

DIVISION 2. PURCHASING*

* Editor's note--Ord. No. 22-89/90, adopted June 4, 1990, amended Div. 2 to read as herein set out in §§ 2-155--2-174. Prior to inclusion of said ordinance, Div. 2, §§ 2-155--2-170 pertained to similar subject matter and derived from Ord. No. 9-82/83, adopted Jan. 17, 1983, and amended Feb. 8, 1983.

Charter reference(s)--Purchasing generally, Art. IV.

Sec. 2-155. Short title; applicability

This division shall be known as the "Purchasing Ordinance of the City of South Portland." Except where expressly provided otherwise, all provisions herein apply to municipal and school department purchases.

(Ord. No. 22-89/90, 6-4-90; Ord. No. 1-03/04, 7/21/03 [Fiscal Note: Less than \$1000])

Sec. 2-156. Definitions.

For the purposes of this ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

(1) City: The City of South Portland.

(2) City council: The council of the City of South Portland.

(3) City purchasing agent or agent: The purchasing agent of the City of South Portland.

(4) Environmentally preferable products and services: Products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This applies to raw material acquisition, as well as product manufacturing, packaging, distribution, use, reuse, operation, maintenance or disposal of the product or service.

(5) General services: All telephone, gas, water, electric light and power service; towel and cleaning service; insurance; leases for all grounds, buildings, office or other space required by the using departments; the rental, repair or maintenance of equipment and other city-owned personal property; and maintenance of city-owned real property. The term shall not include professional and other services which are in their nature unique and not subject to competition and shall not include arrangements for the lease or rental of any real property owned by the city.

(6) Equipment: All non-consumable durable goods, including but not limited to machinery, tools, vehicles, furniture and computers.

(7) Improvements: All construction, reconstruction, alteration, repair, or renovation of real property owned or leased by the city.

(8) Supplies: All consumable, nondurable goods.

(9) Using department: Any department, agency, commission, bureau or other unit in the city government using supplies or procuring general services or improvements

as provided for in this ordinance, except that it shall not include the school department for purposes of procuring general services nor for purposes of procuring improvements costing one thousand dollars (\$1,000.00) or less.

(10) Written approval: Where written approval is required in this ordinance, this requirement may be satisfied by a written, signed statement or by electronic approval.

(Ord. No. 22-89/90, 6-4-90; Ord. #1-03/04, 7/21/03 [Fiscal note: Less than \$1000]; Ord. No. 7-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 2-157. City purchasing agent.

The city purchasing agent shall be the head, and have general supervision, of the division of purchases. The agent shall perform all duties required of a division head by law, and shall have the powers and duties prescribed by the ordinance.

(1) Position specifications. The agent shall:

(a) Appointment. Be appointed according to the personnel policy and section 302.1 of the city charter.

(b) Experience requirement. Preferably have had, prior to his appointment, at least two (2) years experience in a purchasing office of a public or private corporation.

(2) Scope of purchasing authority. The agent shall have the power and it shall be his duty:

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(a) Purchase or contract. To purchase or contract for all supplies and contractual services and improvements needed by any using department of the city, in accordance with purchasing procedures as prescribed by this division and such rules and regulations as the agent shall adopt for the internal management of the division of purchasing, including the purchasing manual, and such other rules and regulations as shall be prescribed by the city manager, finance director or the city council.

(1) Exceptions prohibited. The authority to the agent to make all purchases for all using departments shall not be abridged by excepting any particular using department.

(2) Unauthorized purchases. Except as herein provided, it shall be unlawful for any city officer or officers to order the purchase of any supplies, general services or improvements or make any contract within the purview of this ordinance other than through the division of purchasing, and any purchase ordered or contract made contrary to the provisions hereof shall not be approved by the city officials, and the city shall not be bound thereby.

(3) Other powers and duties. In addition to the purchasing authority conferred in subsection (2) above and in addition to any other powers and duties conferred by this ordinance, the agent shall:

(a) Minimize expenditures. Act to procure for the city the highest quality in supplies and contractual services at the least expense to the city.

(b) Encourage competition. Endeavor to obtain as full and open competition as possible on all purchases and sales.

(c) Rules and regulations. Establish, and amend when necessary, all rules and regulations authorized by this ordinance and any others necessary to its operation as approved by the city manager and finance director.

(d) Purchasing analysis. Keep informed of current developments in the field of purchasing, prices, market conditions and new products, and secure for the city the benefits of research done in the field of purchasing by other governmental jurisdictions, national technical societies, trade associations having national recognition, and by private businesses and organizations.

(e) Forms. Prescribe and maintain such forms as he shall find reasonably necessary to the operation of this ordinance.

(f) Bulk purchases. Explore the possibilities of buying "in bulk" so as to take full advantage of discounts.

(g) Tax exemptions. Act so as to procure for the city all federal and state tax exemptions to which it is entitled.

(h) Disqualification of bidders. Have the authority to declare vendors who default on their quotations irresponsible bidders and to disqualify them from receiving any business from the municipality for a stated period of time with the approval of the city manager and finance director.

(i) Specifications. Prepare and secure with the cooperation of the city departments standard written specifications for supplies used by the using departments.

(Ord. No. 22-89/90, 6-4-90; Ord. No. 1-03/04, 7/21/03 [Fiscal Note: Less than \$1000])

Sec. 2-158. Requisition and estimates.

All using departments, either by or with the authorization of the department head, shall file with the agent detailed requisitions or estimates of their requirements in supplies, general services, and improvements in such manner, at such times, and for such future periods as the agent shall prescribe.

(1) Unforeseen requirements. A using department shall not be prevented from filing, in the same manner, with the agent at any time a requisition or estimate for any supplies, contractual services, and improvements the need for which was not foreseen when the original detailed estimates were filed.

(2) Revisory power in agent. The agent shall examine each requisition or estimate and shall have the authority to revise it as to quantity, quality or estimated cost with prior written approval by the proper authority.

(Ord. No. 22-89/90, 6-4-90, Ord. No. 1-03/04, 7/21/03 [Fiscal Note: Less than \$1000])

Sec. 2-159. Encumbrance of funds.

Except in cases of emergency, the agent shall not issue any order for delivery on a bid or other purchase until the finance director shall have certified after pre-audit that there is to the credit of the using department concerned a sufficient unencumbered appropriation balance, in excess of all obligations, to defray the amount of such order.

(Ord. No. 22-89/90, 6-4-90)

Sec. 2-160. Environmentally Preferable Products and Services.

The City supports the purchase of environmentally preferable products and services as evidenced by its commitment to sustainability set forth in City Council Resolve #1-10/11. Where practicable, City departments should endeavor to ensure that specifications do not discriminate against environmentally preferable products and services; evaluate environmentally preferable products and services to determine the extent to which they may be used by the department; and review and revise specifications to include environmentally preferable products and services.

(Ord. No. 22-89/90, 6-4-90, Ord. 15-98/99, 4/21/99, [Fiscal note less than \$1000]; Ord. No. 7-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 2-161. Competitive bidding required.

All purchases of and contracts for supplies, general services, equipment and improvements, and all sales of real and personal property which have become obsolete and unusable shall, except as specifically provided herein, be based wherever possible on competitive bids. For purposes of this ordinance, the term "competitive bid" shall mean that three or more vendors have submitted bids. Where fewer than three bids are submitted, the purchasing agent shall state that the bid is not competitive and provide a written explanation why the purchase was not competitively bid.

The purchasing agent shall be responsible for all bid specifications for purchases subject to competitive bidding requirements, and may consult with the city departments and vendors to determine appropriate specifications. The city shall not issue bid specifications drafted by vendors who will be bidding on the item described unless the bid specifications state that allowable alternates are permissible or a reasonable explanation is provided.

(Ord. No. 22-89/90, 6-4-90, Ord. No. 1-03/04, 7/21/03 [Fiscal Note: Less than \$1000])

Sec. 2-162. Formal bidding procedure.

All supplies, general services, equipment and improvements except as otherwise provided in this ordinance, when the estimated cost thereof shall exceed twenty thousand dollars (\$20,000), shall be purchased by formal written bid from the lowest responsive, responsible bidder, after due notice inviting proposals. All final bid awards for non-competitively bid purchases of supplies, general services, equipment or improvements in excess of twenty thousand dollars (\$20,000), must be approved by the city council. All final bid awards for competitively bid purchases of supplies, general services, equipment or improvements in excess of one hundred thousand dollars (\$100,000) must be approved by the city council. The City Manager shall provide to Council on a quarterly basis a report of all expenditures between \$20,000 and \$100,000. Notwithstanding any other provision of this division to the contrary, fuel supplies may be purchased pursuant to Sec. 2-163(5).

(1) Notice inviting bids.

(a) Newspaper. Notice inviting bids shall be published once in a newspaper having general circulation in the city and at least five (5) days preceding the last day set for the receipt of bids.

1. Scope of notice. The newspaper notice required herein shall include a general description of the articles to be purchased or sold, shall state where bid blanks and specifications may be secured, and the time and place for opening bids.

(b) Bidders list. The agent shall also solicit sealed bids from all responsible prospective suppliers who have requested their names to be added to a "Bidders List" which the agent shall maintain, by sending them a copy of such newspaper notice or such other notice as will acquaint them with the proposed purchase or sale. In any case, invitations sent to the vendors on the bidders list shall be limited to commodities that are similar in character and ordinarily handled by the trade group to which the invitations are sent.

(2) Bid deposits. When deemed necessary by the agent, bid deposits in a form satisfactory to him shall be prescribed in the bid material. Unsuccessful bidders shall be entitled to return of surety where the agent has required such. A successful bidder shall forfeit any surety required by the agent upon failure on his part to enter a contract within such time as prescribed by the agent.

(3) Bid opening procedure.

(a) Sealed. Bids shall be submitted in a sealed envelope to the agent and shall be identified as bids on the envelope.

(b) Opening. Bids shall be opened in public at the time and place stated in the public notices.

(4) Rejection of bids. The agent shall have the authority to reject any or all bids, parts of all bids, or all bids for any one (1) or more supplies, general services or improvements included in the proposed contract, when the public interest will be served thereby.

(5) Award of bid.

(a) Authority in agent. The agent shall have the authority to award bids solicited under the formal bidding procedure only with the prior, written approval of the city manager and only where the city manager otherwise has the authority to award bids solicited. (b) Authority in city manager. The city manager shall have the authority to award bids solicited under the formal bidding procedure for supplies, general services, equipment and improvements with an actual cost less than or equal to one hundred thousand dollars (\$100,000) that (i) has been included as a line item budget item approved by the city council as part of the general fund, sewer user or capital improvement portion of the City's overall budget; (ii) for which the City has received bids from three or more vendors; and (iii) for which the award of bid would be consistent with the line item budgeted amount approved by the city council. Otherwise, city council approval is required. (c) Lowest responsive, responsible bidder. Bids shall be awarded to the lowest responsive, responsible bidder. A responsive bid is one that meets all the terms, conditions and specifications of the bid. In determining the "lowest responsive, responsible bidder," in addition to price and compliance with all applicable bid terms, conditions and specifications, the agent, city manager or city council where appropriate, shall consider:

1. The ability, capacity and skill of the bidder to perform the bid or provide the service required.

2. Whether the bidder can perform the bid 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 bids.
5. The previous existing compliance by the bidder with laws and ordinances relating to the bid.
6. The sufficiency of the financial resources and ability of the bidder to perform the bid.
7. The quality, availability and adaptability of the supplies, or general 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 bid.
9. The number and scope of conditions attached to the bid.
10. Such other factors as may be indicated in writing by the agent demonstrating that the bid is not in the city's best interest and does not promote the underlying purposes of this ordinance.

(d) Award to other than low bidder. When the award is not given to the lowest bidder, a full and complete statement of the reasons for placing the order elsewhere shall be prepared by the agent and filed with the other papers relating to the transaction.

(e) Tie bids.

1. Local vendors. If all bids received are for the same total amount or unit price, quality and service being equal, the bid shall be awarded to the bidder whose principal place of business is located in the city.
2. Outside vendors. Where subparagraph 1 is not applicable, the agent shall award the bid to one of the tie bidders by drawing lots in public.

(6) Prohibition against subdivision. No contract or purchase shall be subdivided to avoid the requirements of this section.

(Ord. No. 22-89/90, 6-4-90; Ord. No.1-03/04, 7/21/03 [Fiscal Note: Less than 1000]; Ord. No. 7-11/12, 1/4/12 [Fiscal Note: Less than \$1000]; Ord. No. 1-12/13, 7/2/12 [Fiscal Note: Less than \$1000], Ord. No. 6-18/19, 12/18/18 [Fiscal Note: Less than \$1000])

Sec. 2-163. Informal bidding procedure.

All purchases of supplies, general services, and improvements estimated to be twenty thousand dollars (\$20,000) or less may be made in the open market, without the required newspaper advertisement and without observing the procedure prescribed by section 2-162 for the award of formal bids. The agent shall have the authority to award bids under eight thousand dollars (\$8,000) solicited under the informal bidding procedure and shall have the authority to award such bids between eight thousand dollars (\$8,000) and twenty thousand dollars (\$20,000) with the prior written approval of the city manager or his designee.

(1) Minimum number of bids. All informal bids shall, wherever possible, be based on at least three (3) competitive bids, and shall be awarded to the lowest responsive, responsible bidder in accordance with

the standards set forth in subsection (5)(c) of section 2-162 above. (2) Notice of inviting bids. The agent shall solicit bids by (a) direct mail request to prospective vendors and (b) by telephone. (3) Recording. The agent shall keep a record of all informal bids and the bids submitted in competition thereon, and such records shall also be open to public inspection. (4) Purchasing Cards. Notwithstanding the other provisions of this section, each city department head shall have the authority to make purchases in an amount less than four thousand dollars (\$4,000) on so-called purchasing cards in such manner and on such cards as may be prescribed by the agent. (5) Fuel supplies. Notwithstanding any other provision of this division to the contrary, for fuel supplies (e.g., #2 fuel oil, diesel fuel, unleaded fuel, propane and natural gas) with prices that vary daily, it may be to the City's advantage to lock into a low, guaranteed fixed price for fiscal year fuel supply expenditures. The director of finance is authorized, after consultation with the city manager and following a competitive bid process consistent with the informal bidding procedure, to execute and deliver on behalf of the City such agreement(s) as he deems necessary to effectuate such fuel supply purchases, containing such terms not inconsistent herewith, as the director of finance may approve by his execution thereof, provided that (i) such fuel supply has been included as a line item budget item (or items) approved by the city council as part of the City's overall budget; and (ii) for which the award of bid would be consistent with the line item(s) budgeted amount approved by the city council.

(Ord. No. 22-89/90, 6-4-90; Ord. No. 7-01/02, 11/5/01 [Fiscal note: less than \$1000] Ord. No. 1-03/04, 7/21/03 [Fiscal Note: less than \$1000]; Ord. No. 7-11/12, 1/4/12 [Fiscal Note: Less than \$1000]; Ord. No. 1-12/13, 7/2/12 [Fiscal Note: Less than \$1000], Ord. No. 6-18/19, 12/18/18 [Fiscal Note: Less than \$1000])

Sec. 2-164. Exemption from bidding procedures--Emergency purchases.

(1) By agent. In case of an apparent emergency which requires immediate purchase of supplies, general services or improvements, the city manager shall be empowered to authorize the agent to secure by the informal bidding procedure as herein set forth, at the lowest obtainable price, any supplies or general services regardless of the amount of the expenditure.

(a) Recorded explanation. A full written report of the circumstances of an emergency purchase for an amount in excess of twenty thousand dollars (\$20,000) shall be submitted by the city manager to the city council with a copy to the purchasing agent. This report shall be available for public inspection.

(2) By head of departments. In case of actual emergency, and with the approval of the city manager, the head of any using department may purchase directly any supplies, general services or improvements whose immediate procurement is essential to prevent delays in the work of the using department which may vitally affect the life, health or convenience of citizens or employees.

(a) Recorded explanation. The head of such using department shall send to the city manager, with a copy to the agent, a requisition and a copy of the delivery record together with a full written report of the circumstances of the emergency. The report shall be filed with the city manager, and where the amount of the purchase exceeds twenty thousand dollars (\$20,000), to the city council.

(b) Emergency procedure. The agent may prescribe by rules and regulations the procedure under which emergency purchases by heads of using departments may be made.

(Ord. No. 22-89/90, 6-4-90; Ord. No. 1-03/04, 7/21/03 [Fiscal Note: Less than \$1000]; Ord. No. 7-11/12, 1/4/12 [Fiscal Note: Less than \$1000], Ord. No. 6-18/19, 12/18/18 [Fiscal Note: Less than \$1000])

Sec. 2-165. Exemption from bidding procedure--Special requirements.

The formal and informal bidding procedures shall not be required in connection with any purchases of supplies, general services or improvements funded or reimbursable by sources where such source requires a different procurement process to be followed and procurement is effected through or in accordance with such process.

All federally funded projects, loans, grants, and sub-grants, whether funded in whole or in part by federal funds, are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ("Uniform Guidance") codified at 2 C.F.R. Part 200, as may be amended from time to time, unless otherwise directed in writing by the federal agency or State pass-through agency that awarded the funds.

All procurement activities involving the expenditure of federal funds must be conducted in compliance with the Procurement Standards codified in 2 C.F.R. § 200.317 through § 200.326, as may be amended from time to time, unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds. The City shall follow its own procurement requirements when expending federal funds provided that the procurements conform to federal law and the standards identified in the Uniform Guidance; otherwise, the City shall follow federal law and standards.

The director of finance shall adopt such further written procedures as necessary or required under the Uniform Guidance, including written procedures as necessary or required under the Uniform Guidance, including written procedures for the method for conducting technical evaluations of proposals received and for selecting recipients, for implementing payment and reimbursement procedures, and for complying with allowable cost standards.

No bid or proposal involving the expenditure of federal funds shall be evaluated and no contract shall be awarded on the basis of a geographic preference.

(Ord. No. 22-89/90, 6-4-90; Ord. No. 1-03/04, 7/21/03 [Fiscal Note: Less than \$1000], Ord. No. 6-18/19, 12/18/18 [Fiscal Note: Less than \$1000])

Sec. 2-166. Exemption from bidding procedure--Negotiated purchases.

Where there has been competitive bidding either formal or informal but no bids were received or the city manager has rejected all bids because the bid prices were unreasonable or none of the bids met specifications, the purchasing agent and/or department head or division manager may negotiate for purchases if he/she determines:

- (1) That it is not feasible or practical to re-bid the purchase;
- (2) Each qualified and responsible supplier on the bidders' list has been notified of the city's intention to negotiate and is given reasonable opportunity to negotiate; and
- (3) The final negotiated price is the lowest negotiated price offered by any qualified and responsible supplier.

A purchase by negotiation shall be approved by the city manager or, if in excess of twenty thousand dollars (\$20,000), by the city council.

(Ord. No. 22-89/90, 6-4-90; Ord. No. 7-11/12, 1/4/12 [Fiscal Note: Less than \$1000], Ord. No. 6-18/19, 12/18/18 [Fiscal Note: Less than \$1000])

Sec. 2-167. Exemption from competitive bidding--Cooperative purchasing; used equipment auctions.

(1) The agent shall have the authority to join with other units of government in cooperative purchasing plans when the best interests of the city would be served thereby. The requirements of formal and informal bidding shall not apply to such cooperative arrangements. (2) Electricity supply. The director of finance is authorized, after consultation with the city manager and following participation in a cooperative purchase plan, including, without limitation, any aggregation services, to execute and deliver on behalf of the City such agreement(s) as he deems necessary to effectuate electricity supply purchases, containing such terms not inconsistent herewith, as the director of finance may approve by his execution thereof, provided that (i) such electricity supply has been included as a line item budget item (or items) approved by the city council as part of the City's overall budget; and (ii) for which the award of bid would be consistent with the line item(s) budgeted amount approved by the city council.

(3) The City Council may authorize the City Manager or his designee, on an item by item basis, to purchase used equipment at public auction without using either formal or informal bidding procedures where the City Council has determined:

(a) that to do so would be in the City's best financial interest; and

(b) would not undermine the legitimate public interests in competitive bidding.

Any such City Council authorization shall be supported by a written report demonstrating compliance with these standards and shall contain a maximum expenditure amount and date of expiration, and must be authorized by a vote of at least two thirds (2/3) of the Councilors present and voting.

(Ord. No. 22-89/90, 6-4-90, Ord. No. 6-93/94, 8-16-93; Ord. No. 1-12/13, 7/2/12 [Fiscal Note: Less than \$1000])

Sec. 2-167A. Exemption from competitive bidding--Alternative methods of project delivery for contracts for improvements.

(1) Definitions. For purposes of this section, the following terms, phrases and words shall have the meaning given herein.

(a) "Construction manager-advisor method" means a method of project delivery in which the City engages a single firm for a fee to advise and consult with the City as to design and construction and may include consultation as to the selection of one or more design professionals to furnish the design when trade contracts for performance are held directly by the City.

(i) The construction manager-advisor is contractually bound to manage the schedule and budget to ensure adherence to both by the trade contractors.

(ii) The construction manager-advisor shall not hold subcontracts for the project or provide project bonding for the project.

(iii) The construction manager-advisor shall competitively bid all construction trade work in accordance with the bidding procedure set forth in Sec. 2-167A (3)(d).

(b) "Construction manager-at-risk method" means a method of project delivery in which the City engages a single firm for a fee to advise and consult with the City as to design and construction and separately engages one or more design professionals to furnish the design, and in which the construction manager-at-risk is responsible to the City for schedule and price.

(i) The construction manager-at-risk provides a maximum guaranteed price to perform the work as general contractor.

(ii) If the construction manager-at-risk is to hold all trade contracts and purchase orders, it shall furnish a 100% performance and payment bond and guarantee the entire project. The construction manager-at-risk shall competitively bid all construction trade work in accordance with the bidding procedure set forth in Sec. 2-167A (3)(f).

(iii) If the City is to hold all trade contracts and purchase orders, the City shall competitively bid all construction trade work in accordance with the bidding procedure set forth in Sec. 2-161. The portion of the project not covered by the trade contracts and purchase orders is to be bonded and guaranteed by the construction manager-at-risk. The construction manager-at-risk shall be permitted to submit bids and self-perform work if it is the successful bidder.

(c) "Design-build method" means a method of project delivery in which a single firm is contractually responsible to perform design, construction and related services.

(d) "Design-build team" means representatives of an individual, firm, corporation, limited liability company, partnership, joint venture, sole proprietorship or other entity that submits a prequalification package in response to a request for qualifications under this Section.

(e) "Proposer" means an individual, firm, corporation, limited liability company, partnership, joint venture, sole proprietorship or other entity that submits a proposal.

(f) "Quality" means those features that the City determines are most important to the project. "Quality" includes design quality; feasibility of construction; long-term maintenance costs; life-cycle costs, particularly energy efficiency; service life; and other factors the City Council determines to be in the best interests of the City.

(2) Use of a Construction Manager. To the extent otherwise permitted by law, the City Council may authorize any City improvement, including any improvement by any department (including the School Department), agency, commission, bureau or other unit in City government, costing more than \$1,000 to be executed by a construction management contract with a construction manager after the public notice and competition prescribed by this Ordinance. The use of a construction manager shall be carefully considered by the City Council, which must also carefully consider the School Board's recommendation on school projects. The City Council shall compare the benefits and risks of employing a construction manager, and shall find the existence of one or more of the following circumstances prior to deciding to proceed with the use of a construction manager:

(a) The project has significant schedule ramifications, and concurrent design and construction is necessary to meet these critical deadlines and to shorten the overall duration of the construction process.

(b) The project is one where the phasing and/or complexity are so extremely difficult that complete design and other preconstruction services cannot be completed effectively without the direct involvement of a construction manager.

(c) Early construction manager input during the design process is anticipated to contribute to significant cost savings.

(d) The project presents significant technical complexities that will require the hiring of additional personnel to manage the process.

(3) Selection of a Construction Manager. The construction manager-at-risk method must be substantially consistent with the concepts set forth in a standard form of agreement between an owner and a construction manager when the construction manager is also the constructor as established by national architect or general contractor organizations. The construction manager-advisor method must be substantially consistent with the standard scope of services employed by the City in improvement projects. The final procedures and documents for either the construction manager-at-risk or the construction manager-advisor method of delivery shall be determined at the discretion of the City Council.

Selection of the construction manager shall be as follows:

(a) The City shall publish in at least one newspaper of general circulation in the City and at least one construction industry print publication that covers the Maine market (such as, by way of example only, the Dodge report), a request for qualifications that must contain the evaluation criteria upon which proposals are evaluated. Evaluation criteria include project size and scope, and relevant experience and financial and staff capability of proposers. The City shall evaluate the proposals and determine which proposers, if any, are qualified to perform the project. The City may select such number of firms as it deems appropriate to receive the request for proposals.

(b) Proposers determined to be qualified must be invited to submit a fee proposal. The City shall, in advance of soliciting a fee proposal, publish the evaluation criteria upon which the proposers are evaluated. Evaluation criteria at a minimum must include the following:

(i) Fee;

(ii) Technical capacity;

(iii) Management plan and project schedule if available;

(iv) Experience;

(v) Past performance;

(vi) If for a construction manager-advisor, composition of the project team, with individual resumes;

(vii) If for a construction manager-at-risk, technical approach;

(viii) If for a construction manager-at-risk, composition and qualifications of the proposers' workforce.

As part of the selection process, proposers may be required to make oral presentations to the selection panel established herein.

(c) The City Council shall appoint members of a selection panel for municipal projects, which shall be comprised of six (6) voting members. The selection panel for school projects shall be comprised of six (6) voting members, with five (5) voting members appointed by the School Board and one (1) voting member appointed by the City Council. The selection panel may also include up to three non-voting members, including the designer, if selected. Any non-voting members shall be appointed by the City Council for municipal projects and by the School Board for school projects. The selection panel shall conduct any interviews of proposers and shall make a recommendation on the selection of the construction manager to the City Council.

(d) For the construction manager-advisor method of delivery, the City Council must select, from among the proposals submitted, the construction manager-advisor with the most advantageous proposal that meets the published evaluation criteria as recommended by the selection panel unless, for good cause shown, the City Council determines in writing and based on the applicable selection criteria that an alternative construction manager-advisor is in the City's best interests. The City Council shall award the position of general contractor to the lowest responsive, responsible bidder as recommended by the selection panel unless, for good cause shown, the City Council determines in writing and based on the applicable selection criteria that an alternative general contractor is in the

City's best interests. The City Council shall award additional trade contracts, if any, to the lowest responsive, responsible bidder or bidders.

(e) For the construction manager-at-risk method of delivery, the City Council must select, from among the proposals submitted, the construction manager-at-risk with the most advantageous proposal that meets the published evaluation criteria as recommended by the selection panel unless, for good cause shown, the City Council determines in writing and based on the applicable selection criteria that an alternative construction manager-at-risk is in the City's best interests.

(f) For the construction manager-at-risk method of delivery, subcontractors must be selected in accordance with the following provisions. The City shall create a subcontractor prequalification panel, composed of a representative from the designer, the construction manager and the affected City department. The construction manager shall develop detailed bid packages based on the industry standard practice. The City shall advertise in at least one newspaper of general circulation in the City and at least one construction industry print publication that covers the Maine market (such as, by way of example only, the Dodge report) for requests for qualifications for each trade. The subcontractor prequalification panel shall, from the qualifications submitted, determine a list of trade contractors who must be permitted to submit bids in accordance with the bid package requirements, pursuant to a publicly advertised process and deadline. Bids must be opened publicly and be awarded by the City Council to the lowest responsive, responsible bidder.

(4) Use of a Design-Builder. To the extent otherwise permitted by law, the City Council may authorize any City improvement, including any improvement by any department (including the School Department), agency, commission, bureau or other unit in City government, costing more than \$1,000 to be executed by a design-build contract with a design-builder after the public notice and competition prescribed by this Ordinance. The use of a design-builder shall be carefully considered by the City Council, which must also carefully consider the School Board's recommendation on school projects. The City Council shall compare the benefits and risks of employing a design-builder, and shall find the existence of one or more of the following circumstances prior to deciding to proceed with the use of a design-builder:

(a) The project has significant ramifications, and concurrent design and construction is necessary to meet these critical deadlines and to shorten the overall duration of the construction process. Potential time savings must be substantiated and may include operational and financial data that justify early project completion.

(b) The design-builder's concurrent employment of design and construction professionals is anticipated to contribute to significant cost savings.

(c) The size of the project, or contract value, is of sufficient size to justify the risks for both the City and the design-builder.

(d) The project presents significant technical complexities that are best addressed by a design-builder. Technical complexities that may influence the decision to use a design-builder include:

(i) Program requirements that can be defined by performance criteria or regulatory standards;

(ii) Public safety;

(iii) Price guarantees that allow the City greater cost reliability and effective management of the budget process;

(iv) Historic preservation and/or difficult remodeling projects with many unknown factors; and

(v) Constructability challenges requiring complex phasing or highly coordinated scheduling.

(5) Selection of a Design-Builder. The design-build method must be substantially consistent with guidelines approved by a national architect, general contractor or design-build organization or a combined or modified version of the guidelines approved by those entities, with the final design-build procedures and documents determined at the discretion of the City Council. The City may prequalify design-build teams using criteria that must include at a minimum those set forth in 5 M.R.S.A. § 1747, as may be amended, and may also include additional criteria considered appropriate by the City.

Selection of the design-build team shall be as follows:

(a) Prior to publication of a request for qualifications, the City shall develop concept and schematic designs incorporating a detailed set of program requirements for the project using the services of a qualified architect, engineer or other professional who is selected using the City's professional services selection procedures. Individuals who are involved in developing the project's program requirements may not be part of the design-build team.

(b) For each project, the City shall publish a request for qualifications in at least one newspaper of general circulation in the City and at least one construction industry print publication that covers the Maine market (such as, by way of example only, the Dodge report). The City shall issue a request-for-qualifications package to all firms requesting one in accordance with the notice. The selection panel established herein shall evaluate and rate all firms submitting a responsive statement of qualifications and the City Council shall select the most qualified firms to receive a request for proposals based on the recommendation of the selection panel unless, for good cause shown, the City Council determines in writing and based on the applicable selection criteria that alternative qualified firms are in the City's best interests. Selection criteria at this stage include the ability of the competitor to satisfactorily carry out the project design and construction requirements, past performance, relevant experience, financial capacity

to perform and such other criteria determined to be in the best interests of the City. The City Council may select such number of firms as it deems appropriate and qualified to receive the request for proposals. The City may pay a reasonable stipend to all responsive proposers who were not selected. The amount of the stipend must be published together with the evaluation criteria in the request for proposals.

(c) The request for proposals must set forth the scope of work, design parameters, construction requirements, time constraints and all other requirements that the City determines have a substantial impact on the cost or quality of the project and the project development process. The request for proposals must include the criteria for acceptable proposals and state clearly what weight will be assigned to each criterion. A description of the scoring process and quality criteria to be used to judge the proposals must also be contained in the request for proposals. As part of the selection process, proposers may be required to make oral presentations to the selection panel established herein.

(d) The City Council shall appoint members of a selection panel for municipal projects, which shall be comprised of six (6) voting members. The selection panel for school projects shall be comprised of six (6) voting members, with five (5) voting members appointed by the School Board and one (1) voting member appointed by the City Council. The selection panel may also include up to three non-voting members. Any non-voting members shall be appointed by the City Council for municipal projects and by the School Board for school projects. The selection panel shall conduct any interviews of proposers and shall make a recommendation to the City Council at both the request-for-qualifications and request-for-proposals phase of the project.

(e) Each proposal must be submitted to the City in two separate components: a sealed technical proposal and a sealed price proposal. These two components must be submitted simultaneously. The selection panel shall first open and evaluate and score each responsive technical proposal based on the quality criteria contained in the request for proposals. Nonresponsive proposals must be rejected. During this evaluation process, the price proposals must remain sealed and all technical proposals are confidential. After completion of the evaluation of the technical proposals, the selection panel shall publicly open and read each price proposal. The City Council shall award the contract to the proposer with the lowest price per quality score point as recommended by the selection panel, as long as that proposal meets all request-for-proposals requirements, unless, for good cause shown, the City Council determines in writing and based on the applicable selection criteria that an alternative proposer is in the City's best interests.

(Ord. No. 9-10/11, 12/6/10 [Fiscal Note: Less than \$1000]; Ord. No. 7-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 2-167B. Exemption from competitive bidding--Sole source.

Occasions may arise when competition among vendors is not possible for a particular purchase. These situations may occur when (a) there is clearly and legitimately only one source capable of supplying the subject matter in a timely fashion; (b) the purchase is of such a specialized nature or related to a specific geographic location that only a single source, by virtue of experience, expertise, proximity, or ownership of intellectual property rights, could most satisfactorily provide the subject matter; or (c) the federal or state government or other provider of funds for the subject matter being purchased has imposed clear and specific restrictions on the use of the funds in a way that restricts the procurement to only one vendor. The city manager and the director of finance may approve negotiated procurement of goods or services without requiring bids if it is determined from all information submitted by the department head to the

purchasing agent that steps were taken to verify that the necessary features provided by the proposed vendor are not available from other vendors; that the use of a specific product, manufacturer or vendor is required to maintain consistency of equipment; and that no similar standard goods would reasonably satisfy the city's requirements.

(Ord. No. 7-11/12, 1/4/12 [Fiscal Note: Less than \$1000])

Sec. 2-168. Inspection and testing.

The agent shall inspect, or supervise the inspection of, all deliveries of supplies or general services to determine their conformance with the specifications set forth in the order or contract.

(1) Inspection by using department. The agent shall have the authority to authorize using departments having the staff and facilities for adequate inspection to inspect all deliveries made to such using agencies under rules and regulations which the agent shall prescribe.

(2) Tests. The agent shall have the authority to require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with the specifications. In the performance of such tests, the agent shall have the authority to make use of laboratory facilities of any department of the city government or of any outside laboratory.

(Ord. No. 22-89/90, 6-4-90; Ord. No. 1-03/04, 7/21/03 [Fiscal Note: Less than \$1000])

Sec. 2-169. Contracts for professional and other services.

(a) The city manager shall have the authority to contract for professional and other services which are in their nature unique and not subject to competition, provided that all such contracts in excess of forty thousand dollars (\$40,000), or which when added to all such contracts with the same person or entity within the current fiscal year of the city exceed forty thousand dollars (\$40,000), shall be approved by the city council.

(b) The school board may contract for services as authorized by the general law.

(Ord. No. 22-89/90, 6-4-90, Ord. No. 6-18/19, 12/18/18 [Fiscal Note: Less than \$1000])

Sec. 2-170. Surplus stock.

All using departments shall submit to the agent, at such times and in such form as he shall prescribe, reports showing stocks of all supplies and equipment which are no longer used or which have become obsolete, worn out or scrapped.

(1) Transfer. The agent shall have the authority to transfer surplus stock to other using departments.

(2) Sale. The agent shall have the authority to sell all supplies and equipment which have become obsolete, unusable, or otherwise unsuitable for public use, or to exchange the same for, or trade in the same on, new supplies or equipment. Sale of surplus property shall be accomplished by a competitive bidding procedure, open sale or auction. The type of sale shall be determined by the purchasing agent, with the approval of the city manager. Open sales and auctions may be electronic, and the purchasing agent may create a continuous electronic auction to which new supplies and equipment are added as deemed appropriate. Supplies or equipment not sold within sixty (60) days of being offered may be deemed by the

purchasing agent to have no value and be disposed of in an appropriate manner. A report of all sales and the disposition of all unsold supplies and equipment shall be made to the city council.

(a) Competitive bidding. Sales under the competitive bidding procedure shall be made to the highest responsive, responsible bidder and in conformance with section 2-162. The agent shall have the authority to award bids, provided that all awards of bid of twenty thousand dollars (\$20,000) or more shall be approved by the city council.

(b) Open sale. The agent may periodically conduct an open sale of surplus supplies and equipment. The date and location of such sales shall be publicized in a newspaper of general circulation and shall be publicized in any other manner which will be likely to inform the public of the pending sale. Approval of the city council shall be required prior to the open sale of all supplies and equipment which the purchasing agent has valued at twenty thousand dollars (\$20,000) or more.

(c) Auction. The agent may periodically conduct an auction of surplus supplies and equipment. The date and location of such auctions shall be published in a newspaper of general circulation and shall be publicized in any other manner which will be likely to inform the public of the pending auction. Approval of the city council shall be required prior to the auction of all supplies and equipment which the purchasing agent has valued at twenty thousand dollars (\$20,000) or more.

(3) Disposition of Computer Hardware. Notwithstanding any other ordinance provision to the contrary, computer hardware taken out of service after its useful life may be sold to City employees (other than the purchasing agent and director of information technology) in a manner determined by the purchasing agent. The purchasing agent and the director of information technology shall determine a reasonable market value of the computer hardware in an "as is, where is" condition, and the purchasing agent shall endeavor to sell the computer hardware for at least that amount.

(Ord. No. 2 -89/90, 6-4-90; Ord. No. 1-03/04, 7/21/03 [Fiscal Note: Less than \$1000]; Ord. No. 7-11/12, 1/4/12 [Fiscal Note: Less than \$1000], Ord. No. 6-18/19, 12/18/18 [Fiscal Note: Less than \$1000])

Sec. 2-171. Sale of real property.

(1) General policy. The sale of all real property owned by the city, including any interests therein, shall be governed by this ordinance. As a general rule, the city shall charge fair market value for the conveyance of any interest in real property, except as specifically provided below, and convey its interest by quit claim deed.

(2) Classification of property interest. For the purpose of this division, real property interests owned by the city shall be classified and the disposition of those interests shall be as follows:

(a) Tax acquired.

1. The director of finance shall maintain a list of all tax acquired property and shall send a list of the most recent tax acquired property to the planning board each year for its recommendation as to the disposition thereof.

2. The planning board shall review said annual list and forward its written recommendation to the city council indicating whether said properties should be retained by the city. The city council shall then review the planning board's recommendation and determine which properties, if any, to offer for public sale.

Residential properties which are occupied by the prior owner and for which regularly scheduled payments are being made shall not be offered for sale.

3. If a property to be offered for sale is prior owner occupied single-family property, it shall first be offered to the previous owner for a price to be determined by the city council; provided, however, that in no event shall such price be less than the total of all back taxes, interest, costs, and any and all other charges properly assessed thereon by the city.

4. Thereafter for those properties to be offered for sale, the city council shall determine the method of sale. Methods may include, but are not limited to, brokerage sale, negotiated sale or public bid process. The city reserves the right to establish such conditions or restrictions on the subsequent use of the property as it deems in the best interest of the city. If the property is put out to public bid for sale to the highest bidder, the city shall reserve the right to establish a minimum bid, to reject any bid less than the stated minimum bid, and to establish such other conditions or restrictions on the bid it deems in the best interest of the city.

5. Following approval of the method of sale by the city council, the city manager is authorized to complete the sale, including execution and delivery of the deed and such other paperwork reasonably incident to the sale. The proceeds of the sale shall be distributed in the following manner to the extent that funds are received from the sale: first, all taxes, interest and cost under the tax lien foreclosure process shall be paid to the city, including all costs incident to the sale of the property; and second, all outstanding assessments or other lawful charges incurred by the city in providing services to the property. Any such distributions shall not be considered part of the "net proceeds" of the sale for purposes of Section 18-76(4) of the Code of Ordinances.

(b) City owned.

1. The sale of all real property interests not classified as "Tax Acquired" or "Streets and Rights-of-Way" shall be governed by this paragraph.

2. Any proposed sale of "city-owned" property shall first be referred to the planning board for its recommendation as to the disposition thereof.

3. After review of the planning board's written report, the city council shall decide whether to sell such property. If the city council decides to offer the property for sale, the city council shall determine the method of sale. Methods may include, but are not limited to, sealed bid, sealed request for proposals, auction, brokerage sale or negotiated sale.

4. In evaluating the proposals to purchase such property, depending on the method of sale, the city council may consider factors such as price, annual property tax generation, proposed land use, economic benefit, job creation, environmental benefit or detriment, historical or architectural significance of any existing improvements on the property, community need or neighborhood benefits when awarding the sale. Consistent with the above, the city council shall indicate the factors it will consider for each property at the time the method of sale is determined.

5. The city council may set reasonable conditions on the future use of the property through deed restrictions to ensure that the property will be used in the best interests of the City.

(c) Streets and rights-of-way.

1. The sale or discontinuation/vacation of property interests in streets and rights-of-way shall be governed by this paragraph and the requirements of state law.

2. The city's property interest in streets and rights-of-way shall not be sold or discontinued/vacated until the planning board has reviewed the matter and issued a written recommendation thereon to the city council.

3. The city council shall then decide whether to sell or discontinue/vacate such interests. The assessment of damages shall be left to the discretion of the city council.

(3) Miscellaneous considerations. The city council may waive any of the above requirements where the public interest so requires and where i) An abutting property owner has a unique interest in the property; ii) in the case of a street or right-of-way, a replacement of equal quality is given; or iii) a charitable, nonprofit, or other governmental agency offers to purchase property to be used for a charitable, nonprofit, or governmental purpose. The city council may authorize such a waiver only upon full public disclosure and an affirmative vote of not less than five (5) councilors.

(4) That portion of the net proceeds (sales price less any past due taxes, interest and costs) of all real property sold pursuant to this Section, as determined in accordance with Section 18-76(4) of the Code of Ordinances, shall be deposited into the South Portland Land Bank account.

(Ord. No. 22-89/90, 6-4-90, Ord. No. 17-91/92, 6-15-92; Ord. No. 8-03/04, 10/6/03 [Fiscal Note: less than \$1000]; Ord. No. 10-04/05, 2/23/05 [Fiscal Note: Less than \$1000]; Ord. No. 17-09/10, 7/19/10 [Fiscal Note: Less than \$1000]; Ord. No. 7-11/12, 1/4/12 [Fiscal Note: Less than \$1000]; Ord. No. 11-13/14, 3/17/14 [Fiscal Note: Less than \$1000])

Sec. 2-172. Lease or rental of city property.

(a) The city manager may, on behalf of the city, enter into agreements for the lease or rental of city property, except as otherwise provided in subsection (b), for such purposes as will benefit the city. Any such agreement which is for a term of more than one (1) year, or can extend beyond a period of one (1) year, shall require city council approval.

(b) The school board may enter into arrangements to lease school buildings as authorized by general law.

(Ord. No. 22-89/90, 6-4-90)

Sec. 2-173. Contract requirements.

All purchases of contractual services or improvements for an amount equal to or greater than one thousand dollars (\$1,000) shall be subject to the following requirements:

(1) Bonding. For improvements equal to or greater than forty thousand dollars (\$40,000), a performance bond and a labor and material payment bond each in the full amount of the contract price shall be required; for improvements equal to or greater than one thousand dollars (\$1,000), but less than forty thousand dollars (\$40,000), the director of finance shall require surety in such form and amount as he deems necessary to fully protect the best interests of the city.

(2) Insurance. All vendors providing general services pursuant to this ordinance shall provide the director of finance with proof of comprehensive general liability and automotive liability insurance coverage with

an insurance company licensed to do business in the State of Maine each in an amount not less than four hundred thousand dollars (\$400,000) single limit coverage or such greater amount as may be required to protect the city's interest under the Maine Tort Claims Act, as the same may be amended from time to time, and shall also provide such workers' compensation coverage as is required by law; provided, however, that the director of finance may require such greater amount of insurance coverage as he deems necessary to fully protect the best interests of the city.

(Ord. No. 22-89/90, 6-4-90; Ord. No. 1-03/04, 7/21/03 [Fiscal Note: less than \$1000], Ord. No. 6-18/19, 12/18/18 [Fiscal Note: Less than \$1000])

Sec. 2-174. Separability.

In the event that any section, subsection or any portions of this ordinance shall be declared by any competent court to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection or other portion of this ordinance.

(Ord. No. 22-89/90, 6-4-90)

Secs. 2-175--2-185. Reserved.

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