

## Chapter 2.18

### PURCHASING DIVISION

#### Sections:

- 2.18.010**      **Purchasing Division Created; Purchasing Agent.**
- 2.18.020**      **Make All Purchases.**
- 2.18.030**      **Rules and Regulations.**
- 2.18.035**      **Bid Protests; Definitions; Appeals Board; Fees.**
- 2.18.040**      **Surplus or Obsolete Stock.**
- 2.18.050**      **Additional Requirements.**
- 2.18.060**      **Inspection and Testing.**
- 2.18.070**      **Approval of Purchase Order.**

#### **2.18.010**      **Purchasing Division Created; Purchasing Agent.**

A Purchasing Division for the City of Lincoln is hereby created which shall be a part of the Finance Department. The head and principal officer of the Purchasing Division shall be the Purchasing Agent. The Purchasing Agent shall be an employee of the city in the classified service. The Finance Director shall act as the Purchasing Agent in the absence or disability of the Purchasing Agent, and the Finance Director may, where necessary, designate a suitable city employee to act as Purchasing Agent during such disability or absence. (Ord. 15384 §1; January 8, 1990; P.C. §2.44.010; Ord. 9036 §1; June 13, 1966).

#### **2.18.020**      **Make All Purchases.**

It shall be the duty and function of the Purchasing Division to purchase all materials, parts, supplies, and equipment with an estimated cost of \$1,500.00 or more and for repairs of equipment and facilities with an estimated cost of \$10,000.00 or more for the City of Lincoln and each of its departments under the rules and regulations hereinafter enacted and established and subject to the approval of the Mayor.

Single purchases of materials, parts, supplies, and equipment with an estimated cost of less than \$1,500.00, and repairs of equipment and facilities with an estimated cost of less than \$10,000.00 may be purchased directly by the using department, provided said items are not currently available through a city supply contract. At least three informal bids shall be obtained and recorded, and such purchases shall be awarded to the lowest responsible bidder. Under no circumstances shall purchases be split into smaller purchases to avoid any provision of this chapter. (Ord. 19176 §1; November 17, 2008; prior Ord. 17697 §1; July 17, 2000; Ord. 15980 §1; September 30, 1991; Ord. 15384 §2; January 8, 1990; P.C. §2.44.020; Ord. 9036 §2; June 13, 1966).

#### **2.18.030**      **Rules and Regulations.**

The following rules and regulations are hereby enacted and established for the purchase of materials, parts, supplies, and equipment by the Purchasing Division:

(a) The Purchasing Agent shall make all purchases of materials, parts, supplies, and equipment with an estimated cost of \$1,500.00 or more hereby required to be made by the

Purchasing Division, and the Purchasing Agent shall sign all purchase orders. Except as herein provided, it shall be unlawful for any city officer, officers, or employee to order or purchase any supplies or equipment or make any contract within the purview of this chapter other than through the Division of Purchasing, and any purchase or contract made contrary to the provisions hereof shall not be approved by the city, and the city shall not be bound thereby.

(b) All purchases with an estimated cost of \$1,500.00 or more shall be made upon the requisition of the department desiring the same. The Purchasing Agent may purchase for stock on the basis of the total of such requisitions or upon estimates previously filed. All departments shall file estimates of materials, supplies, and equipment required at such times and in such manner as shall be determined and requested by the Purchasing Division. The Purchasing Division shall examine each requisition or estimate and shall have the authority to revise it as to quality, quantity, or estimate cost; but revision as to quality shall be in accordance with the standards and specifications established pursuant to this chapter.

(c) The Purchasing Division, in cooperation with all officers of the several departments, shall provide for the standardization of materials, supplies, and equipment in accordance with the use of which the various articles are to be put and shall provide for adequate specifications for materials, supplies, and equipment used in large quantities or in common use by more than one department. The Purchasing Division shall, in addition to other duties:

(1) act to procure for the city the highest quality in supplies and contractual services at least expense to the city, and

(2) discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases and sales. All specifications shall be definite and certain and shall permit competition.

(d) The Purchasing Agent may require bid security when necessary in the public notices inviting bids. The Purchasing Agent shall return bid security to all unsuccessful bidders where the Purchasing Agent has required such security. A successful bidder shall forfeit any bid security required by the Purchasing Agent upon failure to enter into the related contract within ten days after the award, or upon failure to deliver supplies and equipment in keeping with specifications. The Purchasing Agent shall keep and maintain a bid security record to account for all security bids and the disposition of same.

(e) The Purchasing Agent may provide for the creation of a store or stores to be under his general direction, supervision, and control. Material, supplies, and equipment placed in the store or stores so created as the Purchasing Agent may determine shall be issued therefrom to departments on requisition and whenever so furnished shall be charged to the department to which issued or delivered and entering same to the credit of the stores account. The Purchasing Agent shall at all times keep a complete inventory of materials, supplies, and equipment on hand.

(f) Any purchase calling for an expenditure involving more than \$25,000.00 shall be entered into and authorized only in accordance with City of Lincoln Charter, Article VII, Section 2.

(g) Competitive bidding shall not be required when unique or noncompetitive articles are being purchased or when no bids have been received after following the formal procedure or when professional services are being contracted for as determined by the Purchasing Agent, pursuant to the provisions of City of Lincoln Charter, Article VII, Section 2.

(h) Advertisement for bids shall not be required for any purchase wherein the probable expenditure shall not exceed \$25,000.00; but in such case, the Purchasing Agent shall secure and record at least three informal bids, if practicable. If a department is making a single item purchase

under \$1,500.00 or a repair under \$10,000.00, the department shall secure and record at least three informal bids, if practicable.

(i) In all cases where bids are required and received, the Purchasing Agent shall award the contracts and purchase orders to the lowest responsible bidder. If, however, the Purchasing Agent believes the interests of the city could be best served by accepting other than the lowest bid, the Purchasing Agent shall submit in writing as a part of the award the reason for accepting such higher bid, and shall present a copy thereof to the Mayor. If the Purchasing Agent finds that the public interest will be best served thereby, and with the approval of the Mayor, the Purchasing Agent may reject any and all bids or parts of any bid or bids upon any one or more articles embraced in any bid. All bidders shall submit their bids to the Purchasing Agent, and the Purchasing Agent shall electronically unseal all bids at an hour and place which shall be stated in the advertisement for bids and in the presence of all bidders who attend. Bidders may inspect the bids after reference to and tabulation by the Purchasing Agent.

(j) In determining "lowest responsible bidder," in addition to price, the Purchasing Agent or department shall consider:

- (1) The ability, capacity, and skill of the bidder to perform the contract or provide the service required;
- (2) Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
- (3) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- (4) The quality of performance of previous contracts or services;
- (5) The previous and existing compliance by the bidder with the laws and ordinances relating to the contract or service;
- (6) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
- (7) The quality, availability, and adaptability of the supplies or contractual services to the particular use required;
- (8) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
- (9) The number and scope of conditions attached to the bid.

(k) In case of low tie bids, all other things being equal, preference shall be given in the following order. If more than one low tie bid in any category occurs, lots shall be drawn.

- (1) To those bidders who manufacture their products within the limits of the City of Lincoln;
- (2) To those bidders who manufacture their products within the limits of the County of Lancaster;
- (3) To those bidders who package, process, or through some other substantial operation have employees and facilities for these purposes in the City of Lincoln;
- (4) To those bidders who package, process, or through some other substantial operation have employees and facilities for these purposes in the County of Lancaster;
- (5) To those bidders who maintain a bona fide business office in the City of Lincoln, whose products may be made outside the confines of the County of Lancaster;
- (6) To those bidders who maintain a bona fide business office in the County of Lancaster, whose products may be made outside the confines of the County of Lancaster;

(7) To those bidders whose commodities are manufactured, mined, produced or grown within the State of Nebraska and to all firms, corporations, or individuals doing business as Nebraska firms, corporations, or individuals when quality is equal or better and delivered price is the same or less than the other bids received; provided, however, the above preferences shall not be given where the purchase is made in whole or in part with federal funds and the applicable federal procurement regulations prohibit the giving of any local preference, in which case, in the event of more than one low tie bid, the tie shall be broken by the drawing of lots.

(8) To those bidders whose commodities are manufactured, mined, produced or grown within the United States of America and to all firms, corporations, or individuals doing business as firms registered in states other than Nebraska, when quality is equal or better and delivered price is the same or less than the other bids received; provided, however, the above preferences shall not be given where the purchase is made in whole or in part with federal funds and the applicable federal procurement regulations prohibit the giving of any local preference, in which case, in the event of more than one low tie bid, the tie shall be broken by the drawing of lots.

(l) In case of actual emergency, and with the consent of the Purchasing Agent, the head of any using agency may purchase directly any supplies whose immediate procurement is essential to prevent delays in the work of the using agency. The head of such using agency shall send to the Purchasing Agent a requisition and a copy of the delivery record, together with a full written report of the circumstances of the emergency.

(m) The Purchasing Agent shall prescribe by rules and regulations the procedure under which emergency purchases by heads of using agencies may be made.

(n) The Purchasing Agent shall have the authority with the approval of the Finance Director and the Director of Public Works and Utilities to declare vendors irresponsible bidders and to disqualify them from receiving any business from the municipality for a stated period of time, if said vendor (1) has defaulted on previous bids or contracts; (2) has previous unresolved contract performance issues with the City; (3) is involved in collusion with other bidders; (4) has failed to timely complete previous projects with the City; or (5) has unpaid debts owed to the City. Any vendor that has been declared irresponsible may, within 14 days of the Purchasing Agent's decision, appeal that determination to the Mayor.

(o) The Purchasing Agent shall have the authority to join with other units of government in cooperative purchasing when the best interests of the city would be served thereby.

(p) The Purchasing Agent shall keep a commodity record showing commodities purchased, from whom purchased, and the price paid. (Ord. 19176 §2; November 17, 2008: prior Ord. 17697 §2; July 17, 2000: Ord. 17044 §1; August 19, 1996: Ord. 15980 §2; September 30, 1991: Ord. 15384 §3; January 8, 1990: P.C. §2.44.030: Ord. 13561 §1; March 21, 1983: Ord. 12934 §1; June 9, 1980: Ord. 12472 §1; January 8, 1979: Ord. 12327 §1; June 19, 1978: Ord. 9036 §3; June 13, 1966).

### **2.18.035 Bid Protests; Definitions; Appeals Board; Fees.**

(a) Definitions.

(1) **Interested party** shall mean an actual or prospective bidder whose direct economic interest would be affected by the award of a contract by the City to another party, or by the failure of the City to award a contract to such actual or prospective bidder.

(2) **Protest** shall mean a written objection by an interested party on any phase of the bidding process, including specification preparation, bid solicitation, and intent to award, for the acquisition of supplies or services.

(3) **Protester** shall mean an interested party who has filed a protest pursuant to subsection (b).

(4) **Procurement Appeals Board** shall mean an independent panel of five disinterested individuals appointed by the Mayor, which individuals shall have a thorough knowledge of the purchasing process and practices, and laws applicable thereto. Members of such board shall be appointed for three-year, staggered terms; provided, however, two of the members first appointed shall serve for a period of one year, two shall serve for a period of two years, and one for a period of three years, with each appointee thereafter, except for appointees filling a vacancy, serving for a period of three years.

(b) **Right to Protest.** An interested party may protest to the City Purchasing Agent, which protest shall be submitted in writing on company letterhead. Protests based on alleged apparent improprieties in a solicitation or other request for proposals must be filed before bid opening. In all other cases, the protest must be filed within five working days following the bid opening or if the protest is based on the selection of the lowest responsible bidder, not later than five working days following the selection of the lowest responsible bidder. To expedite handling of protests, the envelope containing the protest should be clearly labeled "Protest."

The written protest shall include as a minimum the following:

- (1) The name and address of the interested party;
- (2) Appropriate identification of the relevant solicitation, and if a bid has been opened, its number, and date of opening;
- (3) A statement of reasons for the protest;
- (4) Supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time, in which case the expected availability date shall be indicated.

Upon timely receipt of a protest, the City shall not proceed further with the solicitation or with the award of the contract and shall suspend performance under the contract until the Mayor has made a decision on the protest.

(c) **Authority to Resolve Protests.** Prior to the commencement of an appeal to the Procurement Appeals Board concerning any protest, the Purchasing Agent shall attempt to resolve any protest filed by an interested party concerning any solicitation. If the protest is not resolved by mutual agreement, the Purchasing Agent shall issue a decision in writing within five working days. The decision shall (1) state the reasons for the action taken, and (2) inform the interested party of their right to the administrative review as provided by the Procurement Appeals Board. A copy of the decision shall be mailed or otherwise furnished immediately to the protester and all other bidders. If not satisfied with the decision of the Purchasing Agent, any protester may appeal to the Procurement Appeals Board, but the decision shall be final unless the protester files a timely appeal with the Procurement Appeals Board.

(d) **Appeals Board Procedures.** Any protester, within five working days of receipt of a decision of the Purchasing Agent, may file with the Finance Director a written notice of appeal for a hearing before the Procurement Appeals Board. The Notice of Appeal shall be accompanied by a deposit of \$500.00 to defray the cost of processing such appeal, which deposit shall be returned if the Mayor decides in favor of the protester filing the appeal. The Notice of Appeal must clearly state the action protested and the basis of appeal.

Upon receipt of an appeal from an protester, the Finance Director shall convene the Board within ten working days or as soon thereafter as reasonably possible to conduct an administrative review of the appeal. The Board shall decide whether the solicitation being appealed was in accordance with all applicable laws and regulations and the terms and conditions of all applicable

specifications, and whether waiver of specifications, conditions or defects in a bid, if any, were justified and in the best interest of the City.

Within ten working days of hearing such appeal, the Board shall submit its findings and recommendations to the Mayor. If all five members are present, an affirmative vote of three shall be required to pass the recommendation on to the Mayor. If only three members are present, only an affirmative vote of two shall be required to pass the recommendation on to the Mayor. Should it become impossible to obtain a quorum of three members, the appeal shall proceed directly to the Mayor without Procurement Appeals Board action.

No determination by the Board concerning an issue of law or fact shall be final or binding on the City.

(e) Finality of Decision. The Mayor shall consider the recommendations of the Purchasing Agent, the Procurement Appeals Board, and the Department Head or agency for which the solicitation was made and shall make the final decision on the protest. The Mayor's decision shall be final and binding upon the City. (Ord. 18495 §1; January 31, 2005: prior Ord. 16442 §1; August 9, 1993).

#### **2.18.040 Surplus or Obsolete Stock.**

All using divisions shall submit to the Purchasing Agent reports showing stocks of supplies or equipment which are no longer used or which have become obsolete, worn out, or scrapped.

The Purchasing Agent shall have authority to sell all supplies or equipment which have become unsuitable for public use, or to exchange the same for, or trade in the same on new supplies or equipment. Sales under this section shall be made to the highest responsible bidder.

The Purchasing Agent shall have authority to transfer the declared surplus stock of one using division to another using division which may have need for its use. (Ord. 15384 §4; January 8, 1990: P.C. §2.44.040: Ord. 9036 §4; June 13, 1966).

#### **2.18.050 Additional Requirements.**

The Purchasing Division may establish additional requirements and regulations in connection with the operation of this chapter not inconsistent with any of the provisions hereof, or with the provisions of the charter, and said division may recommend to the City Council for consideration such additional measures of action as shall be considered expedient. (Ord. 15384 §5; January 8, 1990: P.C. §2.44.050: Ord. 9036 §5; June 13, 1966).

#### **2.18.060 Inspection and Testing.**

All materials, supplies, and equipment furnished under any purchase order or contract shall be subject to inspection for conformance with specifications. The Purchasing Agent shall have authority to require pre-delivery or post-delivery inspections to determine conformance with specifications. For all purchases over \$100,000.00, inspections by the Purchasing Agent or his designee shall be required. The Purchasing Agent shall have authority to prescribe tests for the determination of quality of all proposed purchases or deliveries when such quality can be accurately determined by tests. It shall have authority through the head of the department in charge thereof to require the use of laboratory facilities of the city and the technical staffs thereof for such tests of samples of proposed purchases or deliveries. Bills to cover the cost of such tests when approved by the Purchasing Agent shall be paid out of funds of the department for whose use the material, supplies, or equipment is delivered or is proposed to be purchased. (Ord. 19176 §3; November 17, 2008: prior Ord. 15384 §6; January 8, 1990: P.C. §2.44.060: Ord. 9036 §6; June 13, 1966).

**2.18.070 Approval of Purchase Order.**

Before any purchase order shall be valid or effective, the Finance Director or some person in said department authorized to act in the absence of said director shall approve the same in writing as to the availability of funds for such purchase and compliance with all charter provisions. (Ord. 15384 §7; January 8, 1990; P.C. §2.44.070; Ord. 9036 §7; June 13, 1966).