

Introduced by: City Manager Healy
 Date: September 28, 2004
 Public Hearing: October 12, 2004
 Action: Postponed to October 26 meeting
 Date: October 26, 2004
 Action: Postponed to November 16 meeting
 Date: November 16, 2004
 Action: Adopted
 Vote: Unanimous

CITY OF PALMER, ALASKA

ORDINANCE NO. 644

AN ORDINANCE REPEALING A PORTION OF CHAPTER 3.20 (PURCHASING) AND ADOPTING CHAPTER 3.21 (PURCHASING AND CONTRACTS) OF TITLE 3 (REVENUE AND FINANCE) OF THE PALMER MUNICIPAL CODE

THE CITY OF PALMER, ALASKA, ORDAINS:

Section 1. Classification. This ordinance shall be of a permanent nature and shall become a part of the City of Palmer Code of Ordinances.

Section 2. Severability. If any provisions of this ordinance, or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Sections 3.20.010 through .050 and .100 through .150 of Chapter 3.20 are hereby repealed.

Section 4. Chapter 3.21 is hereby adopted to read as follows:

Chapter 3.21

PURCHASING AND CONTRACTS

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3.21.020 Purposes and interpretation of chapter.

3.21.030 Powers and duties of purchasing officer.

3.21.040 Centralization of procurement authority.

3.21.050 Standard specifications.

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- 3.21.280 Waiver of formal procedures.**
- 3.21.290 Administrative review of bid protests.**
- 3.21.300 Administrative review regarding claims (excluding bid protests).**
- 3.21.310 Appeal regarding claims (excluding bid protests).**
- 3.21.320 Hearing procedures (excluding bid protests).**
- 3.21.330 Misrepresentation and fraudulent claims.**
- 3.21.340 Exclusive remedy.**
- 3.21.350 Conflict of interest.**

3.21.010 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this chapter, except where the context clearly indicates a different meaning:

“Architectural-engineering-land surveying services” means those professional services within the scope of the practice of architecture, engineering or land surveying, as defined by the Alaska law.

“Construction” means the on-site erection, rehabilitation, alteration, extension or repair of improvements to real property, including painting or redecorating buildings, highways, or other improvements under contract for the city, but does not include routine operation, repair, or maintenance of existing buildings or improvements which are recurring services normally performed in connection with the ownership, occupancy, or use of the building or improvement.

“Contract” includes all types of city agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, professional services or construction, but does not include collective bargaining agreements, subdivision agreements, water or sewer main extension agreements or other similar agreements whereby the owner or a person acting under the direction of the owner of real property agrees to construct improvements of a public nature on property to be dedicated to the city.

“Contract amendment” means any change in the terms of a contract accomplished by agreement of the parties, including change orders.

“Department” means any department or office of the city.

“Department head” means the department director or other chief administrative officer of a department.

“Grant” means the furnishing by the city of assistance, whether financial or otherwise, to implement a program authorized by law. The furnishing by the city of anything of value in exchange for supplies, services, professional services or construction required to perform a function of the city is a contract and not a grant.

“Person” means any individual, or any business or non-business entity recognized by law, whether or not organized for profit, or any governmental unit or entity.

“Professional service” means those advisory, consulting, architectural, engineering, insurance, research or developmental services which involve the exercise of discretion and independent judgment together with an advanced or specialized knowledge, expertise or training gained by formal studies or experience.

“Purchasing officer” mean city manager or designee.

“Services” means those services of a nonprofessional nature which are described within contract specifications and which are needed or desired by the city.

“Supplies” means any tangible personal property.

3.21.020 Purposes and interpretation of chapter.

A. The purposes of this chapter are to:

1. Implement Charter Section 12.2, requiring that the council by ordinance provide for competitive bidding for goods, construction, and services, and for exceptions thereto;
2. Reasonably maximize the purchasing value of city funds;
3. To foster fair and open competition and discourage collusive bidding for city contracts consistent with the efficient operation of the city government; and
4. To obtain in a cost-effective and responsive manner the supplies, services, professional services, and construction required by the city in order for it to better serve its residents and businesses.

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

3.21.030 Powers and duties of the purchasing officer.

Except as this code provides otherwise, the purchasing officer shall have the following authority and responsibilities:

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

- C. To maintain all records pertaining to the procurement of supplies, services and construction, and the disposal of supplies, by the city;
- D. To join with other units of government in cooperative purchasing ventures where the best interests of the city would be served thereby;
- E. To compile and maintain, to the extent practicable, a bidders' list for supplies, services, professional services and construction utilized by the city if deemed necessary by the purchasing officer;
- F. To compile and maintain a log of all contracts awarded for supplies, services, professional services or construction, together with any amendments thereto; and
- G. Any other authorities and responsibilities which this chapter assigns the purchasing officer.

3.21.040 Centralization of procurement authority.

Except as this code provides otherwise, all rights, powers and authority pertaining to the procurement of supplies, services and construction required by the city are vested in the purchasing officer.

3.21.050 Standard specifications.

- A. Every using department shall propose, insofar as practicable, standard specifications for the supplies, services, professional services and construction that it requires.
- B. The purchasing officer shall adopt standard specifications for supplies, services and construction wherever practicable. The standard specifications adopted by the purchasing officer shall be based upon those proposed by departments, modified as necessary to maximize clarity, uniformity and open competition, while effectively serving the needs of the departments and the efficient operation of the city government.

3.21.060 Contracting authority.

The city may, pursuant to an award in accordance with chapter 3.21, contract with any person to acquire any supplies, services, professional services or construction required by the city.

3.21.070 Contracts enforceable against city.

No contract for supplies, services, professional 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.

3.21.080 Availability of funds.

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

3.21.090 Council approval of contracts.

- A. No contract for supplies, services, professional services or construction whereby the city is obligated to pay more than \$15,000.00 may be executed unless the council has first approved a memorandum setting forth the essential terms of the contract. To the extent applicable for particular contracts, the following essential terms shall be set forth:

1. the identity of the selected contractor and all contractors contacted;
 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.
- B. If contracts are awarded to more than one bidder pursuant to an invitation for bids, contracts with different bidders shall be considered separately for purposes of determining the application of subsection A of this section. If any contract to be awarded under a given bid is subject to council approval, the award of other contracts pursuant to the same invitation for bids may, at the discretion of the purchasing officer, be delayed pending council approval.
- C. No grant to a governmental or quasi-governmental agency or to a private nonprofit corporation for any amount may be issued unless the council has approved a memorandum setting forth:
1. the identity of the grantee;
 2. the grant amount;
 3. the purpose to which grant funds are to be devoted; and
 4. the department charged with administration of the grant.
- D. No contractor may provide supplies, services, professional services, or construction to the city before the applicable requirements of this section are first satisfied.
- E. Council approval of a memorandum as described in this section constitutes authorization for the city manager to execute the contract described in the memorandum.
- F. Regardless of the amount involved, all contracts for professional lobbying services must be approved in advance by the council.

3.21.100 Execution of contracts.

All city contracts for supplies, services, professional services and construction, and any amendments thereto, must be signed by the city manager or, in the absence of the city manager, by the acting city manager.

3.21.110 Contract administration.

- A. The using department shall administer all contracts for supplies, services or professional services except as otherwise designated by the city manager.
- B. The director of the public works department, or designee, shall administer all construction contracts, except as otherwise designated by the city manager.

3.21.120 Contract amendments--Permitted amendments.

Contract amendments shall not be used to avoid procurement by the competitive procedures established under this chapter. Except for emergency procurements authorized under this chapter, contracts for supplies, services, professional services and construction may be amended by the city manager only for the following reasons:

- A. To change the quantity ordered or date of delivery under a contract for supplies, where necessary to meet unforeseen city requirements;

- B. To change the quantity of services or professional services to be rendered or to change the scope of a project under a contract for services or professional services, where necessary to meet unforeseen changes in city requirements;
- C. To change the scope of a project or the scope of services or professional services under a construction contract to meet unforeseen city requirements or to change the specifications under a construction contract because unforeseen conditions render the original specifications impracticable;
- D. To change the time for completing a project under a contract for services, professional services or constructions;
- E. To correct an error in contract specifications made by the city in good faith, or to resolve a good-faith dispute between the city and a contractor as to a party's rights and obligations under the contract; or
- F. To change administrative provisions of a contract without materially altering the contract terms governing the quantity or quality of supplies, services, professional services or construction furnished the city.

3.21.130 Contract amendments--Council approval.

No contract amendment or change order that will cause the total value of the contract to increase by more than \$15,000 may be executed unless the council has approved a memorandum setting forth the essential terms of the amendment or change order request.

3.21.140 Contract amendments--Availability of funds.

No contract amendment that will increase 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 as amended.

3.21.150 Multi-year contracts.

- A. Subject to Charter Section 12.3, the city may enter into contracts for a term exceeding one year provided that the finance director certifies that funds for the city's performance during the fiscal year in which the contract term commences are available.
- B. The city's payment and performance obligations for the succeeding fiscal years of a multi-year contract shall be subject to the availability of funds lawfully appropriated therefore.
- C. Contracts for the construction are not to be construed as multi-year contracts; however, lawfully appropriated funds must be available for the term of the contract.

3.21.160 Competitive sealed bidding required; exceptions.

Unless otherwise authorized under this chapter or other provision of law, all city contracts for supplies, services and construction shall be awarded by competitive sealed bidding.

3.21.170 Solicitation and acceptance of bids.

- A. The purchasing officer 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. Public notice of the invitation for bids shall be published at least twice in a newspaper of general circulation in the city, with the first publication at least 14 days before the last

day on which bids will be accepted. The contents of the notice shall be sufficient to inform interested readers of the general nature of the supplies, services or construction being procured and the procedure for submitting a bid. The purchasing officer shall mail or otherwise deliver notices to a sufficient number of prospective bidders from a current bidders' mailing list if such is maintained in the purchasing office to afford equitable opportunity for competition. The failure of any person to receive notice under this subsection shall not affect the validity of any award or contract.

- C. The purchasing officer may provide for a pre-bid conference to be held at least seven days before the last day for submitting bids. At the pre-bid conference or at other times deemed appropriate by the purchasing officer, the terms of an invitation for bids may be modified or interpreted only by written addenda issued by the purchasing officer. Addenda to bids shall be sent to each recipient of the original bid documents. Only a bid acknowledging receipt of all addenda may be considered responsive, unless the addendum, in the opinion of the purchasing officer, would have no material effect on the terms of the bid.
- D. Sealed bids shall be designated as such on the outer envelope and shall be submitted by mail or in person at the place and no later than the time specified in the invitation for bids. Bids not submitted at the proper place or within the time specified shall not be opened or considered.
- E. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. Any bidder may, prior to award, may review bids after the purchasing officer or designee has tabulated or summarized them. The purchasing officer or designee shall tabulate the amount of each bid and shall record such other information as may be necessary or desirable 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 upon request.
- F. Bids shall be accepted unconditionally without alteration or correction. For purposes of determining the low bidder and the responsiveness of bids, no criteria except those set forth in the invitation for bids, including all specifications and addenda, may be used.

3.21.180 Award to be made only to qualified and responsible bidder submitting a responsive bid.

A contract award under this chapter shall be made only to a qualified and responsible bidder submitting a responsive bid. The purchasing officer shall determine whether a bidder is qualified and responsible on the basis of the following criteria:

- A. The skill and experience demonstrated by the bidder in performing contracts of a similar nature.
- B. The bidder's record for honesty and integrity.
- C. The bidder's capacity to perform in terms of facilities, personnel and financing.
- D. The bidder's past performance under city contracts. If the bidder has failed in any material way to perform its obligations under any contract with the city, the bidder may be deemed a non-responsible bidder.
- E. At all times the best interests of the city shall be recognized in awarding bids.

3.21.190 Procedures for award.

- A. At least five calendar days before council approval, the city will send notice to bidders of notice of intent to award the contract. Notice will be sent by fax if available to the three lowest bidders.
- B. Contracts shall be awarded by written notice issued by the purchasing officer to the qualified and responsible bidder submitting the lowest responsive bid.
- C. The city manager may reject any or all bids if he or she determines that it is in the best interests of the city.
- D. If the lowest responsive bid from a qualified and responsible bidder 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 officer 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, the purchasing officer may negotiate with the qualified and responsive bidder providing the lowest bid or up to the three qualified and responsible bidders providing the three lowest responsive bids, and may award or recommend to the council for award, the reduced contract to the best negotiated proposal.

3.21.200 Waiver of irregularities.

The council, or city manager for bids of \$50,000.00 or less, shall have the authority to waive irregularities on any and all bids, except that timeliness and manual signature requirements shall not be waived.

3.21.210 Competitive sealed proposals; negotiated procurement.

- A. If the purchasing officer determines that use of competitive sealed bidding is not practicable, not the most advantageous procurement method for the city, or not in the city's best interest, the city may procure supplies, services, or construction by competitive sealed proposals under this section. For purposes of this section, construction includes, by way of example and not limitation, design-build, design-build-operate-maintain, or design-build-finance-operate-maintain project delivery methods.
- B. The purchasing officer 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 as deemed appropriate by the purchasing officer. One or more pre-proposal conferences may be held by the purchasing officer or designee. A request for proposals may be modified or interpreted only in written addenda issued by the purchasing officer.
- C. Sealed proposals shall be designated as such on an outer envelope and shall be submitted by mail or in person at the place and no later than the time specified in the request for proposals. Proposals not submitted at the place or within the time so specified shall not be opened or considered.
- D. Proposals shall be received at the time and place designated in the request for proposals, and shall be opened so as to avoid disclosing their contents to competing proposers during the evaluation, discussion, and negotiation process. Notwithstanding public

records requirements, the contents of the proposals, tabulations and evaluations thereof shall be open to public inspection only after council approval of a contract award. However, the purchasing officer shall issue a notice of intent to award to all responding proposers at least five calendar days prior to council approval. Upon request by a competing proposer, the recommended awardee's proposal shall be opened for review. The review by a competing proposer is to assure reasonable access and opportunity to request a debriefing from the purchasing officer prior to council action on the proposed award. If an award does not require council approval, public inspection shall not be allowed until seven days after the purchasing officer has issued a notice of intent to award and there are no pending reviews or actions from any competing proposer.

- E. As provided in the request for proposals, the purchasing officer may enter into discussions with responsible proposers whose proposals are determined by the purchasing officer to be most reasonably responsive to the request for proposals (short-listed firms). The purchasing officer may issue an interim notice to the remaining firms that a qualified short list has been established for discussion purposes. No disclosure of the contents of proposals, tabulations or evaluations thereof shall be made in accordance subsection D above. Discussions shall be used to clarify and ensure full understanding of the requirements of the request for proposals. The purchasing officer may permit those short-listed firms to revise their proposals after submission and prior to award to obtain best and final offers. Proposers deemed eligible for discussions shall be treated equally regarding any opportunity to discuss and revise proposals. However, if during the discussions it is evident that the proposals, as submitted, will exceed the available funding, and/or other changes in the terms, conditions, or requirements are needed to clarify or fulfill the requirements of the city, the purchasing officer shall issue a written modification to those short-listed firms with an established date and time for the firms to respond. The failure of a short-listed firm to respond or to notify the purchasing officer of a needed time extension may be just cause to remove the proposer from further consideration. In conducting discussions or requesting revisions, neither the purchasing officer nor any other city officer or employee shall disclose any information derived from other competing proposals.
- F. If fair and reasonable compensation, contract requirements and contract documents can be agreed upon with the most qualified proposer, the contract may be awarded to that firm and no other firm.
- G. If fair and reasonable compensation, contract requirements and contract documents cannot be agreed upon with the most qualified proposer, the purchasing officer shall advise the proposer of the termination of negotiations. If the proposals were submitted by one or more other proposers determined to be qualified, negotiations may be conducted with such other proposers in the order of their respective rankings. The contract may be awarded to the proposer then determined to be most advantageous to the city.
- H. After the notice of intent to award referred to in subsection D, the award shall be made by written notice to the proposer whose final proposal is determined to be most advantageous to the city. No criteria other than those set forth in the request for proposals may be used in proposal evaluation. If the city manager determines that it is in the best interest of the city to do so, the city may reject all proposals.

3.21.220 Open market procedure.

- A. The purchasing officer may procure all budgeted supplies, services, professional services and construction having an estimated value of not more than \$50,000 on the open market without formal advertising or other formal bid procedures, but subject to the following.
- B. For procurements under this section over \$5,000, whenever practicable, at least three informal bids or quotations shall be solicited and a record kept thereof. The solicitation may be either oral or written, and shall be in a form reasonably calculated to yield the lowest responsive bid by a responsible bidder. In addition, for any procurement under this section over \$15,000, the solicitation and acceptance must be in writing. As required by 3.21.100, all contracts must be signed by the city manager or acting city manager.
- C. Awards, where practicable, shall be made to the responsible bidder submitting the lowest responsive bid. The purchasing officer shall keep a record of all open market bids received and awards made thereon.
- D. All contract awards under this section, and any amendments thereto, shall be subject to the applicable approval requirements of section 3.21.090 prior to execution.

3.21.230 Governmental and proprietary procurements.

- A. The purchasing officer may contract, without the use of the competitive source selection procedures of this chapter, for the following supplies, services, professional services or construction:
 - 1. For contracts, including reimbursable agreements, with Federal, State or local units of government or utility provider where the city has a financial responsibility or beneficial interest in entering into an agreement.
 - 2. For contracts issued pursuant to any Federal, State, or local government contract where the city is an authorized user, or where the resulting contractor agrees to extend the same terms, conditions, and pricing to the city as those awarded under the original contract, all in accordance with section 3.21.240. Such agreements shall be limited to those contracts where the award is issued pursuant to a formally advertised solicitation.
 - 3. For contracts where the purchasing officer determines in writing that the city's requirements reasonably limit the source for the supplies, services, professional service or construction to one person.
- B. All contract awards under this section and any amendments thereto, shall be subject to the applicable approval requirements of section 3.21.090 prior to execution.
- C. No contractor may provide supplies, services, professional services, or construction to the city before the applicable requirements of this section are first satisfied.

3.21.240 Joint purchasing.

- A. The city manager, upon approval of the city council, may join with other units of government in cooperative purchasing ventures for the purchase of personal property to include bid extension, where the best interest of the city would be served thereby, provided such other unit of government uses competitive bidding on the item purchased. The property to be purchased must be budgeted and substantially meet or exceed the city requirements for a similar item.
- B. The city manager, upon approval of the city council, may join with other units of government in the cooperative purchasing of professional services and products, where

the best interest of the city is served. The professional service or product must be budgeted and substantially meet or exceed the city requirements for a similar service or product.

- C. The city manager, upon approval of the city council, may purchase personal or real property from other governmental agencies, without competition, provided the manager presents to the council a writing describing the transaction, including a description of the property and its price.
- D. The other units of government may be outside of Alaska, to include other municipalities, states, and the federal government. If for a federal government purchase the point of purchase or contract is outside of Alaska or if the unit of non-federal government is outside of Alaska, then the bidder must agree (1) to have venue in Palmer, Alaska, for any dispute arising out of or related to the purchase or to the good or service provided, (2) to have the laws of the State of Alaska apply to all disputes arising out of or related to the purchase or to the good or service provided, and (3) to have the laws of no state other than the State of Alaska apply to all disputes arising out of or related to the purchase or to the good or service provided. If the goods are reasonably expected to require service over their lifetime, the bidder must certify that there is a service center for the goods within 50 miles of Palmer; provided that this requirement may be omitted by the city manager for good cause in writing. In addition, the bidder must agree to ship the goods FOB Palmer, Alaska, at the best shipping rate available providing for a reasonable delivery time, which shipping rate and time must be pre-approved by the city manager. The bidder must agree that the city will bear only that portion of the shipping costs FOB Palmer that exceed the shipping costs to the point of delivery under the contract with the other unit of government.

3.21.250 Emergency procurements.

The city may award a contract for supplies, services, professional services or construction without competition, formal advertising or other formal procedure where the city manager determines in writing that an emergency threatening the public health, safety or welfare requires that the contract be awarded without delay. The city manager shall make a report on such contract to the council no later than the next regular meeting following award of the contract.

3.21.260 Professional services.

- A. Except as authorized by 3.21.230 or 3.21.250, professional services shall be procured in accordance with the terms of this section.
- B. Persons interested in providing professional services for the city may submit statements of qualifications to the city manager.
- C. Notice of the need for professional services shall be given as deemed appropriate by the city manager. The notice shall describe the services required and shall list the type of information and data required of each person submitting a proposal. The notice shall state the factors to be considered in evaluating proposals and the relative importance of those factors.
- D. The department head and city manager may conduct discussions with any person who has submitted a proposal to determine the person's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other persons.

- E. Award shall be made to the person determined by the city manager, in consultation with the department head, to be the best qualified, and shall be for an amount of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best qualified person, negotiations shall be formally terminated with that person. If proposals were submitted by one or more other persons determined to be qualified, negotiations may be conducted with the persons, in order of their respective qualification ranking. The contract may be awarded to the person then ranked as best qualified if the amount of compensation is determined to be fair and reasonable.
- F. Other provisions of this chapter notwithstanding, legal services may be procured by direct negotiation with an attorney or law firm qualified to handle the type of legal problems presented. No negotiations or contract for services of legal counsel may be pursued without the prior approval in writing of the city manager.

3.21.270 Bonds.

- A. Bid bonds. The purchasing officer may require that persons submitting bids pursuant to this chapter accompany their bids with a bid bond in an amount and in a form acceptable to the purchasing officer. The 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 cashier's check from a bank with a branch in the Matanuska-Susitna Borough or the Municipality of Anchorage. A condition of the bond shall be that, if the bidder receives the award, the bidder shall enter into a contract therefore with the city.
- B. Performance and payment bonds. If a requirement for a performance and payment bond is included in the terms of the invitation to bid or request for proposals, the purchasing officer may require that any person awarded a city contract furnish such bond, issued by a company qualified by law to do business as a surety in the state. The bond shall be in an amount determined by the purchasing officer and in a form approved by the city attorney. Such bonds shall, at a minimum, guarantee the full and faithful performance of all contract obligations and payment for all labor and materials to be used under the contract.
- C. Exceptions. In accordance with AS 29.25.010(a)(10), the purchasing officer may grant exceptions from bonds pursuant to AS 36.25.025.

3.21.280 Waiver of formal procedures.

- A. The city manager may waive, in writing, some or all of the formal procedures of this chapter when there is not sufficient time to comply with the waived requirements or the best interests of the city will be served by such action.
- B. All contracts for which formal procedures are waived under this section shall be reported to the council at its next meeting. The report shall contain the information described in section 3.21.090 and shall summarize the reasons for proceeding under this section.

3.21.290 Administrative review of bid protests.

- A. Policy. The city establishes these administrative review procedures for bid protests to promote the fair and efficient resolution of such disputes over contracts awarded by the city pursuant to the provisions of this chapter regarding bids and requests for proposals. Bid protest procedures are established to ensure the integrity of the public bidding process. Time is of the essence in any bid protest. All bid documents the city issues shall be deemed to contain language advising bidders of the right to protest the determination

of the successful bid as set out in this section. (For purposes of this section the term "bidder" includes the term "proposer," the term "bid" includes the term "proposal," and the term "intended awardee" means the bidder named in the purchasing officer's notice of intent to award.)

- B. Time lines for protests. A protest based on alleged improprieties or ambiguities in an invitation to bid or a request for proposals must be filed with the purchasing officer at least 10 days before the due date of the bid or proposal. Failure to meet this time line shall constitute a waiver of the protesting party's rights and a bar on any further action regarding this matter. A protest based upon alleged improprieties in an intended award of a contract must be filed with the purchasing officer with a copy previously served upon the intended awardee within two business days after a notice of intent to award the contract is issued. Failure to meet this time line shall constitute a waiver of the protesting party's rights and a bar on any further action regarding this matter.
- C. Bid protest. The bid protest shall be in writing on a form provided by the purchasing officer. The protest shall include the following:
 - 1. the name, address, telephone number, and continuously operating fax number of the protester;
 - 2. identification of the invitation or request at issue;
 - 3. a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents;
 - 4. the form of relief requested;
 - 5. certification under oath that the claim is made in good faith and that the supporting data are accurate and complete to the best of the bidder's knowledge and belief; and
 - 6. the signature of the protester or the protester's representative.

If the protest is not timely or does not meet the requirements of this subsection C, it shall be denied.
- D. Purchasing officer decision. The purchasing officer shall conduct a review in consultation with the city attorney. Within three business days of receipt of the bid protest unless the purchasing officer needs more time, the purchasing officer shall issue a determination. The determination shall be in writing, supported by findings and conclusions addressing the issues raised in the bid protest. The decision shall include a statement substantially as follows:

This is the final decision of the purchasing officer. This decision may be appealed. If you appeal, you must deliver your appeal, along with \$250, to the city clerk within three business days after service by fax or otherwise of the purchasing officer's decision.

The determination shall be served on the bid protester and the intended awardee by fax and U.S. mail.
- E. Stay of award. If a protest is filed the award may be made unless the purchasing officer determines in writing that a
 - 1. reasonable probability exists that the protest will be sustained; or
 - 2. stay of the award is not contrary to the best interests of the city.

The purchasing officer is under no duty to stay the award.
- F. Protest remedies.
 - 1. If the purchasing officer sustains a protest in whole or in part, the purchasing officer shall implement an appropriate remedy.

2. In determining an appropriate remedy, the purchasing officer shall consider the circumstances surrounding the solicitation or procurement including the seriousness of the procurement deficiencies, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent the procurement has been accomplished, costs to the city and other impacts on the city of a proposed remedy, and the urgency of the procurement to the welfare of the city.
 3. Notwithstanding (1) and (2) of this subsection, if a protest is sustained in whole or part, the protester's damages are limited to reasonable bid or proposal preparation costs.
- G. Notice of appeal. The bid protester or intended awardee may appeal the purchasing officer's decision on a bid protest as follows:
1. Time line for filing an appeal. An appeal must be received by the clerk's office within three business days after service by fax or otherwise upon appellant of the purchasing officer's decision along with a filing fee in the amount of \$250. Failure to file and submit the fee within three business days shall result in an appeal being denied as untimely without further process and shall constitute a waiver of the protesting party's rights and a bar on any further action.
 2. Procedure for filing. An appeal shall be filed on a form provided by the clerk. The clerk's form shall require the party to provide the following information:
 - (a) Information on the bid including the bid number and the subject matter of the bid.
 - (b) Information on the party filing the appeal, including the business name of the party, contact information including full name of the business, name of a contact, address, telephone number, and fax number;
 - (c) If the party is represented by counsel, the name, address, telephone number, and fax of counsel; and
 - (d) Certification that a copy of all the appeal documents have been served on all other bidders who participated in any way in the bid protest, including without limitation, the purchasing officer and the intended awardee (if the protest was not granted) or the bid protester (if the protest was granted).
- H. Hearing officer review. A hearing officer shall be appointed and shall have jurisdiction over the bid protest appeal. The clerk's office shall contact the hearing officer when the appeal is filed. The appointment should be made within two business days of the filing of the appeal.
- I. Clerk's notice. The clerk shall give notice of the appeal to the city and all parties participating in the protest by fax, if available, and shall supplement the fax notice with notice by US mail or personal delivery within two business days of the filing of the appeal.
- J. Record. Within three business days of receiving notice of appeal, the purchasing officer shall submit the record of the bid to the clerk. The clerk shall mail the record to the parties within two business days of receipt by the clerk.
- K. Hearing date and briefing schedule. The hearing officer shall set a hearing date at least 10 calendar days and no later than 20 calendar days from the date the record is mailed or personally served. The hearing officer shall issue a calendaring notice for briefing and exhibit filing. The calendaring notice shall be served by fax and mail. Unless otherwise agreed to by the parties, the briefing date shall be set by the hearing officer as follows:

1. Briefs. Briefs shall be drafted to conform with the Alaska Rules of Civil Procedure and shall be served on participating parties and filed no later than five calendar days before the hearing. Briefs may include an appendix with evidence upon which the party intends to rely at hearing.
 2. Exhibits. All exhibits shall be served on participating parties and filed with the hearing officer no later than five calendar days before the hearing.
 3. Service of all material shall be by fax and, if necessary, an alternative means to assure timely service of readable documents.
- L. Hearing.
1. Representation. All parties may be represented by counsel.
 2. Conduct of hearing. The hearing shall be conducted in an informal matter and the hearing officer has the discretion to conduct the hearing in a manner which enable the issues and facts to be presented in an efficient manner that conforms to due process.
 - (a) The parties shall have the right to present witnesses and evidence.
 - (b) The parties shall have the right to cross-examine opposing witnesses and rebut evidence.
 - (c) The hearing will be open to the public.
 - (d) The hearing shall be recorded.
 3. The hearing officer shall review the city's award of the contract using a preponderance of evidence standard with the burden of proof on the person appealing from or protesting the purchasing officer's determination.
- M. Finding and decision. The hearing officer's findings are limited to rejecting or upholding the notice of intent to award the contract. If the hearing officer rejects the notice of intent to award, the matter shall be remanded to the city for further action. The hearing officer's decision will be written findings of fact and conclusions of law and be made within five days of the end of the hearing. The decision shall include a statement substantially as follows:
- This is the final decision of the hearing officer. This decision may be appealed to court. If you appeal, you must commence your lawsuit in the Superior Court for the State of Alaska at Palmer within thirty (30) days after your receipt of this decision. The hearing officer shall deliver the written decision to the clerk and serve the written decision on the parties by fax and by mail.
- N. Appeal to superior court. An appeal may be made from the written decision of the hearing officer pursuant to the Alaska Rules of Appellate Procedure to the superior court for the State of Alaska at Palmer only.

3.21.300 Administrative review regarding claims (excluding bid protests).

- A. A person having a claim concerning a contract or other matter arising out of this chapter (other than a bid protest as covered in section 3.21.290) may file the claim with the purchasing officer. The claim must be accompanied by a filing fee in the amount of \$250. When filing the claim, the claimant shall certify under oath:
1. that the claim is made in good faith,
 2. that the supporting data are accurate and complete to the best of the claimant's knowledge and belief, and
 3. that the amount requested accurately reflects the adjustment for which the claimant reasonably believes the city is liable.

- B. A claim under this section must be filed within 30 days after the claimant becomes aware of the basis of the claim or should have known the basis of the claim or within such shorter period as may be required in the contract, whichever is earlier. If the claim does not meet the requirements of subsections A and B, it shall be denied.
- C. If a claim asserted concerning a matter arising out of this chapter cannot be resolved by agreement; the purchasing officer shall issue a written decision and serve it upon the claimant. The purchasing officer shall make the decision not more than 30 days after receipt of all necessary information from the claimant, except that if the claim is for more than \$50,000, the decision will be made within 60 days after receipt of all necessary information. If the claimant fails to furnish necessary information requested by the purchasing officer, the purchasing officer shall proceed to decide the claim and may, in the purchasing officer's discretion, deny all or part of the claim because of the failure to furnish necessary information. During an appeal under this chapter, the claimant may not rely on or introduce information that the claimant has failed to furnish to the purchasing officer in support of the claim. Before issuing the decision, the purchasing officer shall review the facts relating to the claim and obtain necessary assistance from legal, fiscal, and other advisors.
- D. The purchasing officer shall furnish a copy of the decision to the claimant by certified mail or other method that provides evidence of receipt. The decision must include
 - 1. a description of the claim;
 - 2. a reference to the pertinent contract provisions;
 - 3. a statement of the agreed upon and disputed facts;
 - 4. findings of fact about the claim;
 - 5. a determination of any amount payable;
 - 6. a statement of reasons supporting the decision; and
 - 7. a statement substantially as follows:
 "This is the final decision of the purchasing officer. This decision may be appealed to a hearing officer. If you appeal, you must file a written notice of appeal with the city clerk within 14 days after you receive this decision."
- E. If the purchasing officer does not issue a written decision by the date it is due, the claimant may proceed as if the purchasing officer had issued a decision adverse to the claimant.
- F. If a claim asserted by the city concerning a matter arising of this chapter cannot be resolved by agreement, the purchasing officer may notify the clerk and request appointment of a hearing officer.

3.21.310 Appeal regarding claims (excluding bid protests).

- A. An appeal from a decision of the purchasing officer on a claim (excluding bid protests) arising out of a matter in this chapter may be filed by the claimant with the city clerk. The appeal by a claimant shall be filed within 14 days after the decision is received by the claimant. An appeal by a claimant may not raise any new factual issues or theories of recovery that were not presented to and decided by the purchasing officer in the decision under section 3.21.300. The claimant shall serve a copy of the appeal with the purchasing officer at the time of filing with the clerk.
- B. An appeal must contain a copy of the decision being appealed and identification of the factual or legal errors in the decision that form the basis for the appeal.

C. The clerk shall appoint the hearing officer from a list approved by the council.

3.21.320 Hearing procedures (excluding bid protests).

- A. The hearing officer shall arrange for a prompt hearing and notify the parties in writing of the time and place of the hearing. The hearing shall be conducted in an informal manner.
- B. The hearing officer may
 - 1. hold pre-hearing conferences to settle, simplify, or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;
 - 2. require parties to state their positions concerning the various issues in the proceeding;
 - 3. require parties to produce for examination those relevant witnesses and documents under their control;
 - 4. rule on motions and other procedural matters;
 - 5. regulate the course of the hearing and conduct of the participants;
 - 6. establish time limits for submission of motions or memoranda;
 - 7. impose appropriate sanctions against a person who fails to obey an order of the hearing officer, including
 - (a) prohibiting the person from asserting or opposing designated claims or defenses or introducing designated matters into evidence;
 - (b) excluding all testimony of an unresponsive or evasive witness; and
 - (c) excluding a person from further participation in the hearing;
 - 8. take official notice of a material fact not appearing in evidence, if the fact is among the traditional matters subject to judicial notice;
 - 9. administer oaths or affirmations;
 - 10. exclude witnesses when not testifying.
- C. The parties shall have the right:
 - 1. to present witnesses and evidence, and
 - 2. to cross-examine opposing witnesses and rebut evidence.
- D. The hearing will be open to the public.
- E. The hearing shall be recorded. A transcribed record of the hearing shall be made available at cost to a party that requests it.
- F. The hearing officer shall review the purchasing officer's decision using a preponderance of evidence standard with the burden of proof on the claimant.
- G. Finding and decision. The hearing officer's decision will be written findings of fact and conclusions of law and be made within 30 days of the end of the hearing, except that if the amount claimed exceeds \$50,000, the decision will be made within 75 days of the end of the hearing. The decision shall include a statement substantially as follows:
 This is the final decision of the hearing officer. This decision may be appealed to court. If you appeal, you must commence your lawsuit in the Superior Court for the State of Alaska at Palmer within thirty (30) days after your receipt of this decision.
 The hearing officer shall deliver the written decision to the clerk and serve the written decision on the parties by fax and by mail.
- H. Appeal to superior court. An appeal may be made from the written decision of the hearing officer pursuant to the Alaska Rules of Appellate Procedure to the superior court for the State of Alaska at Palmer only.

3.21.330 Misrepresentations and fraudulent claims.

- A. A person who makes or uses in support of a claim or a bid protest under this chapter a misrepresentation, or who practices or attempts to practice a fraud, at any stage of proceedings relating to a matter arising out of this chapter:
 - 1. forfeits all claims relating to that procurement or contract; and
 - 2. is liable to the city for reimbursement of all sums paid on the claim, for all costs, including without limitation actual attorney's fees, attributable to review of the claim or protest, and for a civil penalty equal to the amount by which the claim is misrepresented.
- B. The purchasing officer, hearing officer, or court shall make specific findings of misrepresentation, attempted fraud, or fraud before declaring a forfeiture under A. 1. of this section.
- C. Suits to recover costs and penalties under A. 2. of this section must be commenced within six years after the discovery of the misrepresentation, fraud, or attempted fraud.
- D. In this section, "misrepresentation" means a false or misleading statement of material fact, or conduct intended to deceive or mislead concerning material fact, whether it succeeds in deceiving or misleading.

3.21.340 Exclusive remedy.

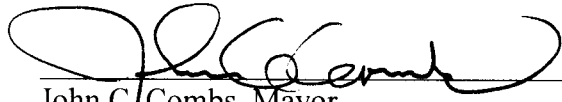
The bid protest and claims procedures in this section provide the exclusive procedure for asserting a bid protest or claim against the city in relation to a matter arising under this chapter.

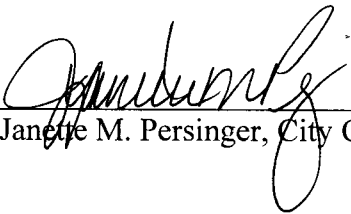
3.21.350 Conflict of interest.

- 1. All purchases and contracts shall be for the public benefit of the city.
- 2. Any city official, officer or employee who has financial interest, direct or indirect, or by reason of ownership in any land, materials, supplies, goods, or services, or regarding 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. He or she shall file with the city clerk a statement, under oath, setting forth the nature of such business dealings, and his or her interest therein, not less than ten days before the date when action may be taken by the council or by any officer or agency of the city upon the matter involved. Such statement shall be sufficient for continuing transactions of a similar or like nature for six months from the date of its filing. Any city official, officer or employee who willfully conceals such a financial interest or willfully violates the requirements of this section is guilty of malfeasance in office or position and shall forfeit his 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 city council.
- 3. There shall be no hidden charges, remuneration, kickback, or any other financial consideration not specifically stated in the lease, contract, or in the notice and instructions to bidders. Violation of this section shall render the contract voidable by the city council.
- 4. If the person who willfully violates this section is an officer or employee of the city, he or she shall immediately forfeit the office or position he or she holds upon proof of the violation.

Section 5. Effective Date. This ordinance shall become effective immediately upon certification of the election held October 5, 2004, provided that Proposition No. 2 passes at that election.

Adopted by the City Council of the City of Palmer, Alaska, this 16th day of November, 2004.



John C. Combs, Mayor

Janette M. Persinger, City Clerk