

CHAPTER 10
PURCHASES, DISPOSALS AND SALES

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1-10-1: SHORT TITLE:

This chapter shall be known and may be cited as the PURCHASES, DISPOSALS AND SALES ORDINANCE OF FILLMORE CITY.

1-10-2: PURPOSE:

The underlying purposes of this chapter are to:

- A. Encourage competition in a transparent manner;
- B. Procure the best value to the City; and
- C. Provide fair treatment of persons who conduct business or wish to conduct business with the City.

1-10-3: DEFINITIONS:

The following words and phrases used in this chapter shall have the following meanings unless a different meaning clearly appears from the context:

BUILDING IMPROVEMENT PROJECT: The construction or repair of a public building or structure.

CITY PROPERTY: Any item of real or personal property owned by the City.

CITY: Means the City of Fillmore, the redevelopment agency of the City of Fillmore, and all departments and divisions of the City of Fillmore.

EMERGENCY: Under conditions which reasonably do not permit fulfilling all of the purchasing requirements provided for in this chapter, an emergency is an imminent threat to the public's health, welfare, or safety; an imminent and substantial risk of injury or loss to persons or property; or an imminent risk of interruption of an essential public service. An emergency includes but is not limited to natural disasters, epidemics, riots, equipment failures, or such other reason as may be determined by the legislative body.

PUBLIC WORKS PROJECT: The construction of a street, road, curb and gutter, sidewalk, power line or electrical generation or transmission facility; a public park, trail, or other recreational facility; a pipeline, culvert, dam, canal, or other system or facility for water, sewage, stormwater, or flood control; or any other public infrastructure, system, or improvement constructed, owned, operated, or maintained by the City.

PURCHASING AGENT: The Purchasing Agent of the City, designated pursuant to section 1-10-4.

PROFESSIONAL SERVICES: Includes, but is not limited to, the following services: medical diagnosis or treatment; veterinary; psychological or emotional diagnosis, testing, analysis, counseling or treatment; auditing; banking; insurance; bonding; risk management; engineering; architectural; legal; public surveying and statistical analysis; hazardous substance consulting and disposal; construction management; tax consulting; financial investment; appraisal; title research; geology consulting; hydrology; history; technical writing; seismic consulting; impresarios, producers, directors, music conductors, choreographers, authors, artists, and other artistic services; and other consulting services which require a high level of training, skill and special knowledge not common among lay people.

SURPLUS PROPERTY: Any City property, which is obsolete, unused, not needed for a public purpose, or ineffective for current use.

1-10-4: PURCHASING POWER AND AUTHORITY:

- A. **Office Of Purchasing Agent:** There is hereby created for the City the Office of City Purchasing Agent (the "Purchasing Agent"). The Purchasing Agent shall be the City Recorder.
- B. **Duties Of Purchasing Agent:** The Purchasing Agent shall perform all duties and shall have the powers and duties prescribed by and subject to this chapter, including the duty to purchase or contract for all goods and services needed by the City.
- C. **Unlawful Purchases:** Except as otherwise set forth herein or in the Fillmore City Purchasing Policy, it shall be unlawful for any officer or employee of the City to order or purchase any goods or make any contract within the purview of this chapter, other than through the Purchasing Agent.
- D. **Other Powers:** In addition to any other powers and duties conferred by this chapter, the Purchasing Agent shall:
 - 1. Minimize expenditures and act to procure for the City the highest quality in goods and services at the least expense to the city.

2. Encourage competition and endeavor to obtain as full and open competition as possible on all purchases and sales.
 3. Implement all rules and regulations authorized by this chapter and any others necessary to its operation.
 4. Prescribe and maintain such forms as are reasonably necessary.
 5. Make bulk purchases when possible to take advantage of bulk purchase discounts.
 6. Determine and obtain all State and Federal tax exemptions to which the city is entitled.
 7. Supervise budget and secure maximum accounting efficiency.
 8. Keep records of all required documentation regarding purchases and sales.
- E. Authority To Disqualify Bidders: With the approval of the City Council, the Purchasing Agent shall have the authority to declare as irresponsible bidders, those who default on their quotations, and to disqualify them from receiving any business from the City for a period of time to be determined by the Purchasing Agent and the City Council.

1-10-5: AUTHORIZATION FOR CITY PURCHASES:

- A. Purchases of five thousand dollars (\$5,000) or less may be authorized on the signature of the Purchasing Agent alone.
- B. Purchases greater than five thousand dollars (\$5,000) and less than ten thousand dollars (\$10,000) require the signature of the Purchase Agent and the Mayor or council member in charge of the requesting department.
- C. Purchases of ten thousand dollars (\$10,000) or more require the signatures of the Purchasing Agent and the Mayor as well as approval of the City Council.

1-10-6: GENERAL PURCHASING PROCEDURE:

- A. Purchases of goods or services of an estimated cost of ten thousand dollars (\$10,000) or less may be made in the open market without advertisement, without complying with formal purchase procedures, and without a written agreement except as provided in this section. Purchases under this section may be made after soliciting bids by at least one of the following methods: direct response to prospective vendors, telephone, or by public notice posted at the City Office. Sufficient effort should be made on all purchases, regardless of cost, to determine the best value before any purchase is initiated. A written agreement is required for goods or services if the purchases require customization, have unique design criteria, or special terms.
- B. Purchases of goods or services of an estimated cost greater than ten thousand dollars (\$10,000.00) but less than (\$40,000.00) may be made by procuring written price quotes, without advertisement, without complying with formal purchase procedures, and without a written agreement except as provided in this section. A written agreement is only required for goods or services if the goods require customization, have unique design criteria, or special terms.
- C. Purchases of goods or services of an estimated cost of forty thousand dollars (\$40,000.00) or more are subject to the formal purchase procedure and shall be awarded to the lowest responsible

bidder. A written agreement is required for goods or services if the goods require customization, have unique design criteria, or special terms.

- D. Minimum Number of Bids: Whenever possible, all purchases shall be based on at least two (2) bids. This does not include exempted purchases under section 1-10-11.

1-10-7: FORMAL PURCHASE PROCEDURE - PURCHASES OF \$40,000 OR MORE:

A. Invitation For Bids (“IFB”)

1. This process shall be used when the nature of the work to be performed or the product to be purchased is known and can be adequately and accurately described in the bid documents. Such services and goods, except as otherwise set forth herein or in the Fillmore City Purchasing Policy, when the estimated cost thereof shall totals forty thousand dollars (\$40,000.00) or more, shall be purchased by formal written contract from the lowest, responsive, responsible bidder after invitation for bids has been made.
2. Required documentation: All IFBs shall have the following minimum documentation:
 - a. Notice inviting bids; and
 - b. Instructions to bidders.
3. Notice Inviting Bids: At a minimum, the notice inviting bids shall include a general description of the goods or services being solicited in sufficient detail as to enable a reasonable bidder to formulate a bid; the location where interested bidders may secure bid documents; the deadline and location for bids to be submitted; and the time and location for opening bids.
4. Instructions to Bidders: At a minimum, when reasonably necessary considering the types of goods or services being solicited, the instructions to bidders should include the following:
 - a. Bonding and insurance requirements;
 - b. The process bidders shall use to ask questions during the proposal process;
 - c. Site visits;
 - d. Necessary licensure requirements;
 - e. Due dates and location for submitting bids;
 - f. Page limits and format of the bid;
 - g. Delivery terms and/or completion deadlines;
 - h. Review of this Chapter 10, including the local bidder preference requirements; and
 - i. The City’s right to waive certain matters and/or reject any and all bids.

Commented [RW1]: Should the sealed bid include this information, or should the request for bid (information provided to contractor’s by the City). The notice of invite

Commented [RW2]: If necessary.

B. Request for Proposal (“RFP”)

1. This process shall only be used when the Purchasing Agent determines that this process is more advantageous to the City, the use of the sealed bid procedure is impractical, or the nature of the work to be performed or the product to be purchased is either unknown or cannot be adequately and accurately described. Such goods and services, except as otherwise set forth herein or in the Fillmore City Purchasing Policy, when the estimated cost totals forty thousand dollars (\$40,000.00) or more, shall be purchased by formal written contract from the highest-

ranking proposal after request for proposals has been made. The City may use this process notwithstanding the estimated cost being less than forty thousand dollars (\$40,000.00).

2. Required documentation: All RFPs shall have the following minimum documentation:
 - a. Notice inviting proposals; and
 - b. Instructions to responders.
3. Notice Inviting Proposals: At a minimum the notice inviting proposals shall include: a general description of the goods or services being solicited, including a description of the solicited goods or services in enough detail that a reasonable responder can formulate a proposal; the location where interested responders may secure RFP documents; and the deadline and location for proposals to be submitted.
4. Instructions to Responders: At a minimum, when reasonably necessary considering the types of goods or services being solicited, the instructions to responders should include the following:
 - a. Bonding and insurance requirements;
 - b. The process responders shall use to ask questions during the proposal process;
 - c. Site visits;
 - d. Necessary licensure requirements;
 - e. Due dates and location for submitting proposals;
 - f. Page limits and format of the bid;
 - g. The criteria the City will use in evaluating proposals; and
 - h. The City's right to waive certain matters and/or reject any and all bids.

C. Notice Publication Requirements:

1. An IFB or RFP, with an estimated cost or value of forty thousand dollars (\$40,000.00) or more, shall be published for at least ten (10) days prior to the closing date on the Fillmore City website and on the Utah Public Notice website. The Agent shall also advertise all pending IFBs or RFPs by a notice posted at the City office. An IFB or RFP may also be advertised in a newspaper of general circulation in Fillmore City and in trade publications or on trade specific websites when appropriate in order to adequately promote the IFB or RFP.
2. The notice required herein shall include the information under (B)(3) or (C)(3), respectively.

D. Opening Procedures:

1. Sealed Bids; Identification: Sealed bids or proposals shall be submitted to the Purchasing Agent or its designee, as required by the instructions, and shall be identified as a bid or proposal on the outside of the envelope.
2. Opening: Bids shall be opened in public at the time and place stated in the public notices.
3. Public Inspection Of Tabulation: A tabulation of all bids received shall be available for public inspection.

E. Rejection of Bids: The City Council shall have the authority to reject any bid or proposal, parts of any or all bids or proposals, or all bids or proposals for any one or more goods or services included

in the invitation or request upon a determination that awarding the bid or proposal would not be in the best interest of the City. Such reasons may include: the bids or proposals exceed the budget for the project or activity or the bid fails to comply with all of the requirements of the bidding process.

- F. Surety: When deemed necessary to protect the best interests of the City, bid deposits shall be prescribed in the public notices inviting bids. Unsuccessful bidders shall be entitled to return of surety. A successful bidder shall forfeit any surety required by the Purchasing Agent on failure of the bidder to enter a contract within ten (10) days after the award.
- G. Award to Lowest Responsive Responsible Bidder: Upon City Council approval, the Purchasing Agent shall have the authority to award contracts within the scope of this chapter to the lowest responsive responsible bidder. In determining "lowest responsive responsible bidder", in addition to price, the Purchasing Agent shall consider:
 - 1. The quality of the goods or services to the particular use required;
 - 2. The ability, capacity, and skill of the bidder to perform the contract or provide the goods or service required;
 - 3. The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
 - 4. The quality of the bidder's performance on previous orders or contracts for the City or others;
 - 5. The sufficiency of the bidder's financial resources and the effect thereof on his ability to perform the contract or provide the goods or services;
 - 6. Litigation by or against the bidder, either pending or threatened, where claim is made that the bidder provided or furnished materially defective workmanship or materials to the City, or failed to substantially comply with bid specifications or contract terms and conditions;
 - 7. Any previous or existing noncompliance by the bidder with laws and ordinances of the City relating directly or indirectly to the subject of the contract;
 - 8. The ability of the bidder to provide future maintenance and service, where such maintenance and service is essential;
 - 9. Whether the bidder can perform the contract or provide the goods promptly, or within the time specified, without delay or interference;
 - 10. Whether the bidder is a local bidder, using the preference and following the procedure set forth in section 1-10-10.
- H. Award to Other Than Lowest Bidder: If a low bidder is not awarded the bid, he/she shall have the right to request and receive a statement of the reasons why the bid was not accepted.
- I. Tie Bids: Tie bids shall be handled in one of the following ways:

1. Local Vendors: If all bids received are for the same total amount or unit price, quality and service being equal, and one of the bidders is eligible for the local bidder preference, the contract shall be awarded to the local bidder;
2. Outside Vendors: If there is no local vendor or there is a tie between local vendors who are both eligible for the local bidder preference, the Purchasing Agent shall award the contract in one of the two following manners:
 - a. To the low bidder after sending back for reconsideration and revision specified line items to be rebid, in a process the same or similar to that outlined in subsection (A); or
 - a. By having the tie bidders draw lots in public.

1-10-8: DEPARTMENT PURCHASE REQUESTS:

- A. Purchase requests are to be made by department heads to the Purchasing Agent.
- B. Requisition and Estimates: All departments of the City shall file with the Purchasing Agent detailed requisitions or estimates of their requirements for goods and services in such manner, at such times, and for such future periods as the Purchasing Agent shall prescribe.
- C. Unforeseen Requirements: A department shall not be prevented from filing, in the same manner, with the Purchasing Agent at any time a requisition or estimate for any goods and services, the need for which was not foreseen when the detailed estimates were filed.
- D. Revisory Power In Agent: The Purchasing Agent shall examine each requisition or estimate and shall have the authority to revise it as to quantity, quality or estimated cost; but revision as to quality shall be in accordance with the standards and specifications established pursuant to this chapter prior to making revisions. The Purchasing Agent shall confer with the requisition maker.

1-10-9: BUILDING IMPROVEMENT PROJECT, PUBLIC WORKS PROJECT, AND CLASS C ROADS

- A. Building Improvement Project or Public Work Project: Any expenditure of the City involving building improvements or public works projects shall comply with applicable provisions set forth at Utah Code Ann. § 11-39-101 et seq., as amended.
- B. Class C Roads: Any expenditure of the city involving the construction, maintenance or improvement project of a Class B or C road or work excluded under Section 11-39-104 of the Utah Code Annotated, as amended, shall comply with applicable provisions of the State Transportation Code, including, but not limited to Utah Code Ann. §§ 72-6-108, 72-6-109, as amended.
- C. Change Orders: The city council member assigned to a department, under which a project is bid or proposed, has discretion and is authorized to approve extra work or change orders on City construction projects in an amount not to exceed the approved budget for the project, if such change is in the best interests of the City and such change is based on an unforeseeable circumstance. Notice of such provision may be included in the IFB or RFP.

1-10-10: LOCAL BIDDER PREFERENCE:

- A. Findings and Policy: Unless otherwise prohibited by federal law or by the terms of a federal grant or loan, a local bidder shall receive a preference on the terms and conditions set forth in this section due to the economic multiplier effect of dollars being spent in the local economy and a tax base increase, thus benefitting the residents and businesses of the City and the surrounding area.
- B. Local Bidder Defined: For purposes of this section, a local bidder means the contractor or supplier submitting the bid and providing any required performance, payment, and other bond, that has a current Fillmore City business license and its principal place of business located within the boundaries of Fillmore City. If no bidders qualify within Fillmore City, the same preference and procedures shall be extended to contractors or suppliers within Millard County.
- C. Affidavit Required: A local bidder may take advantage of the local bidder preference by submitting with their bid an affidavit, signed before a notary swearing that they wish to take advantage of the local bidder preference and will comply with the terms of this section and any successor or replacement sections of this Code.
- D. Match: A local bidder taking advantage of the local bidder preference shall, if their bid is within five percent (5%) of the lowest responsive responsible bidder's bid received for the work requested or the goods to be furnished, be qualified to be the lowest responsive bidder, provided they match the bid that would otherwise qualify a bidder as the lowest responsible bidder.
- E. Award To Other Bidder: Notwithstanding a local bidder being willing to match the low bid price as set forth above, the contract may be awarded to another bidder based on subsection 1-10-7(G)(1)-(9) of this chapter.
- F. Local Pricing and Purchasing: A local bidder shall price goods locally and purchase competitively priced goods from local suppliers.
- G. Hiring: To the greatest extent possible, a local bidder shall hire its labor force from within Millard County and submit supporting documentation to show its use of Millard County residents in its labor force.

1-10-11: EXEMPTIONS:

- A. Auctions and Similar Sales: The City may make exceptions required under this chapter if it is determined that a good can be purchased at any public auction, closeout sale, bankruptcy sale, estate sale, or other similar sale, and such purchase at any such sale will be made at a cost below the market cost in the community, a contract or contracts may be let, or the purchase made, without complying with the competitive bidding requirements of this article, after City Council approval during a public meeting where a maximum amount will be determined by the City Council.
- B. Cooperative Purchases (Utah State Contract): The City may make exceptions to the procedures required under this chapter if utilizing cooperative purchasing contracts, including but not limited to those contracts administered by the Utah Division of Purchasing.
- C. Emergency Purchases: If the City Council is unable to meet and formally approve the suspension of competitive bidding requirements, such requirements may be suspended upon personal verbal approval of a majority of the council members after explanation of the circumstances, subject to formal ratification at the first public City Council meeting after authorization of the expenditures. Emergency procurement shall be limited to only those goods or services necessary to meet the

emergency. If the situation allows, the Purchasing Agent shall attempt to achieve as much competition in the emergency procurement process as reasonably practical.

- D. Federal or State Funds: When procurement involves the expenditure of federal or state assistance funds, the City shall make exceptions to the procedures required under this chapter to the extent necessary to comply with applicable federal and state law and regulations related to the use of those funds.
- E. Grants, Gifts, and Bequests: The City may make exceptions to the procedures required under this chapter to the extent necessary to comply with the terms and conditions of any grant, gift, or request, that are otherwise consistent with the law.
- F. Previously Bid: The City may make exceptions to the procedures required under this chapter, if the good or service was previously bid and one of the two following situations occurred: (1) The prior bid included a renewal clause, or (2) The prior bid was solicited within one year.
- G. Professional Services: The City may make exceptions to the procedures required under this chapter if such contract is for professional services.
- H. Projects Performed by City Employees: The City may make exceptions to the procedures required under this chapter if such projects are routinely performed by City employees, that are otherwise consistent with the law.
- I. Routine Expenses and Payroll Payments: The City may make exceptions to the procedures required under this chapter as stated in the Fillmore City Purchasing Policy.
- J. Sole Source Provider Purchases: The City may make exceptions to the procedures required under this chapter if the procurement of goods, services or construction items are only reasonably available from a single provider. The Purchasing Agent shall find in writing that there is only one source for the good or service.

1-10-12: PROHIBITION AGAINST SUBDIVISIONS:

Prohibition Against Subdivision: No contract or purchase shall be subdivided to avoid the requirements of this section.

1-10-13: PROHIBITION OF INTEREST:

- A. Specified; Waiver: Any purchase order or contract within the purview of this chapter in which the Purchasing Agent, or any officer or employee of the City, is financially interested, directly or indirectly, shall be void, except that before the execution of a purchase order or contract, the Council shall have the authority to waive compliance with this section when it finds such action to be in the best interests of the City and if the officer or employee has fully disclosed his/her interest in any transaction over five hundred dollars (\$500.00) prior to the award of the purchase order or contract.
- B. Petition For Consideration: Any officer or employee of the City may petition the City Council to authorize the Purchasing Agent to consider them to compete with other vendors for orders from the City of five hundred dollars (\$500.00) or less without appearing before the Council each time.
- C. Awards, Gifts, Rebates: The Purchasing Agent and every officer and employee of the City are expressly prohibited from accepting, directly or indirectly, from any person, company, firm or

corporation to which any purchase order or contract is, or might be, awarded, or any rebate, gift or money, except where given for the use and benefit of the City.

1-10-14: PROTESTS:

The City adopts and incorporates by reference in this Code, the Utah State Procurement Code, Utah Code Annotated section 63G-6a-1601 *et seq.*, or its successor section, in its entirety as this section of this Code, with the only change being the Protest Officer for the City shall be the Mayor.

1-10-15: DISPOSAL AND SALE OF PROPERTY:

A. Means Of Disposal: Subject to requirements listed herein regarding significant parcels of real property, the City Council may dispose of, or control the disposition of, any City real property, or any legal or equitable interest in such property, the disposition of which is determined to be in the public interest and in accordance with good property management. The disposition of property, or any interest therein, may be by public or private sale, exchange, exchange and sale, option to purchase, lease, lease with an option to purchase, public auction, public advertisement for sealed bids, or any other lawful manner or means. The disposition of property shall not be for less than adequate consideration except for property which is determined to lie within the boundaries of a street or highway, for properties which are conveyed or traded to another government entity, or for small parcels of property unusable by the City. Such consideration may be other than monetary.

B. Definitions: For purposes of this section, the following words and terms shall have the meanings set forth in this subsection:

REASONABLE NOTICE: Posting notice of the proposed disposition in at least three (3) public places within the City, publishing notice of the proposed disposition on the Utah State Public Notice website and publishing notice of the proposed disposition on the City website and Facebook page.

SIGNIFICANT PARCEL OF REAL PROPERTY:

1. Any parcel of real property having an estimated value, as determined by the City Council, of more than thirty thousand dollars (\$30,000.00).

2. Significant parcel of real property shall not include the sale, exchange, exchange and sale, lease, option to purchase, or lease with an option to purchase of any lot(s) in the Fillmore City Industrial Park, nor the sale, exchange, exchange and sale, lease, option to purchase, lease with an option to purchase or transfer of property to another governmental entity.

C. Notice Required: If the property to be sold by the City is a "significant parcel of real property", as defined in this section, then the City shall provide "reasonable notice", as defined above, of the proposed disposition, at least fourteen (14) days before City action on the proposed disposition, to provide the opportunity for public comment.

D. Public Comment: After the fourteen (14) day period, the City Recorder shall forward copies of any public comment received to the City Council. Thereafter, the City Council may determine not to dispose of the real property, may direct the Mayor to proceed with the disposition, or impose such additional terms and conditions as the City Council may adopt in regards to the disposition.