

ORDINANCE 163

CITY OF BETHEL - PURCHASING ORDINANCE

ARTICLE 1 - GENERAL PROVISIONS

1-101 - PURPOSE. The purpose of this Ordinance is to provide for the fair and equitable treatment of all persons involved in public purchasing by the City, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

1-102 - APPLICATION. This Ordinance applies to contracts for the procurement of supplies, services, and construction, entered into by the City after the effective date of this Ordinance. It shall apply to every expenditure of public funds by a public agency for public purchasing irrespective of the source of the funds. When the procurement involves the expenditure of federal assistance, state grants, or contract funds, the procurement shall be conducted in accordance with any mandatory applicable federal or state law and regulations. Nothing in this Ordinance shall prevent any public agency from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law. This Ordinance shall be used in conjunction with the purchasing procedures adopted by City Administration and set forth in the City administrative manual.

1-103 - DEFINITIONS.

1. ARCHITECT-ENGINEER AND LAND SURVEYING SERVICES. Those professional services within the scope of the practice of architecture, professional engineering, or land surveying, as defined by the laws of the State.

2. BUSINESS. Any corporation, partnership, individual, sole proprietorship, joint venture, or any other private legal entity.

3. CONFIDENTIAL INFORMATION. Any information which is available to an employee only because of the employee's status as an employee of the City and is not a matter of public knowledge or available to the public on request.

4. CONSTRUCTION. The process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

5. CONTRACT. All types of City agreements, regardless of what they may be called, for the procurement of supplies, services, or construction.

6. CONTRACTOR. Any person having a contract with the City or a using agency thereof.

7. DIRECT OR INDIRECT PARTICIPATION. Involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or any other advisory capacity.

8. EMPLOYEE. An individual drawing a salary or wages from the City, whether elected or not; any noncompensated individual performing personal

services for the City or any department, agency, commission, council, board, or any other entity established by the executive or legislative branch of the City; and any noncompensated individual serving as an elected official of the City.

9. FINANCIAL INTEREST.

- A. Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than \$1,000 per year, or its equivalent;
- B. Ownership of 20% of any property or business; or
- C. Holding a position in a business such as officer, director, trustee, partner, employee, or the like, or holding any position of management.

10. GRATITUDE. A payment, loan, subscription, advance, deposit of money, service or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

11. IMMEDIATE FAMILY. A spouse, children, parents, brothers, and sisters.

12. INVITATION FOR BIDS. All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

13. PERSON. Any business, individual, union, committee, club, other organization, or group of individuals.

14. PROCUREMENT. The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, and service, or construction, including description of requirements, selection, and solicitation of sources, professional services, preparation and award of contract, and all phases of contract administration.

15. PUBLIC AGENCY. A public entity subject to or created by the City.

16. QUALIFIED PRODUCTS LIST. An approved list of supplies, services, or construction items described by model or catalogue numbers, which prior to competitive solicitation, the City has determined will meet the applicable specification requirements.

17. REQUEST FOR PROPOSALS. All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

18. RESPONSIBLE BIDDER OR OFFEROR. A person who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facility, equipment, and credit which will assure good faith performance.

19. RESPONSIVE BIDDER. A person who has submitted a bid which conforms in all material respects to the requirements set forth in the invitation for bids.

20. SERVICES. The furnishing of labor, time, or effort, by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.

21. SPECIFICATION. Any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery.

22. SUPPLIES. All property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

23. USING AGENCY. Any department, commission, board, or public agency requiring supplies, services, or construction procured pursuant to this Ordinance.

ARTICLE 2 - OFFICE OF THE PURCHASING AGENT

2-101 - ESTABLISHMENT, APPOINTMENT, AND TENURE.

1. THE POSITION OF PURCHASING AGENT. The position of Purchasing Agent has been established by personnel regulation as the City's principal public purchasing official.

2. APPOINTMENT. The Purchasing Agent shall be appointed by the Finance Director. The Purchasing Agent shall have a minimum of two years experience in public purchasing within five years preceding the date of appointment.

3. TENURE. The Purchasing Agent shall be appointed to serve an indefinite term and may be removed from office by the Finance Director in accordance with City personnel regulations.

2-102 - AUTHORITY AND DUTIES

1. PRINCIPAL PUBLIC PURCHASING OFFICIAL. Except as otherwise provided herein, the Purchasing Agent shall serve as the principal public purchasing official for the City, and shall be responsible for the procurement of supplies and services in accordance with this Ordinance, as well as the management and disposal of supplies and fixed assets.

2. DUTIES. In accordance with this Ordinance, and subject to the supervision of the Finance Director, the Purchasing Agent shall:

A. procure or supervise the procurement of all supplies and services needed by the City.

B. sell, trade, or otherwise dispose of surplus supplies and fixed assets belonging to the City.

3. OPERATIONAL PROCEDURES. Consistent with this Ordinance, and with the approval of the Finance Director, the Purchasing Agent may adopt operational procedures relating to the execution of his/her duties. These are set forth in a separate City administrative manual.

2-103 - DELEGATIONS TO OTHER CITY OFFICIALS

With the approval of the City Manager, the Purchasing Agent may delegate authority to purchase certain supplies, services, or construction to other City officials, if such delegation is deemed necessary for the effective procurement of those items. This provision recognizes that for the procurement of certain supplies, services, or construction, effective management may call for the delegation of procurement authority to other City officials possessing specialized skills or knowledge that would make them better qualified to define the City's requirements or monitor a contractor's performance. When faced with an especially complex procurement, such as a complex construction project, the City may find it necessary to temporarily appoint a highly qualified construction management professional as construction procurement officer for that project. As an alternative, the City may choose to contract for the services of a construction management firm to oversee all phases of the project. As a City contractor, this firm shall be closely supervised in its performance

by the Purchasing Agent or other City official as the City Manager deems appropriate. In selecting and utilizing such a project management firm, the City will insure that the contractors providing this management function are independent of those contractors providing construction or other project services to the City. Consistent oversight will be essential for the successful completion of such complex construction projects.

ARTICLE 3 - SOURCE SELECTION AND CONTRACT FORMATION

3-101 - COMPETITIVE SEALED BIDDING.

1. CONDITIONS FOR USE. All procurement contracts of the City shall be awarded by competitive sealed bidding except as otherwise provided in Section 3-102 and Section 5-102 of this Ordinance.

2. INVITATION FOR BIDS. An invitation for bids shall be issued and shall include specifications, and all contractual terms and conditions applicable to the procurement.

3. PUBLIC NOTICE. Adequate public notice of the invitation for bids shall be given a reasonable time, not less than 30 calendar days prior to the date set forth therein for the opening of bids. Such notice may include publication in a newspaper of general circulation a reasonable time prior to bid opening. The public notice shall state the place, date, and time of bid opening.

4. BID OPENING. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as the Purchasing Agent deems appropriate, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection.

5. BID ACCEPTANCE AND BID EVALUATION. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Ordinance. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total of life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids.

6. CORRECTION OR WITHDRAWAL OF BIDS; CANCELLATION OF AWARDS. Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written or telegraphic notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the City or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

A. the mistake is clearly evident on the face of the bid document

- but the intended correct bid is not similarly evident; or
- B. the bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Purchasing Agent.

7. AWARD. The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. In the event the low responsive and responsible bid exceed available funds as certified by the Finance Director, and such bid does not exceed such funds by more than five percent, the City Manager or authorized designee is authorized, when time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment or the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. Any such negotiated adjustment shall be based only upon eliminating independent deductive items specified in the invitation for bids.

3-102 - COMPETITIVE SEALED PROPOSALS.

1. CONDITIONS FOR USE. When the Purchasing Agent determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the City, a contract may be entered into by use of the competitive sealed proposal method.

2. REQUEST FOR PROPOSALS. Proposals shall be solicited through a request for proposals.

3. PUBLIC NOTICE. Adequate public notice of the request for proposals shall be given in the same manner as provided in Section 3-101 (3) (Competitive Sealed Bidding, Public Notice).

4. RECEIPT OF PROPOSALS. No proposals shall be handled so as to permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors during the process of negotiation. A register of proposals shall be prepared containing the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The register of proposals shall be open for public inspection only after contract award.

5. EVALUATION FACTORS. The request for proposals shall state the relative importance of price and other evaluation factors.

6. DISCUSSION WITH RESPONSIBLE OFFERORS AND REVISIONS TO PROPOSALS. As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of competing offerors, or of any information derived from proposals submitted by competing offerors.

7. AWARD. Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the City, taking into consideration price and the evaluation factors set forth in the evaluation. The contract file shall contain the basis on which the award was made.

3-103 - CANCELLATION OF INVITATIONS FOR BIDS OR REQUEST FOR PROPOSALS

An invitation for bids, a request for proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part, when it is for good cause and in the best interests of the City. The reasons therefore shall be made part of the contract file. Each solicitation issued by the City shall state that the solicitation may be cancelled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the City. Notice of cancellation shall be sent to all businesses solicited. Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.

3-104 - RESPONSIBILITY OF BIDDERS AND OFFERORS

1. DETERMINATION OF NONRESPONSIBILITY. If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility, setting forth the basis of the finding, shall be prepared by the Purchasing Agent. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an injury with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination shall be made part of the contract file and be made a public record.

2. RIGHT OF NONDISCLOSURE. Information furnished by a bidder or offeror pursuant to this section shall not be disclosed by the City outside of the office of the Purchasing Agent, or using agency, without prior written consent of the bidder or offeror.

ARTICLE 4 - APPEALS AND REMEDIES

4-101 - APPEALS AND DECISIONS

1. RIGHT TO PROTEST. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the City Manager. A protest with respect to an invitation for bids or request for proposal shall be submitted in writing prior to the opening of bid or the closing date of proposals, unless the aggrieved person did not know and should not have known of the facts giving rise to such protest prior to bid opening or the closing date for proposals. The protest shall be submitted within 5 days, excluding Saturdays, Sundays, and other legal holidays, after such aggrieved person knows or should have known of the facts giving rise to the case.

2. STAY OF PROCUREMENTS DURING PROTESTS. In the event of a timely protest under subsection (1) of this section, the Purchasing Agent shall not proceed further with the solicitation or award of the contract until the City Manager makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of the City.

3. DECISION OF THE CITY MANAGER. All claims by a contractor against the City relating to a contract, except bid protests, shall be submitted in writing to the City Manager for a decision. The contractor may request a conference with the City Manager on the claim. Claims include, without limitation, disputes arising under a contract, and those based upon breach

of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

4. NOTICE TO THE CONTRACTOR. The decision shall be promptly issued in writing, and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of its appeal rights under subsection (5) of this section.

5. FINALITY OF DECISION: CONTRACTOR'S RIGHT TO APPEAL. The City Manager's decision shall be final and conclusive unless, within 5 days, excluding Saturdays, Sundays, and other legal holidays, from the date of receipt of the decision, the contractor mails or otherwise delivers a written appeal to the City Council or commenced an action in a court of competent jurisdiction.

4-102 - REMEDIES FOR SOLICITATIONS OR AWARDS IN VIOLATION OF LAW

1. PRIOR TO BID OPENING OR CLOSING DATE FOR RECEIPT OF PROPOSALS. If prior to the bid opening or the closing date for receipt of proposals, the Purchasing Agent, after consultation with the City Attorney, determines that a solicitation is in violation of federal, state, or municipal law, then the solicitation shall be cancelled or otherwise revised to comply with applicable law.

2. PRIOR TO AWARD. If after bid opening or the closing date for receipt of proposals, the Purchasing Agent, after consultation with the City Attorney, determines that a solicitation or a proposed award of a contract is in violation of federal, state or municipal law, then the solicitation or proposed award shall be cancelled.

3. AFTER AWARD. If after an award, the Purchasing Agent, after consultation with the City Attorney, determines that a solicitation or award of a contract was in violation of applicable law, then;

- A. if the person awarded the contract has not acted fraudulently or in bad faith:
 - a. the contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the City; or
 - b. the contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, prior to the termination; or
- B. if the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void or voidable, if such action is in the best interests of the City.

ARTICLE 5 - PROCUREMENT OF GENERAL EQUIPMENT AND SUPPLIES, CONSTRUCTION, AND PROFESSIONAL SERVICES

5-101 - PROCUREMENT OF GENERAL EQUIPMENT, MATERIALS AND SUPPLIES

1. SOURCE SELECTION. Except as otherwise provided in Section 3-102 of this Ordinance, the source selection process for procurement of other than construction or professional services shall be as follows.

- A. over \$20,000: for the procurement of any single item, or purchase order transaction expecting to cost \$20,000 or more,

it shall be required that the request be put out for bid following the process as stated in Section 3-101 (Competitive Sealed Bidding).

- B. \$10,000 or more, but less than \$20,000: for the procurement of any single item, or purchase order transaction expecting to cost \$10,000 or more, but less than \$20,000, no less than 3 businesses shall be solicited to submit written quotations. The names of the businesses submitting quotations shall be recorded and maintained as public record.
- C. \$5,000 or more, but less than \$10,000: for the procurement of any single item or purchase order transaction expecting to cost \$5,000 or more, but less than \$10,000, at least 3 businesses shall be contacted for a phone quotation. The names of the businesses submitting phone quotations, shall be recorded and maintained as public record.
- D. Under \$5,000: the Purchasing Agent shall use judgement based on knowledge of vendors and products to determine whether or not it is necessary or practical, or in the best interests of the City to solicit for quotations or bids.

2. BID AND PERFORMANCE BONDS. Bid and performance bonds or other security may be requested for supply contracts or service contract, as the Purchasing Agent deems advisable to protect the City's interests. Any such bonding requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for determination of a bidder or offeror's responsibility.

5-102 - PROCUREMENT OF CONSTRUCTION CONTRACTS

1. SOURCE SELECTION. The source selection process for the procurement of construction contracts, whether it be remodeling or construction of a new structure, shall be made as follows.

- A. \$100,000 and over: for any construction or remodeling project estimated by the requisitioning department head or the Public Works Director to cost \$100,000 or more, the competitive sealed bid procedure shall be used as stated in Article 3.
- B. Under \$100,000: for any construction or remodeling project estimated by the requisitioning department head or the Public Works Director to cost under \$100,000, no less than 3 businesses shall be contacted to submit written quotations. Award shall be given to the lowest responsible and responsive contractor.

2. BID SECURITY. Bid security shall be required for all competitive sealed bidding for construction contracts, when the price is estimated by the requisitioning department or the Public Works Director to exceed \$100,000. Bid security shall be a bond provided by a surety company authorized to do business in the State, or the equivalent in cash, or otherwise supplied in a form satisfactory to the City. Bid security shall be in the amount equal to at least 5% of the amount of the bid.

3. PERFORMANCE AND PAYMENT BONDS. When a construction contract is awarded in excess of \$50,000 the following bonds or security shall be delivered to the City and shall become binding on the parties upon the execution of the contract;

- A. a performance bond satisfactory to the City, executed by a surety company authorized to do business in the State or otherwise secured in a manner satisfactory to the City, in an

amount equal to 50% of the price specified in the contract, unless the price specified in the contract exceeds \$5,000,000. Then the performance bond shall be in the sum of \$2,500,000; and

- B. a payment bond satisfactory to the City, executed by a surety company authorized to do business in the State or otherwise secured manner satisfactory to the City, for the protection of all persons supplying labor and material to the or its subcontractors for the performance of the work provided for the contract. The bond shall be in an amount equal to 50% of the price specified in the contract, unless the price specified in the contract exceeds \$5,000,000. Then the payment bond shall be in the sum of \$2,500,000.

4. CONTRACT ADMINISTRATION FOR CONSTRUCTION CONTRACTS. The City Manager or Council shall have discretion to select the appropriate method of construction contracting management for a particular project. In determining which method to use, the City Manager shall consider the City's requirements, its resources, and the potential contractor's capabilities. The City Manager shall execute, and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of construction contracting management for each project. It is recognized that at least the following methods are currently being used for control and coordination of construction projects;

- A. a single prime contractor (including a turnkey or design-build contractor); or
- B. multiple prime contractor managed by:
 - a. a designated general contractor;
 - b. a construction manager; or
 - c. the Public Works Director.

5-103 - PROCUREMENT OF PROFESSIONAL SERVICES, INCLUDING ARCHITECT-ENGINEERING AND LAND SURVEYING SERVICES

1. SOURCE SELECTION. The method of source selection process for professional services shall be made through the solicitation for request for proposals as stated in Section 3-102 of this Ordinance.

2. PUBLIC NOTICE. Adequate public notice of the request for proposals shall be given in the same manner as provided in Section 3-101 (Competitive Sealed Bidding, Public Notice). The request for proposal shall describe services required, list the types of information and data required of each offeror, and state the relative importance of particular qualifications.

3. STATEMENT OF QUALIFICATIONS. Persons engaged in providing the designated types of professional services may submit statements of qualifications and expressions of interest in providing such professional services. Persons may amend these statements at any time by filing a new statement.

4. DISCUSSIONS. The head of a using department procuring the required professional services or a designee of such officer may conduct discussions with any offeror who has submitted a proposal to determine such offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.

5. AWARD. Award shall be made to the offeror determined in writing by the head of the using department procuring the required professional

services or a designee of such officer. to be best qualified based on the evaluation factors set forth in the request for proposals, and negotiation of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best qualified offeror, the negotiations may be conducted with such other offeror or offerors, in the order of there respective qualification ranking, and the contract may be awarded to the offeror then ranked best qualified if the amount of compensation is determined to be fair and reasonable.

5-104 - SOLE SOURCE PROCUREMENT. A contract may be awarded without competition when the Purchasing Agent documents in writing, after conducting a good faith review of available resources. that there is only one source for the required supply, service, or construction item.

5-105 - EMERGENCY PROCUREMENTS. Notwithstanding any other provisions of this Ordinance, the City Manager may authorize in writing the Purchasing Agent to make or authorize others to make emergency procurements of supplies, services, or construction items when there exists a threat to public health, welfare, or safety; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination on the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

ARTICLE 6 - FISCAL RESPONSIBILITY, BUDGET APPROVAL

6-101 - BUDGET APPROVAL. It shall be the duty of the Finance Director to confirm that sufficient funds are available for the procurement of any single item or purchase order transaction exceeding \$10,000 which has already been approved by the adoption of the current fiscal year budget. The Purchasing Agent may give budget approval for the procurement of any single item of purchase order transaction less than \$10,000. Any item for which the procurement of is not otherwise included in the current fiscal year budget must be approved by Council.

ARTICLE 7 - SPECIFICATIONS

7-101 - MAXIMUM PRACTICABLE COMPETITION. All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the City's needs. Whenever a material, article, or piece of equipment is identified on the plans or in the specifications by reference to manufacturers or vendors names, trade names, catalog numbers, etc. it is intended merely to establish a standard; and any material, article, or equipment of other manufacturers and vendors which will perform adequately the duties imposed by the general design, will be considered equally acceptable provided the material, article, or equipment so proposed, is in the opinion of the City of Bethel, of equal substance and function. Any item quoted as "equal" shall be accompanied by complete data and/or brochures to be used in evaluation.

ARTICLE 8 - ETHICS IN PUBLIC CONTRACTING

8-101 - CRIMINAL PENALTIES.

To the extent that violations of the ethical standards of conduct set forth in this Article constitute violations of the State Criminal Code they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this Part. Criminal, civil, and administrative sanctions against employees or nonemployees which are in existence on the effective date of this Ordinance shall not be impaired.

8-102 - EMPLOYEE CONFLICT OF INTEREST

It shall be unethical for any City employee to participate directly or indirectly in a procurement contract when the City employee knows that:

- A. the City employee or any member of the City employee's immediate family has a financial interest pertaining to the procurement contract; or
- B. any other person, business, or organization with whom the City employee or any member of a City employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.

A City employee or any member of a City employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

8_103 - GRATUITIES, KICKBACKS, AND UNAUTHORIZED SPENDING

1. GRATUITIES. It shall be unethical for any person to offer, give, or agree to give any City employee or former City employee, or for any City employee or former City employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

2. KICKBACKS. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

3. UNAUTHORIZED SPENDING. Unauthorized spending of City monies by a City employee on the City's behalf without proper approval shall be deemed unethical. No City funds shall be used for the procurement of goods and services for a City employee even if there was such intent to reimburse the City.

8-104 - PROHIBITION AGAINST CONTINGENT FEES

It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a City contract upon an agreement or

understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

8-105 - CONTEMPORANEOUS EMPLOYMENT PROHIBITED

It shall be unethical for any City employee who is participating directly or indirectly in the procurement process to become or to be, while such a City employee, the employee of any person contracting with the governmental body by whom the employee is employed.

8-106 - WAIVERS FROM CONTEMPORANEOUS EMPLOYMENT PROHIBITION AND OTHER CONFLICTS OF INTEREST

The City Council may grant a waiver from the employee conflict of interest provision (Section 8-102; Employee Conflict of Interest) or the contemporaneous employment provision (Section 8-105; Contemporaneous Employment Prohibited) upon making a written determination that:

- A. the contemporaneous employment of financial interest of the City employee has been publicly disclosed;
- B. the City employee will be able to perform its procurement functions without actual or apparent bias or favoritism; and
- C. the award will be in the best interests of the City.

8-107 - USE OF CONFIDENTIAL INFORMATION

It shall be unethical for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

12-108 - SANCTIONS

1. EMPLOYEES. The City Manager or City Council may impose any one or more of the following sanctions on a City employee for violations of ethical standards in this Article:

- A. oral or written warnings or reprimands;
- B. suspension with or without pay for specified periods of time; or
- C. termination of employment.

2. NONEMPLOYEES. The City Council may impose any one or more of the following sanctions on a nonemployee for violations of the ethical standards:

- A. written warnings or reprimands;
- B. termination of contracts; or
- C. debarment.

8-109 - RECOVERY OF VALUE TRANSFERRED OR RECEIVED IN BREACH OF ETHICAL STANDARDS

1. GENERAL PROVISIONS. The value of anything transferred or received in breach of the ethical standards of this Ordinance by a City employee or a nonemployee may be recovered from both City employee and nonemployee.

2. RECOVERY OF KICKBACKS BY THE CITY. Upon a showing that a sub-contractor made a kickback to a prime contractor or a higher tier sub-contractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the City and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

2. RECOVERY OF KICKBACKS BY THE CITY. Upon a showing that a sub-contractor made a kickback to a prime contractor or a higher tier sub-contractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the City and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

PASSED AND APPROVED THIS *22nd* DAY OF APRIL, 1985.

ATTEST:

Joe Sullivan
Joe Sullivan, Mayor *WJ*

Wayne J. Maiers
Wayne J. Maiers, City Clerk

Note: Suggested additions are highlighted and suggested deletions are overstruck

**AMENDMENT #1
TO
ORDINANCE #163**

AN ORDINANCE AMENDING CHAPTER 4.20 OF THE BETHEL MUNICIPAL CODE PERTAINING TO THE PURCHASE OF INSURANCE AND SELECTION OF AN INSURANCE BROKER.

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF BETHEL, ALASKA, THAT CHAPTER 4.20 OF THE BETHEL MUNICIPAL CODE BE AMENDED AS FOLLOWS:

Section 1. Section 4.20.030 (T) is amended to read as follows:

Services. "Services" means the furnishing of labor, time, or effort, by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements, collective bargaining agreements or agreements relating to the procurement of insurance coverage through an insurance broker.

Section 2. Section 4.20.030 (V) is amended to read as follows:

Supplies. "Supplies" means all property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

Section 3. Section 4.20.090 (A) is amended to read as follows:

4.20.090 Competitive sealed bidding. A. Conditions for Use. All procurement contracts of the City shall be awarded by competitive sealed bidding except as otherwise provided in Section 4.20.100, ~~4.20.155~~, and 4.20.160 of this chapter.

Section 4. There is hereby added to the Bethel Municipal Code Section 4.20.155, which is to read as follows:

~~4.20.155 Contracts for insurance.~~ The City shall procure insurance coverage through an insurance broker. The broker shall be selected through competitive sealed proposals for a three-year term. The competitive sealed proposals for an insurance broker shall be solicited in accordance with ~~4.20.100.~~

failed 9/8/92

Section 5. This ordinance shall be effective upon passage.

Introduced: August 25, 1992

Public Hearing: September 8, 1992

PASSED AND APPROVED THIS _____ DAY OF _____, 1992.

James H. Feaster III, Mayor

ATTEST:

Jane Elam, City Clerk

failed 9/8/92

**AMENDMENT #2
TO
ORDINANCE #163**

AN ORDINANCE AMENDING CHAPTER 4.20 OF THE BETHEL MUNICIPAL CODE PERTAINING TO THE PURCHASE OF INSURANCE AND SELECTION OF AN INSURANCE BROKER.

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF BETHEL, ALASKA, THAT CHAPTER 4.20 OF THE BETHEL MUNICIPAL CODE BE AMENDED AS FOLLOWS:

Section 1. Section 4.20.030 (T) is amended to read as follows:

Services. "Services" means the furnishing of labor, time, or effort, by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements, collective bargaining agreements or agreements relating to the procurement of insurance coverage through an insurance broker.

Section 2. Section 4.20.030 (V) is amended to read as follows:

Supplies. "Supplies" means all property, including but not limited to equipment, materials, printing, and leases of real property, excluding land or a permanent interest in land.

Section 3. Section 4.20.090 (A) is amended to read as follows:

4.20.090 Competitive sealed bidding. A. Conditions for Use. All procurement contracts of the City shall be awarded by competitive sealed bidding except as otherwise provided in Section 4.20.100, 4.20.155, and 4.20.160 of this chapter.

Section 4. There is hereby added to the Bethel Municipal Code Section 4.20.155, which is to read as follows:

4.20.155 Contracts for insurance. The City shall hire a consultant to establish a risk package and review each renewal. The City shall procure insurance coverage through an insurance broker by competitive sealed proposals for up to a three year period. The competitive sealed proposals shall be solicited in accordance with Section 4.20.100.

Section 5. This ordinance shall be effective upon passage.

Introduced: October 27, 1992

Public Hearing: November 10, 1992

PASSED AND APPROVED THIS 24th DAY OF November, 1992.

James H. Feaster III
James H. Feaster III, Mayor

ATTEST:

Jane Elam
Jane Elam, City Clerk