

Submitted by: Chair Traini and
Assemblymember Tesche
Prepared by: Assembly Office
For reading: JULY 10, 2001

ANCHORAGE, ALASKA
AO NO. 2001-122(S)

AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING ANCHORAGE MUNICIPAL CODE TITLE 7, PURCHASING AND CONTRACTS AND PROFESSIONAL SERVICES, PERTAINING TO SECTIONS 7.10, GENERAL PROVISIONS, 7.15, GENERAL CONTRACTING PROCEDURES, SECTION 7.20, METHODS OF SOURCE SELECTION, AND 7.70, CONTRACTS WITH NONPROFIT SERVICE ORGANIZATIONS.

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1: That Anchorage Municipal Code section 7.10.060, *Applicability of title to Anchorage Telephone Utility*, is hereby repealed in its entirety.

Section 2: That Anchorage Municipal Code section 7.15.040 is hereby amended to read as follows:

7.15.040 **Assembly approval of contracts.**

A. No contract for supplies, services, professional services or construction whereby the municipality is obligated to pay more than \$100,000.00 pursuant to a contract awarded through competitive procedures, which are described in sections 7.20.020 through 7.20.040 (bids) and 7.20.060 (proposals), or more than \$30,000.00 pursuant to contracts awarded through other authorized procedures, may be executed unless the assembly has approved a memorandum setting forth the essential terms of the contract. To the extent applicable for particular contracts, the following essential terms shall be set forth:

1. The identity of the contractor;
2. The contract price;
3. The nature and quantity of the performance that the municipality shall receive under the contract;
4. The using agency; and
5. The time for performance under the contract.

All contracts awarded through competitive procedures under this subsection [A] that are more than \$30,000.00 and less than \$100,000.00 shall be reported to the assembly in an informational memorandum once each month. The report shall contain the information described in subsections 1 through 5 of this subsection.

C. No grant to a governmental or quasi-governmental agency or to a private nonprofit corporation under the provisions of chapter 7.70 for more than \$30,000.00 may be issued unless the assembly has approved a memorandum setting forth:

1. The identity of the grantee;
2. The grant amount;
3. The purpose to which grant funds are to be devoted; and
4. The agency charged with administration of the grant.

(AO No. 79-203; AO No. 82-168; AO No. 93-217, § , 2-26-94; AO No. 94-123(S), § 1, 8-25-94)

D. Regardless of the amount involved, all contracts for professional lobbying services must be approved by the Assembly.

E. The Municipality shall not be liable for payment for any supplies, services, professional services, or construction provided to the Municipality before the applicable requirements of this section are first satisfied.

Section 3: That Anchorage Municipal Code section 7.15.080 is hereby repealed and reenacted to read as follows:

7.15.080 Contract amendments – Assembly approval.

A. No contract amendment or change order that will cause the total value of the contract to exceed the limits specified below may be executed unless the Assembly has approved a memorandum setting forth the essential terms of the amendment or change order request:

- 1 For contracts with an original award value of [\$50,000.00] **\$30,000** or less; a contract amendment or change order, or cumulative contract amendments or change orders, that will cause the total contract amount, as amended, to exceed \$50,000.00 or 125% of the original contract award, whichever is greater.

2. For contracts with an original award value greater than [\$50,000.00] \$30,000 up to \$250,000.00; a contract amendment or change order, or cumulative contract amendments or change orders, that will cause the total contract amount, as amended, to exceed 125% of the original contract award, or to increase the original contract by [\$50,000.00] \$30,000 whichever is less.
 3. For contracts with an original award value greater than \$250,000.00 up to \$2,500,000.00; a contract amendment or change order, or cumulative contract amendments or change orders, that will cause the total contract amount, as amended, to exceed 120% of the original contract award, or to increase the original contract by \$250,000.00, whichever is less.
 4. For contracts with an original award value greater than \$2,500,000.00; the department shall recommend, with concurrence of the purchasing officer, the maximum contract amendment or change order value that can be executed without Assembly approval. This value shall be established and approved concurrently with the contract award under 7.15.040.
- B. For contracts that contain one or more optional contract periods, and where the municipality desires to exercise the option, a follow-on period may be executed in an amount consistent with the original contract terms, notwithstanding subsection A herein. The individual option period is considered a separate action and not an amendment or change order. However, a contract amendment or change order, or cumulative contract amendments or change orders, issued within the original or any optional contract period, shall be subject to subsection A herein. If the original contract period or any optional period is otherwise subject to 7.15.040, such approval shall be received prior to contract execution.
- C. For construction contracts where the original contract value is greater than \$500,000.00, the administering agency or department shall submit informational memoranda to the assembly that, at a minimum, lists the contractor name and project identity, the original contract amount, and all contract amendments or change orders processed against the contract. Informational memoranda shall be submitted no later than 60 days after issuing the final pay estimate.
- [A. NO CONTRACT AMENDMENT WHICH WILL CAUSE THE TOTAL PRICE OF THE CONTRACT, AS AMENDED, TO EXCEED \$30,000.00, OR 110 PERCENT OF THE ORIGINAL CONTRACT PRICE FOR CONTRACTS GREATER THAN \$30,000.00, MAY BE EXECUTED UNLESS THE ASSEMBLY HAS APPROVED A MEMORANDUM SETTING FORTH ANY MODIFICATIONS TO THE ESSENTIAL TERMS OF THE CONTRACT; PROVIDED, HOWEVER, THAT ANY CONTRACT AMENDMENT IN EXCESS OF \$30,000.00 SHALL BE SUBJECT TO APPROVAL BY THE ASSEMBLY EXCEPT AS AUTHORIZED BY SUBSECTIONS B AND C OF THIS SECTION.

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2 [B. FOR CONSTRUCTION PROJECTS, THE SUM TOTAL OF THE CONTRACT
3 AMENDMENTS WHICH WILL CAUSE THE TOTAL PRICE OF THE
4 CONTRACT, AS AMENDED, TO EXCEED 110 PERCENT OF THE
5 ORIGINAL CONTRACT PRICE, OR EXCEED \$30,000.00, WHICHEVER IS
6 GREATER, MAY NOT BE EXECUTED UNLESS THE ASSEMBLY HAS
7 APPROVED A MEMORANDUM SETTING FORTH ANY MODIFICATIONS
8 TO THE ESSENTIAL TERMS OF THE CONTRACT; PROVIDED,
9 HOWEVER, THAT ANY SINGLE CONTRACT AMENDMENT IN EXCESS
10 OF \$30,000.00 SHALL BE SUBJECT TO APPROVAL BY THE ASSEMBLY.
11
12 [C. USING AGENCIES WHICH AMEND CONSTRUCTION CONTRACTS AS
13 AUTHORIZED UNDER SUBSECTION B OF THIS SECTION SHALL
14 REPORT SUCH AMENDMENTS TO THE ASSEMBLY WITHIN 60 DAYS
15 OF EXECUTION.]
16
17 D. THE MUNICIPALITY SHALL NOT BE LIABLE FOR PAYMENT FOR
18 ANY SUPPLIES, SERVICES, PROFESSIONAL SERVICES, OR
19 CONSTRUCTION PROVIDED TO THE MUNICIPALITY BEFORE THE
20 APPLICABLE REQUIREMENTS OF THIS SECTION ARE FIRST
21 SATISFIED.
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23 (AO NO. 79-203, 1-1-80; AO NO. 88-163)

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25 Section 4: That Anchorage Municipal Code section 7.20.050 is hereby amended to read
26 as follows:

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28 7.20.050 Waiver of irregularities.
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30 The assembly, or mayor for bids of \$30,000.00 or less, shall have the authority to waive
31 irregularities on any and all bids, except that timeliness and manual signature
32 requirements shall not be waived.
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34 Section 5: That Anchorage Municipal Code section 7.20.060 is hereby amended to read
35 as follows:

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37 7.20.060 Competitive sealed proposals; negotiated procurement.
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- 40 D. Proposals shall be received at the time and place designated in the request for
41 proposals, and shall be opened so as to avoid disclosing their contents to
42 competing proponents during the evaluation, discussion, and negotiation process.
43 [OF NEGOTIATION.] Notwithstanding chapter 3.90, the names of the
44 responding firms, contents of the proposals, tabulations and evaluations thereof
45 shall be open to public inspection only after assembly approval of a [THE]
46 contract award. However, the purchasing officer shall issue a notice of intent to

award to all responding proposers at least seven days prior to assembly approval. Upon request by a competing proponent, the recommended awardee's proposal shall be opened for review. The review by a competing proponent is to assure reasonable access and opportunity to request a debriefing from the purchasing officer prior to assembly action on the proposed award. If an award does not require assembly approval, public inspection shall not be allowed until seven days after the purchasing officer has issued a notice of intent to award and there are no pending reviews or actions from any competing proposer.

- E. In the manner provided in the request for proposals, the purchasing officer may enter into discussions [NEGOTIATE] with those responsible proponents whose proposals are determined by the purchasing officer to be most reasonably responsive to the request for proposals (short-listed firms). The Purchasing Officer may issue an interim notice to the remaining firms that a qualified list has been established for discussion purposes. No disclosure of the short-listed firms, contents of proposals, tabulations or evaluations thereof shall be made in accordance subsection D above. Discussions [NEGOTIATIONS] shall be used to clarify and ensure full understanding of the requirements of the request for proposals. The purchasing officer may permit those short-listed firms [PROPOSERS] to revise their proposals after submission and prior to award to obtain best and final offers. Proponents deemed eligible for discussions [NEGOTIATIONS] shall be treated equally regarding any opportunity to discuss and revise proposals. However, if during the discussions it is evident that the proposals, as submitted, will exceed the available funding, and/or other changes in the terms, conditions, or requirements are needed to clarify or fulfill the requirements of the Municipality, the Purchasing Officer shall issue a written modification to those short-listed firms with an established date and time for the firms to respond. The failure of a short-listed firm to respond or to notify the Purchasing Officer of a needed time extension may be just cause to remove the proposer from further consideration. In conducting discussions [NEGOTIATIONS] or requesting revisions, neither the purchasing officer nor any other municipal officer or employee shall disclose any information derived from other competing proposals. [OF COMPETING PROPONENTS.]

- J. Legal services shall be procured in accordance with this section. Except for procurement of legal services by the assembly as provided by section 4.06 of the Charter and subsection K of this section, no negotiations or contracts for the services of legal counsel may be pursued or awarded without the prior approval in writing of the municipal attorney. The municipal attorney shall review the responses received by the purchasing officer and shall be assisted by the purchasing officer in the selection process. All bills or invoices for payment for legal services obtained pursuant to this section shall be reviewed and approved by the municipal attorney prior to payment. All funds budgeted, obligated or expended by any municipal department, agency or utility [EXCEPT THE ANCHORAGE TELEPHONE UTILITY] for contract legal services must be

charged to a separate legal services budget account within that department, agency or utility. The assembly shall be informed, in advance, of the participation by the municipality in any litigation as plaintiff or intervener where outside counsel is retained to represent the municipality if the cost of such representation is likely to exceed \$30,000.00.

(AO No. 79-203, 1-1-80; AO No. 88-163; AO No. 92-82(S), 1-1-93; AO No. 92-87(S); AO No. 94-174, § 1, 10-25-64)

Section 6: That Anchorage Municipal Code section 7.20.070 is hereby amended to read as follows:

7.20.070 **Open market procedures.**

- A. The purchasing officer may procure all supplies, services, professional services and construction having an estimated value of not more than \$25,000.00 on the open market without formal advertising or other formal bid procedures.

- C. Awards, where practicable, shall be made to the lowest responsive and responsible bidder. The purchasing officer shall keep a record of all open market bids received and awards made thereon. Local bidders preference shall be applied in accordance with Section 7.20.040.

(AO No. 79-203, 1-1-80)

Section 7: That Anchorage Municipal Code section 7.20.080 is hereby repealed and reenacted to read as follows:

7.20.080 **Proprietary [REQUIREMENTS] and non-competitive procurements.**

- A. The Purchasing Officer may contract, without the use of the competitive source selection procedures of this chapter, for the following supplies, services, professional services or construction:

1. For contracts, including reimbursable agreements, with Federal or State units of government, any post secondary educational institutions, or utility provider where the municipality has a financial responsibility or beneficial interest in entering into an agreement.
2. For contracts issued pursuant to any Federal, State, or local government contract where the municipality is an authorized user, or where the resulting contractor agrees to extend the same terms, conditions, and pricing to the municipality as those awarded under the original contract.

(Piggy-backing) such agreements shall be limited to those contracts where the award is issued pursuant to a formally advertised solicitation.

3. For contracts where the amount is less than \$5,000.00 for supplies, services, or professional services, and \$10,000.00 for construction services, and the price is fair and reasonable.
4. For contracts pursuant to a formal recommendation by a municipal contractor specifically tasked with researching and/or reviewing the market place for qualified products or services. The municipal contractor must have been hired specifically for this purpose and must have been selected in accordance with the competitive procedures of 7.20.020 (Bids) or 7.20.060 (Proposals).
5. For contracts where the purchasing officer determines in writing that the municipality's requirements reasonably limit the source for the supplies, services, professional service or construction to one person.

- B. All contract awards under this section, or any amendments thereto, shall be subject to the applicable approval requirements of sections 7.15.040 and 7.15.080 prior to execution.

[THE MUNICIPALITY MAY AWARD A CONTRACT FOR SUPPLIES, SERVICES OR CONSTRUCTION WITHOUT COMPETITION WHERE THE PURCHASING OFFICER DETERMINES IN WRITING THAT THE MUNICIPALITY'S REQUIREMENTS REASONABLY LIMIT THE SOURCE FOR THE SUPPLIES, SERVICES OR CONSTRUCTION TO ONE PERSON.]

(AO No. 79-203, 1-1-80)

- C. The Municipality shall not be liable for payment for any supplies, services professional services, or construction provided under this section before all of the requirements of this section and AMC 7.15.040 and 7.15.080 are first satisfied.

Section 8: That Anchorage Municipal Code section 7.20.120 is hereby amended to read as follows:

7.20.120 Waiver of formal [BIDDING] procedures.

- [A.] The mayor may waive, in writing, the formal [BIDDING] procedures of this Title [CHAPTER] when time is of the essence and the best interests of the municipality will be served by such action. [IN PROCEEDING UNDER THIS SECTION, THE MAYOR SHALL SUBMIT AN INFORMATIONAL MEMORANDUM TO THE ASSEMBLY STATING ALL ESSENTIAL TERMS OF THE CONTRACT AND THE REASONS FOR PROCEEDING UNDER THIS

SECTION.] All contracts for which formal procedures are waived under this section shall be reported to the assembly at its next meeting. The report shall contain the information described in section 7.15.040.A and shall summarize the reasons for proceeding under this section.

[B. THE MAYOR MAY WAIVE THE FORMAL PROCEDURES OF THIS CHAPTER WITHOUT ASSEMBLY APPROVAL FOR THE FOLLOWING TRANSACTIONS:

1. ACQUISITION OR DISPOSAL OF UNUSED OR OBSOLETE TELEPHONE CUSTOMER EQUIPMENT; AND
2. ACQUISITION BY PURCHASE OR LEASE, OR THE SALE OR LEASE, OF TELEPHONE CUSTOMER EQUIPMENT WHICH IS INTENDED FOR USE BY A TELEPHONE UTILITY CUSTOMER PURSUANT TO AN OUTSTANDING CUSTOMER ORDER.]

[C. ALL CONTRACTS FOR WHICH FORMAL PROCEDURES ARE WAIVED UNDER THIS SECTION SHALL BE REPORTED TO THE ASSEMBLY AT ITS NEXT MEETING. THE REPORT SHALL CONTAIN THE INFORMATION DESCRIBED IN SECTION 7.15.040.A AND SHALL SUMMARIZE THE REASONS FOR PROCEEDING UNDER THIS SECTION.]

(AO No. 79-203, 1-1-80; AO No. 88-163)

Section 10: That a new section 7.20.140 , Remedies, is enacted to read as follows:

7.20.140 Remedies.

Upon the complaint of any person, after notice and hearing, and with a finding that any Municipal employee or official has knowingly violated the provisions of AMC 7.15.040, .070, .080, and 7.20.080, the Bidding Review Board may impose a civil penalty on that employee or official not to exceed the total cost of any unlawful procurement made as a result of that violation. Employees and officials penalized under this section are personally liable for payment of the penalties and may not be indemnified by the Municipality of Anchorage for their repayment.

Section 11: That Anchorage Municipal Code section 7.70.030 is hereby amended to read as follows:

7.70.030 Assembly approval of grant agreements.

In accordance with the provisions of section 7.15.040, grants to governmental agencies and nonprofit service organizations in an amount exceeding \$30,000.00 shall be subject to assembly approval.

Section 12: That this ordinance shall be effective immediately upon passage and approval.

PASSED AND APPROVED by the Anchorage Assembly the ____ day of _____, 2001.

Chair

ATTEST:

Municipal Clerk