

ORDINANCE NO. 07-18-23A

**AN ORDINANCE ESTABLISHING REGULATIONS FOR
ACQUISITION, MANAGEMENT AND DISPOSAL OF COUNTY PROPERTY
AND REPEALING ORDINANCE NO. 08-02-16
AND ALL AMENDMENTS THERETO**

WHEREAS, the Utah Code now allows the County to adopt §63G-6a-101, *et seq.* (Utah Procurement Code) OR provide by ordinance a manner in which Emery County shall acquire, manage and dispose of all real and personal property; and,

WHEREAS, Ordinance No. 08-02-16 and all amendments thereto were established pursuant to the previous Procurement Code (§17-5-48); and,

WHEREAS, the Emery County Commission finds the new Utah Procurement Code cumbersome and ill fitted for Emery County; and,

WHEREAS, it is desirable to have an updated policy which amends and updates the current standards and all previous amendments in one document;

NOW, THEREFORE, be it ordained by the Board of Emery County Commissioners that the County shall acquire, manage and dispose of all real and personal property in the following manner:

Section 1 - Real Property

1. Real property shall not be purchased, leased or disposed of by the County unless the matter has first been heard in an open meeting of the County Commissioners and such purchase, lease or disposal has been determined to be in the public interest. Whenever feasible, no sale or lease shall be approved by the Board of Commissioners without first analyzing the fair market value of such real property and determining that the tender offered is the highest price available to the County under the circumstances after properly advertising such lease or sale intentions.
2. In advertising the lease or disposal of real property under one million dollars in value (\$1,000,000), the County shall use the following procedure:
 - a. A written notice shall be sent by mail to all adjacent landowners to the subject property thirty (30) days prior to sale.
 - b. Public notices shall be posted at the Emery County Courthouse, at the municipal office nearest the subject property, and at the site of the property to be sold three weeks prior to the date of sale.
 - c. The property will be sold by sealed bids submitted to the Emery County Clerk in accordance with the instructions contained in the Notice of Sale.
 - d. The Notice of Sale shall contain the following:

- i. legal description of the property and an approximate street address, if available;
 - ii. the date and time of sale;
 - iii. the minimum acceptable bid; and
 - iv. the method for submitting bids.
3. In the lease or disposal of real property over one million dollars in value (\$1,000,000), the County shall use one of the following procedures:
 - a. Follow the disposal of real property if appropriate and applicable as defined above for assets under one million (\$1,000,000).
 - b. Or the county may also go through a Request for Proposal (RFP) process to seek professional assistance in the disposal of a specific asset of real property/equipment guaranteeing that the optimum market value of the asset will be obtained.
4. The Board of Commissioners may choose to follow UCA §17-50-312 in regards to the disposition of government owned property, regardless of the amount, for the purpose of conveyance or acquisition of property to another public or government entity §11-13-214 and in accordance with the Interlocal Cooperation Act.

Section 2 - Purchase of Motor Vehicles

1. All motor vehicles of a single type and class purchased on behalf of the County shall, to the extent possible, be purchased in one transaction annually so as to obtain the lowest possible price.
 - a. The officer or employee proposing such purchase shall obtain at least three price quotes from dealers selling like merchandise, based upon common specifications.
 - b. Submit a proposal for purchase to the Board of Commissioners setting forth:
 - i. the specifications and number of vehicles to be purchased;
 - ii. which dealers have been contacted;
 - iii. the price quoted by each dealer; and
 - iv. other significant terms.
2. As an alternative, the officer or employee may purchase vehicles pursuant to the State of Utah bidding procedure, as long as evidence is provided that the purchase is at the State bid price.
3. No such purchase shall be consummated unless and until the purchase proposal has been approved by the Board of Commissioners.

Section 3 - Disposition of Personal Property

1. Prior to the sale or disposal of any surplus personal property by the County, the head of the department in charge of such property shall submit a disposition proposal to the

Board of Commissioners setting forth on a Fixed Asset Inventory Disposition Form provided by the County Auditor:

- a. the reason for the proposed disposition;
 - b. the recommended manner of disposition; i.e., private sale, public auction, trade-in, salvage sale, etc., and the reasons for such recommendation;
 - c. the estimated fair market value of the property; and
 - d. the basis of such estimate.
2. Prior to the sale, the Disposition Form must be filed with the Auditor's Office complete with a fixed asset tag attached.
 3. Upon approval by the Board of Commissioners, the disposition may take place forthwith, according to the proposal. All proceeds of such disposition shall be credited to the General Fund. In the case of recurring dispositions of similar property, one proposal may be approved to cover all such dispositions in the future; provided they all fall under the terms of the original proposal.
 4. When disposing of surplus personal property via Internet Auctions, the following procedures shall be employed:
 - a. There is established by the Emery County IT Department ONE Internet auction account on the Internet auction website (www.publicsurplus.com) which is open to and advertised to the public for the purpose of selling surplus personal property as may be declared surplus by the County from time to time.
 - b. The Emery County IT Department will act as the account manager for the county and is hereby authorized and may direct the Internet auction service to facilitate an agreement for the sale of surplus personal property owned by the county to the highest bidder on said declared surplus property.
 - c. Upon payment of the full auction price, the account manager or clerk/auditor is authorized and directed to convey and transfer title to the aforesaid surplus personal property to the successful highest bidder. Thereafter, the account manager shall report the disposition of the property to the clerk/auditor's office by written communication in a timely manner. All proceeds of such disposition shall be credited to the general fund.
 - d. The account manager shall post public notice of the disposition including the time, place, terms of disposition and the schedule of disposition shall be posted in one local newspaper circulation, in the clerk/auditor's office and on the Emery County website. Such notice of intended sale of surplus property shall constitute notice to the general public and anyone who may have interest in purchasing the items of surplus property. When the account manager determines that it is not practicable to advertise the disposition, he/she may dispose of the surplus personal property in whatever manner he/she considers most advantageous to the county.

- e. No sale of surplus property shall be effected by the county until the public notice required under this section shall have been posted for seven (7) days, and thereafter, the account manager or clerk/auditor is authorized to proceed to deliver a bill of sale for any or all of such items.

Section 4 - Prizes and Contributions

1. Purchases that are to be used for a gift, donation, or any other contribution of value up to \$500.00, prior authorization shall be required by the responsible department head or elected official, one commissioner, and the auditor.
2. For purchases or value exceeding \$500.00, prior authorization shall be required by the responsible department head or elected official, three commissioners, and the auditor. If all three commissioners do not authorize the purchase, the proposed purchase may be placed on the commission agenda for authorization by a majority vote of the commission.
3. Any person who commits or expends county funds for purchases that do not comply with the provisions of this chapter may be held personally responsible for the payment of the unauthorized procurement, however, it shall not constitute a criminal offense to fail to comply with said procedures or the provisions of this section.

Section 5 - Approval of purchases

1. Department heads or elected officials may authorize the purchase of equipment or other personal property for their department if the amount does not exceed \$1000, provided that said procurement is within the budget of said department. (Purchases shall not be artificially divided so as to constitute a small purchase under this section.)
2. For purchases of \$1000 to \$5,000, shall require: three (3) phone bids with copy in writing and prior authorization shall be required by the responsible department head or elected official, and the auditor.
3. For purchases of \$5,000 to \$25,000, prior authorization shall be required by the responsible department head or elected official, one commissioner, and the auditor.
4. For purchases of \$25,000 or more, prior authorization shall be required by the responsible department head or elected official, three commissioners, and the auditor. If all three commissioners do not authorize the purchase, the proposed purchase may be placed on the commission agenda for authorization by a majority vote of the commission.
5. Any person who commits or expends county funds for purchases that do not comply with the provisions of this chapter may be held personally responsible for the payment of the unauthorized procurement, however, it shall not constitute a criminal offense to fail to comply with said procedures or the provisions of this section.
6. The commission, with approval of the auditor, may designate purchasing authority who, under the general direction of the auditor, will act as a purchasing agent for the county.

7. All purchases of merchandise, equipment or supplies by any county agent or department shall be made in compliance with county purchasing policies herein stated, unless a special exception to such policies is granted or approved by the Board of Commissioners. No exception shall be granted by the Board of Commissioners to the purchasing policies unless unusual circumstances exist or an unnecessary hardship will result. In addition to the purchasing policy stated in this Ordinance and in other county ordinances, all county officers and agents should observe the following purchasing policies:
- a. Ordinary purchases of merchandise, equipment or supplies shall be ordered in advance by the county department and paid by the clerk/auditor upon receipt of a claim form and an invoice or receipt.
 - b. An invoice or receipt must be attached to all claim forms and purchase order forms before they can be processed for payment by the auditor.
 - c. No purchases of merchandise, equipment or supplies shall be made by cash, credit cards, special merchant cards or purchase order forms, unless no other reasonable alternative for purchasing the item is available. Purchases by cash, credit card or merchant cards shall be approved in advance by the department head or elected official.
 - d. When merchants provide special cards for purchases at their establishments, three such special merchant cards will be issued and kept at the offices of the auditor, the Emery County Sheriff, and the Emery County Road Department. A card may be checked out by an individual office as needed and should be returned immediately to the office from which it was borrowed after the purchase is completed.
 - e. Payments and reimbursements by the county for cash, credit card or special merchant card transactions shall not be authorized by the commission or the auditor unless an invoice, receipt or other proof of purchase, as provided by the vendor, is attached to the billing form. (An itemized bill from a credit card company is not a sufficient proof of purchase.) Said invoice, receipt or other proof of purchase shall be submitted to the office of the auditor by the department representative immediately and shall not be left in the department to be included with claims routinely submitted to the auditor for payment.
 - f. County credit cards were issued to facilitate official travel and lodging required by county employees and officers, and such credit cards should not be used to create petty cash funds for minor purchases.
 - g. Whenever possible, preference should be given to local merchants who pay taxes to Emery County. In pricing merchandise, equipment and supplies, county departments are encouraged to determine whether or not local merchants can meet prices quoted by out-of-county vendors. County purchasing agents are not required to purchase merchandise at the lowest possible price, if there is an

offsetting additional expense for travel, time or inconvenience associated with making the purchase at a lower price outside of Emery County.

Section 6 - Competitive bid requirements

1. When a purchase is made which is expected to be \$5,000 and \$25,000, the department head or elected official shall, under the direction of the auditor or purchasing authority:
 - a. Obtain three (3) bids or proposals for the item or service to be purchased, from separate sources, which bids need not be in writing.
 - b. Bids or proposals shall be recorded by the department head or elected official and the auditor and shall be maintained as official county records. Said records shall include:
 - i. the name of the person or firm the bid or proposal was obtained from;
 - ii. the date of the bid;
 - iii. the item or service bid on; and
 - iv. the bid amount.
2. When a procurement is expected to be greater than \$25,000, the department head or elected official shall prepare written specifications for said procurement and shall have said specifications approved by the supervising commissioner for the respective office or department prior to obtaining bids or proposals. The written specifications for said procurement should be publicly advertised for sealed bids unless the commission waives this requirement.
3. When the commission does not require public advertisement for sealed bids, the department head or elected official shall either:
 - a. obtain at least three written bids or proposals from separate sources;
 - b. or obtain one written bid utilizing the State's Cooperative Contracts program.
4. The person or firm who submits the lowest bid or proposal that meets the approved specifications shall be awarded the bid, unless the commission authorizes the acceptance of another bid or proposal that it determines to be in the best interest of the county. A summary of the bids or proposals received shall be submitted with each purchase order.
5. This chapter does not excuse compliance with additional requirements of state law, if any.
6. For procurements greater than \$100,000, the auditor shall consult with the county attorney prior to authorizing the procurement.
7. Except as provided in (3) above, the commission will not generally permit a sole source procurement of a particular item or service if there is more than one potential bidder or offeror for that item or service. The commission may waive the foregoing bid procedures only if it determines that there is only one source that can meet the procurement requirements, or if the service to be acquired is professional or technical services where unique skills and expertise are indicated. For procurements greater than \$50,000,

foregoing the bidding process may only be accomplished by a majority vote of the commission.

8. "Professional or technical service" means labor, effort, or work that requires an elevated degree of specialized knowledge and discretion, including labor, effort, or work in the fields of: accounting; information technology; law; medicine; psychiatry; or underwriting.
9. Procurements shall not be artificially divided to avoid the bid requirements of this section.
10. All documents required by this section shall be delivered to the auditor to be maintained as official county records. Such documents include, but are not limited to, bids, proposals, invoices and contracts.

Section 7 - Emergency Procurements

1. An emergency condition is defined as a situation that creates a threat to public health, welfare or safety, such as may arise by reason of floods, epidemics, riots, equipment failures, or such other reasons as may be determined by a majority of the commission and an affected department head or elected official. The existence of such a condition must create an immediate and serious need for supplies, materials, equipment, services, or construction that cannot be met through normal procurement methods.
2. A majority of the commission and an affected department head or elected official may authorize emergency procurements for those supplies, materials, equipment, services or construction items necessary to meet an emergency without complying with the foregoing provisions, provided that said expenditures are not beyond the budget for the affected department or office. After an emergency procurement is made, the majority of the commission and the affected department head or elected official shall submit a written statement to the auditor stating the basis of the emergency procurement and such other details as are necessary to process the procurement.

Section 8 - Cancellation and Rejection of Bids

1. An invitation for bids, a request for proposals or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part, as may be specified in the solicitation, when it is in the best interests of the county. The reasons shall be made part of the contract file.

Section 9 - Determination of Nonresponsibility of Bidder

1. The failure of a bidder or offeror to promptly supply information to the Board of Commissioners in connection with inquiry with respect to responsibility may be grounds for a determination of nonresponsibility in respect to the bidder or offeror. A determination of nonresponsibility shall be made in writing. Information furnished by a

bidder or offeror, pursuant to this section, is subject to GRAMA and may not be disclosed outside of a procurement unit without the person's prior written consent. .

Section 10 - Prequalification of Suppliers

1. Prospective suppliers may be prequalified for particular types of supplies, services and construction. Solicitation mailing lists of potential contractors shall include, but shall not be limited to, prequalified suppliers.

Section 11 - Costs Plus Percentage of Cost and Cost-Reimbursement Contracts Prohibited

1. Subject to the limitations of this Ordinance, any type of contract may be used pursuant to statute with the following exceptions.
2. A procurement unit may not enter into a cost-plus-percentage-of-cost contract, unless:
 - a. use of a cost-plus-percentage-of-cost contract is approved by the commission;
 - b. it is a standard practice in the industry to obtain the procurement item through a cost-plus-percentage-of-cost contract; and
 - c. the percentage and the method of calculating costs in the contract are in accordance with industry standards.
3. A procurement unit may not enter into a cost-reimbursement contract, unless the commission makes a written determination that:
 - a. a cost-reimbursement contract is likely to cost less than any other type of permitted contract; or
 - b. it is impracticable to obtain the procurement item under any other type of permitted contract; and
 - c. the proposed contractor's accounting system will timely develop the cost data in the form necessary for the procurement unit to timely and accurately make payments under the contract; and
 - d. will allocate costs in accordance with generally accepted accounting principles. .

Section 12 - Right to Inspect Place of Business of Contractor or Subcontractor

1. The County may, at reasonable times, inspect the place of business of a contractor or any subcontractor which is related to the performance of any contract awarded pursuant to this Ordinance. The Sheriff and all deputy sheriffs, and the County Attorney and his deputies are hereby appointed *ex officio* deputies to enforce this Ordinance and, in addition to their several duties in their regular offices or positions, they are hereby authorized and empowered to examine all places of business in order to see that the provisions of this Ordinance are complied with and to report to the County Clerk, or other duly appointed officer, any information indicating the inability of such a business to perform on a contract so awarded.

Section 13 - Determinations Final

1. The determinations of the Board of Commissioners specified herein are final and conclusive.

Section 14 - Records of Contracts Made

1. The County Clerk shall make and maintain a record listing all contracts made pursuant to this Ordinance. The record shall contain:
 - a. each contractor's name;
 - b. the amount and type of each contract; and
 - c. a listing of the supplies, services and/or construction procured under each contract.

In the opinion of the Board of County Commissioners of Emery County, this Ordinance is necessary for the peace, health and safety of Emery County and the inhabitants thereof. Therefore, this Ordinance shall become effective 15 days after its passage and upon a copy being published in accordance with UCA §17-53-208, and upon a copy being deposited in the office of the Emery County Clerk, Castle Dale, Utah.

PASSED AND APPROVED by the Board of Emery County Commissioners at a regularly scheduled meeting of the Board on the _____ day of July, 2023, Commissioners Lynn Sitterud, Keven Jensen and Jordan Leonard voting "aye" and none voting "nay."

BOARD OF EMERY COUNTY COMMISSIONERS

By 
Lynn Sitterud, Chairman

ATTEST:


Brenda Tuttle, Clerk/Auditor

Date of Publication: _____