

## CHAPTER 1-11

### PURCHASING

#### Sections:

<b>1-11-01</b>	<b>GENERAL PROVISIONS</b>
<b>1-11-02</b>	<b>REPORTING OF ANTICOMPETITIVE PRACTICES</b>
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#### Section 1-11-01 GENERAL PROVISIONS

The City of Boise takes seriously its authority to spend taxpayer funds to purchase public works construction, goods and services required for the orderly and efficient operation of the City.

- A. Adoption of Idaho State Code Purchasing laws: In order to promote uniformity and consistency in the City's procurement of public works construction, services and goods, the City adheres to the purchasing by political subdivision laws in Idaho Code as established by the Idaho Legislature.
- B. The procedures for the implementation of the purchasing laws shall be described in the Business Operations Manual of the City, as it now exists or as it may from time to time be amended in the future.

#### Section 1-11-02 REPORTING OF ANTICOMPETITIVE PRACTICES

When for any reason, collusion or other anticompetitive practices (any act by one or more parties seeking or endeavoring to limit or restrict competitive bid policies) are suspected among any bidders, offerors, or proposers, the procuring department shall transmit the relevant facts to the Purchasing Agent and the City Attorney.

#### Section 1-11-03 REMEDIES

- A. Authority to Resolve Protested Solicitations and Awards.
  - 1. Right to Protest. In the event a formal level contract is awarded to a bidder/proposer other than the lowest responsive bidder/highest ranking proposer, any participating bidder/proposer may protest to the City Council through the Purchasing Agent. The protest shall be submitted in writing specifying the reason or reasons the proposed award is in error within seven (7) calendar days after transmittal of the Notice of Intent to Award letter.
  - 2. Authority to Resolve Protests. The Purchasing Agent, with concurrence of the Department Head, or a designee, shall have the authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest of an aggrieved bidder/proposer, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract unless the settlement entails the payment of City funds in excess of \$10,000, or more, in which case it must be approved by the Mayor and City Council.
  - 3. Decision. Unless a protest is withdrawn, the City Council shall either affirm its prior award, modify the award, reject all bids/proposals, or direct staff to proceed as it directs.

4. Notice of Decision. A copy of the decision under Subsection 3 of this Chapter shall be mailed by certified letter or otherwise furnished immediately to the protestant and any other party intervening.
  5. Finality of Decision. A decision under Subsection 3 of this Chapter shall be final and conclusive.
  6. Stay of Procurement During Protests. In the event of a timely protest under Subsection 1 of this Section, the City shall not proceed further with the solicitation or with the award of the contract until the City Council considers the contentions raised or the protest is withdrawn.
- B. Authority to Debar or Suspend.
1. Authority. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Purchasing Agent, after consultation with the Department Head of the using agency and the City Attorney, shall have the authority to debar a person or firm for cause from consideration for award of contracts. The debarment shall not be for a period of more than three (3) years. The same officer, after consultation with the Department Head of the using agency, shall have the authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall be for a period not exceeding three (3) months.
  2. Causes for Debarment or Suspension. The causes for debarment or suspension include the following:
    - a. conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
    - b. conviction under City, State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a City contractor.
    - c. conviction under City, State or Federal antitrust statutes arising out of the submission of bids or proposals.
    - d. violation of contract provisions, as set forth below, of a character which is regarded by the Purchasing Agent to be so serious as to justify debarment action:
      1. failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
      2. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
    - e. any other cause the Purchasing Agent determines to be so serious and compelling as to affect responsibility as a City contractor, including debarment by another governmental entity.
  3. Decision. The Purchasing Agent shall issue a written decision to debar or suspend. The decision shall:
    - a. state the reasons for the action taken; and
    - b. inform the debarred or suspended person involved of its rights to administrative review of the City Council.
  4. Finality of Decision. A copy of the decision under Subsection 3 of this Section shall be final and conclusive. The debarred or suspended person may appeal to the City Council within 14 days of notification of the decision by filing a notice of appeal with the City Clerk.

- C. Authority to Resolve Contract and Breach of Contract Controversies.
1. Applicability. This Section applies to controversies between the City and a contractor and which arise under, or by virtue of, a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.
  2. Authority. The Purchasing Agent with the concurrence of the Department Head or designee is authorized, prior to commencement of an action in a court concerning the controversy, to settle and resolve a controversy described in Subsection 1 of this Section, unless the settlement entails the payment of City funds of \$10,000, or more, in which case it must be approved by the Mayor and City Council.
  3. Decision. If such a controversy is not resolved by mutual agreement, the Purchasing Agent shall promptly issue a decision in writing. The decision shall:
    - a. state the reasons for the action taken; and
    - b. inform the contractor of its right to administrative review by the City Council.
  4. Notice of Decision. A copy of the decision under Subsection 3 of this Section shall be mailed or otherwise furnished immediately to the contractor.
  5. Finality of Decision. The decision under Subsection 3 of this Section shall be final and conclusive. The contractor may submit a written appeal to the City Council within 7 working days of notification of the decision by filing a notice of appeal with the City Clerk.
  6. Failure to Render Timely Decision. If the Purchasing Agent does not issue the written decision required under Subsection 3 of this Section within 120 calendar days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.
- D. Remedies Prior to an Award.
1. If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be:
    - a. canceled; or
    - b. revised to comply with the law.
- E. Remedies after an Award.
- If after an award it is determined that a solicitation or award of a contract is in violation of law, then:
1. if the person awarded the contract has not acted fraudulently nor in bad faith nor been party to the illegality:
    - a. the contract may be ratified and affirmed, provided it is determined by City Attorney and the Purchasing Agent that doing so is in the best interest of the City; or
    - b. the contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract prior to termination.
  2. if the person awarded the contract has acted fraudulently or in bad faith:
    - a. the contract may be declared null and void; or
    - b. the contract may be ratified and affirmed if it is determined by the
      1. Purchasing Agent such action is in the best interests of the City, without prejudice to the City's rights to such damages as may be appropriate.

(6859, Repealing and Reenacting, 08/28/2012)