

PART N

Purchasing/Contract/Property Disposition Control

Section 1401. Purpose and Function.

a. **Purpose.** The purpose of this Ordinance shall be to establish procedures for the purchase of products, goods and services, the making of contracts, and the sale or lease of personal or real property of the Municipality. Procedures shall include negotiated contracts, competitive bidding, controls on aggregate spending and safeguards against special interests.

b. **Functions.** The purchasing functions shall include the:

- (1) Procurement of the highest quality in supplies, materials, equipment and contractual services meeting specifications at the least expense to the Municipality.
- (2) Encouragement of open, competitive pricing.
- (3) Encouragement of savings or cost avoidance through bulk or quantity purchasing.
- (4) Maintenance of lists of vendors and contractors.
- (5) Assurance of vendor and contractor compliance with Municipal specifications and contract terms and provisions.
- (6) Administration of a system of stocking or warehousing of materials and supplies for day-to-day use.

(Ordinance 1184, September 10, 1987, Section 1.)

Section 1402. Definitions. As used in this Ordinance, these words and terms shall have the following meanings:

Council. The State College Municipal Council, as provided for in the Home Rule Charter of the Municipality.

Home Rule Charter. The Charter of the Municipality, as approved by electors of State College, 1973, with amendments, if any, thereafter lawfully adopted and approved.

Manager. The municipal Manager, as provided for in the Home Rule Charter of the Municipality.

Municipality. The Borough of State College, Pennsylvania.

Person. Any natural person, partnership, association, firm, corporation, governmental body or agency or other entity.

Purchasing Authority. The State College Borough Manager or his designee.

Responsible Bidder. Any bidder not disqualified by the Purchasing Authority for:

- ...an apparent lack of capacity to perform the contract;
- ...an unsatisfactory record of performance (either with the Municipality or other agencies) in prior contracts; and/or
- ...failing to promptly supply information, bonds and documentation requested by the Municipality.

(Ordinance 1184, September 10, 1987, Section 2.)

Section 1403. Competitive Bidding. Competitive bidding shall be required on all contracts for equipment, services and construction with an estimated value in excess of \$25,000.00, except as indicated in Sections 1404 and 1405 of this Chapter. The following provisions shall apply to competitive bidding:

a. **Notice to Prospective Bidders.** Notice of the desire of the Municipality to receive bids from contractors or vendors shall be given as follows:

(1) By advertisement at least 2 times at intervals of not less than 3 days in at least 1 newspaper of general circulation in the Municipality. The first advertisement shall be published not more than 45 days and the second advertisement not less than 10 days prior to the date filed for the opening of bids. This advertisement shall include a general description of the supplies, materials, equipment and contractual services to be purchased, a statement as to where bid forms and specifications may be secured and the time and place for the opening of bids.

(2) At the discretion of the Purchasing Authority, additional notice may be given in any publication or journal devoted to the dissemination of information about construction, materials and supplies.

(3) The Purchasing Authority may also solicit bids from prospective vendors and contractors by mailing copies of the specifications and forms and/or any other information which will acquaint them with the proposed purchase or contract.

(4) By posting the advertisement in a conspicuous place within the municipal offices.

b. **Specifications for Bidders.** When bids are sought for the erection, construction or alteration of any public building or facility, the Purchasing Authority may have separate

specifications prepared for any one or more of the phases, parts, sections or internal or external systems of the work and, when this is done, separate bids may be required for each of those parts of the work. The contract may be awarded to the lowest responsible bidder for each of those branches or parts or on the basis of the lowest total price.

c. **Bid Security.** When it shall be deemed necessary to protect the interests of the Municipality, bid security shall be required. The amount of security required shall be set forth in the bid specifications. Bid security may be in the form of a certified check, cashiers check or bid bond. If a bid bond is submitted, it must be in a form approved by the Purchasing Authority.

d. **Submission, Acceptance and Opening of Bids.** Bids shall be sealed, shall be identified as bids on the envelope, shall be submitted at the place of opening no later than the time stated in the public notice inviting bids and shall be opened by the Purchasing Authority at a public meeting at the time and place stated in the public notice. Bids received after the stated time shall not be accepted.

In certain instances when specified in the invitation to bid, the Borough will permit the electronic submission of bids. The Borough will maintain the confidentiality of these bids until the date and time of the bid opening. All bids submitted electronically must be received by the Borough by the date and time and at the e-mail address specified in the public notice. Electronic bids received after the stated time shall not be accepted.

e. **Award of Contracts.** Contract awards by Council shall be made at an advertised public meeting. The following shall apply to Council awards:

(1) Awards shall normally be made to the lowest responsible bidder. However, Council, upon recommendation of the Purchasing Authority, shall have the right to take into consideration such other factors as delivery date, quality of service, length of warranty, etc.

(2) Council shall have the authority to waive minor irregularities and defects when the best interests of the Borough would be served.

(3) Council shall have the authority to accept or reject any and/or all bids or to hold all bids for 45 days or until the next regular Council meeting.

(4) If 2 or more of the lowest bids received are for the same total amount or unit prices and the quality, delivery date and service capability are equal, the contract may be awarded to the bidder with business offices in the Borough or as an alternative, the Purchasing Authority may break ties by requesting each of the equal low bidders to submit, in writing, their lowest and final bid. Said bids shall be opened in public and each of the bidders shall be informed of the time and place of said opening.

(5) A tabulation of bids shall be made available for public inspection.

f. **Exceptions.** Contracts or purchases made by the Municipality involving an expenditure of more than \$25,000.00 to which this Ordinance shall not apply, unless the Council shall otherwise direct in a specific instance, shall include:

(1) Those for maintenance, repair or replacement of the public works of the Municipality, provided they do not constitute new additions, extensions or enlargements of existing facilities and equipment.

(2) Those made for improvements, repairs and maintenance of any kind made or provided by the Municipality through its employees, except that all materials used for street construction, maintenance or improvement in excess of \$25,000.00 shall be subject to the provisions of this Ordinance.

(3) Those where particular types, models or pieces of new equipment, articles, apparatus, vehicles or parts which are patented, manufactured or copyrighted, cannot reasonably be acquired from more than 1 vendor.

(4) Those involving any purchase of insurance or surety bond; those made for public utility service under tariffs on file with the Pennsylvania Public Utility Commission; those made with the federal government, the Commonwealth of Pennsylvania or any subdivision thereof, including the sale, lease or loan of any supplies, materials, equipment or services by the Commonwealth, the federal government or their subdivisions. The price charged to the Municipality shall not be in excess of that fixed by the Commonwealth, the federal government or their subdivisions.

(5) Those involving personal or professional services.

(6) Those made for improvements, repairs and maintenance of any kind of property of the Municipality for labor, materials or profits and overhead, entered into with any organization which is engaged in rehabilitative or job training programs and such organization receives state or federal funding for such purposes.

(7) Those cases, with Council approval, where the Purchasing Authority deems it is in the best interest of the Municipality to purchase without competitive bidding.

(8) Those involving the purchase of equipment and services related to computer software, technology, and information systems. The purchase of equipment and services related to computer software, technology, and information systems shall be made on the basis of best value procurement. Contracts under best value procurement shall be made only after the Borough has solicited proposals based on performance and outcome specifications developed by the Borough and describing, at minimum, the objectives to be met by the system, the tasks to be performed by the system, the users of the system, system security issues, the time frame for

system implementation, potential operating technologies, compatibility with existing systems, training and maintenance, and shall indicate the process by which the contract shall be awarded. Best value procurement shall not require a sealed bid process, and shall permit the Borough to negotiate the terms of the agreement with any responsive and responsible vendor. Any contract for the procurement of equipment and services related to computer software, technology, or information systems in excess of \$25,000.00 shall be awarded by Borough Council at a public meeting.

g. **Disposition of Bid Deposits.**

(1) The Municipality shall return to the unsuccessful bidders the bid deposits submitted by them.

(2) A successful bidder shall forfeit any deposit made by him, upon failure on his part to enter into a contract with the Municipality within 20 calendar days after award, unless an extended time is authorized, in writing, by the Purchasing Authority.

h. **Piecemeal Contracts and Purchases Restricted.** It shall be prohibited for any officer or employee of the Municipality to purposely evade use of the procedures for competitive bidding by making a series of purchases or contracts, each under the minimum set out in Section 3 of this Ordinance or by making several simultaneous purchases or contracts, each below that minimum amount.

i. **Contract Extensions.** The Purchasing Authority may authorize change orders and extend a contract if it is deemed in the best interest of the Municipality. Such change orders or extensions shall be in writing and shall not individually or jointly exceed 15 percent of the original contract award. The Purchasing Authority may make purchases from any contract awarded under Section 3 of this Ordinance within 8 months of the award.

j. **Performance Bonds.** To protect the interests of the Municipality, a 100 percent performance bond shall be required from the successful bidder before entering into a construction contract.

The Purchasing Authority shall establish the percent of the contract price required in the performance bond for purchase of materials, supplies and equipment.

If the performance bond is not furnished within 20 days after the award of the contract, the award shall be void. Deliveries, accomplishments and guarantees may be required in all cases of expenditure.

k. **Bonds for the Protection of Labor and Materials.** Any person entering into a contract with the Municipality for the construction, erection, installation, completion, alteration or repair of or alteration to any public work or improvement whatsoever shall, before

commencing work under the contract, execute and deliver to the Municipality, in addition to the performance bond, an additional bond, in a sum not less than 50 percent and not more than 100 percent, as the Purchasing Authority may prescribe, conditioned for the prompt payment of all material furnished and labor supplied or performed in the prosecution of the work, whether or not the material or labor entered into becomes component parts of the work or improvement contemplated. This additional bond shall be deposited with and held by the Municipality for the use of any interested party. This bond shall provide that every person who, whether as subcontractor or otherwise, has furnished material or supplied or performed labor in the prosecution of the work, and who has not been paid for it, may sue in assumpsit on this additional bond, for his use, and prosecute the suit to final judgment for whatever sum may be justly due him, and have execution thereof. The Municipality shall not be liable for the payment of any costs or expenses of any suit.

l. **Workers Compensation.** Every contract entered into by the Municipality which involves the construction or doing of any work involving the employment of labor, shall contain a provision that the contractor shall accept, insofar as the work covered by that contract is concerned, the provisions of the Workers Compensation Act of 1915 and its supplements and amendments, and that the contractor will insure his liability under that Act or file, with the Municipality, a certificate of exemption from insurance from the Bureau of Workers Compensation of the Pennsylvania Department of Labor and Industry. Any contract executed in violation of this Section shall be null and void.

m. **Discrimination Prohibited.** Any contract entered into by the Municipality for the construction, alteration or repair of any public building or public work may contain provisions by which the contractor agrees that, in the hiring of employees for the performance of work under the contract or any subcontract under it, no contractor or subcontractor and no person acting on behalf of the contractor or subcontractor shall, by reason of race, creed, sex, or color, discriminate against any person who is qualified and available to perform the work to which the employment relates. Violations of this provision by the contractor will constitute grounds for terminating the contract.

n. **Competitive Electronic Auction Bidding**⁷⁹⁵

(1) Conditions of use. Notwithstanding any other provision of this ordinance concerning the requirements for competitive bidding for purchases and contracts, if the Borough determines that use of competitive electronic auction bidding is in the Borough's best interest, a contract for supplies and services, but not for construction or design professional services, may be entered into by competitive electronic auction bidding.

(2) Invitation for bids. An invitation for bids shall be issued and shall include a procurement description and all contractual terms, whenever practical, and conditions applicable to the procurement, including a notice that bids will be received in an electronic auction manner.

(3) Public Notice. Public notice and advertisement of the invitation for bids shall be given in the same manner as provided in Section 3 of this ordinance.

(4) Auctions. Bids shall be accepted electronically at the time and in the manner designated in the invitation for bids. During the auction, each bidder shall have the capability to view their bid rank or the low bid price. Bidders may reduce their bid prices during the auction. At the conclusion of the auction, the record of the bid prices received and the name of each bidder shall be open to public inspection.

(5) Award of Contracts. Contract awards by Council shall be made at an advertised public meeting. The following applies to Council awards:

(a) Awards shall normally be made to the lowest responsible bidder. However, Council, upon recommendation of the Purchasing Authority, may have the right to take into consideration such other factors as delivery date, quality of service, length of warranty, etc.

(b) Council shall have the authority to waive minor irregularities and defects when the best interests of the Borough would be served.

(c) Council shall have the authority to accept or reject any and/or all bids or to hold all bids for 45 days or until the next regular Council meeting.

(d) A tabulation of bids shall be made available for public inspection.

(Ordinance 1184, September 10, 1987, Section 3, as amended by Ordinance 1293, October 17, 1990, Section 1, Ordinance 1664, May 21, 2001, Ordinance 1812, May 2, 2005, and by Ordinance 1856, November 20, 2006, Section 1 and 2.)

Section 1404. Open Market Purchases.

a. All purchases of supplies, materials, equipment and contractual services not made under the provisions of Section 3 of this Ordinance shall be made, when feasible and when in the best interests of the Municipality, in the open market without newspaper advertisement and without observing the procedures prescribed for the receipt of formal sealed bids and the award of contracts on those bids, in one of the following manners: by written inquiry, telephone solicitation, or competitive electronic auction bidding.

b. Open market purchasing, wherever possible, shall be based on two or more quotations and shall be awarded based on the lowest quotation and most favorable delivery. In determining "lowest quotation," the Purchasing Authority shall do so on the basis of the lowest quotation meeting the specification or the description or the sample as set forth in the price quotation request.

c. The Purchasing Authority shall keep a record of all open market orders and the quotations submitted in competition thereon for a minimum of 3 years. Those records shall be open to public inspection during normal business hours.

(Ordinance 1184, September 10, 1987, Section 4, as amended by Ordinance 1293, October 17, 1990, Section 2, and by Ordinance 1856, November 20, 2006, Section 3.)

Section 1405. Emergency Purchases. In case of actual emergency and with the approval of the Purchasing Authority, the head of any department or using agency may purchase directly any supplies, materials and/or equipment, the immediate procurement of which is essential to prevent delays in the work of the department or using agency which might vitally affect the life, health, safety and/or welfare of citizens. The head of the department or using agency, after having made any emergency purchase, as authorized by this Section, shall submit to the Purchasing Authority, a record of the emergency purchase together with a report of the circumstances of the emergency. (Ordinance 1184, September 10, 1987, Section 5.)

Section 1406. Inspection and Testing. The ordering department shall, through inspection, testing or other means, certify to the Purchasing Authority the conformance of all purchased goods, equipment, supplies and services with Borough specifications and contract provisions with the specifications set forth in the order of contract. (Ordinance 1184, September 10, 1987, Section 6.)

Section 1407. Cooperative Purchasing. The Purchasing Authority shall have authority to join with other units of government in cooperative purchasing plans when the best interests of the Municipality would be served. (Ordinance 1184, September 10, 1987, Section 7.)

Section 1408. Disposition of Municipally Owned Real Estate. Council may authorize the disposition of real estate owned by the Municipality in any of the following ways:

a. The property may be sold to the highest bidder after notice in at least one newspaper of general circulation in the Municipality, the advertisement to give notice of the property to be disposed of, the requirement for sealed bids and the time and place where the bids are to be received and opened.

b. The property may be sold to the highest bidder at public auction, of which notice shall be given at least 30 days in advance of the auction sale, in at least one newspaper of general circulation in the Municipality.

c. In the case of property needed by another unit of government, a municipal authority, a council of governments or a similar agency, that property may be disposed of upon recommendation of the Purchasing Authority, on terms mutually agreeable to the Municipality

and to the other unit of government concerned. Sale of real property shall be announced at a regular Council meeting.

(Ordinance 1184, September 10, 1987, Section 8.)

Section 1409. Disposition of Surplus Personal Property.

a. All using agencies shall submit to the Purchasing Authority, at those times and in whatever form prescribed, reports showing stocks of all supplies, materials and equipment that are no longer used or that have become obsolete, worn out or scrapped.

b. The Purchasing Authority may transfer surplus supplies, materials and equipment to other using agencies or may exchange such personal property for new supplies, materials and equipment or may sell, on behalf of the Municipality, personal property which has become unsuitable for public use. The sale of personal property shall be by written contract to the highest responsible bidder in the manner specified in Section 8 of this Ordinance; by public auction as specified in Section 8 of this Ordinance; by open market sale in the manner specified in Section 4 of this Ordinance; or by competitive electronic auction bidding as specified in Section 3 of this Ordinance, except without newspaper advertisement and without observing the procedures prescribed for the receipt of formal sealed bids and the award of contracts on those bids for the disposition of personal property with a value of \$25,000.00 or less.

(Ordinance 1184, September 10, 1987, Section 9,⁸⁰⁰ as amended by Ordinance 1856, November 20, 2006, Section 4.)