



CITY OF THORNE BAY  
ORDINANCE 26-03-03-02

Introduction: February 3, 2026  
Public Hearing: March 03, 2026  
Sponsor: Gary Anderson  
Vote: 5 Yeas, 0 Nays, 2 Absent

AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF THORNE BAY, ALASKA, AMENDING TITLE 3-REVENUE AND FINANCE, CHAPTER 03.12 -PURCHASING, SECTIONS 3.12.040-3.12.170 MANNER OF MAKING PROCUREMENTS GENERALLY – EMERGENCY PROCUREMENTS

BE IT ENACTED BY THE CITY COUNCIL FOR THE CITY OF THORNE BAY, ALASKA

- Section 1. **Classification.** This ordinance is of a general and permanent nature, the chapter and section hereby amended shall be added to the Thorne Bay Municipal Code.
- Section 2. **Purpose.** To Amend TBMC 3.12.040-170 to reinstate previous purchasing codes until further Council review;
- Section 3. **Severability.** If any provisions of this ordinance or any application thereof to any person or circumstances is held invalid, the circumstances shall not be affected thereby.
- Section 4. **Amendment of Section.** The title and chapter of Title 3 – Revenue and Finance, Chapter 3.12, Purchasing, Section 3.12.040-3.12.170 Manner of Making Procurements – Emergency Procurements, is hereby amended and added to the Thorne Bay City Code and shall read as shown on page 2 of this ordinance.
- Section 5. **Effective Date.** This ordinance shall become effective upon adoption.

PASSED AND APPROVED February 17, 2026

ATTEST:

  
Caitlyn Sawyer, City Clerk/Treasurer

  
Timber Pesterfield, Mayor Pro-Tempore

**THORNE BAY MUNICIPAL CODE  
TITLE 3 – REVENUE AND FINANCE  
CHAPTER 3.12 - PURCHASING**

**3.12.040 MANNER OF MAKING PROCUREMENTS GENERALLY.**

- A. The procurement of all supplies, materials, equipment and contractual services for the offices, departments and agencies of the city government shall be made by the purchasing agent as defined in section 3.12.020, and in accordance with purchase authorizations provided under this chapter.
- B. All procurements for contractual services estimated by the procurement agent to be over ~~ten~~ FIVE thousand dollars in value shall be memorialized in a formal written contract to be executed by the parties bound to their terms and setting out the specific terms of performance. Procurements for contractual services estimated by the procurement agent to be under ten thousand dollars in value may be completed by purchase order. All procurements for supplies, materials, and equipment may be completed by purchase order. All contracts shall include standard terms and conditions approved by the mayor.
- C. Subject to the limitations of this section, any type of contract which will promote the best interests of the city may be used. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the city than any other type or that it is impracticable to obtain the supplies or contractual services required except under such a contract.
- D. All provisions of this chapter are subject to, and subordinate to, procurement requirements of the state or federal government where required by law including but not limited to contracts where state or federal grant revenues are used.
- E. Where applicable, all city contracts must comply with the public contract requirements provided by state statute and regulation including but not limited to:
  - 1. Wage and hour requirements under as 36.05;
  - 2. Local hire and employee preference requirements under as 36.10;
  - 3. Contractor bonding requirements under as 36.25;
  - 4. Public construction contract payment requirements under as 36.90; and
  - 5. Mandatory contractual provision requirements under as 36.90.

- F. The city clerk shall establish and maintain lists of persons who desire to provide supplies, services, professional services or construction services to the city.
  - 1. A person who desires to be on a bidder's list shall submit to the city clerk evidence of a valid state business license and a description of the supplies or services the person desires to provide. A construction contractor shall also submit a valid certificate of registration issued under as 08.18. The city clerk may require submission of additional information.
  - 2. The list may be used by the city procurement agent responsible for the procurement when issuing invitations to bid or requests for proposals.
- G. The city shall make reasonable efforts to solicit bids and proposals from local suppliers and contractors.

**3.12.050 LIMITATIONS ON DURATION OF CITY CONTRACTS .**

- A. All contracts must, by the terms thereof, be fully executed within a period of ~~five~~ **ONE** years unless a majority of the city council who vote thereon have approved the contract prior to execution.
- B. This requirement does not apply to contracts concerning interests in real property, franchises, contracts for services with a public utility or with other governmental units, or to contracts for debt secured by the bonds or notes of the city. (Ord. 22-02-01-01; Prior Ord. 98-07 §§ 3(part), 4(part), 1998: Ord. 85-01-17-02 § 5, 1985)

**3.12.060 APPROVAL OF CITY COUNCIL REQUIRED - PROCUREMENTS .**

Every procurement of budgeted supplies, materials, equipment or contractual services for more than ~~twenty-five thousand dollars~~ **TEN THOUSAND DOLLARS** shall require the approval of the city council. Procurements over ~~five thousand~~ **TWO THOUSAND** dollars for supplies, materials, equipment, or contractual services that (a) are not specifically in budget for the year of procurement or

(b) exceed the budgeted amount require council approval. For each budgeted procurement between ~~five~~ **TWO** thousand dollars and ~~twenty-five~~ **TEN** thousand dollars that does not require council approval, the city council shall be notified by written report detailing such procurement at the next regular city council meeting following such procurement. Such notification shall include:

- A. The dollar amount of the procurement;
- B. The name of the supplier or contractor;
- C. A statement regarding why the chosen supplier or contractor was most advantageous to the city. (Ord. 22-02-01-01; Prior Ord. 98-07 §§ 3(part),

4(part), 1998: Ord. 85-01-17-02 § 6, 1985)

### 3.12.070 EMERGENCY PROCUREMENTS .

The provisions of this chapter may be waived during times of crisis, emergency or disaster for no longer than seven days when operating under a declaration of emergency issued by the mayor. All provisions of this chapter waived while operating under a declaration of emergency issued by the mayor shall be reported to the city council via electronic mail within twenty-four hours following any such waiver. The city council may waive the provisions of this chapter for a definite period longer than seven days by resolution. The city administrator or authorized successor shall have the responsibility to protect the interest of the city consistent with prudent and appropriate emergency responses. (Ord. 22-02-01-01; Prior Ord. 98-07 §§ 3(part), 4(part), 1998: Ord. 85-01-17-02 § 8, 1985)

### 3.12.080 APPROVAL OF CITY COUNCIL REQUIRED—MODIFICATIONS AND CHANGE ORDERS .

- A. A proposed modification or change order to an existing city contract shall require the approval of the city council when the proposed modification or change order increases the contract amount by ~~ten-thousand~~ **FIVE THOUSAND** dollars or more. No work may proceed under a modification or change order requiring city council approval prior to approval by the city council.
- B. The council shall be notified by written report at its next regular meeting of any modification or change order in excess of ~~five~~ **TWO** thousand dollars. Such notification shall include:
  - 1. The dollar amount of the original contract;
  - 2. The number of previous modifications or change orders;
  - 3. The dollar amount of each previous modification or change order and the total aggregated dollar amount of the previous modifications and change orders;
  - 4. The total dollar amount of the contract as modified or changed; and
  - 5. A statement explaining the justification or need for the modification or change order.
- C. Modifications and change orders shall not be arbitrarily divided into smaller amounts to avoid council approval thereof.
- D. Notwithstanding any of the foregoing provisions of this section, the city may make modifications or change orders in any city contract without council

approval where in the judgment of the city administrator a crisis, emergency or disaster as defined in section 3.12.020 exists which requires immediate action to remedy and where there is insufficient time or it is impractical to obtain council approval. Notice of such crisis, emergency or disaster modifications or change orders containing the information set forth in subsection b of this section shall be presented to the council no later than its next regular meeting. (Ord. 22-02-01-01; Prior Ord. 85-01-17-02 § 9, 1985)

### 3.12.090 SPECIFICATIONS AND CONTRACTS .

- A. The city administrator shall adopt policies and procedures governing the preparation, revision and content of standard specifications, standard plans and contracts for supplies, services, professional services and construction required by a department. The city administrator shall monitor the use of these standard contracting documents and procedures.
  
- B. The city administrator may obtain expert advice and assistance from department personnel in the development of standard specifications and contracts. All contract specifications, forms and procedures must promote overall economy for the purposes intended and encourage competition in satisfying the city's needs and may not be unduly restrictive. (Ord. 22-02-01-01)

### 3.12.100 COMPETITIVE PROCUREMENT PROCEDURE .

- A. Before the procurement of, or contract for, supplies, materials, equipment or contractual services in an amount of ~~twenty-five~~ **TWO** thousand dollars or less is made, except as otherwise provided in this chapter, the city shall submit to at least three persons dealing in and able to supply the same an invitation to bid or request for proposal and specifications to give them opportunity to submit a proposal or bid. In the event that three persons cannot reasonably be found, fewer may be used when it is deemed to be in the best interest of the city.
- B. For procurement of, or contract for, supplies, materials, equipment or contractual services in an amount greater than ~~twenty-five~~ **TEN** thousand dollars, an invitation to bid or request for proposal will be posted on the city website, and the city shall employ such other forms of notice of such invitation to bid or request for proposal as may be determined in the city's discretion to adequately reach prospective bidders or offerors. The city shall provide adequate notice of the invitation to bid or request for proposal for at least

fourteen days unless otherwise required by state or federal law. Among the forms of notice employed by the city, the city may in its discretion:

1. Publish such invitation, request, or notice thereof in such newspapers or other publications circulated to reach prospective bidders;
2. Post notices in public places thought likely to reach prospective bidders.

Invitations to bid and/or requests for proposals shall be made both inside and outside of the city when necessary to create competitive conditions, or when a savings can be made for the city. (Ord. 22-02-01-01; Prior Ord. 85-01-17-02 § 10, 1985)

### 3.12.110 COMPETITIVE BIDDING.

- A. Procurements shall be made by competitive sealed bidding except as otherwise provided in this chapter. When competitive sealed bidding is used, the procurement agent shall issue an invitation to bid. The invitation to bid must include a time, place and date by which the bid must be received, a description of all essential contractual terms and conditions, and a description of all requirements and selection criteria.
- B. When responding to the invitation to bid, the bidder shall supply evidence of the bidder's valid state business license. A bidder for a construction contract shall also submit evidence of the bidder's registration under as 08.18.
- C. Late bids—withdrawals—cancellation.
  1. Bids received after the bid date and time indicated on the invitation to bid may not be considered unless the delay was due to an error of the city, except where delays in mail service cause a late bid in which case bids postmarked at least 72 hours prior to the bid opening date will still be considered timely.
  2. Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on bid mistakes, may be permitted in accordance with policies adopted by the city. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the city or fair competition may not be permitted. A decision to permit the correction or withdrawal of a bid, or to cancel an award or contract based on a bid mistake, shall be supported by a written determination made by the city administrator. If a bidder is permitted to withdraw a bid before award, an action may not be maintained against the bidder or the bid security.
- D. Competitive bid opening.
  1. The procurement agent responsible for the procurement shall open bids at the time and place designated in the invitation to bid. All bid openings are open to the public. The amount of each bid and other essential

information required by this chapter, together with the name of each bidder, shall be recorded.

2. The information recorded under subsection (d)(1) of this section is open to public inspection as soon as practicable following bid opening. To the extent the bidder designates and the city administrator concurs, trade secrets and other proprietary data contained in a bid document may be deemed confidential.
- E. The city may repeatedly reject all bids, and again may submit to the same or other persons invitation to bid or again publish notice of the proposed purchase.
- F. Evaluation and award. Bids shall be evaluated based on the requirements set forth in the invitation to bid, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the criteria set forth in the invitation to bid. In determining whether a bidder is responsible the city may consider:
1. The qualifications, ability, capacity and skill of the bidder to perform the contract;
  2. The availability of the bidder to perform the contract 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 by the bidder of previous contracts;
  5. The previous and existing compliance by the bidder with laws and ordinances relating to the contract;
  6. The sufficiency of the financial resources and ability of the bidder to perform the contract.

When the award is made to other than the lowest bidder, a full and complete written statement of the reasons therefore shall be mailed or delivered to the unsuccessful low bidder and filed with the other documents relating to the procurement.

- G. Multi-step bidding. When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.
- H. Except where prohibited by state or federal grant requirements, a local bidder,

as defined in section 3.12.020, may be given consideration as low bidder where the offer is the lesser of ten percent or fifty thousand dollars in excess of the lowest offer received from a bidder not qualified as a local bidder. The city may split the award between two or more suppliers in any manner the city deems to be in its best interest.

- I. Procurement of, or contract for, supplies, materials, equipment, contractual services, or capital projects that could be subject to potential future grant reimbursements may be restricted to the procurement requirements of such grants as understood at the time of procurement. (Ord. 22-02-01-01; Prior Ord. 85-01-17-02 § 11, 1985)

### 3.12.120 COMPETITIVE PROPOSALS.

- A. A contract not awarded by competitive sealed bidding shall be awarded by competitive sealed proposals, unless otherwise provided for in this chapter.
- B. The city may determine in writing that it is either impracticable or disadvantageous for the city to procure specified types of supplies or contractual services by competitive sealed bidding that would otherwise be procured by that method. When the city determines in writing that the use of competitive sealed bidding is either impracticable or disadvantageous to the city, a contract may be entered into by competitive sealed proposals in accordance with this section. The city shall specify with particularity the basis for determination.
- C. A request for proposals must contain the essential information necessary for an offeror to submit a proposal including a time, place and date by which the proposal must be received or contain references to any information that cannot reasonably be included with the request. The request must provide a description of the factors that will be considered when evaluating the proposals received, including the relative importance of price and other evaluation factors.
- D. Notice of request for proposals shall be given in accordance with procedures set out under section 3.12.100(b). The city may use additional means considered appropriate to notify prospective offerors of the intent to enter into a contract through competitive sealed proposals.
- E. The procurement agent shall open proposals so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals containing the name and address of each offeror shall be prepared in accordance with policies adopted by the procurement agent. The register and the proposals, except as otherwise noted in this section, are open for public inspection after the award is issued. To the extent that the offeror designates and the city administrator concurs, trade secrets and other proprietary data contained in the proposal documents shall be confidential.
- F. Discussion with responsible offerors and revisions to proposals. As provided in

the request for proposals, and under policies adopted by the city, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements. Offerors reasonably susceptible of being selected for award shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and before the award of the contract for the purpose of obtaining best and final offers. In conducting discussions, the city shall not disclose information derived from proposals submitted by competing offerors.

- H. A contract may be awarded under competitive sealed proposals to the responsible offeror whose proposal is determined in writing to be the most advantageous to the city taking into consideration price and the evaluation factors set out in the request for proposals. The contract file must contain the basis upon which the award is made. (Ord. 22-02-01-01; Prior Ord. 85-01-17-02 § 12, 1985)

### 3.12.130 OPEN MARKET PURCHASES/PROCUREMENTS.

The following may be purchased without competitive bidding:

- A. Supplies, materials, equipment or contractual services when combined cost does not exceed ten thousand dollars in a single transaction;
- B. Supplies, materials, equipment or contractual services which can only be furnished by a single dealer or which has a uniform price wherever bought;
- C. Supplies, materials, equipment or contractual services procured from another unit of government at a price deemed below that obtainable from private dealers, including war surplus;
- D. Contractual services procured from a public utility corporation at a price or rate determined by state or other government authority;
- E. Contractual services of a professional nature, such as medical services, or insurance policies whose nature demands immediate action;
- F. Supplies, materials or equipment which cannot be procured locally and which can be procured from a source selected by another unit of government pursuant to competitive bidding procedures to provide the same or similar supplies, materials or equipment if:
  - 1) The award was made by the governmental unit; and
  - 2) The item(s) can be procured at the same price plus additional freight or delivery charges if applicable;
- G. The city encourages local procurement whenever practicable. Procurements

made under this section shall only be made after a reasonable attempt to evaluate procurement options from a local source;

- H. Professional services such as, but not limited to, services rendered by architects, attorneys, engineers, appraisers, surveyors, accountants and other specialized consultants provided, that the procedures set out in section 3.12.140 are followed.
- I. When public work is performed by the city with its own employees.
- J. To contracts primarily involving the purchasing of supplies, materials, equipment, or contractual services using state or federal grants when the grant funds are being spent by a state or federal agency pursuant to that state or federal agency's procurement rules and regulations.
- K. When either competitive procedure has been followed, but no bids or quotations are received. In such a case, the purchasing agent may proceed to have the services performed or the supplies purchased without further competitive bidding or quotation.
- L. When the city council determines that the public interest would be best served by the purchase of used equipment and, by resolution, authorizes the purchasing agent to locate and purchase a particular type and quantity of used equipment.
- M. Where calling for bids on a competitive basis is unavailing and impossible, including but not limited to situations where rates are set by statute or ordinance or where like items are traded in, or where used items are being purchased. (Ord. 22-02-01-01; Prior Ord. 85-01-17-02 § 13, 1985)

### 3.12.140 PROFESSIONAL SERVICES .

- A. Due to the nature of professional services, it is in the best interest of the city to use a qualitative selection process, with or without consideration for price, in the city's discretion, when in need of these services.
    - 1. For professional services estimated by the city to be one hundred thousand dollars or less, direct solicitation of contractors or consultants may be made from a roster maintained by the city, or to such other vendors who may be known to the city as possessing the required expertise. These solicitations will seek to evaluate the qualifications, experience, and availability of particular vendors. When more than one vendor is considered, the procurement agent will appoint a selection panel to evaluate the potential vendors and offer a recommendation for selection.
    - 2. For professional services estimated by the city to be more than one hundred
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thousand dollars, a formal request for qualifications will be solicited. Public notice of requests for qualifications will be given in accordance with the same procedures set forth in section 3.12.100(b). The procurement agent will develop and publish qualitative selection criteria for evaluating all responses to requests for qualifications received. In multi-phase projects the city may contract with a professional services provider that has provided professional services in an earlier phase of the same project, without the solicitation of formal request for qualifications, in order to maintain project continuity or to otherwise promote the best interest of the city.

- B. The provisions of sections 3.12.060 and 3.12.080 apply to all professional services contracts.
- C. The duration of professional services contracts may not exceed two years, except for completion of work in progress under architectural or engineering contracts. (Ord. 22-02-01-01; Prior Ord. 85-01-17-02 § 14, 1985)

### 3.12.150 HYBRID PROCUREMENTS.

When contracting for procurement of supplies, materials, equipment or contractual services, as contemplated under section 3.12.110, and professional services, as contemplated under section 3.12.140, within the same contract, the city shall utilize the procedures set forth in section 3.12.120. (Ord. 22-02-01-01; Prior Ord. 85-01-17-02 § 15,

1985)

### ~~3.12.160 CONSTRUCTION MANAGER/GENERAL CONTRACTOR CONTRACTS.~~

~~The city may award a two-phase construction manager/general contractor contract for preconstruction services and construction services on a single project.~~

- ~~A. In the preconstruction services phase of a contract under this section, the contractor shall provide the city with advice for scheduling, work sequencing, cost engineering, constructability, cost estimating, and risk identification.~~
- ~~B. Prior to the start of the construction services phase, the city and the contractor may agree to a price and other factors for the construction of the project or a portion of the project.~~
- ~~C. If an agreement is reached under subsection b of this section, the contractor~~

~~shall be responsible for the construction of the project or portion of the project at the negotiated price and in compliance with the other factors specified in the agreement.~~

~~D. A contract shall be awarded under this section using the competitive selection process set out in section 3.12.120 and based on qualifications, experience, best value, or any other combination of factors deemed relevant to the procurement. (Ord. 22-02-01-01; Prior Ord. 02-03-21-01 § 3, 2002; Ord. 98-07 §§ 3(part), 4(part),~~

~~1998; Ord. 89-05 § 4(part), 1989; Ord. 85-01-17-02 § 16, 1985)~~

### 3.12.170 CONTRACTOR BONDING REQUIREMENTS .

A. Before a contract exceeding ~~one hundred~~ TWENTY FIVE Thousand dollars for the construction, alteration, or repair of a public building or public work is awarded to a general or specialty contractor, the contractor shall furnish to the city the following bonds, which become binding upon the award of the contract to that contractor:

1. A performance bond with a corporate surety qualified to do business in the state, or at least two individual sureties who shall each justify in a sum equal to the amount of the bond; the amount of the performance bond shall be equivalent to the amount of the payment bond.

2. A labor and materials payment bond with a corporate surety qualified to do business in the state, or at least two individual sureties who shall each justify in a sum equal to the amount of the bond, for the protection of all persons who supply

labor and material in the prosecution of the work provided for in the contract. When the total amount payable by the terms of the contract is not more than one million dollars, the labor and materials payment bond shall be in a sum of one-half the total amount payable by the terms of the contract; when the total amount payable by the terms of the contract is more than one million dollars and not more than five million dollars, the payment bond shall be in a sum of forty percent of the total amount payable by the terms of the contract; when the total amount payable by the terms of the contract is more than five million dollars, the payment bond shall be in the sum of two million five hundred thousand dollars.

B. The city hereby exercises its option under as 36.25.025 to exempt contractors from compliance with the provisions of subsection a of this section and as 36.25.010(a) if the estimated cost of the project does not exceed four hundred

thousand dollars and:

1. The contractor is, and for two years immediately preceding the award of the contract has been, a licensed contractor having its principal office in the state;
2. The contractor certifies that it has not defaulted on a contract awarded to the contractor during the period of three years preceding the award of a contract for which a bid is submitted;
3. The contractor submits a financial statement, prepared within a period of nine months preceding the submission of a bid for the contract and certified by a public accountant or a certified public accountant licensed under as 08.04, demonstrating that the contractor has a net worth of not less than twenty percent of the amount of the contract for which the bid is submitted;
4. The total amount of all contracts that the contractor anticipates performing during the term of performance of the contract for which a bid is submitted does not exceed the net worth of the contractor reported in the certified financial statement prepared and submitted under subsection (b)(3) of this section by more than seven times. (Ord. 22-02-01-01; Prior Ord. 98-07 §§ 3(part), 4(part), 1998; Ord. 85-01-17-02 § 17, 1985)