

PROCUREMENT CODE

BILL NO. _____

INTRODUCED BY COUNCIL

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 2.25 OF THE SPARKS MUNICIPAL CODE TO ALIGN MORE CLOSELY WITH THE NEVADA REVISED STATUTES AND TO UPDATE THE CITY COUNCIL APPROVAL REQUIREMENT FROM \$25,000.00 TO \$50,000.00; PROVIDING OTHER MATTERS PROPERLY RELATED THERETO.

THE CITY COUNCIL OF THE CITY OF SPARKS DOES ORDAIN:

Section 1. Section 2.25.030: "Procurement organization" is hereby amended as follows:

Section 2.25.030 - Procurement organization.

For the purposes of Chapter 2.25 of the Sparks Municipal Code, the title of "Purchasing Manager" shall have the meaning of the person holding the position as the functional and operational head of the procurement function, regardless of classification or title of the position held by that individual.

The division of purchasing is vested with the authority for procurement and contracts negotiation by a fiduciary relationship between the purchasing manager as the City's authorized representative and the city manager as the City's Chief administrative officer.

A. The purchasing manager shall serve as the principal procurement officer of the city *and as the "Authorized Representative" as specified in NRS 332 and NRS 338* with the authority to procure or supervise the procurement of supplies, materials, equipment and services for the offices, departments, and agencies of the city according to the regulations prescribed in this code.

~~B. The purchasing manager shall establish guidelines for the management of all inventories of materials belonging to the city.~~

~~B.~~ The sale, trade or other disposal of city-owned personal property and surplus supplies shall be supervised by the purchasing manager.

~~D~~C. Procedures and programs for the inspection and acceptance of supplies, materials, equipment and services shall be established by the city manager and maintained by the purchasing manager.

(Ord. 1747, 1992.) (Ord. 2320, Amended, 04/24/2006)

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Section 2. Section 2.25.040: “Centralization of procurement authority” is hereby amended as follows:

Section 2.25.040 - Centralization of procurement authority.

All rights, powers, duties and authority relating to the procurement of supplies, services and construction, and the management, control, warehousing, sale and disposal of supplies, services and construction now vested in or exercised by any city department, regardless of source of funding, are hereby vested in the city manager and the purchasing manager.

~~A. The city manager may delegate authority for the procurement of specific goods and services to his authorized representative where to do so would be in the best interest of the city. Any such delegation must be expressed in writing.~~

BA. The purchasing manager shall obtain expert advice and assistance from personnel of city departments in the development of specifications and the city manager or his designee may delegate to a using department the authority to prepare and utilize its own specifications.

CB. Advisory groups may be appointed by the purchasing manager to assist in the evaluation of specifications, proposals, bid and quotations, without compensation.

DC. The purchasing manager shall cooperate in the preparation of statistical data concerning the procurement, usage and disposal ~~and of~~ all supplies, services and construction. All city departments shall furnish such reports as the purchasing manager may require concerning usage, needs and stocks on hand, and the purchasing manager shall have authority to prescribe forms to be used by the city departments in requisitioning, ordering and reporting of supplies, services and construction.

(Ord. 1747, 1992.) (Ord. 2320, Amended, 04/24/2006)

Section 3. Section 2.25.070: “Conflict of interest” is hereby amended as follows:

Section 2.25.070 - Conflict of interest.

A. Except as otherwise provided in NRS Chapters 281.230 *and NRS Chapter 281A*, ~~281.505 and 281.555~~, no member of the city council may be interested, directly or indirectly, in any contract entered into by the city council.

B. No public officer or employee may participate as an agent of government in the negotiation or execution of a contract between the city and any private business in which he has a significant pecuniary interest.

C. All public officers and employees shall comply with the code of ethical standards, NRS ~~281A281.481~~, and the code of ethics SMC Chapter 2.01

D. An evaluator may not be interested, directly or indirectly, in any contract awarded by such governing body or its authorized representative.

E. Before a contract is awarded, a person who has bid on the contract or an officer, employee,

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representative, agent or consultant of such a person shall not:

1. Make an offer or promise of future employment or business opportunity to, or engage in a discussion of future employment or business opportunity with, an evaluator or member of the governing body offering the contract;
 2. Offer, give or promise to offer or give money, a gratuity or any other thing of value to an evaluator or member of the governing body offering the contract; or
 3. Solicit or obtain from an officer, employee or member of the governing body offering the contract, any proprietary information regarding the contract.
- F. Any agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price, or otherwise, shall render the bids of such bidders void. Advance disclosures of any information to any particular bidder which would give that particular bidder any advantage over any other interested bidder in advance of the opening of bids, whether in response to advertising or an informal request for bids, made or permitted by a member of the governing body or an employee or representative thereof, shall operate to void all bids received in response to that particular request for bids.

(Ord. 1747, 1992.) (Ord. 2320, Amended, 04/24/2006)

Section 4. Section 2.25.090: "Requisition procedure" is hereby amended as follows:

Section 2.25.090 - Requisition procedure.

- A. If a city governmental unit determines the need for goods or services *exceeding authorized procurement card program limits*, it shall prepare a purchase requisition, authorized by a department head or designee prior to submittal to the purchasing manager to initiate a procurement, ~~unless exempted pursuant to Section 2.25.130(D).~~
- B. Requests for procurement shall show ~~justification of the need for the goods or services and~~ *sufficient* funds designated for the expenditure.
- C. Upon receipt of the requisition from a city governmental unit, the purchasing manager is authorized to determine the form and manner in which the procurement shall be solicited in accordance with this code.
- D. The purchasing manager shall examine each requisition or estimate and, after consultation with the requesting department head, shall have authority to revise it as to quantity, quality or estimated cost. ; ~~but revisions to quality shall be in accordance with Section 2.25.110 of this code.~~ The city manager shall have final authority in any disputed revisions of requisitions or estimates.
- ~~E. Urgent needs for goods or services, not considered as emergencies, in situations requiring timely action for procurement may be requested by contacting the purchasing division to initiate a numbered purchase order with a written request provided subsequent to the assignment of that order, excepting contracts that require supervision or approval of the~~

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~~city attorney.~~

(Ord. 1747, 1992.) (1970, Amended, 01/12/1998)

Section 5. Section 2.25.100: “Regulations” is hereby amended as follows:

Section 2.25.100 - Regulations.

The city manager is authorized to adopt and enforce such regulations or administrative instructions as are necessary to implement this chapter. *The City shall follow all applicable rules and procedures specific to public procurement contained in Nevada Revised Statutes as may be amended from time to time. Applicable statutes may include, but are not limited to NRS 332, NRS 338, NRS 339, NRS 624, NRS 625 and all other chapters that may be applicable to a specific procurement.*

Section 6. Section 2.25.120: “Procurement methods” is hereby amended as follows:

Section 2.25.120 - Procurement methods.

- A. The method, form and manner of procurements shall be uniform and consistent with the provisions of this code.
- B. The cost of an item, not the method of payment, determines the method of procurement. Artificial division, splitting or fragmentation of a transaction to circumvent source selection or to avoid requirements for bidding or authorization of procurements are prohibited.
- C. Procurements made for the city shall be documented by a written contract or purchase order that has been authorized and issued prior to receipt of the goods or services or prior to payment for goods and services, except as otherwise provided for in this code.
- D. *Employees that are authorized to hold a City-issued procurement card may make authorized purchases within the limits of their credit limit as specifically authorized by their immediate supervisor and Department Head.*

~~The purchasing division shall maintain a current list of prospective suppliers who have expressed an interest in providing goods and services to the city and they may be contracted for quotations or bids until they have failed to respond.~~

~~E. Prompt service, accessibility, delivery, travel, whether the goods are made from recycled material, or other factors that may reduce or offset the cost of goods and services solicited by the city shall be considered in source selection.~~

~~F. Per NRS 332.047, a governing body or its authorized representative may use on-line bidding to receive bids submitted in response to a request for bids. The governing body shall not use on-line bidding as the exclusive means of receiving bids for the request for bids.~~

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- ~~G.—A request for bids for which bids may be submitted must designate a date and time at which bids may be submitted and may designate a date and time after which bids will no longer be received.—~~
- ~~H.—A governing body or its authorized representative may require bidders to:~~
- ~~1.—Register before the date and time at which bids may be submitted; and~~
 - ~~2.—Agree to terms, conditions or requirements of the request for bids to facilitate on-line bidding.—~~
- ~~I.—The procedures established by a governing body or its authorized representative for the purposes of conducting on-line bidding must not conflict with the provisions of this chapter.—~~
- ~~J.—As used in this section, "on-line bidding" means a process by which bidders submit bids for a contract on a secure website on the Internet or its successor, if any, which is established and maintained for that purpose.—~~

(Ord.1747, 1992.) (Ord. 2320, Amended, 04/24/2006; 1970, Amended, 01/12/1998)

Section 7. Section 2.25.125: "Exceptions to requirements for competitive bidding" is hereby repealed as follows:

~~Section 2.25.125 – Exceptions to requirements for competitive bidding.—~~

- ~~A.—Contracts which by their nature are not adapted to award by competitive bidding, including contracts for:~~
- ~~1.—Items which may only be contracted from a sole source;~~
 - ~~2.—Professional services;~~
 - ~~3.—Additions to and repairs and maintenance of equipment which may be more efficiently added to, repaired or maintained by a certain person;—~~
 - ~~4.—Equipment which by reason of the training of the personnel or of any inventory of replacement parts maintained by the local government is compatible with existing equipment;—~~
 - ~~5.—Perishable goods;~~
 - ~~6.—insurance;~~
 - ~~7.—Hardware and associated peripheral equipment and devices for computers;~~
 - ~~8.—Software for computers;~~
 - ~~9.—Books, library materials and subscriptions;~~

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- ~~10. Motor vehicle fuel purchased by a local law enforcement agency for use in an undercover investigation;~~
 - ~~11. Motor vehicle fuel for use in any vehicle operated by a local law enforcement agency or local fire department if such fuel is not available within the vehicle's assigned service area from a fueling station area owned by the State of Nevada or a local government.~~
 - ~~12. Supplies, materials or equipment that are available from contracts with the General Services Administration or another governmental agency in the regular course of its business;~~
 - ~~13. Items for resale through a retail outlet operated in this state by a local government or the State of Nevada; and~~
 - ~~14. Goods or services purchased from organizations or agencies whose primary purpose is the training and employment of handicapped persons, are not subject to the requirements of this chapter for competitive bidding as determined by the governing body or its authorized representative.~~
- ~~B. The purchase of equipment for use by a local law enforcement agency in the course of an undercover investigation is not subject to the requirement of this chapter for competitive bidding as determined by the governing body or its authorized representative if:~~
- ~~1. The equipment is an electronic or mechanical device which by design is intended to monitor and document in a clandestine manner suspected criminal activity; or~~
 - ~~2. Purchasing the equipment pursuant to such requirements would limit or compromise the use of such equipment by an agency authorized to conduct such investigations.~~
- ~~C. Except as otherwise provided by law; if the governing body or its authorized representative determines that the supplies, materials or equipment can be purchased at any public auction, closeout sale, bankruptcy sale, sale of merchandise left after an exhibition, or other similar sale at a reasonable savings over the cost of like merchandise and below the market cost in the community, a contract or contracts may be let or the purchase made without complying with the requirements of this chapter for competitive bidding. The documentation for the purchase or acquisition must be summarized for the next regularly scheduled meeting of the governing body, together with written justification showing the savings involved.~~
- ~~D. A governing body or its authorized representative may join or use the contracts of other local governments located within or outside this state with the authorization of the contracting vendor. The originally contracting local government is not liable for the obligations of the local government which joins or uses the contract.~~
- ~~E. A governing body or its authorized representative may join or use the contracts of the State of Nevada or another state with the authorization of the contracting vendor. The State of Nevada or other state is not liable for the obligations of the local government which joins or uses the contract.~~

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~~F. The purchase of safety equipment for use by a local fire department or local law enforcement agency is not subject to the requirements of this code for competitive bidding, as determined by the governing body or its authorized representative, if:~~

- ~~1. The personal safety equipment will be used by personnel of the fire department or law enforcement agency in responding to emergencies in which the health, safety or welfare of those personnel may be compromised, impaired or otherwise threatened; and~~
- ~~2. The cost of the safety equipment is comparable to the cost of similar personal safety equipment that is available for purchase by the public.~~

~~G. As used in this section, "personal safety equipment" means safety equipment that is worn or otherwise carried on a regular basis by personnel of a fire department or law enforcement agency. The term includes but is not limited to, firearms, boots, bulletproof vests or other types of body armor, protective garments, gloves and helmets.~~

~~H. Notwithstanding any provisions of this code, NRS chapter 332 and NRS chapter 338 (338.1907) to the contrary, a local government may, as an alternative to competitive bid, enter into an installment or lease purchase performance contract with a qualified service company for the purchase and installation of operating cost savings energy measures related to and improvement, repair or alteration of a building or equipment including electricity, natural gas, water and the disposal of waste and related labor costs.~~

~~(Ord. 2320, Amended, 04/24/2006; 1970, Added, 01/12/1998)~~

Section 8. Section 2.25.130: "Emergency procurements" is hereby amended as follows:

Section 2.25.130 - Emergency procurements.

- A. *For the purposes of this section, an "emergency" is one which:*
- 1. Results from the occurrence of a disaster, including, but not limited to, fire, flood, hurricane, riot, power outage or disease; or*
 - 2. May lead to impairment of the health, safety or welfare of the public if not immediately attended to.*
- B. *If the authorized representative, chief administrative officer or governing body of the local government determines that an emergency exists affecting the public health, safety or welfare, a contract or contracts necessary to contend with the emergency may be let without complying with the requirements of this chapter. If such emergency action was taken by the authorized representative or chief administrative officer, he or she shall report it to the City Council at its next regularly scheduled meeting for ratification.*
- ~~A~~C. The city manager, purchasing manager or an authorized representative may make or authorize others to make emergency procurements if there exists a ~~threat to the public health, welfare or safety or in the event of a disaster~~*condition meeting the definition above..*

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- ~~BD.~~ An emergency procurement shall be limited to the goods or services necessary to satisfy the emergency need with as much competition as practicable under the circumstances.
- ~~CE.~~ The using unit making the emergency procurement shall prepare a written purchase requisition and submit it to the city manager or his designee as authorized representative within two (2) working days after the emergency procurement to document the existence of the emergency need.
- ~~D.~~ ~~Emergency expenditures and obligations to suppliers of goods and services in natural or man-made disasters that exceed twenty-five thousand dollars (\$25,000.00) shall be submitted to the council for authorization or ratification subsequent to the emergency procurement.~~
- F. The city manager or his designee shall endeavor to maintain an accurate record of costs incurred in responding to any emergency and shall make this information available to the City Council by request or communication at scheduled intervals.*

(Ord. 1747, 1992.) (Ord. 2320, Amended, 04/24/2006)

Section 9. Section 2.25.140: "Expenditures of ten thousand dollars (\$10,000.00) or less" is hereby repealed as follows:

~~**Section 2.25.140 – Expenditures of ten thousand dollars (\$10,000.00) or less.**~~

- ~~A.~~ ~~Notwithstanding 2.25.020B any procurement that results in an expenditure of ten thousand dollars (\$10,000.00) or less shall have been made with as much economy as practicable in the open market place at the prevailing price without the requirement of public notice or council authorization.~~
- ~~B.~~ ~~Open market procurements shall, whenever practicable, be based on the lowest price of an item which meets or exceeds the performance or functional characteristics that is available from two (2) or more sources of supply, if available, by written quote or in any acceptable informal manner.~~
- ~~C.~~ ~~The purchasing manager is authorized to compare prices offered by suppliers of goods and services within the open market and have final determination of the prevailing price to be paid by the city.~~
- ~~D.~~ ~~Petty cash expenditures of one hundred dollars (\$100.00) or less may be authorized by the finance director and disbursed by a designee from a cash fund set aside and maintained for small procurements.~~
- ~~E.~~ ~~Department heads may be delegated the authority to approve minor expenditures for goods or services from budgeted departmental funds in a limited amount determined by a written policy of the city manager. Purchase orders, Blanket orders or Procurement cards for department head authorization shall be issued by the purchasing manager and shall state the expenditure amount limitation.~~

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~~(Ord. 1866, 1995; Ord. 1747, 1992.) (Ord. 2320, Amended, 04/24/2006)~~

Section 10. Section 2.25.150: “Expenditures of ten thousand one dollars (\$10,001.00) to twenty five thousand dollars (\$25,000.00)” is hereby amended as follows:

Section 2.25.150 -- ~~Expenditures of ten thousand one dollars (\$10,001.00) to twenty-five thousand dollars (\$25,000.00).~~ *City Council Approval Requirements.*

~~A. Any procurement resulting in an expenditure from ten thousand one dollars (\$10,001.00) to twenty five thousand dollars (\$25,000.00) shall have been made only after informal competitive solicitation from two (2) or more responsible suppliers if available, without the requirements of public notification by advertisement.~~

~~B. The purchasing manager or designee shall obtain, when possible, two (2) or more informal competitive bids, in writing, from suppliers on the current prospective supplier list and/or from other available suppliers.~~

~~C. Informal quotations from suppliers responding to a request for bid other than in writing are satisfactory when the method of inquiry, date and person quoted is documented; however, a written informal bid is encouraged.~~

~~D. Invitations to informal bids or quotations shall include a description of goods or services and all contractual terms and conditions applicable to the procurement.~~

EA. The city manager as chief administrative officer or purchasing manager as the principal designated authorized representative are authorized to execute contracts providing for an expenditure of less than ~~twenty five~~ *fifty* thousand dollars (~~\$25~~*50*,000.00) unless otherwise provided by ordinance or direction of the city council.

B. *Contracts or purchases exceeding the amount defined in Section 2.25.150 (A) shall require the approval of the City Council.*

(Ord. 1866, 1995; Ord. 1747, 1992.) (Ord. 2320, Amended, 04/24/2006)

Section 11. Section 2.25.160: “Expenditures exceeding twenty five thousand dollars (\$25,000.00)” is hereby amended as follows:

Section 2.25.160 - ~~Expenditures exceeding twenty-five thousand dollars (\$25,000.00).~~ *Formal Solicitations.*

~~A. Unless otherwise provided for or exempt by Nevada Revised Statutes any procurement resulting in an expenditure of more than twenty five thousand dollars (\$25,000.00) shall have been made only after formal competitive sealed bidding, solicited by public notification, properly received and authorized by the city council or their authorized representative. *The City hereby adopts NRS 332 and NRS 338 as may be amended from time to time in its process for issuing and receiving formal bids.*~~

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- ~~1. Per NRS 338.143, contracts for projects defined as a "public work" with an estimated value of less than \$100,000 may be let by following the "informal" bidding procedures outlined in SMC 2.25.150.~~
 - ~~2. Projects defined as a "public work" where the estimated cost exceeds \$100,000 shall be let following the "formal" bidding procedures outlined below.~~
- ~~B. When a formal invitation to bid is issued by the purchasing manager, it shall include the dates of public notice, the time and place for bid receipt and opening and a description of the goods or services.~~
- ~~C. Public notification shall be considered adequate when a formal invitation to bid is advertised and published at least once in a newspaper of general circulation within the city not less than seven (7) days before the bid opening.~~
- ~~D. The purchasing manager shall solicit formal sealed bids from two or more suppliers on the current prospective supplier list or other sources that have requested to be included in bids for goods or services of a specific character and kind.~~
- EB.** ~~Amendments~~ *Addenda* to ~~invitations to bid~~ *formal solicitations* that are necessary to make a change shall be issued by the authorized representative/purchasing manager within a reasonable time before the ~~bid opening~~ *solicitation deadline* to all suppliers to whom the purchasing manager distributed ~~invitations to bid~~ *the solicitation* and to all suppliers who have requested ~~bid~~ *solicitation* documents or specifications and ~~shall~~ *may* require acknowledgment of receipt by the bidder ~~before the bid opening or within the bid~~ *at the time they submit their response to the formal solictaion.*
- FC.** Sealed bids shall be considered properly received only when delivered in a sealed envelope marked to indicate the purpose of the bid to the purchasing manager or designee by or before the specified time and designated place as advertised in the public notice. Sealed bids shall be ~~dated and~~ stored unopened in a secure place within the purchasing division until the public bid opening.
1. Late bids shall be rejected if received after the designated time in the location for receipt except late bids that are received before the bid opening and would have been timely received but for the action or inaction of city personnel directly serving the procurement function.
 2. Minor informalities may be waived by the city manager in consultation with the purchasing manager and city attorney if the waiver is in the best interest of the city.
- GD.** A modification or withdrawal of bid shall be received before the time and date set for bid opening in the location designated for receipt of bids. ~~and shall be time dated and recorded upon each modification or withdrawal.~~
- HE.** Bids and modifications shall be opened publicly by the purchasing manager or designee in the presence of one or more witnesses at the time, date and location designated in the invitation to bid.

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1. The name of each bidder, the price bid and other information deemed appropriate by any person in attendance shall be read aloud and recorded.

F. Mistakes in the bid discovered after the bid opening based on an error in judgment may not be corrected or withdrawn.

1. After bid opening, the city manager in consultation with the purchasing manager and the city attorney, may waive minor informalities in a bid.

2. After bid opening, the purchasing manager or designee may permit a bidder to withdraw a bid when:

a. A nonjudgmental mistake is evident on the face of the bid and the intended bid is not clear; or

b. The bidder established by clear and convincing evidence in the sole opinion of the city that a nonjudgmental mistake was made; or

c. The purchasing manager or designee determines, by clear and convincing evidence, that the bid is so low as to create a likelihood that the contract cannot be completed and to enforce compliance with the bid would be unconscionable.

G. An invitation for bids, a request for proposals or other solicitation may be canceled or any or all bids or proposals may be rejected in whole or in part if it is in the best interest of the city.

(Ord. 1866, 1995: Ord. 1747, 1992.) (Ord. 2320, Amended, 04/24/2006; 1995, Amended, 06/22/1998)

Section 12. Section 2.25.180: "Request for proposal" is hereby amended as follows:

Section 2.25.180 - Request for proposal.

A. Except for professional services which may be obtained without competitive bidding pursuant to the provisions of NRS 332.115(1)(b), a request for proposal shall be utilized whenever the purchasing manager and department head of a using unit determine that the city wishes to utilize competitive negotiation. Additionally, a request for proposal may be utilized if the city is unable to provide bid specifications for an entire project and shall be requesting the prospective bidders to specify a method or manner of performing a contract.

~~B. Requests for proposals shall be invited and awarded depending upon the estimated dollar amounts for each such proposal in accordance with Sections 2.25.140, 2.25.150 and 2.25.160.~~

B. If a city governmental unit determines the need for goods or services where competitive negotiation is more practicable or advantageous than competitive bidding, it shall prepare a written request for solicitation of proposals to the purchasing manager for authorization prior to any action for advertisement, receipt or procurement.

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- DC.** Formally advertised proposals shall be opened publicly at the time and place designated in the request for proposals. The name of the offeror and such other relevant information as may be designated by the purchasing manager or designee shall be publicly read. All other information contained in the proposals shall be confidential as to avoid disclosure of contents prejudicial to competing offerors during the process of negotiation. All proposals shall be open for public inspection after contract award. To the extent as designated by the offeror and the purchasing manager concerns, trade secrets or other proprietary data contained in the bid documents shall remain confidential.
- ED.** Competitive negotiation may be used when available specifications or procurement specifications are not sufficiently complete to permit full competition without technical evaluations and discussions to ensure a mutual understanding between offerors and the city. Discussions shall not disclose any information derived from proposals submitted by other offerors.
- EE.** Negotiation following the opening of sealed proposals is not required if one or more of the initial offers is fully satisfactory. Award may be made on the basis of the proposal as first submitted, without any discussion with the offeror or changes to the content of the proposal.
- EF.** Criteria for evaluation of proposals may include, but shall not be limited to, managerial, or technical capabilities, comparative feasibilities of the approach or other elements where price is not the sole determining factor for selection of a supplier.
- EG.** Authorized awards shall be made in writing to the responsible offeror whose proposal is determined to be the most advantageous to the city, taking into consideration price and those evaluation factors set forth in the solicitation, and in Sections 2.25.190 and 2.25.200 of this code.
- EH.** "Proprietary information" means:
1. Any trade secret or confidential business information that is contained in a bid submitted to a governing body or its authorized representative on a particular contract; or
 2. Any other trade secret or confidential business information submitted to a governing body or its authorized representative by a bidder and designated as proprietary by the governing body or its authorized representative.
- EJ.** As used in this subsection, "confidential business information" means any information relating to the amount or source of any income, profits, losses or expenditures of a person, including data relating to cost, price, or the customers of a bidder which is submitted in support of a bid. The term does not include the amount of a bid submitted to a governing body or its authorized representative.
- EK.** "Trade secret" has the meaning ascribed to it in NRS 600A.030. Except as otherwise provided in this subsection, proprietary information regarding a trade secret does not constitute public information and is confidential.

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1. A person shall not disclose proprietary information regarding a trade secret unless the disclosure is made for the purpose of a civil, administrative or criminal investigation or proceeding, and the person receiving the information represents in writing that protections exist under applicable law to preserve the integrity, confidentiality and security of the information.
2. A bid which contains a provision that requires negotiation or evaluation by the governing body or an evaluator may not be disclosed until the bid is recommended for the award of a contract.

(Ord. 1747, 1992.) (Ord. 2320, Amended, 04/24/2006; 1970, Amended, 01/12/1998)

Section 13. Section 2.25.190: "Selection of professional services" is hereby amended as follows:

Section 2.25.190 - Selection of professional services.

- A. Services provided by members of certain professions ~~specified by a written policy of the city manager,~~ that require specialized knowledge and expertise acquired by advanced training and experience may be procured or retained on an as-needed basis ~~or for a particular project by the department head of a city department~~ if so allowed pursuant to NRS 332.115(1)(b) or Section 2.25.040(A), when applicable. *A provider of professional services may be selected by competitive solicitation and negotiation according to the procedures set forth in Section 2.25.180. These services may be procured annually according to the procedures of this section, except that legal counsel services shall only be procured under the supervision of and with the authorization of the city attorney.*
- ~~B. Selection of a provider other than professional services shall be made only after adequate public notice of the need for such services, receipt of proposals from qualified offerors and evaluation according to the criteria set forth in the proposal.~~
- ~~1. Notification of the need for professional services in an anticipated amount exceeding twenty five thousand dollars (\$25,000.00) shall be solicited according to Section 2.25.160 of this code unless otherwise exempt under the provisions of NRS 332.115(1)(b).~~
 - ~~2. Persons or professional organizations engaged in providing professional services may submit or be required to submit annual statements of qualifications and expressions of interest in providing such services.~~
 - ~~3. The department head of the using unit, in cooperation with the purchasing manager, shall evaluate current statements of qualifications and performance data and select if possible, in order of preference, the three (3) most qualified providers of such service.~~
- ~~C. The department head of a using unit may select a provider of professional services by negotiation according to the procedures set forth in Section 2.25.180(E), (F) and (G), or by the order of their respective qualification ranking.~~
- DB.** Authorized awards or recommendations for awards may be made in writing to the best

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qualified provider according to Section 2.25.200 of this code.

(Ord. 1747, 1992.) (1970, Amended, 01/12/1998)

Section 14. Section 2.25.200: "Awards" is hereby amended as follows:

Section 2.25.200 - Awards.

- A. *The City of Sparks hereby adopts NRS 332 and NRS 338 as may be amended from time to time. The City of Sparks will award solicitations using the process defined in NRS 332, NRS 338 and any other applicable chapter. ~~If a governing body or its authorized representative has advertised for or requested bids in letting a contract, the governing body or its authorized representative must, except as otherwise provided in subsection L, award the contract to the lowest responsive bidder. Authorized awards shall be made to the lowest responsive and responsible supplier whose bid quotation or offer conforms to the procurement requirements and criteria set forth in the city's solicitation and is deemed to be in the best interest of the city.~~* The city shall take into consideration price, conformance to specifications, qualifications, past performance, performance or delivery date, quality and utility of services, supplies, materials or equipment offered and the adaptability of those services, supplies, materials or equipment to the required purpose of the contract and the best interest of the public. In determining the responsibility of any bidder the city shall also take into consideration the possession of and limit on any required license of the bidder and may consider the financial responsibility of the bidder, experience of the bidder, adequacy of the equipment and ability of the bidder to complete performance.
- B. The evaluation methods to determine the conformity of the procurement requirements and criteria shall be uniform and equal for each responding supplier.
- C. Goods or services shall be evaluated as much as possible by tangible, measurable criteria that includes but is not limited to, transaction privilege or use tax, transportation costs, energy costs, standard practices or procedures, life cycle and effective ownership costs, whether the goods are made from recycled material, or other factors that satisfy the particular function at the lowest overall cost to the city. Additionally, the city may include in its evaluation managerial or technical capabilities, comparative feasibilities of the approach to be used (if applicable), prompt service, accessibility, delivery, travel, or any other factors which may reduce or offset the cost of goods or services solicited by the city.
- D. A bidder or offeror may be required to submit to the purchasing manager or designee a certification of current cost or pricing data used to price the bid or offer prior to an award to determine if the price is fair, reasonable, and in the best interests of the city.
- E. The city manager retains the authority to debar or suspend any potential supplier of goods or services from consideration of award for breach of this code, or if the potential supplier is in default of any obligation, taxes or fees due and owing the city, until such time as the breach or default is cured.
- F. Low bids, quotations or offers which are identical in all respects from two (2) or more

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responsible and responsive suppliers may be awarded by the drawing of cards in public in the presence of two (2) or more witnesses.

- G. Multiple awards may be made in whole or in part to two (2) or more suppliers of similar goods or services to facilitate delivery, service product compatibility or obtain the best value in the best interest of the city.
- H. If only one responsive bid, quotation or offer is received from a competitive solicitation:
 - 1. An authorized award may be made to the single bidder if the price is determined to be fair and reasonable;
 - 2. The bid may be rejected;
 - 3. A new competitive solicitation may be made; or
 - 4. If the need for the procurement continues and the acceptance of one bid is not advantageous to the city the procurement may be made under provision for sole source or emergency as defined in Section 2.25.120(G) or Section 2.25.130

~~I. If no response is received from competitive solicitation, the purchasing manager or designee may let the contract without competitive bidding not less than seven days after it publishes a notice stating that no bids were received on the contract and that the contract may be let without further bidding. The city shall entertain any bid which is submitted after it publishes notice and before the expiration of the waiting period.~~

~~J. If after the lowest responsive and responsible bidder has been awarded the contract, during the term of the contract he does not supply goods or services in accordance with the bid specifications or if he repudiates the contract, the city may reaward the contract to the next lowest responsive and responsible bidder without requiring that new bids be submitted. Reawarding the contract to the next lowest responsive and responsible bidder is not a waiver of any liability of the initial bidder awarded the contract.~~

~~K.~~ Any or all bids received in response to a request for bid may be rejected if the city or its authorized representative determines that any such bidder is not responsive or that the quality of the services, supplies, materials, equipment or labor offered does not conform to requirements or if the public interest would be served by such a rejection.

~~L. The governing body or its authorized representative:~~

~~1. Shall give preference to recycled products if:~~

~~a. The product meets the applicable standards;~~

~~b. The product can be substituted for a comparable non-recycled product; and~~

~~c. The product costs no more than a comparable non-recycled product.~~

~~2. May give preference to recycled products if:~~

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- a. ~~The product meets the applicable standards;~~
 - b. ~~The product can be substituted for a comparable non-recycled product; and~~
 - c. ~~The product cost no more than 5 percent more than a comparable non-recycled product.~~
3. ~~May purchase recycled paper products if the specific recycled paper product is:~~
- a. ~~Available at a price which is not more than 10 percent higher than that of paper products made from virgin material;~~
 - b. ~~Of adequate quality; and~~
 - c. ~~Available to the purchaser within a reasonable period.~~
- M. ~~If after the lowest responsive and responsible bidder has been awarded the contract, during the term of the contract he does not supply goods or services in accordance with the bid specifications, or if he repudiates the contract, the governing body or its authorized representative may re-award the contract to the next lowest responsive and responsible bidder without requiring that new bids be submitted. Re-awarding the contract to the next lowest responsive and responsible bidder is not a waiver of any liability of the initial bidder awarded the contract.~~
1. ~~As used in this section:~~
- a. ~~"Post-consumer waste" means a finished material which would normally be disposed of as a solid waste having completed its life cycle as a consumer item.~~
 - b. ~~"Recycled paper product" means all paper and wood pulp and wood-pulp products containing in some combination at least 50 percent of its total weight: Post-Consumer waste; and~~
 - c. ~~Secondary waste, but does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, wood slabs, chips, sawdust or other wood residue from a manufacturing process.~~
 - d. ~~"Secondary waste" means fragments of products or finished products of a manufacturing process, which has converted a virgin resource into a commodity of real economic value.~~
 - e. ~~In determining the responsibility of any bidder, the governing body or its authorized representative shall consider the possession of a limit on any required license and may consider the financial responsibility; experience, adequacy of equipment, past performance and ability of the bidder to perform the contract.~~
 - f. ~~No contract awarded may be assigned to any other person without the consent of the governing body or its authorized representative.~~

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~~g. No contract awarded or any portion thereof may be assigned to any person who was declared by the governing body or its authorized person who was declared by the governing body or its authorized representative not to be a responsible person to perform the particular contract.~~

(Ord. 1747, 1992.) (1970, Amended, 01/12/1998) (Ord. 2320, Amended, 04/24/2006; 1970, Amended, 01/12/1998)

Section 15. Section 2.25.205: "Appeal by unsuccessful bidder" is hereby repealed as follows:

~~Section 2.25.205 – Appeal by unsuccessful bidder.~~

- ~~A. A person who bids on a contract may file a notice of protest regarding the awarding of the contract with the authorized representative designated by the City within five (5) business days after the date the bids were opened by the City or its authorized representative.~~
- ~~B. The notice of protest must include a written statement setting forth with specificity the reasons the person filing the notice believes the applicable provisions of law were violated.~~
- ~~C. A person filing a notice of protest may be required by the City or its authorized representative, at the time the notice of protest is filed, to post a bond with a good and solvent surety authorized to do business in this state or submit other security, in a form approved by the City, to the City who shall hold the bond or other security until a determination is made on the protest. A bond posted or other security submitted with a notice of protest must be in an amount equal to the lesser of:~~
- ~~1. Twenty-five percent (25%) of the total value of the bid submitted by the person filing the notice of protest; or~~
 - ~~2. Two hundred fifty thousand dollars.~~
- ~~D. A notice of protest filed in accordance with the provisions of this section operates as a stay of action in relation to the awarding of any contract until a determination is made by the City on the protest.~~
- ~~E. A person who makes an unsuccessful bid may not seek any type of judicial intervention until the City had made a determination on the protest and awarded the contract.~~
- ~~F. Neither a public body or any authorized representative of the City is liable for any costs, expenses, attorney's fees, loss of income or other damages sustained by a person who makes a bid, whether or not the person files a notice of protest pursuant to this section.~~
- ~~G. If the protest is upheld, the bond posted or other security submitted with the notice of protest must be returned to the person who posted the bond or submitted the security. If the protest is rejected, a claim may be made against the bond or other security by the public body in an amount equal to the expenses incurred by the City because of the unsuccessful protest. Any money remaining after the claim has been satisfied must be returned to the person who posted the bond or submitted the security. No bid/contract protests will be~~

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~~heard by the City of Sparks unless a bidder has followed the notice of protest route.
(Ord. 2320, Add, 04/24/2006)~~

Section 16. Section 2.25.210: "Change orders" is hereby amended as follows:

Section 2.25.210 - Change orders.

- A. A change order shall be defined as any change , contract modification or adjustment to the amount of the original contract value or schedule for work or project in progress, when revisions to work or materials are required due to bona fide unforeseen conditions; or for public works as established by the "standard specification for Public Works construction" (A.K.A. the Orange Book). Change orders may or may not require adjustments to the cost of the contract.
 - 1. The "Original Contract Value" as used in this section is defined as the contract amount agreed to by the City of Sparks and the vendor providing products or services, at the commencement of the contract period.
- B. Change order requests must have funding available, written justification approved by the required level of supervision or management within the requesting department, and thereafter written authorization by the Purchasing Manager in the form of an executed change order issued by the City of Sparks.
- C. Cost or pricing data shall be submitted for all change orders, contract modifications or adjustments to the original award when such adjustments increase or decrease the amount of the original award.
- D. Each contract or Purchase Order awarded by the City may include a contingency amount from which changes to the contracted work may be paid as approved by the City Department managing the contract. Unless otherwise stated within the bid or contract documents, the default contingency amount shall not exceed 10% of the original contract value.
- E. Changes in excess of the contingency amount on an individual contract or purchase order shall require additional oversight and approval as outlined in the remainder of this section.
- F. Change Order Methodology
 - 1. City Council Awarded Contracts
 - a. Change order requests for contracts originally awarded by the City Council in a formal agenda item, resulting in a cumulative cost increase exceeding the ~~stated or default contingency amount~~*City Council Approval Requirement defined in SMC 2.25.150*, must be submitted to the City Council for approval. In the event that prior approval of the Council will unduly delay a project in progress, the City Manager or his designee shall have authority to approve said change orders subject to subsequent ratification by the City Council.

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2. City Manager or Purchasing Manager Awarded Contracts or Purchase Orders
 - a. Change order requests cumulatively exceeding 10% will require authorization from the City Manager.

G. Changes to contracts that do not result in additional monetary costs or that only account for changes in time allowed for completion of the work may be executed by the City Manager or his designee.

(Ord. 1747, 1992.) (Ord. 2320, Amended, 04/24/2006)

Section 17. Section 2.25.230: "Types of contracts" is hereby amended as follows:

Section 2.25.230 - Types of contracts.

- A. Any type of contract which will promote the best interest of the city may be used, except that a cost-plus-a-percentage-of-cost is prohibited.
- B. Fixed-price contracts shall be used only when the extent or type of goods or services can be specified and the cost can be reasonably estimated at the outset of the contract.
 1. Fixed-price contracts with a price adjustment allowance shall be used only if the solicitation and the contract specify the basis for the price adjustment and provide for adequate notice of such adjustments.
- C. Time and material contracts may be used only when the purchasing manager determines that such a contract is less costly than any other type or that it is impractical to obtain the goods or services except under such a contract. The using unit will be responsible for monitoring the work, and the department head of the using unit may set performance criteria in monitoring said work. Time-and-materials or labor-hour contracts shall provide for a maximum contractual amount not to be exceeded without prior authorization. ~~as set forth in Section 2.25.210~~
- D. Lease agreements and lease-purchase contracts may be used if all conditions for renewal, including the cost determination for renewal are set forth in the agreement and the lease is not used to circumvent the required procurement procedures of this code. A purchase option may be exercised if the lease-purchase was awarded by competitive solicitation *in cases where the annual lease cost exceeds the current bid requirements.*
- E. Multi-term contracts may be used for any period of time deemed to be in the best interests of the city. The term of the contract and any conditions for the renewal or extension shall be included in the solicitation and funds shall be available for the first fiscal year at the outset of the contract. Payment and performance obligations for succeeding fiscal years shall be subject to the availability and appropriations of funds therefor.
 1. Before exercising any option for renewal or extension of a contract, the purchasing manager or designee shall evaluate the performance criteria during the original contract period and determine in writing that competitive procurement is not more

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advantageous to the city than exercise of the particular option.

2. In the event that funds are not appropriated or made available to support the continuation of a contract in a subsequent fiscal year, the contract shall be canceled and the city shall have no further obligation under said contract.

(Ord. 1747, 1992.)

Section 18. Section 2.25.240: "Contract clauses" is hereby amended as follows:

Section 2.25.240 - Contract clauses.

- A. All city contracts for goods or services shall include provisions that define the rights and responsibilities of the parties to the contract and any language that contractually safeguards the city, its employees, officers and elected officials that is appropriate to the procurement and in the best interest of the city.
- B. The purchasing manager, under the supervision of the city attorney, may establish standard contract clauses for inclusion in city contracts.
- C. Such standard clauses may be modified upon review by the city attorney on a case-by-case basis.
- D. The submission of bid security (*Bid Bond or Cashier's Check*) by the bidder or offeror to guarantee faithful bid may be required by the purchasing manager or designee in an amount of not less than five percent (5%) of the total bid. Any requirement shall be set forth in the bid solicitation.
 1. When the solicitation requires bid security, it must accompany the bid proposal or the bid will be rejected. ~~unless the purchasing manager decides to grant the bidder an extension to file the bid bond. Extensions are limited to a maximum of two (2) working days to seventy-two (72) hours after bid opening. Bid bonds received after this will not be accepted and the bids will be rejected.~~
 2. No action shall be ~~had~~ *taken* against the bidder or offeror's bid security if the bidder or offeror is permitted to withdraw its bid or offer prior to award.
- E. The submission of performance or payment security by the bidder or offeror may be required by the purchasing manager or designee in an amount of not less than one hundred percent (100%) of the total bid. Any requirement shall be set forth in the bid solicitation. All performance and payment security shall be submitted to the city prior to execution of the contract and prior to release of any bid security.
- F. All ~~bid,~~ payment or performance security shall be a cash bond or bond provided by an insurance company authorized to do business in the State of Nevada ~~and countersigned by a Nevada resident agent if issued outside the State of Nevada.~~
 1. A bid payment or performance security shall not be required solely to exclude

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potential bidders.

2. The nature of performance and the need for future protection of the city shall be considered when determining the amount and type of security required for each solicitation.
 3. Unless otherwise provided in the bid specifications, the successful bidder shall provide an additional insured endorsement to any required commercial general or automobile liability policy naming the City of Sparks as an additional insured.
- G. In addition to the requirements of subsection "F" above, depending upon the nature of the contract and amount thereof, the city manager may also require insurance companies and/or bonding companies to have an "A" rating or better with ~~Moody's or A.M. Best Company, and/or to be included on the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bond and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended) by the audit staff, Bureau of Accounts, U.S. Treasury Department.~~ *an appropriate rating company recognized in the rating of such instruments.*

(Ord. 1747, 1992.) (Ord. 2320, Amended, 04/24/2006; 1999, Amended, 07/13/1998)

Section 19. Section 2.25.250: "Sale, transfer or disposition of city personal property" is hereby amended as follows:

Section 2.25.250 - Sale, transfer or disposition of city personal property.

- A. The method, form and manner of the sale or transfer or disposition of personal property of the city shall be uniform and consistent within the provisions of this code and in accordance with the requirements set forth in the NRS.
- B. The purchasing division shall be custodian of all personal property that has been identified and declared by a city department to be not needed nor likely to be needed within a reasonable future time.
 1. No individual city employee, elected or appointed official, city office or agency shall sell, transfer, trade in, condemn or otherwise dispose of any city personal property without written notification of such intent to the purchasing division.
 2. The purchasing manager may identify city personal property, idle equipment, excess inventory, obsolete materials or expendable supplies that may be subject for disposition and recommend their disposition to the city manager.
- C. It is assumed that all city personal property has a value which shall be determined by the fair and competitive market at the time of sale or transfer or disposition through consistent methods, form and manner as to be determined by the purchasing manager and subject to such conditions as the council may from time to time prescribe.
 1. The method, form and manner selected by the purchasing manager for the sale or

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disposition to other agencies, or transfer to other city departments shall consider the value terms of sale, timing of the activity and other economic factors relative to obtaining the maximum value in the best interests of the city.

2. The purchasing manager may employ whatever methods are most advantageous to the city to dispose of personal property.
- D. Prior to sale or disposition of city personal property, the purchasing manager shall endeavor to identify and recommend to the city manager any city personal property that has potential for recycle, reutilization or transfer to other city departments, *local governments* or ~~other~~ not-for-profit agencies.
1. Personal property transferred to or from city departments shall be documented on such forms and at such times as the purchasing manager may prescribe with authorization by the department heads of the sending and receiving departments.
- E. The value received from the sale, transfer or disposition of city personal property shall be allocated in accordance to the governmental accounting practices.
- F. The purchasing manager shall act on behalf of the city with the state, federal or other surplus property agencies regarding the procurement or disposition of surplus property.
- G. A governing body or its authorized representative may solicit and accept trade-in allowances for personal property of the public entity which has been determined by the governing body or its authorized representative to be no longer required for public use, in any manner authorized by law.
1. Except as otherwise provided on subsection A, NRS 244.1505 and NRS 334.070, all sales of personal property of the local government must be made, as nearly as possible, under the same conditions and limitations as required by this chapter in the purchase of personal property. The governing body or its authorized representative may dispose of personal property of the local government by any manner, including, without limitation, at public auction, if the governing body or its authorized representative determine that the property is no longer required for public use and deems such action desirable and in the best interests of the local government.
 2. The city manager or his designee may donate surplus personal property of the City to another public or not-for-profit entity without regard to:
 - a. The provisions of this code; or
 - b. Any statute, regulation, ordinance or resolution that requires:
 1. The posting of notice or public advertising.
 2. The inviting or receiving of competitive bids.
 3. The selling or leasing of personal property by contract or at a public auction.

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- c. The provisions of this chapter do not apply to the purchase, sale, lease or transfer of real property by the governing body.

(Ord. 1747, 1992.) (Ord. 2320, Amended, 04/24/2006)

SECTION 20: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 21: The City Clerk is instructed and authorized to publish the title to this ordinance as provided by law.

SECTION 22: This ordinance shall become effective upon passage, approval and publication.

SECTION 23: The provisions of this ordinance shall be liberally construed to effectively carry out its purposes in the interest of the public health, safety, welfare and convenience.

SECTION 24: If any subsection, phrase, sentence or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions.

SECTION 25: The City Council finds that this ordinance is **not** likely to impose a direct and significant economic burden upon a business or directly restrict the formation, operation or expansion of a business, or is otherwise exempt from Nevada Revised Statutes Chapter 237.

PASSED AND ADOPTED this ____ day of _____, 20__, by the following vote of the City Council:

AYES: _____

NAYS: _____

ABSTAIN: _____

ABSENT: _____

APPROVED this ____ day of _____, 20__, by:

GENO MARTINI, Mayor

ATTEST:

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TERESA GARDNER, City Clerk

**APPROVED AS TO FORM AND
LEGALITY:**

CHESTER H. ADAMS, City Attorney