ORDINANCE NO. 2018-10

AN ORDINANCE OF IVINS CITY, UTAH, AMENDING TITLE 2 OF THE IVINS CITY CODE ENTITLED "ADMINISTRATION" AND TITLE 3, CHAPTER 12 OF THE IVINS CITY CODE ENTITLED "PURCHASING"

WHEREAS the Ivins City Council desires to update and amend Title 2 of the City Code entitled "Administration" and Chapter 12 of Title 3 entitled "Purchasing" to more closely comply with State code and to clarify other procedures;

NOW, THEREFORE, BE IT ORDAINED by the Ivins City Council that Titles 2 and 3 of the Ivins City Code are hereby amended as follows:

TITLE 2

ADMINISTRATION

CHAPTER 1

MAYOR AND CITY COUNCIL

* * *

Part 1
Administration

* * *

2.01.103 Powers and Duties.

(1) The mayor shall:

* * *

(h) Act as the Public Information Officer during times of city disasters or other city emergencies. (Ord. 2018-10, 2018)

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CHAPTER 5

ADMINISTRATIVE ~~HEARINGS~~APPEALS

* * *

2.05.101 Administrative ~~Hearings~~ Appeals. An administrative ~~hearing~~ appeal:

(1) Shall be a public meeting;

(2) Shall be conducted by an administrative law judge;

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(3) Shall provide due process for the parties;

(4) Shall be recorded or otherwise documented so that a true and correct transcript may be made of its proceedings; and

(5) May not be held for a civil violation that occurs in conjunction with another criminal violation as part of a single criminal episode that will be prosecuted in a criminal proceeding. (Ord. 2018-10, 2018)

2.05.102 Administrative Law Judge. An administrative law judge:

(1) Shall be appointed by the city council to conduct administrative ~~hearings~~ appeals;

(2) May be an employee of the city; and

(3) Shall make a final administrative determination for each administrative proceeding. (Ord. 2018-10, 2018)

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TITLE 3
REVENUE AND FINANCE

* * *

CHAPTER 12
PURCHASING

Part 1
General Provisions

3.12.101 Purpose. The purpose of the Ordinance is to establish a policy and procedure for purchases and payments made by the City. (Ord. 2006-27, 2006)

3.12.102 Definitions.

(1) Bidding. The procedure used to solicit quotations on price and delivery from various prospective suppliers of goods, equipment, and/or contractual services.

(2) Change Order. A written order directing the contractor to suspend work or make changes, as authorized by contract without the consent of the contractor; or any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract.

(3) Contract. Any City agreement for the procurement or disposal of supplies, services, or construction.

(4) Emergency. A state of emergency declared by the Mayor; or a Department Head and the City Manager determine that a threat to public health, safety, welfare or property does not allow time for public notice to be given.

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(5) Payment Bond: A contract of guaranty for the protection of each person supplying labor, service, equipment or material for the performance of the work provided for in a contract.

(6) Performance Bond. A contract of guaranty by a successful bidder to protect the City from loss due to the inability of the bidder to complete the contract as agreed.

(7) Procurement. Purchasing, renting, leasing, leasing with an option to purchase, or otherwise acquiring any supplies, services, or construction.

(8) Professional Services. Services such as auditing, architects, engineers, consulting, or other services that require an elevated degree of specialized knowledge and discretion.

(9) Public Works Improvement. Public Works Improvements include any repair, maintenance, or construction of streets, water transportation and storage, sewer, and storm drain.

(10) Purchase Description. A general description of the goods, services or construction to be purchased, including any specifications attached to or made a part of the solicitation.

(11) Request for Proposals (RFP). All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(12) Responsible Bidder. A bidder who is capable, in all respects, of meeting all the requirements of a solicitation and fully performing all the requirements of the contract resulting from the solicitation, including being financially solvent with sufficient financial resources to perform the contract.

(13) Specification. Any description of the physical or functional characteristics, or of the nature of a supply, service, or construction item and may include a description of any requirement for inspection, testing, or preparing a supply, service, or construction item for delivery.

(14) Solicitation. An invitation for bids or a request for proposals. (Ord. 2018-10, 2018)

3.12.103 Public notice.

(1) When required by this chapter to give public notice of a solicitation, the city shall provide public notice that includes:

(a) the contact information for the person overseeing the solicitation;

(b) information on how to obtain a copy of the procurement documents;

(c) the date of the opening and closing of the solicitation;

(d) the time and place for the opening of the bids;

(e) a purchase description and whether bids are to be sealed when submitted;

(f) the criteria to be used to evaluate bids submitted; and

(g) a statement that the City may reject all bids, or any part thereof.

(2) Required public notice shall be published at least seven (7) calendar days before the day of the deadline for submission of a bid or other response:

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(a) in a newspaper of local circulation in the City; or

(b) on the City's official website and/or on a state website used for posting public procurement notices. (Ord. 2018-10, 2018)

3.12.104 Purchase orders.

(1) A purchase order is the official document used in committing City funds for the purchase of supplies, equipment, or services. The Purchase Order shall specify the nature of the goods or services to be acquired, the purchase price or estimate thereof, the date of the purchase, the vendor from whom acquired, the department for whom the acquisition is being made, the general ledger number assigning funding for the proposed purchase, signature of applicable approvals, and other information that is pertinent to the clear understanding of the purchase. The Purchase Order shall incorporate by reference all the terms, conditions, and specifications, if any, contained in the related request for bids.

(2) It is the policy of the City that payment for goods or services shall not be made until the goods or services have been delivered.

(3) A Purchase Order shall not be required for the purchase and payment of routine expenses, such as payroll, payroll taxes and related expenses, utility bills and similar expenses, payment for previously approved leases, contracts, professional services and maintenance of City equipment and property. (Ord. 2018-10, 2018)

3.12.105 Contractor verification of employment eligibility.

(1) All requests for proposals and all contracts for the procurement of goods and services under this chapter shall contain the following statement:

> "By submitting a proposal and/or by signing this contract, contractor certifies that it does not and will not, during the performance of this contract, knowingly employ or subcontract with any entity which employs workers in violation of 8 U.S.C. §1324a and that it participates in the "E-Verify" status verification process. Contractor agrees to produce, at the City's request, such documents which are required to verify compliance with applicable federal and state laws. If the contractor knowingly employs workers in violation of 8 U.S.C. §1324a, such violation shall be cause for unilateral cancellation of the contract between contractor and the City. In the event this contract is terminated due to violation of 8 U.S.C. §1324a by the contractor or by a subcontractor of the contractor, the contractor shall be liable for any and all costs associated with such termination including, but not limited to, any damages incurred by the City, as well as attorney's fees."

(2) The foregoing statement shall also be accompanied by a signature line for the contractor to sign, thereby acknowledging that the contractor has read, understands, and agrees to comply with the requirements of federal and state law regarding eligibility of workers.

(3) Use of Status Verification System. As required by Section 63G-12-302 of the Utah Code, a contractor shall register and participate in the Status Verification System in order to enter into a contract with the City. (Ord. 2018-10, 2018)

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Part 2
Purchasing Authority

3.12.201 Department Head. Each Department Head is authorized to approve purchases or services costing up to five thousand dollars ($5,000) and to authorize Purchase Orders up to that amount. (Ord. 2018-XX, 2018)

3.12.202 City Manager. The City Manager is authorized to approve purchases or services costing between five thousand dollars ($5,000) and ten thousand dollars ($10,000) and to authorize Purchase Orders up to that amount. (Ord. 2018-XX, 2018)

3.12.203 City Council. The City Council shall authorize purchases or services costing over ten thousand dollars ($10,000). (Ord. 2018-10 2018)

Part 3
Bidding

3.12.301 Competitive bid required. All procurements shall be awarded on a competitive basis to the extent reasonably possible.

DOLLAR AMOUNT	BID REQUIREMENT
Up to $1,000	No bid required – competitive quotes recommended
$1,001 to $50,000	Informal bids/quotes required (three if possible)
Over $50,000	Formal bid or RFP required

(1) Any purchase, construction contract or professional service contract in excess of fifty thousand dollars ($50,000), that is not a public works project, shall be awarded to the lowest responsible bidder after public notice has been given.

(2) When the cost of a contemplated improvement exceeds the bid requirement sum, the job shall not be divided into smaller jobs to avoid having to bid the job. (Ord. 2018-10, 2018)

3.12.302 Public works projects. All public works projects shall be awarded on a competitive basis to the extent reasonably possible as set forth below:

DOLLAR AMOUNT	BID REQUIREMENT
Up to $1,000	No bid required – competitive quotes required
$1,001 to $100,000	Informal bids required (three if possible)
Over $100,000	Formal bid required

(1) Any procurement for a public works project in excess of one hundred thousand dollars ($100,000) shall be by sealed bids and awarded to the lowest responsible bidder after public notice has been given.

(2) When the cost of a contemplated improvement exceeds the bid requirement sum, the job shall not be divided into smaller jobs to avoid having to bid the job. (Ord. 2018-10, 2018)

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3.12.303 Emergency procurements.

(1) Notwithstanding any other provision of this chapter, the City Manager or Department Head may authorize an emergency procurement without using a standard procurement process if the procurement is necessary to:

(a) avoid a lapse in a critical government service;

(b) mitigate a circumstance that is likely to have a negative impact on public health, safety, welfare, or property; or

(c) protect the legal interests of a public entity.

(2) A department conducting an emergency procurement shall:

(a) ensure that the procurement is made with as much competition as reasonably practicable while:

(i) avoiding a lapse in a critical government service;

(ii) avoiding harm, or a risk of harm, to the public health, safety, welfare, or property; or

(iii) protecting the legal interests of a public entity; and

(b) after the emergency has abated, prepare a written document explaining the emergency condition that necessitated the emergency procurement.

3.12.304 Procurements not requiring bids.

(1) Items or services that can only be purchased from a single or sole source provider or no reasonable alternative exists.

(2) Purchases, contracts or services needed during times of emergency or disaster.

(3) Purchases made from vendors who are under state or national procurement contract, when the purchase price is the price established by such contract, or less.

(4) Goods and services made available by any federal, state or local unit of government, or association of government.

(5) Quotes for employee benefits negotiated by the City Manager and approved by the City Council.

(6) Supplies, materials or equipment that can be purchased at any public auction, closeout sale, bankruptcy sale or other similar sale, at a price below the market cost in the community. (Ord. 2018-10, 2018)

3.12.305 Bid opening & evaluation.

(1) Formal bids shall be opened publicly at the time and place designated in the invitation for bids in the presence of the Department Head, or designee, and one or more witnesses.

(2) The name of each bidder and the amount of each bid shall be recorded at the time the bids are opened.

(3) Bids shall be accepted unconditionally without alteration or correction. Only a correction or withdrawal of an immaterial error in a solicitation response shall be allowed.

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(4) Bids shall be evaluated based on the requirements set forth in the invitation for bids. No criteria may be used in bid evaluation that are not set forth in the invitation for bids.

(5) After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the City or fair competition shall be permitted.

(6) The City may cancel a solicitation prior to its acceptance or rejection.

(7) The contract shall be awarded with reasonable promptness by written notice to the lowest responsible bidder whose bid meets the criteria set forth in the invitation for bids. (Ord. 2018-10, 2018)

3.12.306 Rejection of bids.

(1) A bid may be rejected for:

(a) a violation of a requirement of the invitation for bids;

(b) unlawful or unethical conduct by the bidder who submitted the bid;

(c) the bid was received after the deadline stated in the notice;

(d) a change in a bidder's circumstance that, had the change been known at the time the bid was submitted, would have caused the bid to be rejected; or

(e) the City determines that the lowest bid was made by a bidder who is not a responsible bidder.

(2) In the event a bid is rejected, the Department Head overseeing the bidding process shall:

(a) make a written finding stating the reasons for the rejection; and

(b) provide a copy of the written finding to the bidder who submitted the rejected bid. (Ord. 2018-10, 2018)

3.12.307 Bonds of bidders may be required. Bidders may be required to provide bonds in such amounts as approved by the City Manager or City Council and set out in the bid notice, not only to insure performance of the contract in the time and manner prescribed, but also to save, indemnify, and hold the City harmless against losses, damages, claims, liabilities, judgments, costs, and expenses which may accrue in consequence of granting the contract. (Ord. 2018-10, 2018)

3.12.308 Contracts required.

(1) A contract signed by both parties is required when:

(a) Personal property acquired by lease, rental, or installment purchase.

(b) Personal or professional services are required by the City except where the services are to be performed at the vendor's place of business or where the services are for non-repetitive repairs or maintenance;

(c) Consultant services; or

(d) Any interest in real property, unless acquired pursuant to eminent domain decree or by the recording of a final plat;

(2) The following procedure should be followed for all contracts for construction:

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(a) Two original copies of the Contract document shall be prepared with all required supplemental information attached, signed by the contractor, and forwarded to the City Recorder. Required attachments are:

(i) 100% Payment Bond and Performance Bond

(ii) Certificate of Liability Insurance

(iii) Certificate of Workers Compensation Insurance

(b) Contracts over fifty thousand dollars ($50,000) shall be forwarded to the City Attorney for review and approval.

(c) Contracts over fifty thousand dollars ($50,000) shall be submitted to the City Recorder for signature by the Mayor and then attestation;

(d) Upon final execution of the contract, the City Recorder shall give one copy of the signed Contract to the appropriate Department Head and retain the second original Contract.

(e) The appropriate Department Head shall prepare the Notice to Proceed for the Contractor and submit a copy of the Notice to Proceed to the City Recorder for filing with the original Contract.

(f) Upon completion of the project, the appropriate Department Head shall prepare a Notice of Completion and submit the Notice of Completion to the City Recorder for filing with the original Contract.

(g) No work may begin prior to final contract approval. (Ord. 2018-10, 2018)

Part 4
Requests for Proposals

3.12.401 Process. The request for proposals process is appropriate for the city to use in selecting the proposal that provides the best value or is the most advantageous to the city. Examples include:

(1) procurement of professional services;

(2) procurement of design-build or construction manager/general contractor services;

(3) negotiated contracts to achieve the most advantageous results for the city; and

(4) procurements where cost is not the most important factor in making a selection. (Ord. 2018-10, 2018)

3.12.402 Public notice. Public notice shall be given as set forth in section 3.12.103(2). The request for proposals shall:

(1) state the period of time during which a proposal will be accepted;

(2) describe the manner in which a proposal shall be submitted;

(3) state the place where a proposal shall be submitted;

(4) include, or incorporate by reference:

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(a) a description of the procurement items sought and the scope of work;

(b) a description of the subjective and objective criteria that will be used to evaluate the proposals, as well as the relative weight each will be given; and

(c) the standard contractual terms and conditions required by the city.

(5) state the formula that will be used to determine the score awarded for each proposal. (Ord. 2018-10, 2018)

3.12.403 Opening of proposals; evaluation; rejection.

(1) Proposals shall be opened in a manner that avoids disclosing the contents to competing offerors during the evaluation process.

(2) The city may not accept a proposal after the time for submission of a proposal has expired.

(3) Proposals shall be evaluated and scored based on the requirements set forth in the request for proposals. No criteria may be used in the evaluation process that were not set forth in the request for proposals.

(4) The city may reject a proposal if it determines:

(a) that the person submitting the proposal is not responsible; or

(b) the proposal is not responsive or does not meet the mandatory minimum requirements stated in the request for proposals. (Ord. 2018-10, 2018)

3.12.404 Correction or clarification of proposal. The city may allow a vendor to correct an immaterial error in a proposal or to clarify information contained in a proposal. After the deadline for submitting a cost proposal and before a contract is awarded, a vendor may not change the total amount of a cost proposal. (Ord. 2018-10, 2018)

Part 5
Request for Information

3.12.501 Process.

(1) The purpose of a request for information is to:

(a) obtain information, comments, or suggestions from potential bidders or offerors before issuing an invitation for bids or request for proposals;

(b) determine whether to issue an invitation for bids or a request for proposals; and

(c) generate interest in a potential invitation for bids or request for proposals.

(2) A request for information may be useful in order to:

(a) prepare to issue an invitation for bids or request for proposals for an unfamiliar or complex procurement;

(b) determine the market availability of a procurement item; or

(c) determine best practices, industry standards, performance standards, product specifications, and innovations relating to a procurement item.

(3) A request for information is not a procurement process and may not be used to

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(a) solicit cost, pricing, or rate information;

(b) negotiate fees;

(c) make a purchase; or

(d) enter into a contract.

(4) A response to a request for information is not an offer and may not be accepted to form a binding contract.

(5) A request for information may seek a wide range of information, including:

(a) availability of a procurement item;

(b) delivery schedules;

(c) industry standards and practices;

(d) product specifications;

(e) training;

(f) new technologies;

(g) capabilities of potential providers of a procurement item; and

(h) alternate solutions. (Ord. 2018-10, 2018)

Part 6
Inspection & Payment; Fixed Assets

3.12.601 Inspection of merchandise received.

(1) It shall be the responsibility of the Department Head or his designee to immediately inspect all material, supplies, equipment, and personal property of any nature purchased pursuant to this chapter prior to the acceptance of the delivery.

(2) The signature of the individual(s) conducting the inspection shall be required on all packing/delivery slips or equivalent documentation to designate that they have received and inspected the merchandise.

(3) Damaged property or items not specified on the Purchase Order shall not be accepted, and the non-conforming nature of the goods, together with the reason for rejection thereof, shall be noted in writing upon the delivery receipt. (Ord. 2006-27, 2006)

3.12.602 When checks may be written. Checks may be written after proof of receipt or completion and an invoice for the expenditure is received. (Ord. 2006-27, 2006)

3.12.603 Fixed assets. Whenever payment is made for an acquisition costing five thousand dollars ($5,000) or more, the Director of Finance shall forthwith record said acquisition in the fixed asset inventory records of the City. (Ord. 2018-10, 2018)

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Part 7
Appeals

3.12.701 Administrative review.

(1) Within five (5) working days, anyone aggrieved by a Department Head's decision following a procurement process may submit a written petition for review to the City Recorder shall then schedule a hearing date based on the availability of the city's Administrative Law Judge. Following the hearing, the Administrative Law Judge shall issue a written decision within fifteen (15) working days.

(a) While waiting for the hearing before the Administrative Law Judge, the City Manager may review the facts of the case and the written petition for review and seek a resolution with the aggrieved party, if possible. (Ord. 2018-10, 2018)

3.12.702 District Court review.

(1) No person may challenge in District Court an Administrative Law Judge's decision until that person has first exhausted all administrative remedies.

(2) Any person adversely affected by an Administrative Law Judge's decision may file a petition for review to the District Court and pay the filing fee therefor. A petition for review shall be barred unless it is filed within thirty (30) days of the Administrative Law Judge's decision.

(3) The District Court's review is limited to the record of the hearing and decision of the Administrative Law Judge. The District Court shall not accept nor consider any evidence that is not part of the record of that decision. (Ord. 2018-10, 2018)

Severability. If any section, clause or portion of this ordinance is declared invalid by a court of competent jurisdiction, the remainder shall not be affected thereby and shall remain in full force and effect.

Effective Date: This Ordinance shall become effective immediately upon passage and publication.

PASSED AND ADOPTED BY THE IVINS CITY COUNCIL, STATE OF UTAH, ON THIS _____ DAY OF _____, 2018 BY THE FOLLOWING VOTE:

	AYE	NAY	ABSTAIN	ABSENT
Dennis Mehr	_____	_____	_____	_____
Cheyne McDonald	_____	_____	_____	_____
Jenny Johnson	_____	_____	_____	_____
Miriah Elliott	_____	_____	_____	_____
Ron Densley	_____	_____	_____	_____

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Chris Hart, Mayor

ATTEST:

Kari Jimenez, City Recorder

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