

Introduced by: Mayor  
Date: June 2, 1987  
Hearing: July 21, 1987 PST/PND.  
Vote: 12 Yes, 2 No  
Action: Enacted

KENAI PENINSULA BOROUGH  
ORDINANCE 87-29

ESTABLISHING PROCUREMENT AND PURCHASING PROCEDURES FOR THE KENAI PENINSULA BOROUGH.

WHEREAS, the Kenai Peninsula Borough does not have a codified procurement and purchasing system; and

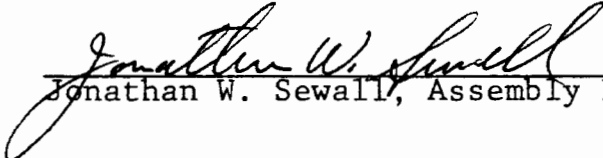
WHEREAS, the present purchasing resolution is outdated and was designed for a much smaller facility;

NOW THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

Section 1. That the attached procurement and purchasing procedures are adopted as a part of this ordinance.

Section 2. That these procedures shall take effect immediately upon enactment by the assembly, except that all contracts and purchase orders initiated before the date of enactment of this ordinance shall be governed by the then existing resolution.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS 4th DAY OF August, 1987.

  
Jonathan W. Sewall, Assembly President

ATTEST:

  
Borough Clerk

## Chapter 5.28

### PROCUREMENT AND PURCHASING

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- 5.28.020 Definitions
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- 5.28.100 Contract Authority
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- 5.28.500 Surplus Disposal of Tangible Property
- 5.28.600 State and Federal Grants

5.28.010 Purpose: The purpose of this chapter is to:

- A. Establish consistent procurement principles for all agencies of the Borough;
- B. Ensure the fair and equitable treatment of all persons who deal with the procurement system of the Borough;
- C. Maximize fair and open competition and to discourage collusive bidding for Borough contracts;
- D. Maximize to the fullest extent practicable, the purchasing value of Borough funds; and to
- E. Clearly define authority for the purchasing function within the Borough organization.

5.28.020 Definitions: As used in Chapter 5.28:

- A. "Agency" means any department, office, or service area of the Borough.
- B. "Agency Head" means the department director or other chief administrative officer of an agency.
- C. "Architectural and engineering services" means those professional services within the scope of the practice of architecture, engineering or land surveying, as defined by the law of the State of Alaska.

- D. "Borough" means any and all departments, offices and agencies comprising the Kenai Peninsula Borough government, including service areas, but excluding the Kenai Peninsula Borough School District.
- E. "Certifying Officer" means the Finance Director of the Borough or the Mayor's designee.
- F. "Contract" means all types of Borough agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, professional services or construction.
- G. "Contract amendment" means any change in the terms of a contract accomplished by agreement of the parties, including change orders.
- H. "Contractor" means the person who has entered into a binding contract with the Borough to provide supplies, services, professional services, construction or disposal of surplus supplies.
- I. "Construction" means the on-site erection, alteration, extension, repair, improvement, or demolition of any public structure, building, road or highway, or other improvements of any kind to any public real property. This includes painting and redecorating of structures, buildings, or real property; but does not include routine operation, repair or maintenance of existing buildings, improvements, or roads and highways which are recurring services normally performed in connection with the ownership, occupancy or use of the building or improvement.

- J. "Person" means an individual, group of individuals, business, non-business association, other governmental entity, or advisory board created by the Borough.
  
- K. "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring supplies, services, professional services, or construction. It also includes functions that pertain to the obtaining of a supply, service, professional service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
  
- L. "Professional service" means all advisory, consulting, technical, research or other services, such as architectural, engineering, land surveying, legal and financial, which involve the exercise of discretion and independent judgment together with an advanced or specialized knowledge, expertise or training gained by formal studies or experience.
  
- M. "Purchasing Officer" means the Finance Director of the Borough or the Mayor's designee.
  
- N. "Services" means the furnishing of the labor, time or effort by a contractor, not involving the delivery of a specific end product, other than reports, that are merely incidental to the required performance. It does not include employment agreements or collective bargaining agreements.

- O. "Specification" means a description of the physical or functional characteristics, or of the nature of a supply, service, professional service, or construction project.
- P. "Supplies" means any tangible personal property.
- Q. "Surplus Disposal" means the sale, trade, or other means of transferring control of tangible property from an agency that has no further use of the property.

5.28.030 Authority of Purchasing Officer: Except as this code provides otherwise, the Purchasing Officer shall, subject to the Mayor's approval, have the authority and responsibility to:

- A. Procure or supervise the procurement of all supplies, services (excluding professional services), and construction required by the Borough;
- B. Sell, trade or otherwise dispose of surplus supplies belonging to the Borough;
- C. Prescribe the time, manner, authentication, and form of making requisitions for supplies and services;
- D. Maintain a record on the procurement of all supplies, services, professional services, and construction; and the disposal of supplies, by the Borough;

E. Join with other units of government in cooperative purchasing ventures whereby the best interests of the Borough will be served.

5.28.040 Centralization of procurement authority. Except as this code provides otherwise, all rights, powers and authority pertaining to the procurement of supplies, services, professional services and construction required by the Borough are vested in the purchasing officer. The purchasing officer may, with approval of the Mayor, authorize an agency to independently procure supplies, services, professional services or construction when it is determined by the Mayor to be in the best interest of the Borough to do so. The authorization shall be in writing and conditioned upon compliance with provisions of this code.

5.28.100 Contract Authority. The Mayor may, pursuant to an award in accordance with this chapter, contract with any person to acquire any supplies, services, professional services or construction required by the Borough.

5.28.110 Execution of Contracts. All Borough Contracts for supplies, services, professional services and construction, and any amendments thereto shall be signed by the Mayor or designee.

5.28.120 Availability of funds. No contract for supplies, services, professional services or construction, or any amendment thereto, may be approved or executed unless the certifying officer has certified in writing that funds are available for the Borough's performance under the contract. All purchases and contracts shall be encumbered by purchase order, unless specifically excluded by the Mayor.

5.28.130 Contracts enforceable against the Borough. No contract for supplies, services, professional services or construction, or any amendments thereto, may be enforced against the Borough unless its terms have been approved in accordance with this chapter and unless the contract or amendment thereto has been set forth in a writing executed in accordance with this chapter.

5.28.140 Contractors violations of tax ordinances.

- A. No contract shall be awarded to any individual or business who is found to be in violation of the Borough Code of Ordinances in the several areas of taxation which is not remedied within ten days of notice.
- B. Any contract can be terminated for cause if it is determined that the contractor is in violation of any taxation ordinance and if such violation is not remedied within ten days of notification by regular mail. If the delinquency arises due to nonfiling of sales tax, no payment will be made to the contractor until all filings have been made and all amounts due are remitted.
- C. The Borough reserves any right it may have to offset amounts owed by its contractor(s) for delinquent borough taxes against any amount owing to the contractor(s) under a contract between the borough and the contractor(s). (Ord. 86-73 >1, 1986.)



5.28.150 Contract Administration. The using agency head or designee shall administer all contracts for supplies, services, professional services and construction, except as otherwise designated by the Mayor.

5.28.160 Contract Amendments. Contract amendments shall not be used to avoid procurement by the competitive procedures established under this title. Contracts for supplies, services, professional services and construction may be amended by the Mayor only for the following reasons:

- A. To change the quantity of supplies ordered or date of delivery under a contract for supplies, where necessary to meet unforeseen Borough requirements;
- B. To change the quantity of services or professional services to be rendered or to change the scope of a project under a contract for services or professional services, where necessary to meet unforeseen changes in Borough requirements;
- C. To change the scope of a project or the scope of services or professional services under a construction contract to meet unforeseen Borough requirements or to change the specifications under a construction contract because unforeseen conditions render the original specifications impracticable;
- D. To change the time for completing a project under a contract for services, professional services or construction;

- E. To correct an error in contract specifications made by the Borough in good faith or to resolve a good faith dispute between the Borough and a contractor as to a party's rights and obligations under the contract; or
- F. To change administrative provisions of a contract without materially altering the contract terms governing the quantity or quality of supplies, services, professional services or construction furnished the Borough.

5.28.170 Standard Specifications.

- A. Every using agency shall propose, insofar as practicable, standard specifications for the supplies, services, professional services and construction that it requires.
- B. Upon approval by the Mayor, the Purchasing Officer shall adopt standard specifications for supplies, services, and construction wherever practicable. The standard specifications adopted by the Purchasing Officer shall not be unduly restrictive and shall be based upon those proposed by using agencies. The standard specifications may be modified by the Purchasing Officer to maximize clarity, uniformity and open competition, while effectively serving the needs of the using agencies.

5.28.180 Multiyear contracts.

- A. The Borough may enter into contracts for a term exceeding one year provided that funds for the Borough's performance during the fiscal year

in which the contract term commences are certified in writing by the certifying officer as being available.

- B. The Borough's payment and performance obligations for succeeding fiscal years after issue of a multiyear contract shall be subject to the availability of funds lawfully appropriated therefor.
- C. Contracts for construction or in connection with requirements of Federal and State grants are not to be construed as multiyear contracts; however, lawfully appropriated funds must be available for the term of the contract.

5.28.190 Bidders and Vendors List.

- A. The purchasing officer shall have the authority and responsibility to compile and maintain, to the extent practicable, a bidders' and vendors' list for supplies, services, and professional services utilized by the Borough.
- B. Placement on the list shall not constitute any determination or representation by the Borough that the listed person is qualified or acceptable.
- C. As may be provided by and in accordance with other provisions of this ordinance, the purchasing officer will attempt to notify persons on the list of proposed purchases. The failure to provide any person with any notice of an invitation to bid, solicitation proposal or other proposed

purchase action shall not affect the validity of any award or contract nor give rise to any claim for failure to give such notice.

5.28.200 Competitive sealed bidding. Unless otherwise authorized under this chapter or other provisions of law, all Borough contracts for supplies, services (excluding professional services) and construction shall be awarded by competitive sealed bidding.

5.28.210 Solicitation and acceptance of bids.

- A. The purchasing officer or designee shall initiate competitive bidding by issuing an invitation for bids. The invitation for bids shall be prepared by the requesting agency and shall state, or incorporate by reference, all specifications and contractual terms and conditions applicable to the procurement.
- B. Public notice of the invitation for bids shall be published at least once in a newspaper of general circulation in the Borough at least ten days before the last day on which bids will be accepted. Such notice shall also be posted at the office of the Purchasing Officer. The contents of the notice shall be sufficient to inform interested readers of the general nature of the supplies, services or construction being procured and the procedure for submitting a bid.
- C. The purchasing officer, at the request of the agency head, may provide for a pre-bid conference. At the pre-bid conference or at other times deemed appropriate by the agency head, the terms of an invitation for

bids may be modified or interpreted only by written addenda issued by the purchasing officer or appropriate agency head or designee. Addenda to bids shall be sent to each recipient of the original bid documents. Only a bid acknowledging receipt of all addenda may be considered responsive, unless the addendum, in the opinion of the Mayor or the agency head, would have no material effect on the terms of the bid.

- D. Sealed bids shall be designated as such on the outer envelope and shall be submitted by mail or in person at the place and no later than the time specified in the invitation for bids. Bids not submitted at the proper place or within the time specified will not be opened or considered and will be returned to the respective bidders. If a bid is inadvertently opened, the bid shall be immediately resealed and an appropriate explanation noted on the envelope; the resealed bid shall be then kept with the other bids submitted.
  
- E. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The purchasing officer shall tabulate the amount of each bid and shall record such other information as may be necessary or desirable for evaluation together with the name of each bidder. The tabulation shall be open to public inspection, and a copy of the tabulation shall be furnished to each bidder upon request. Any bidder may review the bids after tabulation or summary.
  
- F. Bids shall be submitted unconditionally in accordance with bid instructions and specifications. No alteration or correction to a submitted bid will be allowed after the specified time for receipt of the bid. For purposes of determining the apparent low bidder and the

responsiveness of bids, no criteria except those set forth in the invitation for bids, including all specifications and addenda, may be used.

5.28.220 Award to qualified bidder. A contract award under this chapter shall be made only to a qualified, responsive and responsible bidder. The Mayor shall determine, after consultation with the appropriate agency head and/or Borough attorney, whether a bidder is qualified, responsive and responsible on the basis of the following criteria:

- A. The skill and experience demonstrated by the bidder in performing contracts of a similar nature;
- B. The bidder's record of honesty and integrity;
- C. The bidder's capacity to perform in terms of facilities, personnel, financing and location; including whether the bidder has performed contracts of a similar nature.
- D. The bidder's past performance under Borough contracts. If the bidder has failed in any material way to perform its obligations under any contract with the Borough, the bidder may be deemed a nonresponsible bidder.
- E. At all times the best interests of the Borough shall be recognized in awarding bids.

5.28.230 Procedures for award.

- A. Contracts shall be awarded by written notice issued by the purchasing officer to the lowest qualified, responsive and responsible bidder, provided that, if the lowest bids are approximately equal, preference may be given to local bidders who maintain and operate businesses within the boundaries of the Borough when it is determined by the Mayor to be in the best interest of the Borough.
  
- B. The Borough may reject any or all bids if the Mayor determines that it is in the best interest of the Borough.
  
- C. If the lowest qualified, responsive and responsible bid exceeds the amount of funds certified by the certifying officer to be available for the procurement, and if sufficient additional funds are not made available, the scope of the procurement may be reduced to bring its estimated cost within the amount of available funds. The purchasing officer shall issue a new invitation for bids for the reduced procurement, or, upon finding that the efficient operation of the Borough government requires that the contract be awarded without delay, he may negotiate with the three lowest qualified, responsive and responsible bidders, starting first with the lowest bidder and then proceeding with the second and third lowest bidders; and may award, or recommend to the Assembly for award, the reduced contract to the best negotiated proposal, except where prohibited by State and Federal grant conditions or where another procedure has been specified in this chapter.

5.28.240 Waiver of irregularities. The Purchasing Officer shall have the authority to waive irregularities on any and all bids, except that timeliness and manual signature requirements shall not be waived.

5.28.250 Proposals for Professional Services or where bidding not practicable.

- A. If the Mayor determines that use of competitive bidding is not practicable or if the procurement is for professional services, the Borough may procure supplies, services, professional services, or construction by competitive sealed proposals under this section. Competitive, as used in this section, means evaluation and selection based on the factors specified in this ordinance and the request for proposal; and not solely on price.
  
- B. The purchasing officer or designee shall solicit proposals by issuing a request for proposals. The request for proposals shall be prepared by the requesting agency and shall state, or incorporate by reference, all specifications and contractual terms and conditions to which a proposal must respond, and shall state the factors to be considered in evaluating proposals and the relative importance of those factors. Public notice of a request for proposals shall be given in accordance with Section 5.28.210B of this code. One or more preproposal conferences may be held by the purchasing officer, at the request of the agency head. A request for proposals may be modified or interpreted only in written addenda issued by the purchasing officer, at the request of the agency head.



- C. Sealed proposals shall be designated as such on an outer envelope and shall be submitted by mail or in person at the place and no later than the time specified in the request for proposals. Proposals not submitted at the place or within the time so specified shall not be opened or considered.
  
- D. Proposals shall be received at the time and place designated in the request for proposals, and shall be opened so as to avoid disclosing their contents to competing proponents during the process of negotiation. Notwithstanding Section 5.28.210 of this code, proposals and tabulations thereof shall be open to public inspection only after the contract award.
  
- E. In the manner provided in the request for proposals, the purchasing officer, at the request of the agency head, or agency head may negotiate with those qualified and responsible proponents whose proposals are determined by the purchasing officer and agency head to be reasonably responsive to the request for proposals. Negotiations shall be used to clarify and assure full understanding of the requirements of the request for proposals. The purchasing officer, at the request of the agency head, may permit proponents to revise their proposals after submission and prior to award to obtain best and final offers. Proponents deemed eligible for negotiations shall be treated equally regarding any opportunity to discuss and revise proposals. In conducting negotiations and requesting revisions, neither the purchasing officer nor any other Borough officer or employee shall disclose any information derived from proposals of competing proponents.

F. Awards shall be made by written notice to the qualified and responsible proponent whose final proposal is determined to be most advantageous to the Borough. No criteria other than those set forth in the request for proposals may be used in proposal evaluation. If the Mayor determines that it is in the best interest of the Borough to do so, the Borough may reject any and all proposals.

5.28.260 Professional Services. Professional services shall be procured in accordance with Section 5.28.250 of this code, with the following exceptions:

- A. Architectural and engineering services for capital projects specifically pertaining to the Kenai Peninsula Borough School District or to Borough-designated service areas may be awarded by the Borough Assembly upon the recommendation of the School Board or the appropriate service area board. Preparation and solicitation of the request for proposal, and subsequent review and negotiation shall be the responsibility of the respective board, with the assistance of the Public Works Director.
- B. Legal services may be procured by direct negotiation with an attorney or law firm qualified to undertake the type of legal assistance required. All negotiations or contracts for the services of legal counsel shall be pursued and awarded by the Borough attorney.

5.28.270 Open Market Procedure

- A. The purchasing officer or agency head may procure supplies, services, professional services and construction having an estimated value of not

more than fifteen thousand dollars (\$15,000.00) on the open market without formal advertising or other formal bid procedures.

- B. The solicitation for informal bids or proposals may be either oral or written, and shall be in a form reasonably calculated to yield the lowest responsive bid or proposal by a qualified and responsible bidder. If practicable, at least three bids or proposals shall be solicited for any procurement estimated to exceed five thousand dollars (\$5,000.00), and the bids or proposals shall be submitted in writing.
  
- C. Awards for supplies, services and construction shall be made by the purchasing officer to the lowest responsive, qualified and responsible bidder. All bids and proposals shall be tabulated and held in the office of the purchasing officer for public inspection for a period of not less than thirty days.

5.28.280 Proprietary Procurement. A contract for supplies, services, professional services or construction may be awarded by the purchasing officer or agency head without competition under the following conditions:

- A. Where it is determined by the purchasing officer or agency head that the Borough's requirements reasonably limit the procurement to a sole source. The determination will be based on a written justification provided by the requesting agency head;

B. Where it is determined by the Mayor that it is in the best interest of the Borough to standardize the procurement in order to maintain compatibility with existing Borough requirements.

5.28.290 Emergency Procurement. The purchasing officer may award a contract for supplies, services, professional services or construction without competition, formal advertising or other formal procedure where the Mayor determines, in writing, that an emergency threatening the public health, safety, property or welfare requires that the contract be awarded without delay. Justification for the emergency will be based on written documentation provided by the requesting agency head, and complete accountability for all obligations incurred during the emergency will be provided to the Finance Director as soon as practicable.

5.28.300 Waiver of formal bidding procedures. The Mayor may waive, in writing, some or all of the formal bidding procedures of this chapter when there is not sufficient time to comply with the waived requirements or the best interests of the Borough will be served by such action.

5.28.310 Bonds.

A. The Mayor may require in the specifications that persons submitting bids pursuant to this chapter accompany their bids with a bid bond in an amount and in a form acceptable to the purchasing officer. The bond shall be issued by a company qualified by law to do business as a surety in the State of Alaska, or shall be in the form of a cashier's check, cash deposit or irrevocable letter of credit. A condition of the bond

shall be that if the bidder receives the award, he shall enter into a contract therefore with the Borough.

B. If a requirement for a performance and payment bond is included in the terms of the invitation to bid, the Mayor may require that any person awarded a Borough contract furnish such bond, issued by a company qualified by law to do business as a surety in the State of Alaska. The purchasing officer may allow in lieu of a surety bond, at least two individual sureties, each who justify in a sum equal to the amount of the bond. The bond shall be in an amount determined by the purchasing officer and in a form approved by the Borough attorney. Such bonds shall, at a minimum, guarantee the full and faithful performance of all contract obligations and the payment of all labor and materials to be used under the contract.

C. The Mayor may grant a contractor exemption from bonds required by AS 36.25.010 and this chapter pursuant to the Authority and Conditions of AS 36.25.025. On projects where this exemption will be permitted, a bidder who seeks the exemption must submit the request and necessary information in advance of the bid, within a time specified in the invitation to bid or at such earlier time as specified in the bid instructions or request for proposal.

5.28.320 Appeal. Any person adversely affected by the provisions of this chapter, or regulations promulgated thereunder, or by any acts of the Borough in connection with the award of a Borough contract, may appeal in writing to the Mayor; or if the matter is not resolved satisfactory, may appeal to the Borough Assembly.

5.28.330 Intergovernmental contracts. Notwithstanding the other provisions of this chapter, the Borough may enter into procurement agreements with the federal, state and other municipal governments when it is in the best interests of the Borough to do so.

5.28.400 Borough preference policy.

- A. It is the policy of the Borough to give preference to local residents, workers, businesses, contractors, producers and dealers, to the extent consistent with the law and interests of the public.
- B. In making purchases or awarding contracts for goods, services or construction, preference may be given whenever practicable to producers, contractors and dealers in the Borough pursuant to Section 5.28.230.

5.28.500 Surplus disposal of tangible property.

- A. Subject to the other provisions of this section, the Purchasing Officer shall have the authority to sell, trade, or transfer by other means all surplus tangible property no longer needed by the agencies of the Borough.
- B. Obsolete or surplus tangible property to be sold shall be sold by sealed bid or at a public auction.
- C. Public notice of the sale by sealed bid or at public auction shall be published at least once in a newspaper of general circulation in the

Borough at least ten days before the last day on which bids will be accepted or the auction held. Such notice shall also be posted at the Borough Purchasing Office.

- D. All agencies of the Borough shall be notified at least 30 days prior to the Public Notice, that surplus property is available for agency use.

5.28.600 State and Federal Grants.

- A. The Assembly has the power and authority to appropriate funds and accept grant offers from state and federal granting agencies.
- B. The Assembly may authorize the Mayor or designee to enter into grant agreements with state and federal granting agencies.
- C. All rights, powers and authority pertaining to grants, and the administration of grants, are vested in the Mayor or designee.
- D. The Assembly may authorize the Mayor or designee to enter into contracts with incorporated entities, including organized municipalities, to assist the Borough in performing under the terms and conditions of grant agreements.
- E. When in the opinion of the Borough attorney it is determined that certain mandated provisions of a grant agreement regarding procurement are inconsistent with this chapter, the grant provisions shall take precedent.

