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Introduced by: Administrative Official
Requested by: Assembly member Bonney
Drafted by: Assembly member Austerman,
and Borough Attorney

Introduced: 01/03/2013
Public Hearing: 01/17/2013
Amended: 01/17/2013
Adopted: 01/17/2013

**KODIAK ISLAND BOROUGH
ORDINANCE NO. FY2013-11**

**AN ORDINANCE OF THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH
AMENDING TITLE 3 REVENUE AND FINANCE CHAPTER 3.30 CONTRACT,
PURCHASE, SALE, AND TRANSFER PROCEDURES TO MAKE INFORMATION
ABOUT BOROUGH CONTRACTS MORE READILY AVAILABLE TO THE PUBLIC
AND OTHER RELATED MATTERS**

WHEREAS, the Kodiak Island Borough has established procedures for entering into contracts for goods and services in a manner intended to be cost-effective for the Borough and fair to all potential contracts; and

WHEREAS, the procedures set forth in Chapter 3.30 of the Kodiak Island Borough Code should be amended to have the Borough Manager report to the Assembly regarding certain contracts entered into under the Manager's administrative authority, although it is the Assembly's intent that any delay in reporting will not affect the validity of the contract; and

WHEREAS, notices to potential bidders and proposers should be made available by electronic means, as well as by newspaper publication; and

WHEREAS, the privileges and immunities clause of the United States Constitution significantly limits the right of the Borough to grant a contracting preference to local residents or companies; and

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH THAT:

Section 1: This ordinance is of a general and permanent nature and shall become a part of the Kodiak Island Borough Code of Ordinances;

Section 2: Kodiak Island Borough Code Chapter 3.30 Contract, Purchase, Sale, and Transfer Procedures is hereby amended as follows:

3.30.010 Contract, purchase and sale and transfer procedure.

The manager may carry out any of the following:

- A. Contract for, purchase, or issue purchase authorizations for all supplies, materials, equipment, and services for the offices, departments, and agencies of the borough;
- B. Sell surplus, obsolete, or unusable personal property for the offices, department, and agencies of the borough;

- 51 C. Transfer supplies, material, and equipment to or between the offices, departments,
52 and agencies of the borough; or
53 D. Contract for the construction, repair, or improvements of borough facilities.
54

55 **3.30.020 Limitation on manager's authority.**

56 The manager may not make an acquisition, sale, transfer, or contract authorized by KIBC
57 3.30.010 if the value of the property, service, or contract exceeds \$25,000 without first
58 obtaining assembly approval with the exception of utility bills, which may be paid without
59 assembly approval. **Similar types of work, even if performed in different geographic**
60 **locations, are considered "in the aggregate" regardless of the project, contract,**
61 **purchase orders, or change order and require assembly notification if the total**
62 **payment to one contractor exceeds \$25,000 in one fiscal year. The manager will**
63 **report to the assembly, at its next regular meeting, contracts of \$25,000 or less**
64 **between the borough and a) a member of the assembly, b) an assembly member's**
65 **immediate family, or c) a business in which the assembly member is associated or**
66 **has an ownership interest. Immediate family of an assembly member means a**
67 **parent; sibling; child by blood, adoption, or marriage, spouse; grandparent or**
68 **grandchild.**
69

70 **3.30.030 Open market procedures.**

- 71 A. Purchases, sales, or contracts authorized by KIBC 3.30.010 having an estimated
72 value in excess of \$15,000 but less than \$25,000 shall be made in the open market
73 without newspaper advertisement.
74 B. Market purchases, sales, and contracts for over \$500.00 shall, whenever possible, be
75 based on at least two ~~competitive bids~~ **quotes** and shall be awarded to the lowest
76 responsible bidder, or in the case of a sale, to the highest responsible bidder, except a
77 local preference for purchasing shall be allowed **for purchases of \$15,000 or less if**
78 **that bid does not exceed the lowest responsible bid by more than** ~~not to exceed~~
79 ~~20-10 percent of the purchase price for purchases of \$15,000 or less and not to~~
80 ~~exceed 10 percent of the purchase price for purchases of more than \$15,000 but not~~
81 ~~more than \$25,000.~~
82 C. The manager, or authorized designee, may solicit oral or written bids for open market
83 purchases or sales, and shall maintain a record of all bids received.
84 D. The sale of all surplus, obsolete, or unusable personal property shall be advertised by
85 **electronic means** or in a newspaper of general circulation ~~published within the~~
86 borough unless authorized to the contrary by the assembly.
87 E. The purchase of utilities is exempt from this section.
88

89 **3.30.040 Advertising for bids.**

- 90 A. Purchases, sales, or contracts authorized by KIBC 3.30.010 having an estimated
91 value of more than \$25,000 may be made only after a notice calling for bids **issued by**
92 **electronic means** or is printed in a newspaper of general circulation ~~published within~~
93 the borough once a week for not less than three consecutive weeks prior to the date of
94 the bid opening. The notice shall contain a general description of the property, work,

- 95 or service; state where the bid forms and specifications may be obtained; specify the
96 place for submission of bids and the time by which they must be received.
- 97 B. The purchase or contract shall be awarded to the lowest responsible bidder, or in the
98 case of a sale to the highest responsible bidder.
- 99 C. Utilities are exempt from this section.

100

101 **3.30.050 Processing of bids.**

102 Notwithstanding other provisions of this chapter relating to the award after competitive bid
103 for purchases, sales, and contracts, the borough may:

- 104 A. Reject defective or nonresponsive bids;
- 105 B. Waive any irregularities in any and all bids;
- 106 C. Reject all bids;
- 107 D. Negotiate with two or more of the lowest bidders, if bid prices are in excess of the
108 money available or authorized, for a reduction in the scope, quality, or quantity of the
109 purchase, service, or contract; or
- 110 E. Readvertise for bids with or without making changes in the plans or specifications.

111

112 **3.30.060 Local preference.**

113 The assembly may, in its discretion, direct an award of a contract for the purchase of
114 personal property or services after competitive bidding to a responsible bidder who
115 maintains a business office or store within the borough from which the property or service
116 would be provided, if that bid does not exceed the lowest responsible bid by more than 10
117 percent.

118

119 **3.30.070 Exception to bidding requirements.**

120 The requirements of this chapter relating to solicitation of competitive bids and award to
121 the lowest responsible bidder shall not apply to:

- 122 A. Contracts for professional or unique services. **The Assembly shall review contracts**
123 **for professional or unique services such as architects, engineers, surveyors,**
124 **attorneys, or accountants if the manager recommends exempting the contract**
125 **from the regular bidding process. Professional services means professional,**
126 **technical, or consultant's services that are predominately intellectual in**
127 **character, result in the production of a report or the completion of a task, and**
128 **include analysis, evaluation, prediction, planning, or recommendation;**
- 129 B. Contracts for property or services necessitated by an emergency, if the delays
130 required for compliance with the bidding requirements would jeopardize the public
131 health or welfare;
- 132 C. Contracts for audit and insurance services that may be bid at up to five-year intervals;
- 133 D. **Contracts entered into using a competitive sealed proposal process as set forth**
134 **in KIBC 3.30.110;**
- 135 E. Contracts with a municipality or other political subdivision to the extent authorized by
136 statute with the assembly holding a public hearing on contracts exceeding \$100,000;
137 or

- 138 F. Contracts for street improvements involving donated services and materials when the
139 assembly has determined not to create an assessment district and has approved a
140 project. The following steps shall be taken before a proposed contract is submitted to
141 the assembly for approval:
- 142 1. An applicant shall first submit to the engineering and facilities department director
143 a proposal that fully complies with Chapters 4.45, 16.70, and 16.80 KIBC along
144 with a cost estimate that reasonably describes the value of the services and
145 materials included in the proposal as well as the procedure for addressing any
146 change orders;
 - 147 2. After the engineering and facilities department director accepts the proposal, the
148 applicant shall submit to the borough finance director proof of ability to comply with
149 Chapter 3.65 KIBC; and
 - 150 3. The proposal shall be referred to the applicable road service area board for review
151 and recommendation to the assembly;
 - 152 4. After the borough finance director approves the proposed bonding and a
153 recommendation has been received from any reviewing service area board, the
154 assembly shall hold a public hearing with notice to affected property owners as
155 follows:
 - 156 a. Publication in a newspaper of general circulation in the borough at least once a
157 week for two consecutive weeks prior to the public hearing;
 - 158 b. Mailing at least 15 days before the public hearing to all record owners of
159 property with frontage on the street to be improved. "Record owners" means
160 the person or persons listed as the owner of the property on the current
161 property tax records of the assessor. The notice shall be mailed to the record
162 owner at the address stated in the assessor's tax records; and
 - 163 c. Every notice of a public hearing required by this section shall state the date,
164 time, location, and purpose of the public hearing and shall describe the
165 improvement. The notice shall also state that, if the assembly approves the
166 proposal, no assessment district will be formed and the borough will not
167 participate in the allocation or collection of costs among the respective property
168 owners.
 - 169 5. After the public hearing, the assembly may approve the project, with or without
170 additional conditions. If the assembly approves the project, it shall authorize the
171 manager to execute the contract.

172
173 **3.30.080 Lowest responsible bidder.**

174 In determining the lowest responsible bidder, the assembly shall may consider:

- 175 A. The bid price;
- 176 B. The ability, capacity and skill of the bidder to perform the contract within the time
177 specified;
- 178 C. The character, integrity, reputation, judgment, and experience of the bidder; and
- 179 D. The quality of performance of previous contracts; and

180 E. If more than one bidder is determined to be responsible using the factors
181 described in A, B, and C, then the responsible bidder with the lowest bid price
182 will be considered to be the lowest responsible bidder.

183
184 **3.30.090 Requirements mandatory.**

185 Except as provided in KIBC 3.30.110, a purchase, contract, or sale involving
186 expenditure of borough funds or other assets in excess of \$25,000 subject to the
187 provisions of this chapter shall not be valid, enforceable or binding upon the borough
188 unless the established requirements have been satisfied and the contract, purchase, or
189 sale approved by the assembly.

190
191 **3.30.100 Change orders – Manager authority.**

192 The manager, or designee, is authorized, without assembly approval, to enter into change
193 orders with respect to borough construction projects where the amount of additional
194 expenditure occasioned by the change order or orders does not, in the aggregate, exceed
195 ~~\$10,000~~ the total amount appropriated for the project, including any of the
196 designated project contingency. The manager, or designee, shall report monthly to the
197 assembly the nature and amount of such change orders. ~~If the change order or orders~~
198 ~~exceeds \$10,000, it will require the signatures of The Manager, or designee, is authorized~~
199 ~~to enter into change orders with respect to borough projects where the amount of~~
200 ~~additional expenditure occasioned by the change order or orders does not in the~~
201 ~~aggregate exceed the total amount appropriated for the project. The manager, or~~
202 ~~designee, shall report monthly to the assembly the nature and amount of such change~~
203 ~~orders. Project approval should include a budget for the project that includes an~~
204 ~~appropriation of contingency funds. The manager may authorize change orders up~~
205 ~~to the appropriated amount of for that project. Change orders of up to 5% in excess~~
206 ~~of the appropriated project amount, and not exceeding \$200,000 for a particular~~
207 ~~contract, require approval by:~~

- 208 A. The mayor and deputy presiding officer;
209 B. The mayor and one assembly member in the absence of the deputy presiding officer
210 C. The deputy presiding officer and one assembly member in the absence of the mayor;
211 or
212 D. Any two assembly members in the absence of the mayor and deputy presiding officer

213
214 Such approval may be by signature or electronic signature. A change order in
215 excess of \$200,000 for a contract or more than 5% in excess of the appropriated
216 project amount requires assembly approval.

217
218 **3.30.105 Circumvention of bidding requirements prohibited.**

219 No person shall subdivide an acquisition of supplies, materials, equipment, or services
220 into more than one purchase order, contract, or change order if the acquisition of said
221 items or services would normally, reasonably, and customarily be conducted under a
222 single purchase order, contract, or change order, and if the subdivision has the effect of
223 avoiding or circumventing the competitive bidding requirements, or the limitations on the

224 authority to make acquisitions or to award contracts or change orders contained in this
225 chapter. Similar types of work, even if performed in different geographic locations,
226 are considered "in the aggregate" regardless of the project, contract, purchase
227 orders, or change order and require assembly notification if the total payment to
228 one contractor exceeds \$25,000 in one fiscal year.

229

230 **3.30.110 Competitive sealed proposals – Negotiated procurement.**

231 A. If the manager determines that use of competitive sealed bidding is not practicable,
232 the borough may procure supplies, services or construction by competitive sealed
233 proposals under this section.

234 B. The manager shall solicit competitive sealed proposals by issuing a request for
235 proposals. The request for proposals shall state, or incorporate by reference, all
236 specifications and contractual terms and conditions to which a proposal must respond
237 and shall state the factors to be considered in evaluating proposals and the relative
238 importance of those factors. Public notice of a request for proposals shall be given in
239 accordance with KIBC 3.30.040.

240 C. Sealed proposals shall be designated as such on an outer envelope and shall be
241 submitted by mail or in person at the place and no later than the time specified in the
242 request for proposals. Proposals not submitted at the place or within the time so
243 specified shall not be opened or considered.

244 D. Proposals shall be received at the time and place designated in the request for
245 proposals and shall be opened so as to avoid disclosing their contents to competing
246 proponents during the process of negotiation. Proposals and tabulations thereof shall
247 be open to public inspection only after the contract award.

248 E. In the manner provided in the request for proposals, the manager may negotiate with
249 those responsible proponents whose proposals are determined by the manager to be
250 reasonably responsive to the request for proposals. Negotiations shall be used to
251 clarify and assure full understanding of the requirements of the request for proposals.
252 The manager may permit proponents to revise their proposals after submission and
253 prior to award to obtain best and final offers. Proponents deemed eligible for
254 negotiations shall be treated equally regarding any opportunity to discuss and revise
255 proposals. In conducting negotiations or requesting revisions, neither the manager nor
256 any other borough director or employee shall disclose any information derived from
257 proposals of competing proponents.

258 F. Awards shall be made by written notice to the responsible proponent whose final
259 proposal is determined to be most advantageous to the borough. No criteria other than
260 those set forth in the request for proposals may be used in proposal evaluation. If the
261 manager determines that it is in the best interest of the borough to do so, the borough
262 may reject all proposals.

263

264 **3.30.115 Delinquency.**

265 A. The borough shall not award a contract or purchase order to any person, corporation,
266 or other business entity who is delinquent in paying (1) any tax levied by the borough;
267 (2) any special assessment levied by the borough; (3) any charge for utility or

268 municipal waste services; or (4) any other borough fee due under the code, unless the
269 person, corporation, or other business entity cures the delinquency within 30 days
270 after the mailing of written notice of the delinquency. In the case of a closely held
271 business, this prohibition shall also apply to the delinquency of their legal principals or
272 officers. For purposes of this section, a payment shall be considered "delinquent"
273 when it is not made on or before the applicable deadline established by the Kodiak
274 Island Borough Code, or by written notice if the code does not establish a deadline, or,
275 if the code does not establish a deadline and a deadline is not established in a written
276 notice, within 60 days of the mailing of written notice that the payment is due.

277 B. The borough may terminate any contract or purchase order if the person, corporation,
278 or other business entity and, in the case of a closely held business, their legal
279 principals or officers, becomes delinquent in payment of any of the items listed in
280 subsection (A) of this section, unless the delinquency is cured within 30 days after
281 mailing of written notice as above.

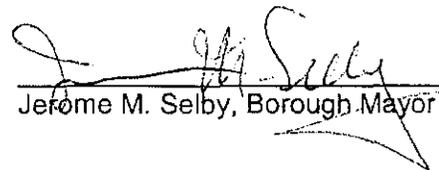
282 C. The borough may deduct from any amount otherwise due the person, corporation, or
283 other business entity and, in the case of a closely held business, their legal principals
284 or officers under any contract or purchase order an amount equal to the total of all
285 such delinquent amounts that the contractor owes for (1) taxes levied by the borough;
286 (2) special assessments levied by the borough; (3) charges for borough utility or
287 municipal waste services; and (4) other borough fees due under the code.

288 D. Nothing in this section shall prevent any person, corporation, or other business entity
289 and, in the case of a closely held business, their legal principals or officers from
290 paying under protest any tax, special assessment, utility or municipal waste charge, or
291 other borough fee, or pursuing appropriate judicial or administrative action to contest
292 or recover any such tax, assessment, charge or fee.

293 E. For purposes of this section, the term "closely held business" shall mean a
294 corporation, limited liability company or other business entity which has less than five
295 unrelated (by blood or marriage) owners.

296
297 **ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH**
298 **THIS SEVENTEENTH DAY OF JANUARY, 2013**
299

300 KODIAK ISLAND BOROUGH

301
302 
303
304 Jerome M. Selby, Borough Mayor

304 ATTEST:

305 
306
307 Nova M. Javier, MMC, Borough Clerk