

CITY OF BANGOR

PROCUREMENT
POLICY

as adapted

from

The Model Procurement Ordinance
for Local Governments

By

The American Bar Association

in cooperation with

The National Institute of Governmental
Purchasing

Adopted by the Bangor City Council

January 10, 1994

Revised June, 1997

Revised October 27, 2003

Revised March 28, 2011 (CO11-110)

Revised October 24, 2011 (CO11-313)

Revised February 9, 2015 (CO 15-082)

TABLE OF CONTENTS

ARTICLE 1 - GENERAL PROVISION

Part A - Purpose and Application

1-101 Purpose	7
1-102 Application	7

Part B - Definitions

1-201 Definitions	
(1) Architect, Engineer and Land Surveying Services	7
(2) Brand Name or Equal Specification	7
(3) Brand Name Specification	7
(4) Business	7
(5) Change Order	7
(6) Contract Modification	7
(7) Construction	7
(8) Contract	8
(9) Contractor	8
(10) Cost Analysis	8
(11) Employee	8
(12) Financial Interest	8
(13) Person(s)	8
(14) Price Analysis	8
(15) Pricing Data	8
(16) Procurement	8
(17) Request for Bids	9
(18) Request for Proposals/Qualifications	9
(19) Responsible Bidder or Offeror	9
(20) Responsive Bidder	9
(21) Services	9
(22) Specification(s)	9
(23) Supplies	9

Part C - Public Access to Procurement Information

1-301 Public Access to Procurement Information	9
1-302 Authorization for the Use of Electronic Transmissions	9

ARTICLE 2 - OFFICE OF THE PURCHASING AGENT

2-101 Establishment, Appointment, and Tenure	10
(1) Establishment of the Position of Purchasing Agent	10
(2) Appointment	10
(3) Tenure	10

2-102	Authority and Duties	10
	(1) Principal Public Purchasing Official	10
	(2) Authority	10
	(3) Duties	10
	(3) Operational Procedures	10
2-103	Delegations to other (City) Officials	11

ARTICLE 3 - SOURCE SELECTION AND CONTRACT FORMATION

Part A - Methods of Source Selection

3-101	Competitive Sealed Bidding	11
	(1) Conditions for Use	11
	(2) Request for Bids	11
	(3) Public Notice	11
	(4) Bid Opening	11
	(5) Bid Acceptance and Bid Evaluation	11
	(6) Correction or Withdrawal of Bids, Cancellation of Awards	12
	(7) Award	12
	(8) Multi-Step Sealed Bidding	12
3-102	Request for Proposals/Qualifications	12
	(1) Conditions for Use	12
	(2) Public Notice	12
	(3) Evaluation Factors	13
	(4) Discussion with Responsible Offerors and Revisions to Proposals/Qualifications	13
	(5) Award	13
3-103	Contracting for Designated Professional Services (Other than Architect, Engineer & Land Surveying Services)	13
	(1) Procurement of Services	13
3-104	Purchases	13
	(1) General	13
	(2) Purchases (\$1,000 - <\$5,000)	13
	(3) Purchases (\$500 - <\$1,000)	13
	(4) Purchases Under (up to \$500)	14
3-105	Sole Source Procurement	14
3-106	Emergency Procurements	14
3-107	Tie Bids	14
3-108	Cancellation of Invitations for Bids or Request for Proposals/Qualifications	14

Part B - Qualifications and Duties

3-201	Responsibility of Bidders and Offerors	15
(1)	Determination of Nonresponsibility	15
3-202	Cost or Price Analysis	15
3-203	Bid and Performance Bonds on Service Contracts	15
3-204	Insurance on Supply or Service Contracts	15

Part C - Types of Contracts and Contract Administration

3-301	Types of Contracts	15
(1)	General Authority	15
(2)	Multi-Term Contracts	16
(3)	Multiple Source Contracting	16
3-302	Contract Clauses and Their Administration	17
(1)	Contract Clauses	17
(2)	Price Adjustments	18
(3)	Standard Clauses and Their Modification	18
3-303	Change Orders	19
(1)	Requested Submission Relating to Change Orders or Contract Modifications	19
3-304	Contract Administration	19
3-305	Right to Audit Records	19
(1)	Audit of Cost or Pricing Data	19
(2)	Contract Audit	19
3-306	Reporting of Anticompetitive Practices	19
3-307	City Procurement Records	
(1)	Contract File	19
(2)	Retention of Procurement Records	19

ARTICLE 4 – SPECIFICATIONS

4-101	Maximum Practicable Competition	20
4-102	Brand Name or Equal Specification	20
(1)	Use	20
(2)	Designation of Several Brand Names	20
(3)	Required Characteristics	20
(4)	Nonrestrictive Use of Brand Name or Equal Specification	20

4-103	Brand Name Specification	21
	(1) Use	21
	(2) Competition	21

ARTICLE 5 - PROCUREMENT OF CONSTRUCTION,
ARCHITECT, ENGINEER AND LAND SURVEYING SERVICES

Part A - Management of Construction Contracting

5-101	Responsibility for Selection of Methods of Construction Contracting Management	21
-------	---	----

Part B - Bid Security and Performance Bonds

5-201	Bid Security	21
	(1) Requirement for Bid Security	21
	(2) Amount of Bid Security	21
	(3) Rejection of Bids for Noncompliance with Bid Security Requirement	21
	(4) Withdrawal of Bids	21
5-202	Contract Performance and Payment Bonds	22
	(1) When Required and Amounts	22
	(2) Authority to Require Additional Bonds	22
	(3) Suits on Payment Bonds - Right to Institute	22
	(4) Suits on Payment Bonds - Where and When Brought	22
	(5) City of Bangor Subrogation Rights	22

5-203	Copies of Bond Forms	23
-------	----------------------	----

5-204	Insurance Requirements	23
-------	------------------------	----

Part C - Fiscal Responsibility

5-301	Contract Changes and Approval Process	23
-------	---------------------------------------	----

5-302	Fiscal Responsibility	23
-------	-----------------------	----

ARTICLE 6 - DEBARMENT OR SUSPENSION

6-101	Authority to Debar or Suspend	23
-------	-------------------------------	----

6-102	Decision to Debar or Suspend	24
-------	------------------------------	----

6-103	Notice of Decision	24
-------	--------------------	----

6-104	Finality of Decision	25
-------	----------------------	----

ARTICLE 7 - COST PRINCIPLES
(RESERVED)

ARTICLE 8 - SUPPLY MANAGEMENT
(RESERVED)

ARTICLE 9 - APPEALS AND REMEDIES

9-101 Bid Protest	25
(1) Right to Protest	25
(2) Stay of Procurements During Protests	25
(3) Entitlement to Costs	25

ARTICLE 10 - COOPERATIVE PURCHASING

10-101 Authority to Join Groups	25
---------------------------------	----

ARTICLE 11 - ASSISTANCE TO AND DISADVANTAGED BUSINESS PROGRAM
(RESERVED)

ARTICLE 12 - ETHICS IN PUBLIC CONTRACTING
Chapter 33, City of Bangor Ordinance)

ARTICLE 13 – Community Development Block Grant Program

13-101 General Provisions	
13-102 Small Purchase Procedures	
13-103 Sealed Bids	
13-104 Competitive Proposals	
13-105 Non-Competitive Proposals	
13-106 Ineligible Beneficiaries	

ARTICLE 1 GENERAL PROVISIONS

Part A - Purpose and Application

1-101 Purpose.

The Purpose of this Policy is to provide for the fair and equitable treatment of all persons involved in public purchasing by the City of Bangor, 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 Policy applies to contracts for the procurement of supplies, services, and construction, entered into by the City of Bangor after the effective date of this Policy, unless the parties agree to its application to contracts entered into prior to the effective date. It shall apply to every City of Bangor expenditure irrespective of the source of the funds. When the procurement involves the expenditure of Federal assistance or contract funds, the procurement shall be conducted in accordance with any mandatory applicable Federal law and regulations. Nothing in this Policy shall prevent any City department from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

Part B - Definitions

1-201 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 of Maine.
- (2) Brand Name or Equal Specification. A specification limited to one or more items by manufacturers' names or model numbers to describe the standard of quality, performance, and other salient characteristics needed to meet the City of Bangor's requirements, and which provides for the submission of equivalent products.
- (3) Brand Name Specification. A specification limited to one or more items by manufacturers' names or model numbers.
- (4) Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
- (5) Change Order. A written order signed by the City Manager, authorizing the contractor to make changes.
- (6) Contract Modification. Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
- (7) Construction. The process of building, altering, repairing, improving, or demolishing any structure or building, or other improvements of any kind. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

- (8) Contract. All types of City of Bangor agreements, regardless of what they may be called, for the procurement of supplies, services, or construction.
- (9) Contractor. Any person having a contract with the City of Bangor or a using agency thereof.
- (10) Cost Analysis. The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.
- (11) Employee. An individual drawing a salary or wages from the City of Bangor, 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.
- (12) Financial Interest.
 - (a) Direct or indirect 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 \$500 per year, or its equivalent;
 - (b) Direct or indirect ownership of 10% of any property or business to include 10% of the stock of a private corporation; or
 - (c) Holding a position in a business such as officer, director, trustee, partner, employee, or the like, or holding any position of management.
- (13) Person(s). Any business, individual, union, committee, club, other organization, or group of individuals.
- (14) Price Analysis. The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.
- (15) Pricing Data. Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.
- (16) 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, service, or construction, including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration.

- (17) Request for Bids. All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.
- (18) Request for Proposals/Qualifications. All documents, whether attached or incorporated by reference, utilized for soliciting proposals/qualifications.
- (19) 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, facilities, equipment, and credit which will assure good faith performance.
- (20) Responsive Bidder. A person who has submitted a bid which conforms in all material respects to the requirements set forth in the request for bids.
- (21) Services. The furnishing of labor, time, or effect by a contractor, not involving the delivery of a specific product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.
- (22) Specifications. 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.
- (23) 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.

Part C - Public Access to Procurement Information

1-301 Public Access to Procurement Information.

Procurement information shall be a public record to the extent provided in 1 MRSA Section 401 et. seq. and shall be available to the public as provided in such statute.

1-302 Authorization to Use Electronic Transmissions

The use of electronic media, including acceptance of electronic signatures, is authorized consistent with the City's applicable statutory, regulatory or other guidance for use of such media, so long as such guidance provides for:

- (a) appropriate security to prevent unauthorized access to the bidding, approval and award processes; and
- (b) accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.

ARTICLE 2 - OFFICE OF THE PURCHASING AGENT

2-101 Establishment, Appointment, and Tenure.

- (1) Establishment of the Position of Purchasing Agent. There is hereby created the position of Purchasing Agent, who shall be the City's principal public purchasing official.
- (2) Appointment. The City Manager or his or her designee shall act as Purchasing Agent until or unless the City Council by ordinance shall provide for the appointment of a Purchasing Agent.
- (3) Tenure. The Purchasing Agent shall be appointed to serve an indefinite term and may be removed from office by the City Manager in accordance with City Policy.

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, services, and construction in accordance with this Policy, as well as the management and disposal of supplies.
- (2) Authority. The Purchasing Agent shall have the authority to award bids and/or contracts where the value is \$50,000 or less under the following conditions:
 - (a) funding for the item or service has been approved in the current year budget; and
 - (b) the recommendation is to award to the low bidder; and
 - (c) the City has previous experience with the bidder; and
 - (d) where vendors, staff, Councilors or members of the public have not expressed concern/or heightened interest in some form about the item bid or the bid process itself.

All bids or contracts awarded under this section shall be reported to the Finance Committee on a monthly basis.

- (3) Duties. In accordance with this Policy, and subject to the supervision of the City Manager, the Purchasing Agent shall:
 - (a) procure or supervise the procurement of all supplies, services, and construction needed by the City;
 - (b) sell, trade, or otherwise dispose of surplus supplies belonging to the City; and
 - (c) establish and maintain programs for specifications development, contract administration, inspection and acceptance, in cooperation with the departments using the supplies, services, and construction.
- (4) Operational Procedures. Consistent with this Policy, and with the approval of the City Manager, the Purchasing Agent may adopt operational procedures relating to the execution of his/her duties.

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 items or used vehicles and equipment to other City officials, if such delegation is deemed necessary for the effective procurement of those items. Procurement guidelines may be waived for the purchase of used vehicles or equipment after coordination with the Purchasing Agent. Written documentation consistent with purchasing guidelines must be available for all such purchases. Purchases of used vehicles or equipment in excess of \$10,000 must be reported to the Finance Committee.

ARTICLE 3 - SOURCE SELECTION AND CONTRACT FORMATION

Part A - Methods of Source Selection

3-101 Competitive Sealed Bidding.

- (1) Conditions for Use. All contracts of the City shall be awarded by competitive sealed bidding except as otherwise provided in Sections 3-102 (Request for Proposals/Qualifications), 3-103 (Contracting for Designated Professional Services), 3-104 (Purchases), 3-105 (Sole Source Procurement), and 3-106 (Emergency Procurements).
- (2) Request for Bids. A request for bids shall include specifications, and all contractual terms and conditions applicable to the procurement.
- (3) Public Notice. A public notice of the request for bids shall be given no less than seven (7) 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 or posting on the City's website. 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 request 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 in accordance with Section 1-301 (Public Access to Procurement Information).
- (5) Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alterations or correction, except as authorized in this Policy. Bids shall be evaluated based on the requirements set forth in the request for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability 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 or life cycle costs. The request for bids shall set forth the evaluation criteria to be used. No criteria should be used in bid evaluation that are not set forth in the request 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 electronic notice received in the office designated in the request 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 changes in bid prices may only be allowed if the bid price was based on incorrect information provided by the City. No other 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 notice to the bidder whose bid best meets the requirements and criteria set forth in the request for bids. In the event the bid for a construction project exceeds available funds as certified by the Finance Director, does not exceed such funds by more than five (5) percent, the Purchasing Agent is authorized, when time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment of the bid price 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 request for bids.
- (8) Multi-Step Sealed Bidding. When it is considered impractical to prepare initially a purchase description to support an award based on identified criteria, a request for bids may be issued requesting the submission of unpriced offers to be followed by a request for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

3-102 Request for Proposals/Qualifications.

- (1) Conditions for Use. When the Purchasing Agent determines 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 a request for proposals/qualifications.
- (2) Public Notice. Adequate public notice of the request for proposals/qualifications shall be given in the same manner as provided in Section 3-101(3) (Competitive Sealed Bidding, Public Notice).

- (3) Evaluation Factors. The request for proposals/qualifications should include all evaluation factors and selection criteria that will be used in the evaluation process. All evaluation factors cited in the request shall be considered equal unless the relative importance of such factors is so noted or assigned to each factor listed in the request for proposal/qualifications.
- (4) Discussion with Responsible Offerors and Revisions to Proposals/Qualifications. As provided in the request for proposals/qualifications, 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.
- (5) Award. Award shall be made to the responsible offeror whose proposal/qualification is determined to be the most advantageous to the City, taking into consideration price and the evaluation factors set forth in the request for proposals/qualifications. The contract file shall contain the basis on which the award is made.

3-103 Contracting for Designated Professional Services.

- (1) Procurement of Services. For the purpose of procuring the services of accountants, lawyers, appraisers, construction contract manager, architect, engineer, land surveyor or other professionals Section 3-102 (Request for Proposals/Qualifications) shall be used except as provided under Section 3-105 (Sole Source Procurement) or Section 3-106 (Emergency Procurement)

3-104 Purchases.

- (1) General. Any contract costing less than \$10,000 may be made in accordance with the purchase procedures authorized in this Section. Contract requirements shall not be artificially divided so as to constitute a purchase under this Section.
- (2) Purchases costing \$2,000 but less than \$10,000. In so far as it is practical, no less than three businesses shall be solicited to submit written quotations on vendor letterhead. Award shall be made to the business offering the lowest acceptable quotation. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded and maintained as a public record. All pricing information shall be sent directly to the Purchasing Agent.
- (3) Purchases costing over \$500 but less than \$2,000. The Purchasing Agent shall adopt operational procedures for making purchases of \$500 - \$2,000. Such operational procedures shall provide for obtaining adequate and reasonable competition for the supply, service, or construction being purchased; further, such operational procedures shall require the preparation and maintenance of written records adequate to document the competition obtained, properly account for the funds expended, and facilitate an audit of the purchase made.

- (4) Purchases costing up to \$500. Purchases of up to \$500 may use a single selection, after contact, based on reasonable price, stock availability and delivery requirements.

3-105 Sole Source Procurement.

A contract may be awarded without competition when the Finance Committee determines after conducting a good faith review of available sources, that there is only one source for the required supply, service, or construction item. The Purchasing Agent or respective department head shall conduct negotiations, as appropriate, as to price, delivery, and terms. A record of sole source procurements shall be maintained as a public record and shall list each contractor's name, the amount and type of each contract, a listing of the item(s) procured under each contract, and the identification of each contract file.

3-106 Emergency Procurements.

Notwithstanding any other provisions of this Policy, the Purchasing Agent may 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 of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract, a listing of the item(s) procured under the contract, and the identification of the contract file.

3-107 Tie Bids.

Tie bids shall be resolved by the drawing of lots or the flip of a coin. Such tie breaking procedures shall be performed by the Purchasing Agent in the presence of one or more witnesses and reported to the Finance Committee.

3-108 Cancellation of Request for Bids or Requests for Proposals/Qualifications.

A request for bids, a request for proposals/qualifications, or other solicitation may be canceled, or any or all bids or proposals/qualifications may be rejected in whole or in part as may be specified in the solicitation, when it is for good cause and in the best interest of the City. The reasons therefor shall be made part of the contract file.

Each solicitation issued by the City shall state that the solicitation may be canceled 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. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation of any future procurement of similar items.

Part B - Qualifications and Duties

3-201 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. Any grounds which would give the City the right to demand adequate assurance or due performance as to an awarded contract under 11 MRSA §2-609 shall be deemed adequate grounds for a determination of nonresponsibility under this section. The unreasonable failure of a bidder or offeror to supply promptly information in connection with an inquiry 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.

3-202 Cost or Price Analysis.

A cost analysis or a price analysis, as appropriate, shall be conducted prior to award of the contract other than one awarded under Section 3-101 (Competitive Sealed Bidding). A written record of such cost analysis or price analysis shall be made a part of the contract file.

3-203 Bid and Performance Bonds on Service Contracts.

Bid and performance bonds or other security may be requested for service contracts 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 a determination of a bidder or offeror's financial or other responsibility.

3-204 Insurance on Supply or Service Contracts.

Comprehensive general liability, fire hazard, property damage, workers compensation or other insurance coverage may be required in connection with any City contract, when the Purchasing Agent or City Solicitor deems such insurance is advisable to protect the City's interests. Any such insurance requirement shall be set forth in the solicitation. Insurance shall not be used as a substitute for a determination of the bidder or offeror's financial or other responsibility.

Part C - Types of Contracts and Contract Administration

3-301 Types of Contracts.

- (1) General Authority. Subject to the limitations of this Section, any type of contract which is appropriate to the procurement and which will promote the best interests of the City may be used, provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the City than any other type or that it is impracticable to obtain the supply, service, or construction item required except under such a contract.

(2) Multi-Term Contracts.

- (a) Specified Period. Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interest of the City, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.
- (b) Determination Prior to Use. Prior to the utilization of a multi-term contract, it shall be determined:
 - (i) that estimated requirements cover the period of the contract and are reasonably firm and continuing; and
 - (ii) that such a contract will serve the best interests of the City by encouraging effective competition or otherwise promoting economies in the City's procurement.
- (c) Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled and the contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for such purposes.

(3) Multiple Source Contracting.

- (a) General. A multiple source award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror. The obligation to order the City's actual requirements is limited by the provision of Uniform Commercial Code, 11 MRSA §2-306(1).
- (b) Limitations on Use. A multiple source award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, product compatibility, or to be in the City's best interest. Any multiple source award shall be made in accordance with the provision of Section 3-101 (Competitive Sealed Bidding), Section 3-102 (Request for Proposal/Qualification), Section 3-104 (Purchases), and Section 3-106 (Emergency Procurements), as applicable. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements.
- (c) Contract and Solicitation Provisions. All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the actual requirements of such users that can be met under the contract be obtained in accordance with the contract, provided that:

- (i) the City shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds its normal requirement or an amount specified in the contract; and
 - (ii) the City shall reserve the right to take bids separately if the Purchasing Agent approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of the City.
- (d) Intent to Use. If a multiple source award is anticipated prior to issuing a solicitation, the City shall reserve the right to make such an award and the criteria for award shall be stated in the solicitation.
- (e) Determination Required. The Purchasing Agent shall make a written determination setting forth the reasons for a multiple source award, which shall be made a part of the procurement file.

3-302 Contract Clauses and Their Administration.

- (1) Contract Clauses. All City contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Purchasing Agent, after consultation with the City Solicitor, may issue clauses appropriate for supply, service, or construction contracts, addressing among others the following subjects:
- (a) the unilateral right of the City to order in writing changes in the work within the scope of the contract;
 - (b) the unilateral right of the City to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract;
 - (c) variations occurring between estimated quantities of work in contract and actual quantities;
 - (d) defective pricing;
 - (e) liquidated damages;
 - (f) specified excuses for delay or nonperformance;
 - (g) termination of the contract for default;
 - (h) termination of the contract in whole or in part for the convenience of the City;
 - (i) suspension of work on a construction project ordered by the City;
 - (j) site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract:

- (i) when the contract is negotiated;
 - (ii) when the contractor provides the site or design; or
 - (iii) when the parties have otherwise agreed with respect to the risk of differing site conditions.
 - (k) the right of the City to require that the contract be performed in compliance with all applicable City ordinances, building codes, and State and Federal laws;
 - (l) specifying whether and under what conditions contract disputes may be subject to binding or non-binding arbitration; and
 - (m) specifying what law is applicable to resolution or contract disputes.
- (2) Price Adjustments.
- a. Adjustments in price resulting from the use of contract clauses required by Subsection (1) of this Section shall be computed in one or more of the following ways:
 - (i) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (ii) by unit prices specified in the contract or subsequently agreed upon;
 - (iii) by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
 - (iv) in such other manner as the contracting parties may mutually agree; or
 - (v) in the absence of agreement by the parties, by a unilateral determination by the City of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the City, as accounted for in accordance with [reference to cost principles] and subject to the provision of Article 9 (Appeals and Remedies).
 - b. A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provision of Section 3-202 (Cost or Pricing Data).
- (3) Standard Clauses and Their Modification. The Purchasing Agent, after consultation with the City Solicitor, may establish standard contract clauses for use in City contracts. If the Purchasing Agent establishes any standard clauses addressing the subjects set forth in Subsection (1) of this Section, such clauses may be varied provided that any variations are reviewed by the City Solicitor.

3-303 Change Orders

- (1) Required Submissions Relating to Change Orders or Contract Modifications. A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not costs or pricing data was required in connection with the initial pricing of the contract.

3-304 Contract Administration.

Each department shall insure that a contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract, shall be maintained.

3-305 Right to Audit Records.

- (1) Audit of Cost or Pricing Data. The City may at reasonable times and places, audit the books and records of any contractor who has submitted cost or pricing data pursuant to Section 3-202 (Cost or Pricing Data) to the extent that such books, documents, papers, and records are pertinent to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books, document, papers, and records that are pertinent to such cost or pricing data for three (3) years from the date of final payment under the contract.
- (2) Contract Audit. The City shall be entitled to audit the books and records of a contractor or a subcontractor at any tier under any negotiated contract or subcontract other than a firm fixed price contract to the extent that such books, documents papers, and records are pertinent to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract.

3-306 Reporting of Anticompetitive Practices.

When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the State Attorney General and the City Solicitor.

3-307 City Procurement Records.

- (1) Contract File. All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for the City in a contract file by the Purchasing Agent.
- (2) Retention of Procurement Records. All procurement records shall be retained and disposed of by the City in accordance with State record retention guidelines.

NOTE: Records as to awarded contracts should be retained for at least six (6) years following final performance thereunder. Statue of limitations under 14 MRSA §751 et. seq. is 20 years for actions on contracts under seal and maximum ten (10) years for negligence of design professionals.

ARTICLE 4 - SPECIFICATIONS

4-101 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, and shall not be unduly restrictive. The policy enunciated in this Section applies to all specifications including but not limited to, those prepared for the City by architects, engineers, designers, and draftsmen.

4-102 Brand Name or Equal Specification.

- (1) Use. Brand name or equal specifications may be used when the Purchasing Agent determines that:
 - (a) no other design, performance specification or qualified product is available;
 - (b) time does not permit the preparation of another form of purchase description, not including a brand name specification;
 - (c) the nature of the product or the nature of the City's requirements makes use of a brand name or equal specification suitable for the procurement; or
 - (d) use of a brand name or equal specification is in the City's best interests.
- (2) Designation of Several Brand Names. Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.
- (3) Required Characteristics. Unless the Purchasing Agent determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.
- (4) Nonrestrictive Use of Brand or Equal Specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

4-103 Brand Name Specification.

- (1) Use. Since use of a brand name specification is restrictive of product competition, it may be used only when the Purchasing Agent determines that only the identified brand name item or items will satisfy the City's needs.
- (2) Competition. The Purchasing Agent shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 3-105 (Sole Source Procurement).

ARTICLE 5 - PROCUREMENT OF CONSTRUCTION, ARCHITECT, ENGINEER AND LAND SURVEYING SERVICES

Part A - Management of Construction Contracting

5-101 Responsibility for Selection of Methods of Construction Contracting Management.

The Purchasing Agent shall have the discretion to select the appropriate method of construction contracting management for a particular project. In determining which method to use, the Purchasing Agent may consult with the City Engineer and shall consider the City's requirements, its resources, and the potential contractor's capabilities. If a method of construction contracting management other than a single prime contractor is selected, the Purchasing Agent shall include in the contract file a written statement setting forth the reasons for the alternate method of construction contracting management for that project.

Part B - Bid Security and Performance Bonds

5-201 Bid Security.

- (1) Requirement for Bid Security. Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated to exceed \$50,000. Bid security shall be a bond provided by a surety company authorized to do business in the State of Maine, certified check, or otherwise supplied in a form satisfactory to the Purchasing Agent. Nothing herein shall prevent the requirement of such bonds on construction contracts under \$50,000 when the circumstances warrant.
- (2) Amount of Bid Security. Bid security shall be an amount equal to at least 5% of the amount of the bid.
- (3) Rejection of Bids for Noncompliance with Bid Security Requirements. When the request for bids requires security, noncompliance requires that the bid be rejected unless it is determined that the bid fails to comply only in a nonsubstantial manner with the security requirements.
- (4) Withdrawal of Bids. If a bidder is permitted to withdraw his/her bid before award as provided in Section 3-101(6) (Competitive Sealed Bidding; Correction or Withdrawal of Bids; Cancellation of Awards), no action shall be made against the bidder or the bid security.

5-202 Contract Performance and Payment Bonds.

- (1) When Required and Amounts. 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 of Maine or otherwise secured in a manner satisfactory to the City, in an amount to equal to 100% of the price specified in the contract; and
 - (b) a payment bond satisfactory to the City, executed by a surety company authorized to do business in the State of Maine or otherwise secured in a manner satisfactory to the City, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100% of the price specified in the contract.
- (2) Authority to Require Additional Bonds. Nothing in this Section shall be construed to limit the authority of the City to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in Subsection (1) of this Section.
- (3) Suits on Payment Bonds - Right to Institute. Unless otherwise authorized by law, any person who has furnished labor or materials to the contractor or subcontractors for the work provided in the contract, for which a payment bond is furnished under this Section, and who has not been paid in full within 90 days from the date on which that person performed the last of the labor or supplied the material, shall have the right to sue on the payment bond for any amount unpaid at the time the suit is instituted and to prosecute the action for the amount due that person. However, any person having a contract with a subcontractor of the contractor, but no express or implied contract with the contractor furnishing the payment bond, shall have a right of action upon the payment bond upon giving written notice to the contractor within 90 days from the date on which that person performed the last of the labor or supplied the material. That person shall state in the notice the amount claimed and the name of the party to whom the material was supplied or for whom the labor was performed. The notice shall be served personally or by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business.
- (4) Suits on Payment Bonds - Where and When Brought. Unless otherwise authorized by law, every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction in Penobscot County.
- (5) City of Bangor Subrogation Rights. The City of Bangor may reserve by contract the right to make payments directly to any supplier or subcontractor who shall not have received timely payment from the contractor for labor or materials provided to a City project.

In the event the City shall make such payments, it shall be deemed subrogated to the rights of the supplier or subcontractor concerned to the extent of the payments made, and may institute suit on any payment bond as provided above, The City's right to institute suit under this paragraph shall be in addition to the City's rights in regard to payment of contract funds to the contractor or to institute suit against the contractor for enforcement of any performance bond.

5-203 Copies of Bond Forms.

Any person may request and obtain from the City a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

5-204 Insurance Requirements

Where the Purchasing Agent has required liability or hazard insurance in accordance with section 3-204, the minimum coverage amount of such insurance shall be \$400,000 for comprehensive general liability coverage and the value of the City property affected for fire, hazard or property damage insurance. A higher coverage limit may be specified. The City shall be named as an additional insured on all such insurance policies, which shall be issued by an insurance company authorized and licensed to do business in the State of Maine.

Part C - Fiscal Responsibility

5-301 Contract Changes and Approval Process

Every contract modification, change order, or contract price adjustment under a construction contract with the City shall be subject to prior approval by the City Manager after receiving a report from the department head or other appropriate City official that the requested change is appropriate and that sufficient funds are available for the change.

5-302 Fiscal Responsibility.

Every contract modification, change order, or contract price adjustment in excess of \$100,000 under a construction contract with the City shall be subject to prior approval by the City Council after receiving a report from the appropriate City official as to the effect of the contract modification, change order, or contract price adjustment on the total project budget or the total contract budget.

ARTICLE 6 - DEBARMENT OR SUSPENSION

6-101 Authority to Debar or Suspend.

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Purchasing Agent, after consulting with the City Solicitor, is authorized to debar a person for cause from consideration for award of contracts. The debarment shall be for a period of not more than three (3) years.

After consultation with the City Solicitor, the Purchasing Agent is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall be for a period not to exceed one (1) year. The causes for debarment include:

- (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 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 honest which currently, seriously, and directly affects responsibility as a City contractor;
- (c) conviction under 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:
 - (i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (ii) 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 contract 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 for any cause listed in this Policy; and
- (f) for violation of the ethical standards as set forth in Ethics in Public Contract, (See Chapter 33, City of Bangor Ordinance).

6-102 Decision to Debar or Suspend.

The Purchasing Agent shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of its rights concerning judicial or administrative review.

6-103 Notice of Decision.

A copy of the decision required by Section 6-102 (Decision to Debar or Suspend) shall be mailed or otherwise furnished immediately to the debarred or suspended person.

6-104 Finality of Decision.

A decision under Section 6-102 (Decision to Debar or Suspend) shall be final and conclusive, unless fraudulent, or the debarred or suspended person within 10 days after receipt of the decision takes an appeal to the Board of Appeals or commences a timely action in court in accordance with applicable law.

ARTICLE 7 - COST PRINCIPLES

(RESERVED)

ARTICLE 8 - SUPPLY MANAGEMENT

(RESERVED)

ARTICLE 9 - APPEALS AND REMEDIES

9-101 Bid Protests.

- (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 Council. Protesters are urged to seek resolution of their complaints initially with the Purchasing Agent. A protest with respect to a request for bids or request for proposals/qualifications shall be submitted in writing prior to the opening of bids 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 five (5) calendar days after such aggrieved person knows of the facts giving rise thereto. The decision of the City Council is final.
- (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 unless the City Council makes a written determination that the award of a contract without delay is necessary to protect substantial interests of the City.
- (3) Entitlement to Costs. In addition to any other relief, when a protest is sustained and the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, then the protesting bidder or offeror shall be entitled to the reasonable costs incurred in connection with the solicitation, including bid preparation costs other than attorney's fees.

ARTICLE 10 - COOPERATIVE PURCHASING

10-101 Authority to Join Groups.

The Purchasing Agent shall have the authority to join cooperative purchasing groups or other units of government in order to purchase goods or services when such action is deemed in the best interest of the City.

Authorization and award of purchases made under cooperative purchasing arrangements shall be in accordance with the award requirements cited in Article 3, Source Selection and Contract Formation.

ARTICLE 11 - ASSISTANCE TO DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

(RESERVED)

ARTICLE 12 - ETHICS IN PUBLIC CONTRACTING (Chapter 33, City of Bangor Ordinance)

ARTICLE 13 – Community Development Block Grant Program

13-101 General Provisions

- (1) When procuring goods or services using Community Development Block Grant funding, the City and its subrecipients, must follow federal procurement rules when purchasing services, supplies, materials, or equipment.
- (2) The City must adhere to federal procurement requirements found in 24 CFR Part 85 and as amended. Subrecipients must adhere to federal procurement requirements found in 2 CFR Part 215.44, as implemented through 24 CFR Part 84 and as amended.
- (3) Subrecipients are those entities and individuals receiving loans or grants to fulfill a CDBG national objective using CDBG funding and/or matching funds. Subrecipients include, but are not limited to, businesses, non profit organizations, housing developers and single family home owners. Subrecipients are not required to receive the City's authorization to award contracts using CDBG funding so long as these procurement policies are adhered to and documented.
- (4) There are four categories of procurement pertaining to CDBG funding:
 - (a) Small purchase procedures,
 - (b) Sealed bids,
 - (c) Competitive proposals and
 - (d) Non-competitive proposals.

13-102 Small Purchase Procedures

This category may be used for goods and services totaling no more than \$100,000. The Director of Community & Economic Development, or his/her designee, has authority to award contracts within this category.

- (1) .

- (2) Non Housing Rehabilitation - Under the small purchases method, a request for quotes may be sent to a reasonable number of potential vendors with a detailed description of the goods or services needed. Once three or more competitive written quotations are received from qualified sources, a contract may be awarded to the lowest responsive and responsible source.
- (3) Housing Rehabilitation – Under the small purchases method, a request for quotes shall be sent to a reasonable number of pre-qualified vendors with a detailed description of the goods or services needed. Once three or more competitive written quotations are received from qualified sources, a contract may be awarded to the lowest responsive and responsible source.

13-103 Sealed Bids

- (1) This category may be used for construction contracts and goods totaling over \$100,000. The City Council must approve all contracts within this category.
- (2) Competitive and publicly solicited sealed bids are required for this category. A firm-fixed-price lump sum or unit price contract shall be awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price. A minimum of two bidders is required.
- (3) The invitation for bids must be publicly advertised in a newspaper of general circulation and a minimum of two bids must be received in order to award the contract. All bids must be opened publicly at the time and place stated in the invitation for bids. The public is allowed at that time to review the bids. All bids may be rejected when sound documented reasons exist.

13-104 Competitive Proposals

- (1) Competitive proposals are used to purchase professional services where the total cost will exceed \$100,000. The Director of Community & Economic Development, or his/her designee, has authority to award contracts within this category.
- (2) Bids may be solicited under this category using two methods:
 - (a) A request for proposals
 - (b) A request for qualifications for architect and engineering services.
- (3) The invitation for bids must be publicly advertised in a newspaper of general circulation and a minimum of two bids/qualifications must be received in order to award the contract.

13-105 Non-Competitive Proposals

- (1) Non-competitive procurement may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and one of the following circumstances applies:
- (a) Where the item is available only from a single source;
 - (b) Where a public emergency or urgent situation is such that the urgency will not permit a delay beyond the time needed to employ one or the other procurement methods;
 - (c) Where after solicitation of a number of sources, competition is determined inadequate.

Any contract in excess of \$100,000 must be awarded by the City Council. Contracts under \$100,000 may be awarded by the Director of Community & Economic Development, or his/her designee.

13-106 Ineligible Beneficiaries

- (1) No member of the Bangor City Council, nor any other public official, officer, employee or agent of the City, shall have any personal or pecuniary interest, direct or indirect, in this agreement or the proceeds thereof.
- (2) No member or delegate to the Congress of the United States, nor any Resident Commissioner, shall be permitted any share or part of the proceeds of this Agreement or any benefit that may arise herefrom.