds are being mismanaged. Bribery by vendors in order to secure favorable consideration is seldom attempted however attempts to influence decisions regarding the expenditures of public funds may be directed toward any employee or elected official that has influence over the selection of vendors. The penalty for accepting a bribe is immediate termination.

SALES TAX. The city is exempt from paying all local and state sales tax. The Finance Office can provide the necessary exemption documents to any vendor upon request.

PUBLIC ACCESS. All specifications, bid documents, accounts payable vouchers, invoices and supporting documents are public records which will be made available to the citizens, vendors or the media, upon request.

ENDORSEMENTS. It is city policy not to endorse or in any way permit an employee's name, position, or the city's name to be used and advertised as supporting a product or vendor. This is not intended to prohibit Department Heads from sharing information and opinions, upon request, with other purchasers.

PERSONAL PURCHASES. Purchases for employees with city funds shall be limited to items used in the performance of their duties as employees. City employees are also prohibited from using the city's name or the employee's position to obtain special consideration in personal purchases for private use.

CREDIT CARD PURCHASES. Credit card purchases must follow the guidelines outlined in this policy and the adopted credit card policy (Ordinance #336 and any subsequent ordinances or modifications). Use of the city-issued credit card should not lead to additional incurred charges and should only be used when it is advantageous to the city.

PURCHASING AND CONTRACT PROCEDURES

The City Council hereby establishes the following policies regulating the degree of formality to be followed in the purchase of goods and services, depending on the costs of the items to be purchased. The intentional splitting of planned or predictable annual purchases into smaller orders to avoid these requirements is to be discouraged and strictly prohibited when total purchases will exceed limits requiring City Council approval or public bids. Department heads should designate employees who will be allowed to make purchases. It is the responsibility of each department head to provide internal control procedures to ensure that all purchases are necessary and for legitimate public purposes.

CLAIMS PAYABLE POLICY: The city does not require purchase orders, but that of purchase invoices. Each invoice must be submitted to the Finance Office complete with the purchaser's signature and department in which the purchase was made in order to process the claim and account for it in the correct department.

The department head or their designated/authorized employee(s) will endeavor to obtain the best price available for the City when circumstances permit by obtaining a minimum of:

- Purchases less than \$2,500 – Consideration will be given to receiving the best price available with preference toward local vendors.
- Purchases of \$2,500 but under \$10,000 – City Council approval of the purchase shall be secured for items not included previously authorized through the budget. Consideration will be given to receiving the best available price with preference to local vendors.
- Purchases of \$10,000 but under the legal bid limit – City Council approval needed. A minimum of three (3) written or documented proposals or quotes shall be obtained. Exceptions include road oil, hot/cold mix, chips and airport fuel. Consideration will be given to receiving the best available price with preference to the local vendors.
- Purchases at or above the legal bid limit – see the requirements below.
- Purchases supported with federal grant dollars – see the requirements below.

Two non-responsive requests for proposals or quotes equates to one (1) written proposal or quote. All vendor contacts made when soliciting proposals or quotes will be recorded and included with formal records. The only exception for this rule will be in the case of sole source suppliers for proprietary materials. All due diligence must be made to ensure the provider truly is a sole source supplier. Fees for all professional services should go through the same selection/documentation process. It is the responsibility of the individual incurring charges to route through their Department Head to the Finance Office in a timely manner, all invoices, charge slips, credit card receipts, etc.

Municipalities may spend up to five thousand dollars (\$5,000) for supplies and equipment at businesses owned by members of a governing body. (SDCL 6-1-2)

Claims filed without previous Department Head and/or City Council authorization to purchase and/or provide services will not be considered for payment by the city.

PURCHASES IN EXCESS OF STATE BID LIMIT – All purchases in excess of the State Bid Limit requires prior approval from the City Council.

There are currently two bid limits to consider when entering into purchase contracts. If the City intends to enter into a contract for any public improvement or equipment that involves the expenditure of fifty thousand (\$50,000) dollars or more, or a contract for the purchase of supplies or services, other than professional services, that involves the expenditure of twenty-five thousand (\$25,000) or more, the City shall advertise for bids or proposals (SDCL 5-18A-14, 5-18A-22). Exemptions to the State Bid Limit requirements are expressed in SDCL 5-18A-22.

1. Department heads anticipating expenditures for goods, or services exceeding the State Limit in value must prepare specifications based upon standards appropriate to meet the city's needs. Specifications should be forwarded to the Finance Office for review, comment and approval and placement on a City Council agenda for bid date setting.
2. The Finance Office will then assist with the preparation of the complete bid package, advertisements, contract documents, and specifications to meet the city purchasing policy. For public infrastructure improvements, the City's Engineering Firm will also be consulted. The announcement of the bid letting will be sent to qualified vendors and contractors. A packet containing an invitation to bid, specifications, and general bid documents will also be sent to vendors and contractors that respond to the legal notice and to appropriate builders' exchanges and contractor information publications, and maintain a complete list of all plan holders until the contract has been complete.
3. The first public notice must be advertised in the local newspaper at least ten (10) calendar days prior to bid opening. After the bids are publicly opened, the bids or copies will be turned over to the Department Head, City Council Committee and/or Engineer for review.
4. The Department Head and/or Engineer will prepare a written tabulation of all bids and draft a memorandum addressed to the City Council, which will include the recommendation for the bid award.
5. The written tabulation and memorandum shall be forwarded to the Finance Office so that it can be placed on the City Council Agenda with the copies being distributed with the agenda to the City Council.
6. All purchases requiring bidding must be awarded by the City Council at a Public Meeting. The award will normally be made to the low bidder meeting specifications, however, there may be instances when the low bid is not from a responsible bidder--doesn't meet minimum specifications or is not deemed to be in the best interest of the city. When such a situation arises, it is incumbent upon the Department Head and/or Engineer to thoroughly document the reasons why the low bidder should be disqualified.

PURCHASES WITH FEDERAL FUNDS –

Micro Purchase Procedures

- Supplies and services over \$3,000 or \$2,000 for construction subject to Davis Bacon – Purchases must be equitably distributed among qualified suppliers to the extent practical. Purchases may be awarded without soliciting competitive quotes if the price is considered reasonable by the City Council

Small Purchase Procedures

- Supplies, services or other property under \$150,000 (simplified acquisition threshold) – A minimum of three (3) written and documented quotes must be obtained and presented to the City Council for approval. *See State Bid Limit requirements above that may apply prior to meeting this threshold.

Sealed Bidding

- Supplies, services, property or other improvements over \$150,000 (simplified acquisition threshold) - Follow steps contained under the State Bid Limit requirements above.
- Other procedural requirements at 2 CFR 200.320(c)(2).

Competitive Proposals ((2 CFR 200.320(d))

- Generally used when conditions are not appropriate for the use of sealed bids.
- Appropriate when more than one source is expected to submit an offer and either a fixed price or cost reimbursement type contract is awarded.
- Request for Proposal (RFP) must be publicized and identify all evaluation factors and their relative importance.
- Proposal must be solicited from an adequate number of qualified sources.
- Must have a written method for conducting technical evaluations of the proposals received and for selection of the contractor.
- Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

Noncompetitive Proposals ((2 CFR 200.320(f))

- Solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply.
 - 1) One source-single source.
 - 2) Exigency/Emergency-an exigency or emergency will not permit a delay resulting from competitive solicitation.
 - 3) Awarding Agency Approval.
 - 4) Inadequate Competition-after the solicitation of a number of sources, competition is determined inadequate.

Socioeconomic Contracting

- City must take all necessary affirmative steps to assure that minority businesses, women's business enterprises and labor surplus area firms are used when possible (2 CFR 200.321)
 - 1) Affirmative steps must include at least the following:
 - Placing qualified small and minority businesses and women's business enterprise on solicitation lists.
 - 2) Other affirmative steps include:
 - Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and WBE.
 - Establishing delivery schedules, where the requirement permits, which encourages participation by small and minority businesses, and WBE.
 - Using the services and assistance, as appropriate, of such organizations as the SBA and the Minority Business Development Agency of Dept. of Commerce.
 - 3) Requiring the prime contractor, if subcontracts are to be let, to take the previous affirmative steps.

Cost and Price

- A price or cost analysis must be performed in connection with every procurement action above the simplified acquisition threshold (\$150,000), including contract modifications (2CFR200.323).
- Method and degree of analysis is dependent of the facts and circumstances surrounding the particular procurement, but as a starting point, independent estimates must be made before receiving bids or proposals.
- Shall negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed.
- Cost Plus Percentage of Cost. The city must not use a cost-plus percentage of cost or cost-plus-percentage-of-construction-cost method of contracting ((2CFR200.323(d)).

Bonding Requirements

- The city must follow its own bonding requirements for construction or facility improvement projects beneath the simplified acquisition threshold (\$150,000).
- The following must be met for construction above the simplified acquisition threshold (\$150,000):
 - 1) Bid guarantee from each bidder = 5% of the bid.
 - 2) Performance and payment bond = 100% of the contract price.

SPECIAL PURCHASES PROCEDURES

Occasionally, the city may need to purchase goods or services under circumstances which do not clearly fit the patterns of normal public procurement and for which normal competitive shopping procedures do not apply. The following guidelines are provided with regard to making such purchases.

SOLE SOURCES - In the event that there is only one vendor capable of providing a particular good or service, then the competitive shopping procedures outlined in this manual for purchases over \$10,000 may be waived after consulting the City Council, except if it's required by law. Whenever a Department Head determines that, they must purchase goods or service from a "sole source vendor" they should document why only one company or individual is capable of providing the goods or services required. The documentation should be attached to the invoice.

COOPERATIVE PROCUREMENT PROGRAMS – Department Heads are encouraged to use cooperative purchasing programs sponsored by the State of South Dakota or other jurisdictions. Cooperative purchasing can prove advantageous to the city both by relieving Department Heads of the paperwork necessary to document the purchase and by taking advantage of the large quantity purchases by government agencies. Purchases made through these programs have met the requirements of competitive bidding and the City Council is only required to adopt a motion to purchase the particular item(s) off of said procurement programs. The Department Heads are encouraged to check with the Finance Office regarding cooperative procurement contracts in effect prior to making any large purchase. Purchases from vendors that agree in writing to sell at prices approved by State Bid or other government entities are not limited to purchases over "State Limits".

The State Bid Price List may be obtained at www.state.sd.us/boa/ouble, (1) click on "Purchasing and Printing"; (2) click on "State Contracts" and then the item(s) you are interested in. The National Joint Powers Alliance (NJPA) vendors may be obtained at www.NJPACoop.org/search, (1) click on "Cooperative Purchasing"; (2) search vendors and products.

PROFESSIONAL SERVICES - Normal competitive procedures cannot be utilized in securing professional services such as attorneys, engineers, certified public accountants, planners, and other professions, that in keeping with the standards of their discipline, will not enter into a competitive bidding process. A Request for Proposal (RFP) can be prepared much

the same way as specifications including requirements and minimum standards for the services to be provided. RFP's should be submitted to the Finance Office for review and approval prior to distribution. When an RFP for professional services is approved, a limited number of qualified professionals known to the city will be invited to submit a proposal setting forth their interest, qualifications, and how they can meet the city's needs. In securing professional services, it is the primary goal of the city to obtain the services of a professional who have a proven record of providing, in a professional way, those services required. A contract will be negotiated with the professional deemed to best meet the city's needs. Contracts for Professional Services are obligations of public funds, and as such should follow the guidelines in Section III.

EMERGENCY PURCHASES- True emergency situations are rare. Occasionally, equipment will require emergency repairs or other circumstances which necessitate emergency purchasing which cannot await compliance with city policies. Department heads faced with an emergency purchase are to notify the Finance Office as quickly as possible. For emergency purchases over "State Bid Limits", state law allows the City Council to determine an emergency to exist when involving the health and welfare of its people and that by awaiting regular advertising for bids would seriously impair services to be provided and rentals are not available on a timely basis. As far as practicable the City Council shall secure at least two (2) competitive quotations and retain them on file in Finance Office. At a City Council meeting, the quotations shall be reported and recorded in the official records of the city which identify the bidder(s), the amount of the bid(s) and an explanation of the emergency.

PETTY CASH ACCOUNTS – Very often, there is a need for immediate availability of funds. A petty cash fund has been established in the Finance Office in the amount of fifty dollars (\$50). The petty cash funds shall be used for minimal purchases such as copies, postage, supplies and/or the reimbursement of purchases made by employees. A petty cash receipt with the invoice attached is to be completed. These should include the amount, description of the items, budget account number and signature of person receiving the funds and the person issuing the funds. The city vouchers submitted for reimbursement from the petty cash fund will be processed as needed.

PURCHASE OF USED EQUIPMENT – There are situations where the purchase of used equipment should be considered. These include the following:

- 1) When price is of prime importance and the difference in cost between new and used is significant.
- 2) Where equipment will be used infrequently, for a limited time, for training or for auxiliary operations.
- 3) When better delivery is essential.

The purchase of used equipment requires careful shopping and the requisitioning department should make every effort to secure a minimum warranty or guarantee that the equipment will perform as needed and that service or replacement parts are reasonably available.

PROPANE PURCHASES – Propane will be purchased through soliciting quotes from the local propane suppliers on an as needed basis. The quote will be awarded to the supplier with the lowest available price. In the event that the quotes are identical in price, the Mayor will award the quote based on the past history of the suppliers pricing.

PREPAYMENT OF CERTAIN CLAIMS – Prepayment of claims against the city for services have been provided if the following conditions are met:

- 1) A service contract exists between the city and the service provider;
- 2) The contract provides for a refund for prepaid services not received;
- 3) Prepayment for the services offers a measurable benefit to the city;
- 4) The claim is less than the amount for which competitive bidding is required, as established by SDCL Chapter 5-18A.

BILLS IN BETWEEN- Bills in between are bills that are determined to be pre-approved by the City Council for payment once a month (*or as needed). Items to be included in the bills in between include:

1. Council and employee wages and payroll deductions
2. Health, Dental, Vision and Supplemental Insurance
3. SDRS monthly payments
4. Employee wage garnishments
5. Health insurance deductible buy downs
6. Credit card processing fees
7. Loan payments and bonds issued

Appendix A

CITY LIMITS (Assuming there is budgetary authority)

\$0 - \$2,499 – Department Head or designee approval required.

\$2,500 - \$9,999 – Department Head or designee approval required. Council approval required if not included in the annual budget.

\$10,000 - \$24,999 – Council approval required. A minimum of three (3) written or documented proposals or quotes shall be obtained. Exceptions include supplies such as road oil, hot/cold mix, chips and airport fuel.

\$25,000 - \$49,999 – Council approval required. Bidding required for materials, supplies, services except professional services (see State Limits).

\$50,000 and Above – City Council approval required. Bidding required for public improvement contracts and equipment (see State Limits).

STATE LIMITS

\$25,000 – Contracts for the purchase, lease or rental of materials, supplies or services (except professional services).

Consideration must be given to the total number of particular items that will be purchased in a calendar year.

\$50,000 – Contracts for construction of a new building or the remodeling or addition to an existing building; contracts for construction of any other public improvement; or, the purchase of equipment.

FEDERAL LIMITS (expenditures with federal funds--\$150,000 is the simplified acquisition threshold)

\$2,000 – Supplies and services must be equitably distributed among qualified suppliers.

\$3,000 – Construction subject to Davis Bacon must be equitably distributed among qualified suppliers.

\$2,001 - \$149,999 – Supplies, services or other property purchases. A minimum of three (3) written or documented proposals or quotes shall be obtained. City and State limits apply.

\$150,000 – City Council approval required. Bidding required.

EXEMPTIONS FROM BIDDING EXAMPLES

EMERGENCY PURCHASES – Emergency purchases may be made after attempting to secure two competitive quotations if awaiting regular advertising for bids would seriously impair public services.

EQUIPMENT REPAIR CONTRACTS

SURPLUS PROPERTY FROM ANOTHER PUBLIC ENTITY

ITEMS CONTAINED ON THE STATE CONTRACT PRICE LIST OR NJPA

ITEMS COMPETITIVELY BID BY ANOTHER SD LOCAL GOV'T ENTITY (within 12 mos.)

PROFESSIONAL SERVICES – Audits, consultants, architects, engineers, insurance, etc.
COMPUTER HARDWARE AND SOFTWARE
NO BIDS RECEIVED (Quotes must be obtained)

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ATTEST:

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(SEAL)