

## SALT LAKE COUNTY ORDINANCE

ORDINANCE NO. \_\_\_\_\_, 2019

AN ORDINANCE OF THE LEGISLATIVE BODY OF SALT LAKE COUNTY, UTAH, AMENDING SECTION 3.20.030 OF THE SALT LAKE COUNTY CODE OF ORDINANCES, 2001 TO DEFINE ADDITIONAL EXCEPTIONS TO COMPETITIVE PROCUREMENT

The County Legislative Body of Salt Lake County ordains as follows:

SECTION I. The amendments made herein are designated by underlining the new substituted words. Words being deleted are designated by brackets and interlineations.

SECTION II. Section 3.20.030 of the Salt Lake County Code of Ordinances, 2001, is amended to read as follows:

**3.20.030 - Procurements not requiring competitive procurement.**

A. All procurements shall be made by a request for bids, quotes or proposals, as provided in these ordinances, except the following circumstances do not require competitive procurement:

1. For purchases of goods and services under current contracts made available by governmental entities including federal, state, and local governmental entities, or by associations of governmental entities, where the goods or services were competitively procured by the governmental entity or the association in a manner substantially compliant with the provision of these ordinances, and the vendor is willing to extend the county the same or more favorable prices, terms, or conditions as established in, and within the scope of, the underlying agreement;
2. For real property, goods, or services related to construction of a public improvement project; which have been solicited via a formal advertised request for bids, but which the

Purchasing Agent determines the bid prices are not reasonable and exceed the estimated construction cost by an unacceptable amount.

3. Exigency or emergency will not tolerate the delay incident to the formal advertising for a request for bids;
4. The aggregate amount involved does not exceed the small cost limit;
5. For a sole source procurement.
  - a. The determination as to whether a procurement shall be made as a sole source shall be made by the Purchasing Agent. Any agency request for a procurement to be restricted to one vendor shall be made in writing and accompanied by a sole source justification. The Purchasing Agent may specify the application of the determination and its duration. In cases of reasonable doubt, competition shall be solicited. Examples of circumstances which may necessitate sole source procurement are:
    - i. Where the most important consideration in obtaining a procurement item is the standardization or compatibility of equipment, materials, technology, software, accessories, replacement parts, or service;
    - ii. Where transitional costs are unreasonable or cost prohibitive;
    - iii. Where a procurement item is needed for trial use or testing;
  - b. Public notice for sole source procurements exceeding the formal advertised solicitation limit shall be given by the Purchasing Agent. The notice shall be published at least seven calendar days in advance of when responses must be received. The notice shall contain a brief statement of the proposed procurement, the proposed sole source supplier and the sole source justification. The notice shall invite comments regarding the proposed sole source and provide for a closing date for

comments. The Purchasing Agent shall consider the comments received before proceeding with the sole source procurement.

6. Procurements that by their nature are not adapted to award by competitive procurement, such as:
  - a. Legal services or expert witnesses requested by the mayor, the council or the attorney or when the services of a medical doctor or dentist are requested by the attorney in conjunction with criminal or civil litigation, or requested by the sheriff or the human services department director, but the acquisition of legal services shall be governed by Chapter 2.09 of these ordinances;
  - b. The publication of legal notices, ordinances, resolutions, and other legal advertising;
  - c. The private placement of bonds, tax anticipation notes, or other instruments of indebtedness;
  - d. Utility services such as water, electricity, heat, and telephone, except when alternative supplies or services are available;
  - e. Dues and membership fees, non-software subscriptions, media advertising, magazines, books, trade journals, reference works, periodicals, examination or testing materials, and similar articles of an educational, informational or instructional nature. This subsection does not apply to right to use software and right to use licenses that some providers may describe as a software subscription;
  - f. Goods, materials, supplies and services utilized by the County clerk for purposes of performing the duties of the County clerk with regards to elections;
  - g. Medicines or medical supplies, which are not generic in nature;
  - h. Goods and supplies purchased for authorized resale;

- i. Perishable or nonperishable subsistence supplies;
- j. Law enforcement service animals specially trained to assist law enforcement officers in the performance of law enforcement duties;
- k. Entrance fees for conferences, training and seminars;

[~~k~~] l. A person or entity to provide a speech, lecture, specialized training or performance;

[~~l~~] m. Recreational program instructors resulting in recreational program agreements executed pursuant to County Ordinance Sec. 3.28.020(E) provided that the Division of Parks and Recreation adopt and follow a policy and procedure by which the recreational program instructors are selected.

7. Personal property or services, other than those outlined in subsection (A)(6), as the mayor may, upon the recommendation of the purchasing agent, determine to be, by their nature, not adapted to competitive procurement provided that these procurements be publicly noticed as set forth in 3.20.030(A)(5)(b).

8. Otherwise procurements authorized or prescribed by law.

B. In negotiating purchase orders and other contracts for the above-referenced categories of personal property or services, the Purchasing Agent, using agencies or such other person or committee as may be designated by the Mayor, shall ensure that:

- 1. All aspects of the business transaction are fully resolved, to include price, delivery date, delivery terms, acceptance period, warranties, funding terms, and such other terms and conditions as are appropriate;
- 2. The file reflects price or cost analysis or such other evidence of reasonable pricing and other information concerning contract or award matters as will reasonably support entering into a contract with a vendor;

3. All files relating to the award of a contract based upon public exigency reflect that the need was compelling and of unusual urgency, as when the County would be seriously injured, financially or otherwise, if the personal property or services to be purchased or contracted for were not furnished by a certain time, and when they could not be procured by that time by means of formal advertising. This applies irrespective of whether that urgency could or should have been foreseen;
  4. The purchasing agent must justify in writing why the award of a contract based upon sole source is appropriate; and
  5. Prior to submission of a bilateral contract to the Mayor or designee for execution, the contract shall be reviewed and approved by the agency acquiring the personal property or services and by such other agencies as may be specified by ordinance[;] and approved as to form by the Attorney.
- C. Negotiated procurement shall be on a competitive basis to the maximum practical extent. When a proposed procurement appears to be noncompetitive, the Purchasing Agent is responsible not only for ensuring that competitive procurement is not feasible, but also for acting whenever possible to avoid the need for subsequent noncompetitive procurement.
- D. In the event bids for a construction project exceed available funds and the low responsive and responsible bid does not exceed such funds by more than twenty-five percent, the Purchasing Agent or agent's designee is authorized in situations where time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds[~~; not to exceed a final contract amount of two hundred thousand dollars~~].

- E. This chapter shall not apply to the acquisition of personnel pursuant to the provisions of the County Personnel Management Act, as defined by Utah law, nor shall this chapter be applicable to the granting or issuance, pursuant to powers conferred by laws, ordinances or resolutions, of franchises, licenses, permits or other authorizations by the council, or by other agencies of the County. This chapter shall not be construed as authorizing the waiver of competitive bidding when such bidding is required by the provisions of any federal or state grant or relevant federal or state statute or regulation.
- F. No purchase order or other contract greater than the Purchasing Agent's limit may be awarded pursuant to this section except by the Mayor or designee, unless it arises pursuant to the provisions of subsection (A)(7) of this section, in which event the Purchasing Agent may award the purchase order or other contract subject to the ratification of the Mayor. The Purchasing Agent will maintain in a file a document explaining in detail why a purchase order or contract has not been bid and identifying the specific provision of this section which exempts the purchase order or other contract from the bidding requirement. Any procurement without competitive acquisition shall also include a statement from the acquiring agency explaining the recommendation for acquisition.

(Ord. No. 1826, § III, 1-30-2018; Ord. No. 1777, 10-14-2014; Ord. No. 1771, 6-10-2014; Ord. No. 1735, § II, 9-25-2012; Ord. No. 1725, § III, 3-13-2012; Ord. No. 1713, § II, 9-20-2011; Ord. No. 1706, § IV, 5-10-2011; Ord. 1633, § 2 (part), 2008)

SECTION III. This ordinance shall become effective fifteen (15) days after its passage and upon at least one publication of the ordinance or a summary thereof in a newspaper published and having general circulation in Salt Lake County.

APPROVED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2019.

SALT LAKE COUNTY COUNCIL:

By: \_\_\_\_\_  
Richard Snelgrove, Chair  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Sherrie Swensen  
Salt Lake County Clerk

APPROVED AS TO FORM:

Dianne R. Orcutt  
\_\_\_\_\_  
Dianne R. Orcutt  
Deputy District Attorney

Date: 09/05/2019

Council Member Bradley voting	_____
Council Member Bradshaw voting	_____
Council Member Burdick voting	_____
Council Member DeBry voting	_____
Council Member Ghorbani voting	_____
Council Member Granato voting	_____
Council Member Jensen voting	_____
Council Member Newton voting	_____
Council Member Snelgrove voting	_____

VETOED and DATED this \_\_\_\_ day of \_\_\_\_\_, 2019.

By: \_\_\_\_\_  
Jennifer Wilson, Mayor

(Complete As Applicable)

Veto override: Yes \_\_\_\_\_ No \_\_\_\_\_ Date \_\_\_\_\_  
Ordinance published in newspaper: Date \_\_\_\_\_  
Effective date of ordinance: \_\_\_\_\_

SUMMARY OF  
SALT LAKE COUNTY ORDINANCE NO. \_\_\_\_\_

On the \_\_\_\_\_ day of \_\_\_\_\_, 2019, the County Council of Salt Lake County adopted Ordinance No. \_\_\_\_\_, which amends section 3.20.030 of the Salt Lake County Code of Ordinances, 2001, to define additional exceptions to competitive procurement.

SALT LAKE COUNTY COUNCIL:

By: \_\_\_\_\_  
Richard Snelgrove, Chair

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Sherrie Swensen  
Salt Lake County Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Dianne R. Orcutt  
Deputy District Attorney

Date: \_\_\_\_\_

Council Member Bradley voting	_____
Council Member Bradshaw voting	_____
Council Member Burdick voting	_____
Council Member DeBry voting	_____
Council Member Ghorbani voting	_____
Council Member Granato voting	_____
Council Member Jensen voting	_____
Council Member Newton voting	_____
Council Member Snelgrove voting	_____

A complete copy of Ordinance No. \_\_\_\_\_ is available in the office of the Salt Lake County Clerk, 2001 South State Street, N2-100A, Salt Lake City, Utah.