



# Procurement Manual

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## FORWARD

This Procurement Manual (this “Manual”) shall serve as a guide to all those utilizing City of Denton funds for expenditures or disposing of City property. Updates to this Manual will be documented in the table below. This Manual is also available on the City of Denton website at [www.cityofdenton.com](http://www.cityofdenton.com). If you are unable to find an answer to your question(s) or need additional information not found in this Manual, please contact the Procurement Department at [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) or (940) 349-7100.

<b>No.</b>	<b>EFFECTIVE DATE</b>	<b>SUMMARY OF MANUAL CHANGES</b>
DPP 1.0	06/23/2020	Baseline Denton Procurement Manual (Version 1.0)
DPP 2.0	12/13/2022	Amended Denton Procurement Manual (Version 2.0)



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## INTRODUCTION

The Procurement Department (“Procurement”) is the centralized procurement authority for the City of Denton (the “City”). It is responsible for supporting all City departments in contracting for goods, services, professional services, and public works. As a service provider and partner, Procurement is committed to assisting City departments in meeting their needs. This procurement manual (the “Manual”) is designed to provide City departments with critical information related to procurement and to assist them through all phases of the procurement process, including planning, sourcing, contracting, contract administration, and surplus disposition.

Procurement’s mission of “Facilitate, Communicate, Educate” is focused on providing responsive, efficient procurement services to customers through the use of industry best practices, education, and leveraging technology. Procurement adheres to the public procurement values of accountability, ethics, impartiality, professionalism, service, and transparency by:

- Ensuring compliance with local, state, and federal laws applicable to procurement and contracting;
- Providing quality customer service to City departments, suppliers engaging with the City, and the community;
- Obtaining needed goods, services, professional services, and public works at the best possible price, of the highest quality, and at the right time;
- Serving as stewards of the public trust by spending tax dollars wisely, efficiently, and with integrity;
- Providing all suppliers, including Historically Underutilized Businesses, equal access to the City’s competitive processes for the acquisition of goods, services, professional services, and public works; and
- Protecting the interests of City taxpayers by avoiding any undue influence, political pressures, and protecting the integrity of the procurement process.

In order to accomplish the above, Procurement and its customers must partner together to ensure the appropriate planning of needs, timely submission of information, proper execution of responsibilities, compliance with rules and regulations, and commitment to the highest standards of customer service. Procurement, as well as officials, directors, and employees of the City will strive to provide equitable and competitive access to the City’s procurement process for all responsible suppliers. Further, procurement will be conducted in a manner that promotes and fosters public confidence in the integrity of the City’s procurement process.



## **1.0 GENERAL PROVISIONS**

### **1.1 APPLICABILITY OF THIS MANUAL**

This Manual shall apply to the following:

- (a) Every City procurement except those specific procurements found to be exempt as outlined below;
- (b) Disposal of City property; and
- (c) Contracts where there is no expenditure of public monies or where the City is offering something of value to the business community when the City determines source selection and award of a contract, as determined by the Procurement Agent in connection with the department, the Chief Financial Officer, and other related City staff.

### **1.2 EXEMPTIONS TO THIS MANUAL**

Texag Local Government Code (“LGC”) 252 and other relevant Texas regulations exempt the following from competitive bidding requirements:

- (a) a procurement made necessary because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality’s residents or to preserve the property of the municipality;
- (b) a procurement necessary to preserve or protect the public health or safety of the municipality’s residents;
- (c) a procurement necessary because of unforeseen damage to public machinery, equipment, or other property;
- (d) a procurement for personal, professional (see Section 6.0), or planning services;
- (e) a procurement for work that is performed and paid for by the day as the work progresses;
- (f) a purchase of land or right-of-way;
- (g) a procurement of items that are available from only one source, including:
  - i. items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies;
  - ii. films, manuscripts, or books;
  - iii. gas, water, and other utility services;
  - iv. captive replacement parts or components for equipment;
- (h) books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and
- (i) management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits;
- (j) a purchase of rare books, papers, and other library materials for a public library;
- (k) paving drainage, street widening, and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements;





- (l) a public improvement project, already in progress, authorized by the voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes authorized by the voters;
- (m) a payment under a contract by which a developer participates in the construction of a public improvement as provided by LGC 252 Subchapter C, Chapter 212;
- (n) personal property sold:
  - i. at an auction by a state licensed auctioneer;
  - ii. at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business and Commerce Code;
  - iii. by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or
  - iv. under an interlocal contract for cooperative purchasing administered by a regional planning commission established under LGC Chapter 391;
- (o) services performed by blind or severely disabled persons;
- (p) goods purchased by a municipality for subsequent retail sale by the municipality;
- (q) electricity; or
- (r) advertising, other than legal notices.
- (s) bonds or warrants issued under LGC Subchapter A, Chapter 571.
- (t) certain purchases for Denton Municipal Electric (“DME”) per City Ordinance 2009-189, as directed by City Manager.
- (u) expenditures described by LGC Section 252.021(a) if the governing body of the municipality finds that a method described by Texas Government Code (“GC”) 2269 provides a better value for the municipality than the procedures described in LGC Chapter 252.

### **1.3 PRECEDENTS AND INTERPRETATION**

In the event of any conflict with or need for interpretation with this Manual, the following should be noted:

- (a) If there is any conflict between this **Manual** and a state or federal law, or a rule adopted under a state or federal law, the stricter of the conflicting provisions prevails.
- (b) The masculine, feminine, and neutral genders shall be interpreted to include the other genders as required. The singular and plural shall be interpreted to include the other number as required.
- (c) Headings and titles at the beginning of the various sections of this **Manual** have been included only to make it easier to locate the subject matter covered by that section or subsection and are not to be used in interpreting this **Manual**.

It is the responsibility of the Procurement Agent, in consultation with the City Attorney, to interpret this Manual. Any questions regarding the Procurement Agent’s interpretation and/or application of this Manual may be addressed with the City Manager, who shall have final authority to resolve any question about any interpretation and/or application of this Manual.

### **1.4 REQUIREMENT OF GOOD FAITH**

This Manual requires all parties involved in the negotiation, performance, or administration of City contracts to act in good faith.

## **1.5 CONFIDENTIAL OR PROPRIETARY INFORMATION**

Confidential or Proprietary information shall be designated as follows:

- (a) If a person believes that a bid, proposal, offer, specification, or protest contains information that should be withheld from public record, a statement advising of this fact should accompany the submission and the information shall be marked as confidential, wherever it appears.
- (b) Unless otherwise required by law, confidential or proprietary information will not be released until the contract is considered by Council for approval.
- (c) Notwithstanding the above provisions, in the event records marked as confidential are requested under the Texas Public Information Act, the City shall follow the Texas Public Information Act.
- (d) The City shall not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records marked confidential or proprietary. Nor shall the City be in any way financially responsible for any costs associated with securing such an order.



## **1.6 DISCLOSURE OF CERTAIN RELATIONSHIPS BY GOVERNMENT OFFICIALS AND VENDORS**

A Local Government Officer (the “Officer”) must disclose certain relationships with vendors to the City. The Officer must file a conflicts disclosure statement with the City if a vendor who is contracting with the City or is under consideration for entering into a contract with the City has:

- (a) a family relationship with the Officer,
- (b) an employment or other business relationship with the official or a family member of the Officer that results in the Officer or Family Member receiving over \$2,500 of taxable income (other than Investment Income) during the 12-month period preceding the date that the Officer became aware that:
  - a. a contract between the City and vendor has been executed; or
  - b. the City is considering entering into a contract with the vendor.
- (c) given the Officer or a Family Member of the Officer one or more gifts that have an aggregate value over \$100 in the 12-month period preceding the date the official becomes aware that:
  - a. a contract between the City and vendor has been executed; or
  - b. the City is considering entering into a contract with the vendor.

The Officer is not required to file a conflicts disclosure statement in relation to a gift accepted by the Officer or a Family Member if the gift is a political contribution as defined by Title 15 of the Texas Election Code or food accepted as a guest.

The Officer must file the conflicts disclosure statement with the City Secretary no later than 5:00 PM on the seventh business day after the date on which the Officer becomes aware of the facts that require the filing. An Officer commits a misdemeanor if the official knowingly violates Section 176.003 of the LGC. Disclosure statements shall be posted and publicly accessible on the City website.

Vendors are also required to file disclosure statements for certain relationships under Section 176.006 of the LGC and are subject to the City’s Ethics Ordinance (Ordinance 20-1035), as amended (“Ethics Ordinance”), which may be more restrictive than state requirements.

For purposes of this section

- a) “Local Government Officer” means:
  - 1. A member of the governing body of the City (e.g., the Mayor or members of the City Council);
  - 2. A director, superintendent, administrator, president, or other person designated as the executive officer of the City (e.g., Assistant and Deputy City Managers)
  - 3. An agent of the City who exercises discretion in the planning, recommending, selecting, or contracting of a vendor (e.g., Procurement department employees and any other City employees evaluating or bringing forward the vendor for consideration of engagement by the City.



- b) “Family Member” means:
  - 1. A person related to another person within the first degree by consanguinity or affinity.
- c) “Investment Income” means dividends, capital gains, or interest income generated from:
  - 1. A personal or business:
    - i. Checking or savings account;
    - ii. Share draft or share account;
    - iii. Other similar account;
  - 2. A personal or business investment; or
  - 3. A personal or business loan.

## **1.7 PURCHASE OF MATERIALS, EQUIPMENT, AND SUPPLIES FOR PERSONAL USE**

Employees of the City and their immediate family are allowed to participate in the purchase of material at auctions, by bid, or established sale conducted for the City of Denton **with the exception** of Procurement employees and any City of Denton employee involved in the decision-making process relative to the material being auctioned, bid, or otherwise sold.

Employees cannot use the City’s business accounts for personal purchases. Employees that are involved in contract negotiations should use caution when purchasing merchandise or services for personal use with a vendor that is currently or has worked for the City.

## **1.8 PROCUREMENT OF GOODS/SERVICES FROM CITY EMPLOYEES AND/OR IMMEDIATE FAMILY**

It is the general policy of the City of Denton to not enter into contracts or purchases for goods, services, professional services, or public works from employees of the City or members of their immediate family. Exceptions are reviewed on a case by case basis by the Human Resources Department.

## **1.9 SEVERABILITY**

If any provision of this Manual or the application of a provision to any person or circumstances is held invalid by a court of competent jurisdiction, such holding shall not affect the validity of the remainder of this Manual and the application of its provisions to other persons and circumstances shall not be affected

## **2.0 DEFINITIONS**

Definitions not contained specifically within this Manual shall be defined per GC, LGC, or other applicable Texas statutes.

**Advertisement/Notice Requirement/Public Notice** means to make a public announcement of the intention to procure goods, services, professional services, or public works.



**Award** means the act of accepting a bid, proposal, or offer; thereby resulting in a contract between the City and a supplier upon City Council, City Manager, or Procurement approval, as applicable.

**Best and Final Offer (“BAFO”)** means a negotiation technique in which an opportunity is extended to respondents in the RFP or CSP process to review their proposals and provide a best and final offer to the City. A BAFO may be sent to all firms, the top firms, or the highest ranked firm, depending on the procurement.

**Bid** means an offer to contract with an entity, submitted in response to an Invitation for Bid or informal quote.

**Bid, Formal** –means a bid that must be submitted in a sealed envelope and in conformance with a prescribed format, to be received and opened on a specific date and at a specified time.

**Bid, Informal** means an unsealed competitive offer conveyed by letter, telephone, email, or other means and under conditions different from those required for formal bidding.

**Bidder** means one who submits a response to an IFB or informal quote.

**Bidder, Lowest Responsible** means the bidder submitting the lowest *initial* price who is capable of performing the proposed contract as the “lowest and responsible” bid.

**Bidder, Responsible** means a bidder who has the capability in all respects to perform fully the contract requirements, and the experience, integrity, perseverance, reliability, capacity, facilities, equipment, and credit which will also assure good faith performance.

**Bidder, Responsive** means a bidder who has submitted a bid that fully conforms in all material respects to the IFB and all of its requirements, including all form and substance.

**Bidder, Non-resident** means a person whose principal place of business is NOT in the State of Texas, including a contractor whose ultimate parent company or majority owner does NOT have its principal place of business in the State of Texas.

**Bidder, Resident** means a person whose principal place of business is in the State of Texas, including a contractor whose ultimate parent company or majority owner has its principal place of business in the State of Texas.

**Bond, Maintenance** means a guarantee that there is no defect in workmanship and/or materials for a specific time period.

**Bond, Payment** means a bond to protect beneficiaries who supply materials or labor to the public works project and have a direct contractual relationship with the contractor. A payment bond is required because materials suppliers and laborers do not enjoy the same lien rights on public



projects as they do on private projects. The payment bond requirements essentially replace the protections afforded by lien rights with protections guaranteed by a surety.

**Bond, Performance** means a bond to secure the performance and fulfillment of all the undertakings, covenants, terms, conditions and agreements contained in the contract and specifications

**Bond, Bid** means a bond submitted with a bid guaranteeing that the bidder will proceed with the contract and will replace the bid bond with a contract, performance bond and/or payment bonds. The bid bond is an instrument used to stop low bidders from underbidding and then withdrawing their bid. A bid bond is not statutorily required but is generally used by the City on public works contracts.

**Brand Name or Equivalent** means one or more manufacturers' brand names, with identifying model numbers, used in a specification to invoke certain quality, performance, and other salient characteristics needed to meet the solicitation requirements.

**Change Order** means a change in plans or specifications after the performance of a contract is begun, or if it is necessary to increase or decrease the quantity or price of work to be performed or if materials, equipment or supplies to be furnished.

**Chief Financial Officer** is the Chief Financial Officer, or a designee of the Chief Financial Officer.

**Contract Amendment** means any written alteration in specifications, delivery point, frequency of delivery, period of performance, price, quantity, or other provisions of the contract, accomplished by mutual agreement of the parties to the contract.

**City** includes all departments, utilities, commissions and boards comprising the City government.

**City Manager** is the City Manager or a designee of the City Manager.

**Commodity** means a tangible item that can be offered for trade.

**Component Purchases** means a purchase of the component parts of an item that in normal purchasing practices would be made in a single purchase.

**Construction** means the process of utilizing labor and material to build, alter, repair, improve, or demolish any structure, building or public improvement; generally, does not apply to routine maintenance, repair, or operation of existing real property.

**Cooperative Buying Agreement ("Cooperative Contract", "COOP", or "Piggy back" Agreement)** means competitively awarded contracts in accordance with Texas statutes, rules, policies, and procedures, that have been extended for the use of other government agencies and



active cooperative members. A cooperative buying agreement satisfies any state law requiring a local government to competitively source for goods or services.

**Electronic Signature** means any electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

**Historically Underutilized Business (“HUB”)** means a business that is at least 51% owned by an economically disadvantaged group (Asian Pacific American, Black American, Hispanic American, Native American and/or American woman, veterans who suffered at least 20% service-connected disability), is a for-profit entity that has not exceeded the size standards prescribed by 34 TAC §20.294, has its principal place of business in Texas, and has an owner residing in Texas with a proportionate interest that actively participates in the control, operations and management of the entity’s affairs. GC 2161 and 34 TAC § 20.282.

**Invitation for Bid (“IFB”)** means a solicitation requesting submittal of a bid in response to the required specifications. IFBs are awarded to the lowest responsible bidder meeting the specifications. Price may not be altered or negotiated.

**Invitation for Bid, Best Value (“IFB-BV”)** means a solicitation requesting submittal of a bid in response to the required specifications. An IFB-BV is awarded to the bidder that meets the specifications and provides the best value to the City. Published evaluation criteria are utilized to determine the best value; which may not necessarily be the lowest cost. Price may not be altered or negotiated.

**Maintenance services** means routine maintenance, repair and replacement of existing facilities, structures, buildings.

**NIGP Commodity/Service Codes** means the standardized national classification codes that identify goods and services.

**Negotiations** means a consensual bargaining process in which multiple parties attempt to reach an agreement on a disputed, or potentially disputed, matter.

**Offer** means a response to a solicitation that if accepted, would bind the offeror to perform the resulting contract.

**Offeror** means a person or entity who submits a response to an RFP.

**Offeror, Responsible** means an offeror who has the capability in all respects to perform fully the contract requirements, and the experience, integrity, perseverance, reliability, capacity, facilities, equipment and credit which will also assure good faith performance.





**Offeror, Responsive** means an offeror who has submitted a proposal that fully conforms in all material respects to the RFP and all of its requirements, including all form and substance.

**Procurement Agent or purchasing agent** means the manager of the Procurement Department or a designee of the manager of the Procurement Department.

**Person** means an individual, corporation, partnership, limited partnership, limited liability company, association, trust, or other legal entity.

**Personal Services** means those services other than professional services which are performed personally by the individual who contracted to perform them. Personal services may be exempt from the competitive bid process as further outlined by applicable law and this Manual.

**Planning Services** means services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.

**Preconstruction services** means advice during the design phase; does not include manager-agent services.

**Professional Services** means services performed by an individual or group of individuals who possess the education, professional certification, professional license, and/or professional registration required to perform the service. The service is usually based on intellectual qualifications as opposed to craftsmanship, involves a higher level of knowledge, and a higher order of learning, skill, and intelligence. For purposes of GC 2254, Professional Services are services within the scope of the practice, as defined by state law, of: accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising; or professional nursing; or services provided in connection with the professional employment or practice of a person who is licensed or registered as: a certified public accountant, an architect, a landscape architect, a land surveyor, a physician, including a surgeon, an optometrist, a professional engineer, state certified or state licensed real estate appraiser, interior designer, or a registered nurse.

**Proposal** means an offer submitted by a supplier in response to an RFP intended to be used as a basis to negotiate a contract.

**Public Works** means constructing, altering, or repairing a public building or the construction or completion of a public work.

**Qualified Products List** means an approved list of supplies, services, or construction items described by model or catalog numbers, which prior to competitive solicitation, the requesting City department has determined will meet the applicable specification requirements.





**Reciprocal law (in bid evaluation)** means if a nonresident bidder's home state grants a preference to its resident bidders, an equal penalty is added to the nonresident bidder's proposal when bidding in Texas. The action is opposite; a preference becomes a penalty, but the amount is equal. Texas law prohibits cities from awarding contracts to a non-resident firm unless the amount of such a bid is lower than the lowest bid by a Texas resident by the amount the Texas resident would be required to underbid in the non-resident bidders' state.

**Request for Information ("RFI")** means an information gathering tool used when a purchaser cannot clearly identify product requirements/specifications or seeks input as to a potential project or plan.

**Request for Proposal ("RFP")** means a solicitation requesting submittal of a proposal in response to the required scope of services that usually includes some form of a cost proposal. An RFP requires published evaluation criteria. Price may be negotiated with firms to ensure the best value for the organization.

**Request for Qualifications ("RFQ")** means a solicitation requesting a statement of qualification from individuals or firms which demonstrates competence and qualifications for the type of professional services to be performed at fair and reasonable prices.

**Respondent** means a person or entity which submits a response to a solicitation.

**Retainage** means the part of a public works contract payment withheld by the City to secure performance of the contract.

**Reverse Auctions** means a real-time bidding procedure that is conducted at a pre-scheduled time in which multiple suppliers, anonymous to each other, submit bids for designated goods and services.

**Scope of Work ("SOW")** means a written description of the contractual requirements for materials or services contained within a RFP. The SOW can be compared to specifications within an Invitation for Bid. SOW should establish a clear understanding of what is needed, encourage competition, satisfy the departmental need, and provide the best value for the citizens.

**Separate Purchase** means separating purchases that normally would be made in a single purchase.

**Sequential Purchase** means making purchases over a period of time that normally would be made in a single purchase.

**Sole Source** means a good or service available from one source. The procurement is usually used for goods or services protected by patents, copyrights, secret processes, natural monopolies, or captive replacement parts.



**Solicitation** means the process of notifying prospective vendors of an opportunity to provide goods or services to the City. Depending on the circumstances, solicitations may be conducted via telephone, fax, mail, e-mail, or in person.

**Specification** means any description of the physical, functional, or performance characteristics, or of the nature of a supply, service or construction item. A specification includes, as appropriate, requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

**Statement of Work** means the statement outlining the specific services a contractor is expected to perform, generally indicating the type, level and quality of service, as well as the time schedule required.

**Supplier** means a seller of commodities and/or services, also known as a vendor.

### **3.0 METHODS AND THRESHOLDS FOR SOURCE SELECTION – GOODS AND SERVICES**

The following sections outline the methods of source selection available to procure goods and services for the City. They also established when each method may be used, the key requirements of each method, the manner of award and the authority to award. Purchase requirements shall not be divided so as to constitute a Micro Purchase or Small Purchase under this Section. This section does not apply to procurements that have another method or delegated authority approved by City Council.

#### **3.1 MICRO PURCHASES (GOODS AND SERVICES UNDER \$3,000)**

A Micro Purchase is a purchase of goods and services up to \$3,000. A Micro Purchase is an informal purchase and may be solicited through a Request for Quotation process. A minimum of one Request for Quotation is required to process a purchase order. Whenever possible, quotes should be solicited from local service and supply providers. Request for Quotations may be issued to suppliers by the using department. A response to a Request for Quotation may be an electronic quote or a hard copy quote. Procurement Cards (“P-Cards”) may be used to source Micro Purchases and shall be done in compliance with the Denton Procurement Card Manual. Before making a purchase, active contracts should be reviewed to verify desired products or services are not available to purchase on contract.

The issuance of Sequential Purchases, Component Purchases, or Separate Purchase to circumvent the formal competitive process is a violation of state law and may be cause for disciplinary action.



### **3.2 SMALL PURCHASES (GOODS AND SERVICES BETWEEN \$3,000 - \$100,000)**

A Small Purchase is a purchase for goods and services between \$3,000 and \$100,000. A Small Purchase is an informal purchase and may be solicited through a Request for Quotation process. Request for Quotations may be issued to suppliers by the relevant department. A response to a Request for Quotation may be an electronic quote or a written quote. Unlike Micro Purchases, Small Purchases require three quotes whenever practicable. The following requirements also apply to Small Purchases:

- (a) Opportunity to quote should be extended to at least two HUBs registered in Denton County. The state maintains a database of HUBs at <https://mycpa.cpa.state.tx.us/tpasscmlsearch/tpasscmlsearch.do>. If no HUBs are registered in Denton County, the Small Purchase is exempt from this requirement. A non-response to Request for Quotation is considered a quotation for this purpose provided the HUB was given a reasonable time (3-5 business days) to respond. Exceptions to this guideline may include sole source or emergency purchase.
- (b) Departments using this process are encouraged to consult with their Procurement representative for assistance in locating suppliers when they are unable to obtain at least three price quotations. All departments should endeavor to promote fair and open competition for every purchase and to secure the best value, and the highest quality goods or services at the lowest possible cost.
- (c) Quotations received from vendors shall not be divulged to other bidders until after the award has been made.
- (d) Before making a purchase, active contracts should be reviewed to verify desired products or services are not available to purchase on contract.

The intentional issuance of Sequential Purchases, Component Purchases, or Separate Purchases to circumvent the formal competitive process is a violation of state law and may be cause for disciplinary action.

### **3.3 AUTHORITY AND AWARD - MICRO AND SMALL PURCHASES**

Award of Micro and Small Purchases shall be made to the responsible respondent, whose offer is most advantageous to the City and conforms in all material respects to the Micro and Small Purchase requirements. The associated documentation shall be maintained by the department as a public record.

The Procurement Agent must approve Micro and Small Purchases and will be responsible for issuing a purchase order for the good or service, unless otherwise authorized in this Manual or unless authorization to purchase with a P-Card has been provided by Procurement through issuance of a P-Card.

### **3.4 FORMAL SOURCING METHODS (GOODS AND SERVICES OVER \$100,000)**

#### **OVERVIEW**



Formal Threshold Amounts	Type of Solicitation	Approval Required From
Over \$100,000	IFB, RFP	City Council*

\*Purchases for Utilities or using Utilities funds may also require approval by the Public Utilities Board

The purchase of goods and services over \$100,000 shall be made through one of the following sourcing methods:

- (a) competitive sealed bidding (Invitation for Bid– IFB; Invitation for Bid, Best Value - IFB-BV)
- (b) competitive sealed proposals (Request for Proposal – RFP)
- (c) sole source procurement
- (d) emergency purchase
- (e) competitive reverse auction

Formal sourcing methods are managed by Procurement with the assistance of the appropriate department(s). Exceptions to the formal sourcing methods are listed in Section 1.4 as authorized by LGC 252.022.

### **3.5 COMPETITIVE SEALED BIDS - INVITATION FOR BID (GOODS AND SERVICES OVER \$100,000)**

*Application of Method* - Competitive sealed bids shall be solicited through an IFB. The IFB shall include specifications, any applicable criteria, terms and conditions.

*Pre-Qualification* - A pre-qualification process may be conducted prior to the issuance of an IFB in order to establish a list of qualified bidders. In the event a pre-qualification process is used, Procurement shall only consider bids that are submitted from pre-qualified bidders.

*Public Notice* - All IFBs are required to advertise a notice of the date, time and place at which bids will be publicly opened and read aloud. The legal notice must be published at least once a week for two consecutive weeks in a newspaper published in the municipality. Notice of the IFB shall also be electronically posted and the IFB shall be available for public inspection. The first published notice shall be made before the fourteenth (14th) day before the date set for the opening of bids. If the opening date changes, notice shall be made before the fourteenth (14th) day before the new opening date. The public notice shall state the place, date, and time of bid opening.

*Late bids* - A bid is late if it is received by Procurement after the time and date set for bid closing designated in the IFB. A late bid shall be rejected. A late bid shall not be opened except for, if necessary, identification purposes. Such bids may be returned to the bidder.

*Bid Opening* - Bids shall be opened publicly at the time and place designated in the IFB. The name of each bidder and the amount of each bid, as well as other relevant information as the Procurement Agent deems appropriate shall be recorded. Unless otherwise determined by the Procurement Agent, this record shall be open to public inspection. In the event no attendees are present for bid opening, the sealed bids shall be opened by the Procurement department and a “bid” or “no bid” may be recorded on the tabulation sheet. The bid may then be given to the appropriate person for recording. The attendance sheets will indicate that there were no attendees present. After final



execution of the contract, the bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with this Manual.

*Bid acceptance and bid evaluation* - Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Manual. Bids shall be evaluated based on the requirements set forth in the IFB, which may include criteria to determine acceptability such as inspection, testing, safety, quality, workmanship, delivery, and suitability for a particular purpose. The IFB shall set forth the criteria to be used. No criteria may be used that is not set forth in the IFB.

*Correction or withdrawal of bids before bid opening* - Bids may be withdrawn at any time prior to the bid opening. Bids may be modified at any time prior to the due date and time, and mistakes discovered before bid opening may be modified by written notice received in Procurement prior to the time set for bid opening.

*Mistakes and Withdrawals after bid opening; cancellation of awards* - A bid that has been opened may not be modified for the purpose of correcting an error in the bid price. Mistakes discovered after bid opening but before bid award may be withdrawn only to the extent that the bidder can show that the mistake is of so great a consequence that to enforce the bid as made would be unconscionable, the mistake relates to a material feature of the bid, and the withdraw does not result in prejudice to the City except for the loss of the bargain. After bid opening but before bid award, modifications to bid provisions (other than pricing) made by mistake may be permitted by the City if not prejudicial to the interest of the City and does not provide an unfair advantage to a bidder.

All decisions to permit the correction or withdrawal of bids, or to cancel awards based on bid mistakes, shall be supported by a written determination made by the Procurement Agent. Only the City Council may reject any and all bids.

### **3.6 BEST VALUE PROCUREMENT (GOODS AND SERVICES OVER \$100,000)**

*Application of Method* – As an alternative to the IFB defined in Section 4.5, an IFB-BV may be solicited using an IFB process, as defined in Section 4.5, with certain exceptions. The exception is that an IFB-BV must be solicited and evaluated based upon a best value analysis provided that the criteria for analysis was included in the IFB-BV. In determining the best value for the City, the City may consider the following evaluation criteria:

- (a) the purchase price;
- (b) the reputation of the bidder and of the bidder's goods or services;
- (c) the quality of the bidder's goods or services;
- (d) the extent to which the goods or services meet the municipality's needs;
- (e) the bidder's past relationship with the municipality;



- (f) the impact on the ability of the municipality to comply with laws and rules relating to contracting with HUBs and nonprofit organizations employing persons with disabilities;
- (g) the total long-term cost to the municipality to acquire the bidder's goods or services; and
- (h) any relevant criteria specifically listed in the request for bids or proposals.

All other conditions of the IFB process outlined in Section 4.5 shall apply for the IFB-BV.

### **3.7 AWARD AND APPROVALS – INVITATION FOR BIDS AND BEST VALUE PROCUREMENT**

*Award of Invitation for Bid* - Award of an IFB shall be made by appropriate notice to the lowest responsive, responsible bidder whose bid conforms in all material respects to requirements and criteria set forth in the IFB.

*Award of Best Value Procurement* – Award of the IFB-BV may be awarded on best value analysis provided that the criteria for analysis was included in the IFB-BV. The contract shall be awarded by appropriate written notice to the responsive, responsible bidder whose bid is determined to be the best value to the City and that conforms in all material respects to requirements and criteria set forth in the IFB-BV.

*Low tie bids* - If there are two (2) or more low responsive bids from responsible bidders that are identical in price and other evaluation criteria and that meet all the requirements and criteria set forth in the invitation for bids, award must be made to a resident of the City, otherwise shall be made by the casting of lots.

*Award Approvals* - Awards of IFBs and IFB-BVs exceeding \$100,000 shall be routed through the appropriate reviewing board, commission or committee as applicable in advance of City Council consideration.

### **3.8 COMPETITIVE SEALED PROPOSALS – REQUEST FOR PROPOSALS (GOODS AND SERVICES OVER \$100,000)**

*Application of Method* - Competitive sealed proposals shall be solicited through an RFP. The RFP shall include a scope of work, applicable evaluation criteria, terms and conditions.

*Pre- Qualification* - A pre-qualification process may be conducted prior to the issuance of an RFP in order to establish a list of qualified offerors. In the event a pre-qualification process is used, Procurement shall only consider proposals that are submitted from pre-qualified offerors.

*Public notice* - Notice of RFP shall set forth the date, time and place upon which the proposals will be due. Legal notice must be published at least once a week for two consecutive weeks in a newspaper published in the municipality. Notice shall be electronically posted and the RFP shall be available for public inspection. The first published notice shall be made before the fourteenth





(14th) day before the date set for the opening of bids. If the opening date changes, notice shall be made before the fourteenth (14th) days before the new opening date.

*Late proposals* - A proposal is late if it is received by Procurement after the time and date set for closing designated in the RFP. A late proposal shall be rejected. A late proposal shall not be opened except for, if necessary, identification purposes. Such proposals may be returned to the offeror.

*Receipt of proposals* - Unless otherwise required by law or the RFP, proposals shall not be opened or handled in a manner as to permit disclosure of the contents of any proposal to competing offerors. Proposals shall be open for public inspection after the contract is awarded, except to the extent that the withholding of information is permitted or required by law such as trade secrets and confidential information. If the offeror designates a portion of its proposal as confidential, it shall isolate and identify in writing the confidential portions in accordance with this Manual.

*Correction or withdrawal of proposals before proposal opening* - Proposals may be withdrawn at any time prior to the proposal opening. Proposals may be modified at any time prior to the due date and time, and mistakes discovered before proposal opening may be modified by written notice received in Purchasing prior to the time set for proposal opening.

*Revisions, Mistakes and Withdrawals after proposal opening; cancellation of awards* – The City may permit revisions to proposals after submission and before the award of the contract to obtain the best final offers. A proposal that has been opened may not be modified by the offeror for the purpose of correcting an error in the price. Mistakes discovered after proposal opening but before award may be withdrawn only to the extent that the offeror can show that the mistake is of so great a consequence that to enforce the proposal as made would be unconscionable, the mistake relates to a material feature of the proposal, and the withdraw does not result in prejudice to the City except for the loss of the bargain. After proposal opening but before award, modifications to proposal provisions (other than pricing) made by mistake may be permitted by the City if not prejudicial to the interest of the City and does not provide an unfair advantage to an offeror.

All decisions to permit the withdrawal of a proposal after opening shall be supported by a written determination made by the Procurement Agent. Only the City Council may reject any and all proposals.

*Evaluation criteria* - The RFP shall state the criteria to be used in the evaluation of the proposals and shall include their relative importance. No other factors or criteria may be used in the evaluation. City Council designates authority to Procurement to select evaluation criteria in accordance with LGC 252.

*Evaluation Committee* - A committee may be formed to evaluate each proposal using the criteria as defined within the RFP. The use of a committee is recommended for complex, large expenditures, or when multiple proposals are received. This committee will consist of a diverse group of City staff, and consultants when applicable. Committee members are selected by the using department and/or Procurement on the basis of their knowledge of the particular project being



developed and/or of their knowledge of the particular field involved. Procurement participates, as a non-voting member, to provide oversight, guidance and assistance as needed. Procurement may remove evaluation team members if a conflict of interest arises. Conflicts of interests must be documented in accordance with the City of Denton Employee Ethics Policy (Reference No. 10.0), as amended (“Ethics Policy”).

*Discussion with Offerors* – Discussions, or negotiations, may be conducted with offerors in accordance with the terms of the RFPs and the Centralized Purchasing Policy, which constitutes regulations adopted by the City Council under LGC 252.042(b). Offerors shall be accorded fair and equal treatment in conducting discussions and revision of proposals, and there shall be no disclosure of any information derived from proposals submitted by competing offerors.

- (a) Concurrent negotiations. Negotiations may be conducted concurrently with offerors for the purpose of determining source selection and/or contract award.
- (b) Exclusive negotiations. Exclusive negotiations may be conducted with the offeror whose proposal is determined in the source selection process to be most advantageous to the City considering the relative importance of price and other evaluation factors included in the RFP. Exclusive negotiations may be conducted subsequent to concurrent negotiations or may be conducted without requiring previous concurrent negotiations. Exclusive negotiations shall not constitute a contract award nor shall it confer any property rights to the successful offeror. If exclusive negotiations are conducted and an agreement is not reached, the City may enter into exclusive negotiations with the next highest ranked offeror or concurrent negotiations without the need to repeat the formal solicitation process.

### **3.9 AWARD AND APPROVALS – REQUEST FOR PROPOSALS**

*Contract award* - Contract award shall be made to the responsible offeror whose proposal is determined to be the most advantageous to the City taking into consideration the evaluation criteria set forth in the RFP. The contract file shall contain the basis in writing on which the award determination is made.

*Award Approvals* - Awards of RFPs exceeding \$100,000 shall be routed through the appropriate reviewing board, commission, or committee as applicable in advance of City Council consideration.

### **3.10 SOLE SOURCE PROCUREMENT**

*Application of Method* - A sole source procurement is the acquisition of a good, service, professional service or public work in which there is only one source.

The department requesting a sole source procurement shall provide written evidence to support a sole source determination. A sole source written justification, signed by the department director and the Purchasing Manager, is required, explaining and fully describing the conditions which make the supplier the only source for a given commodity or service. Written documentation may





include documentation from the manufacturer of the product or service provider on company letterhead as evidence to the sole source nature of the product or service. Sole source procurements may include, but are not limited to:

- (a) patents, copyrights, secret processes, or natural monopolies;
- (b) films, manuscripts, or books;
- (c) gas, water, and other utility services;
- (d) captive replacement parts or components for equipment;
- (e) books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and
- (f) management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits;

*Negotiation and Award* - The Procurement Agent may require that negotiations are conducted as to price, delivery, and terms. The Procurement Agent may require the submission of cost or pricing data in connection with an award under this Section. Sole source procurement shall be avoided, except when no available alternative sources exist. The sole source justification form shall be maintained as a public record.

Sole source procurements require the approval of the City Council for purchases over \$100,000.

### **3.11 EMERGENCY PURCHASES**

*Application of Method* - Notwithstanding any other provisions of this Manual, City staff or the Procurement Agent may make or authorize others to make emergency procurements of goods, services, professional services or public works when a public calamity requires immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality, or to protect public health, welfare, or safety, or necessary because of unforeseen damage to public machinery or property.

The department requesting an emergency procurement shall provide written evidence and justification to support an emergency determination. An emergency procurement shall be limited to those good, services, professional services, or public works necessary to satisfy the emergency need.

*Negotiation and Award* - The Procurement Agent may require that negotiations are conducted as to price, delivery, and terms. The Procurement Agent may require the submission of cost or pricing data in connection with an award under this Section. Emergency procurements shall be avoided, except when no reasonable alternative approach exist. A written determination by the department director of the basis for the emergency procurement and for the selection of the particular contractor and signed by the Purchasing Manager and other departments as determined by the Purchasing Manager, shall be maintained as a public record. The determination and the award shall be made in accordance with internal departmental procedures ensuring that the procurement is fair, honest, prudent, a wise exercise of discretion and is in the public interest.



Emergency purchases require ratification of the purchase by City Council, and any other applicable board, commission, or committee for expenditures exceeding \$100,000.

### **3.12 COMPETITIVE REVERSE AUCTION – INVITATION TO REVERSE AUCTION**

*Application of Method* – A Reverse Auction is solicited with an Invitation to Reverse Auction (“ITRA”). The ITRA shall be issued and shall include specifications and any applicable evaluation criteria. Contractual terms and conditions may be included within the solicitation document or incorporated by reference.

*Pre-Qualification* - A prequalification process may be conducted prior to the issuance of an ITRA in order to establish a list of qualified bidders. In the event a prequalification process is used, Procurement shall only consider bids that are submitted from prequalified bidders.

*Public notice* - Notice of the ITRA shall be electronically posted and the ITRA shall be available for public inspection not less than fourteen (14) days prior to the date set forth therein for the close of the auction. A shorter time may be deemed necessary for a particular procurement as determined in writing by the Procurement Agent. The public notice shall state the location of the internet website hosting the Reverse Auction.

*Bid acceptance and bid evaluation* - Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Manual. Bids shall be evaluated based on the requirements set forth in the ITRA, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. The ITRA shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that is not set forth in the ITRA.

*Correction or withdrawal of bids before auction closing* - Bids may be withdrawn at any time prior to the auction closing. Bids may be modified at any time prior to the auction closing, and mistakes discovered before auction closing may be modified by written notice received in Procurement prior to the time set for auction closing.

*Mistakes and Withdrawals after auction closing; cancellation of awards* – After auction closing, a bid may not be modified for the purpose of correcting an error in the bid price. Mistakes discovered after auction closing may be withdrawn only to the extent that the bidder can show that the mistake is of so great a consequence that to enforce the bid as made would be unconscionable, the mistake relates to a material feature of the bid, and the withdraw does not result in prejudice to the City except for the loss of the bargain. After auction closing but before bid award, modifications to bid provisions (other than pricing) made by mistake may be permitted by the City if not prejudicial to the interest of the City and does not provide an unfair advantage to a bidder.

All decisions to permit the correction or withdrawal of bids, or to cancel awards based on bid mistakes, shall be supported by a written determination made by the Procurement Agent.



*Contract award* - The contract shall be awarded by appropriate notice to the lowest responsible bidder whose bid conforms in all material respects to requirements and criteria set forth in the ITRA.

### **3.13 CANCELLATION OF SOLICITATIONS**

*General* - Any IFB, IFB-BV, RFP, RFQ, ITRA, or other solicitation process initiated under this Manual may be cancelled prior to opening or after opening when it is in the best interest of the City.

*Cancellation of solicitations prior to opening* -

- (a) As used in this Section, “opening” means the date and time set for opening of bids, receipt of statements of qualifications or receipt of proposals in competitive sealed proposals or in the case of a reverse auction means the date and time set for the auction close.
- (b) Prior to opening, a solicitation may be cancelled in whole or in part when the Procurement Agent determines that such action is in the City’s best interest for reasons including, but not limited to:
  - i. The City no longer requires the materials, services, or construction;
  - ii. The City no longer can reasonably expect to fund the procurement;
  - iii. Proposed amendments to the solicitation would be of such magnitude that a new solicitation is in the best interest of the City; or
  - iv. It is otherwise not advantageous to the City.
- (c) When a solicitation is cancelled prior to opening, notice of cancellation shall:
  - i. Identify the solicitation;
  - ii. Briefly explain the reason for cancellation; and
  - iii. Where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar materials, services, or construction.

*Cancellation of solicitation after opening but prior to award* - After opening but prior to award, a solicitation must be formally rejected by City Council.

*Documentation* - The reasons for cancellation shall be made a part of the procurement file and shall be available for public inspection.

### **3.14 REJECTION OF INDIVIDUAL BIDS, PROPOSALS, STATEMENTS OF QUALIFICATIONS OR REVERSE AUCTION**

A bid may be rejected if:

- (a) The bidder is determined to be not be a responsible bidder pursuant to this Manual;
- (b) The bid is cancelled after opening;
- (c) The bidder is not responsive in accordance with this Manual;
- (d) The proposed price exceeds available funds or is unreasonable; or
- (e) It is otherwise not advantageous to the City.



A proposal, statement of qualifications, or reverse auction bid may be rejected if:

- (a) The person responding to the solicitation is determined to not be responsible pursuant to this Manual (responsibility of bidders, offerors and respondents);
- (b) The proposal, statement of qualifications, or reverse auction bid is cancelled;
- (c) It is not responsive pursuant to this Manual;
- (d) The proposed price exceeds available funds or is unreasonable; or
- (e) It is otherwise not advantageous to the City.

City Council must approve any rejections of bids, proposals, or statements of qualifications. The reasons for rejection shall be made a part of the procurement file and shall be available for public inspection.

### **3.15 RESPONSIBILITY OF BIDDERS, OFFERORS AND RESPONDENTS**

*Findings of non-responsibility* - If a bidder, offeror, or respondent who otherwise would have been awarded a contract is found not responsible, a written finding of non-responsibility, setting forth the basis of the finding, shall be prepared by the Procurement Agent. The unreasonable failure of a bidder, offeror, or respondent to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a finding of non-responsibility with respect to such bidder or offeror. The written finding shall be made part of the contract file and be made a public record.

*Right of non-disclosure* - Confidential information furnished by a bidder, offeror, or respondent in response to an inquiry of responsibility pursuant to this Manual shall not be disclosed by the City outside of the department, using agency, or individuals involved in the evaluation process without prior written consent by the bidder, offeror, or respondent unless required to be disclosed in accordance with GC 552 or other applicable law. Confidential information shall be identified and managed in accordance with this Manual.

*Factors* - Factors to be considered in determining if a prospective contractor is responsible include, but is not limited to:

- (a) The proposed contractor's financial, physical, personnel, or other resources, including subcontracts;
- (b) The proposed contractor's record of performance and integrity;
- (c) Whether the proposed contractor is qualified legally to contract with the City;
- (d) Whether the proposed contractor supplied all necessary information concerning its responsibility; and
- (e) Safety record of the contractor.

*Safety Record Evaluation* – Pursuant to LGC 252.0435, the City Council adopts the following criteria for determining the safety record of a bidder to determine whether a bidder is responsible. The City may consider the safety record of the bidders in determining the responsibility thereof. The City may consider any incidence involving worker safety or safety of the residents of the City,



be it related or caused by environmental, mechanical, operational, supervision or any other cause or factor. Specifically, the City may consider:

- (a) Complaints to, or final orders entered by, the Occupational Safety and Health Review Commission (OSHRC), against the bidder for violations of OSHA regulations within the past three (3) years.
- (b) Citations (as defined below) from an Environmental Protection Agency (as defined below) for violations within the past five (5) years. Environmental Protection Agencies include, but are not necessarily limited to, the U.S. Army Corps of Engineers (USACOE), the U.S. Fish and Wildlife Service (USFWS), the Environmental Protection Agency (EPA), the Texas Commission on Environmental Quality (TCEQ), the Texas Natural Resource Conservation Commission (TNRCC) (predecessor to the TCEQ), the Texas Department of Health (TDH), the Texas Parks and Wildlife Department (TPWD), the Structural Pest Control Board (SPCB), agencies of local governments responsible for enforcing environmental protection or worker safety related laws or regulations, and similar regulatory agencies of other states of the United States. Citations include notices of violation, notices of enforcement, suspension/revocations of state or federal licenses or registrations, fines assessed, pending criminal complaints, indictments, or convictions, administrative orders, draft orders, final orders, and judicial final judgments.
- (c) Convictions of a criminal offense within the past ten (10) years, which resulted in bodily harm or death.
- (d) Any other safety related matter deemed by the City Council to be material in determining the responsibility of the bidder and the ability of the bidder to perform the services or goods required by the bid documents in a safe environment, both for the workers and other employees of bidder and the residents of the City, and such determination should not be arbitrary or capricious.

*Responsibility criteria* - The Procurement Agent may establish specific responsibility criteria for a particular procurement. Any specific responsibility criteria shall be set forth in the solicitation.

### **3.16 BID AND CONTRACT SECURITY FOR MATERIAL OR SERVICE CONTRACTS**

The Procurement Agent may require the submission of security to guarantee faithful bid and contract performance. In determining the amount and type of security required for each contract, the Procurement Agent shall consider the nature of the performance and the need for future protection to the City. The requirement for security must be included in the solicitation. Failure to submit security in the amount and type of security required may result in the rejection of the bid or proposal.

### **3.17 MULTI-TERM CONTRACTS**

Unless otherwise provided by law, a contract for goods, services, professional services or public works may be entered into for any period of time deemed to be in the best interest of the City, if the term of the contract and conditions of renewal or extension, if any, are included in the



solicitation and monies are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of monies.

### **3.18 RIGHT TO INSPECT AND RIGHT TO AUDIT RECORDS**

The City may, at reasonable times, inspect the part of the plant or place of business of a contractor, consultant or any subcontractor or subconsultant that is related to the performance of any contract awarded or to be awarded by the City.

The City may, at reasonable times and places, audit the books and records of any person who submits cost or pricing data as provided in this Manual to the extent that the books and records relate to the cost or pricing data. Any person who is awarded a contract, change order or contract modification for which cost, or pricing data is required shall maintain the books and records that relate to the cost or pricing data for three (3) years from the date of final payment under the contract, unless otherwise specified in the contract.

The City is entitled to audit the books and records of a contractor, consultant or any subcontractor or subconsultant under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract. The books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contractor or consultant, and by the subcontractor or subconsultant for a period of three (3) years from the date of final payment under the subcontract, unless otherwise specified in the contract. All contractors, consultants, subcontractors, and subconsultants participating in City contracts are required to cooperate fully and promptly with the City in reviews, investigations and other requests for information that are related to the performance of any contract awarded or to be awarded by the City.

### **3.19 REPORTING OF ANTICOMPETITIVE PRACTICES**

If for any reason collusion or other anticompetitive practices are suspected among any bidders, offerors or respondents, a notice of the relevant facts shall be transmitted to the Procurement Agent and the City Attorney. This Section does not require a law enforcement agency conducting an investigation into such practices to convey such notice to the Procurement Agent.

### **3.20 PROSPECTIVE VENDOR DATABASES**

Procurement shall maintain a prospective vendor database. Inclusion of the name of a person shall not indicate whether the person is responsible concerning a particular procurement or otherwise capable of successfully performing a City contract.

Persons desiring to be included in the prospective vendor database may register with Procurement electronically. Procurement may remove a person from the prospective vendor database if it is determined that inclusion is not advantageous to the City.





It shall be the vendor's sole responsibility to ensure that vendor registration information is current and active.

### **3.21 CERTIFICATE OF INTERESTED PARTIES**

Potential bidders and offerors interested in doing business with the City must submit a disclosure of interested parties to the City prior to receiving a contract award by the City Council. The business entity must complete a Form 1295 provided by the Texas Ethics Commission ([www.ethics.state.tx.us](http://www.ethics.state.tx.us)) and file with the City. The City must notify the Texas Ethics Commission not later than the 30th day after the date the contract binds all parties to the contract.

### **3.22 CONTRACTOR DEBRIEFING**

Upon completion of a formal solicitation process, Procurement may, upon request, meet with unsuccessful parties in the solicitation process to permit viewing of the contract file and to permit an opportunity for unsuccessful parties to gain a better understanding regarding perceived deficiencies contained within their submitted proposal. Procurement shall not provide any information considered confidential or additional information on the process beyond information recorded in the contract file.

### **3.23 DEMONSTRATIONS**

All demonstrations or product testing should include a written contract detailing the arrangement. All agreements for demonstrations of products must be approved by the City Attorney, Risk Management, and the City Manager. These agreements can be executed by the City Manager without further City Council approval.

### **3.24 TECHNOLOGY SERVICES PROCUREMENTS**

All computer equipment, software, printers, wireless cards, monitors, scanners, cell phones, GIS related product, or any items that will be used on the City network, or items related to the telephone system or require access to the City network must be purchased through Technology Services. Data entry input devices and computer accessories including, but not limited to, mice, keyboards, headsets, cameras, USB Hubs, and Bluetooth devices can be purchased directly by the department.

Software is unique and therefore departments have the discretion to decide what software best satisfies their needs based upon the features of a specific software package. For some software, enhancements, upgrades, and maintenance are only available through the owner/provider/vendor of the software and may be considered a sole source. The sole source justification is only applicable up to the Business Function Analysis and each re-assessment timeline as outlined in the Technology Purchasing SOP.



<https://codenton.sharepoint.com/sites/TechServices/Policies%20and%20Procedures/Forms/TS%20Default%20View.aspx?id=%2Fsites%2FTechServices%2FPolicies%20and%20Procedures%2FAdministrative%20Policy%204%20%2D%20Technology%20Procurement%20SOP%2Epdf&parent=%2Fsites%2FTechServices%2FPolicies%20and%20Procedures>

#### **4.0 SPECIFICATIONS**

##### **4.1 MAXIMUM PRACTICABLE COMPETITION**

All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the City's needs and shall not be unduly restrictive. To the extent practicable and unless otherwise permitted by this Manual, all specifications shall describe the City's requirements in a manner that does not unnecessarily exclude a good, service, professional service, or public work.

Restrictive specifications shall not be used unless such specifications are required and it is not practicable or advantageous to use a less restrictive specification. The department requesting a restrictive specification shall provide written evidence to support the restrictive specification. Past success with the good or performance of the service, or inconvenience of developing specifications do not justify the use of restrictive specifications.

To the extent practicable, the City shall use accepted commercial specifications and shall procure standard commercial materials.

##### **4.2 SPECIFICATIONS PREPARED BY OTHER THAN CITY PERSONNEL**

The requirements of this Manual regarding the purposes and non-restrictiveness of specifications shall apply to all specifications prepared other than by City personnel, including, but not limited to, those prepared by architects, engineers, designers, and consultants for public contracts, or subcontractors. No person preparing specifications shall receive any direct or indirect benefit from the utilization of such specifications and is prohibited in responding to the related solicitation.

##### **4.3 BRAND NAME OR EQUAL SPECIFICATION**

A brand name or equal specification may be used to describe the standards of quality, performance, and other salient characteristics needed to meet the requirements of a solicitation, and which invites offers for equivalent products from a manufacturer.

*Standardization* - A specification may be used to identify the acceptable item that meets the City's needs for purchases in this Manual. The department requesting standardized specification shall provide written evidence to support the standardization determination. A written determination by the Procurement Agent of the basis for the standardization shall be maintained as public record. Past success with a good or performance, traditional purchasing practices, or inconvenience of drawing specifications do not justify the use of a standardization specification.





## **5.0 PROCUREMENT OF PROFESSIONAL SERVICES**

### **5.1 OVERVIEW**

Threshold Amounts	Type of Solicitation	Approval Required From
Under \$100,000	Informal Request for Qualification	Procurement / City Manager
Over \$100,000	Formal Request for Qualification	City Council*

\*Purchases for Utilities or using Utilities funds may also require approval by the Public Utilities Board

### **5.2 GENERAL OVERVIEW AND APPLICABILITY**

Providers of professional services are selected and awarded based upon demonstrated competence and qualifications. A contract is awarded on the basis of a fair and reasonable price. Professional fees under the contract should generally be consistent with the recommended practices and fees published by the applicable professional association. Fees may not exceed any maximum provided by law. The determination of an acceptable negotiated fee amount may be made with the assistance of a qualified staff professional that is experienced in these matters.

### **5.3 INFORMAL SOURCING METHOD – INFORMAL REQUEST FOR QUALIFICATIONS (PROFESSIONAL SERVICES UNDER \$100,000, EXCLUDING THOSE PROFESSIONAL SERVICES SUBJECT TO GC 2254.004)**

*Application of Method* - After consideration of the various anticipated costs, complexity and other relevant issues affecting a project, the department may solicit proposal(s) from qualified professional(s) or professional firms for professional services under \$100,000 that are not subject to GC 2254.004. This selection may be done through an informal RFQ. Professional services below \$100,000 which are deemed complex or involve complex issues are encouraged to be sourced through a formal RFQ as described in Section 6.4.

The department may utilize an evaluation committee or may use a qualified individual to evaluate statements of qualifications submitted in response to the informal RFQ. The individual or committee will select the most qualified individual or firm capable of performing the service on the basis of demonstrated competence and qualifications. The department may then enter into negotiations with the selected individual or firm to establish fair and reasonable rates for the professional service.

### **5.4 FORMAL SOURCING METHOD – REQUEST FOR QUALIFICATIONS (PROFESSIONAL SERVICES \$100,000 AND OVER, AND ALL PROFESSIONAL SERVICES SUBJECT TO GC 2254.004 AT ANY DOLLAR AMOUNT)**

*Application of Method* - Professional services for \$100,000 and over, or professional services below \$100,000 deemed to be more complex or subject to GC 2254.004, shall be solicited through



a two-step Request for Qualification (RFQ) process, except as otherwise provided for in 4.10 (sole source procurement) and 4.11 (emergency procurements). The City shall award and administer contracts for professional services in accordance with the requirements of applicable Texas statutes and this Manual.

Departments are encouraged to seek qualifications for indefinite quantity professional services contracts at least every five years to help ensure diversity in the selection of professional services by the City. These contracts shall be for a set time period (a set number of years or annual renewals up to a set number of years) with a maximum not-to-exceed amount.

*Pre- Qualification* - A pre-qualification process may be conducted prior to the issuance of an agreement in order to establish a list of qualified professionals. In the event a pre-qualification process is used, the Procurement Agent may consider qualifications of professionals that are prequalified for specific projects.

*Two-Step Request for Qualifications Process* - The City shall follow a two-step RFQ process for awarding Professional Services. The first step involves issuing an RFQ for the professional service. The RFQ shall contain sufficient information to inform potential professional service providers as to the type of project, the scope of services to be performed, the selection criteria to be used and terms and conditions of the subsequent contract. A statement of qualifications shall be submitted in response to the RFQ. The statement of qualifications shall include all information requested in the RFQ and sufficient for the City to determine qualifications of the individual or firm.

Upon evaluating the statement of qualifications, a decision shall be made as to the most highly qualified respondent based upon the published evaluation criteria. The second step of the RFQ process will involve conducting discussions with the most highly qualified respondent to establish fair and reasonable rates for the professional service.

*Public notice* - Notice of RFQs shall set forth the date, time and place upon which the statement of qualifications will be due. Notice must be published at least once a week for two consecutive weeks in a local newspaper. The first published notice shall be made before the fourteenth (14th) day before the date set for the opening of bids. Notice shall be electronically posted and the RFQ shall be available for public inspection. A shorter time may be deemed necessary for a particular procurement as determined in writing by the Procurement Agent.

*Late proposals* - A statement of qualifications is late if it is received at the location designated in the RFQ after the time and date set for receipt of statements of qualifications. Late statements shall be rejected.

*Receipt of Statements* - Statements of qualifications shall not be opened publicly. No statements shall be handled as to permit disclosure of the contents to competing respondents. Statements shall be open for public inspection after a notice of intent to award is issued, or in the absence of a notice of intent to award, after final execution of the contract, except to the extent that the withholding of information is permitted or required by law. If the respondent designates a portion of its statements



as confidential, it shall isolate and identify in writing the confidential portions in accordance with this Manual.

*Withdrawal of Statements* - Statements may be withdrawn by written notice before or after statement opening and may be permitted where appropriate. All decisions to permit the withdrawal of a statement after opening shall be supported by a written determination made by the Procurement Agent.

*Evaluation* - The RFQ will give the relative importance, or weighting, assigned to each of the criteria to be used in the selection process. The following general criteria may be used, but the RFQ is not necessarily limited to these criteria:

- (a) The provider's experience in successfully performing similar assignments, scope and size, for others.
- (b) The provider's current staff, both size and related experience, is qualified to provide the desired services.
- (c) Whether or not sufficient finances and other resources are available to accomplish the assignment within the time to be allowed by the City, and whether or not the provider will be able to provide continuing service if required by the City.
- (d) How previous clients of the provider for similar projects express satisfaction with the provider's work.
- (e) Whether or not the provider's response, as perceived by the City's staff, is complete and of acceptable quality.

A professional service provider may be selected after the evaluation of the submitted RFQ or it may be necessary to interview several of the firms and further evaluate them on the basis of the interview or a presentation, narrowing the field until one firm is selected for negotiations.

*Evaluation Committee* - A committee may be formed to evaluate each statement of qualifications using the criteria as defined within the RFQ. This committee will consist of a diverse group of City staff, and consultants when applicable. Committee members are selected by the using department and Procurement on the basis of their knowledge of the particular project being developed and/or of their knowledge of the particular field involved. Procurement may participate, as a non-voting member, to provide oversight, guidance and assistance as needed or requested.

Evaluation committee members must sign a non-disclosure and a conflict of interest disclosure. The Procurement Agent reserves the right to remove any team member for any identified conflicts of interest. Conflicts of interest shall be documented in accordance with the Ethics Policy.

*Discussion with offerors* - Discussions may be conducted with the respondent determined to be the most highly qualified, to agree upon a fair and reasonable price. Respondents shall be accorded fair and equal treatment in conducting negotiations and there shall be no disclosure of any information derived from proposals submitted by competing respondents. If the City is unable to negotiate a satisfactory contract with the most highly qualified provider of the desired professional services, the City shall formally end negotiations with that provider, select the next most highly



qualified provider, and attempt to negotiate a contract with that provider at a fair and reasonable price. The City must continue this process to select and negotiate with providers until a contract is entered into or all respondents are rejected by City Council.

*Exemption to Formal Sourcing Method* – Procurement Agent may exempt the formal sourcing method for professional services not subject to GC 2254.004.

## **5.5 PROCUREMENT OF PHYSICIANS, OPTOMETRISTS, AND REGISTERED NURSES**

The procurement of services from physicians, optometrists, and registered nurses is not subject to competitive advertising and proposal evaluation requirements pursuant to GC 2254.008. A contract is awarded on the basis of a set fee or lump sum amount and the provider's affirmation and the governmental entity's verification that the provider has the necessary occupational licenses and experience.

## **5.6 PROCUREMENT OF LOBBYING OR GOVERNMENT RELATIONS**

A procurement by a municipality for lobbying, government relations, or similar services intended to influence state or federal lawmakers on behalf of a city may not be classified as a personal, professional, or planning service for competitive procurement purposes.

## **5.7 AWARD AND APPROVALS**

*Contract award* - Contract award of the formal Request for Qualifications shall be made to be the most highly qualified respondent taking into consideration the evaluation criteria set forth in the RFQ. The contract file shall contain the basis on which the award is made.

*Award Approvals* – Award of Informal Request for Qualifications may be made by Procurement.

Awards of Request for Qualifications exceeding \$100,000 shall be routed through the appropriate reviewing board, commission, or committee as applicable in advance of City Council approval.

## **6.0 PROCUREMENT OF PUBLIC WORKS**

### **6.1 GENERAL OVERVIEW AND APPLICABILITY**

Contracts for a public work shall be solicited through a competitive sealed bid process except as otherwise authorized and provided for with Alternative Project Delivery Methods ("APDM") established in GC 2269, and as otherwise provided in Section 4.10 (sole source procurement) and Section 4.11 (emergency procurements) of this Manual.

Public works shall include construction of a facility, which is an improvement to real property and includes buildings, highways, road, streets, bridges, utilities, water supply projects, water plants,



wastewater plants, water and wastewater distribution or conveyance facilities, airport runways and taxiways, drainage projects or related types of projects associated with civil engineering construction projects.

The City shall document the basis of its selection and shall make the evaluations public not later than the seventh day after the date the contract is awarded.

## **6.2 USE OF PROFESSIONAL ENGINEERING SERVICES IN PUBLIC WORKS PROJECTS**

State law defines the practice of engineering as “the performance of or an offer or attempt to perform any public or private service or creative work, the adequate performance of which requires engineering education, training, and experience in applying special knowledge or judgment of the mathematical, physical, or engineering sciences to that service or creative work.” The City must utilize an engineer to develop plans, specifications and estimates when the engineered public work could affect the public health, welfare or safety. Construction of engineered plans must be performed under the direct supervision of an engineer.

A professional engineer must be retained for a public works project when:

- (a) The work exceeds \$8,000 and involves electrical or mechanical engineering; or
- (b) The work exceeds \$20,000 and does not involve electrical or mechanical engineering.

## **6.3 USE OF PROFESSIONAL ARCHITECT SERVICES IN PUBLIC WORKS PROJECTS**

State law defines the practice of architecture as “the service or creative work applying the art and science of developing design concepts, planning for functional relationships and intended uses, and establishing the form, appearance, aesthetics, and construction details for the construction, enlargement, or alteration of a building or environs intended for human use or occupancy, the proper application of which requires education, training, and experience in those matters. . . .”

An architectural plan or specification for any of the following may be prepared only by an architect:

- (a) a new building or modification of an existing building intended for occupancy on a 24-hour basis by persons who are receiving custodial care from the proprietor or operator of the building, regardless of the number of stories or square footage of the building.
- (b) a new building having construction costs exceeding \$100,000 that is to be:
  - i. constructed and owned by a state agency, a political subdivision of this state, or any other public entity in this state; and
  - ii. used for education, assembly, or office occupancy; or
- (c) an alteration or addition having construction costs exceeding \$50,000 that:
  - i. is to be made to an existing building that:
    - a. is owned by a state agency, a political subdivision of this state, or any other public entity in this state; and
    - b. is or will be used for education, assembly, or office occupancy; and
  - ii. requires the removal, relocation, or addition of a wall or partition of the alteration or addition of an exit.



This Manual does not prohibit an owner of a building from contracting with an architect or engineer as the prime design professional for a building construction, alteration, or addition project. Designation as the prime design professional does not expand the scope of the practice of an architect or engineer beyond the scope of practice that the architect or bond requirements.

#### **6.4 PUBLIC WORKS UNDER \$100,000 - REQUEST FOR QUOTATION (LGC 252)**

*Application of Method* - After consideration of the various costs, complexity, and other relevant issues affecting a project, the department may solicit quotes from contractors for public works of \$100,000 and less. This selection may be done through an informal Request for Quotation. Public works of \$100,000 and less which are deemed complex or involve complex issues are encouraged to be sourced through formal sourcing methods outlined in this Manual.

The department will award to the lowest responsible contractor. The contract file shall contain the basis on which the award is made and supporting documentation.

#### **6.5 PUBLIC WORKS OVER \$100,000 - COMPETITIVE SEALED BID – IFB (LGC 252)**

*Design-bid-build* means a traditional project delivery method in which:

- (a) There is a sequential award of two (2) separate contracts.
- (b) The first contract is for design services. (See Section 6.0 for details)
- (c) The second contract is for construction.
- (d) Design and construction of the project are in sequential phases.
- (e) Finance services, maintenance services and operations services are not included.

*Required Use* - highways, roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water and wastewater distribution or conveyance facilities, wharves, docks, airport runways and taxiways, drainage projects, or related types of projects associated with civil engineering construction; or buildings or structures that are incidental to projects that are primarily civil engineering construction projects that require an expenditure of \$1.5 million or above must be awarded to the lowest responsible bidder except as provided by GC 2269.

*Application of Method* - Competitive sealed bids shall be solicited through an IFB. The IFB shall include construction documents, estimated budget, project scope/specifications, construction schedule requirements, and other pertinent information. Contractual terms and conditions shall also be included within the solicitation document or incorporated by reference.

*Pre- Qualification* - A pre-qualification process may be conducted prior to the issuance of an IFB in order to establish a list of qualified bidders. In the event a pre-qualification process is used, Procurement shall only consider bids that are submitted from prequalified bidders.

*Public Notice* - The IFB shall set forth the date, time and place upon which the bids will be due. All IFBs are required to advertise a notice of the date, time and place at which bids will be publicly





opened and read aloud. The legal notice must be published at least once a week for two consecutive weeks in a newspaper published in the municipality before the deadline for receiving bids. Notice of the invitation for bids shall also be electronically posted and the invitation for bids shall be available for public inspection. Notice shall be made no less than thirty (30) days prior to the date set forth therein for the opening of bids. A shorter time, as allowed by law, may be deemed necessary for a particular procurement as determined by the Procurement Agent. If the opening date changes, the first notice shall be published before the fourteenth (14th) day before the new opening date. The public notice shall state the place, date, and time of bid opening.

*Late bids* - A bid is late if it is received by Procurement after the time and date set for bid closing designated in the IFB. A late bid shall be rejected. A late bid shall not be opened except for, if necessary, identification purposes. Such bids may be returned to the bidder.

*Bid Opening* - Bids shall be opened publicly at the time and place designated in the IFB. The name of each bidder and the amount of each bid, as well as other relevant information as the Procurement Agent deems appropriate shall be recorded. Unless otherwise determined by the Procurement Agent, this record shall be open to public inspection. In the event no attendees are present for bid opening, the sealed bids shall be opened by Procurement and a "bid" or "no bid" may be recorded on the tabulation sheet. The bid may then be given to the appropriate person for recording. The attendance sheets will indicate that there were no attendees present. Unless otherwise determined by the Procurement Agent, the bids shall not be opened for public inspection until after a contract is awarded. After final execution of the contract, the bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with this Manual.

*Bid acceptance and bid evaluation* - Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Manual. Bids shall be evaluated based on the requirements set forth in the invitations for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that is not set forth in the IFB. These selection criteria can only be used to determine whether the contractor is a responsible bidder, because the award can only be made to the lowest responsible bidder.

*Correction or withdrawal of bids before bid opening* - Bids may be withdrawn at any time prior to the bid opening. Bids may be modified at any time prior to the due date and time, and mistakes discovered before bid opening may be modified by written notice received in Procurement prior to the time set for bid opening.

*Mistakes and Withdrawals after bid opening; cancellation of awards* - A bid that has been opened may not be modified for the purpose of correcting an error in the bid price. Mistakes discovered after bid opening but before bid award may be withdrawn only to the extent that the bidder can show that the mistake is of so great a consequence that to enforce the bid as made would be



unconscionable, the mistake relates to a material feature of the bid, and the withdraw does not result in prejudice to the City except for the loss of the bargain. After bid opening but before bid award, modifications to bid provisions (other than pricing) made by mistake may be permitted by the City if not prejudicial to the interest of the City and does not provide an unfair advantage to a bidder.

All decisions to permit the correction or withdrawal of bids, or to cancel awards based on bid mistakes, shall be supported by a written determination made by the Procurement Agent. Only the City Council may reject any and all bids.

*Contract award* - Contract award shall be made to the lowest responsible bidder. The contract file shall contain the basis on which the award is made.

*Award Approvals* - Awards of IFBs exceeding \$100,000 shall be routed through the appropriate reviewing board, commission or committee as applicable in advance of City Council consideration.

*Public record* - - The evaluations shall be available for public inspection not less than the 7<sup>th</sup> day after contract award, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with this Manual.

*Lump Sum or Unit Price Contracts* – Follow the same method described in this Section, pursuant to LGC 252.047. If the contract is for the construction of public works or for the purchase of materials, equipment, and supplies, the municipality may let the contract on a lump-sum basis or unit price basis. If the contract is let on a unit price basis, the information furnished to bidders must specify the approximate quantity needed, based on the best available information, but payment to the contractor must be based on the actual quantity constructed or supplied.

## **6.6 PUBLIC WORKS OVER \$100,000 – COMPETITIVE SEALED PROPOSAL – RFP (LGC 252)**

*Application of Method* - Competitive sealed proposals shall be solicited through an RFP. The RFP shall include construction documents, estimated budget, project scope/specifications, construction schedule requirements, applicable evaluation criteria and other pertinent information. Contractual terms and conditions shall also be included within the solicitation document or incorporated by reference.

*Pre- Qualification* - A pre-qualification process may be conducted prior to the issuance of an RFP in order to establish a list of qualified offerors. In the event a pre-qualification process is used, Procurement shall only consider proposals that are submitted from pre-qualified offerors.

*Public notice* - The RFP shall set forth the date, time and place upon which the proposals will be due. All RFPs are required to advertise a notice of the date, time and place at which proposals will





be publicly opened and read aloud. Legal notice must be published at least once a week for two consecutive weeks in a newspaper published in the municipality before the deadline for receiving proposals. Notice shall be electronically posted and the RFP shall be available for public inspection. Notice shall be made no less than thirty (30) days prior to the date set forth therein for the opening of bids. A shorter time, as allowed by law, may be deemed necessary for a particular procurement as determined by the Procurement Agent. If the opening date changes, the first notice shall be published before the fourteenth (14th) day before the new opening date. The public notice shall state the place, date, and time of bid opening.

*Late proposals* - A proposal is late if it is received by Procurement after the time and date set for closing designated in the RFP. A late proposal shall be rejected. A late proposal shall not be opened except for, if necessary, identification purposes. Such proposals may be returned to the bidder.

*Receipt of proposals* - Proposals shall be opened publicly and read aloud the names of the offerors and any monetary proposals made by the offerors. Proposals shall be open for public inspection after the contract is awarded, except to the extent that the withholding of information is permitted or required by law such as trade secrets and confidential information.

*Correction or withdrawal of proposals before proposal opening* - Proposals may be withdrawn at any time prior to the proposal opening. Proposals may be modified at any time prior to the due date and time, and mistakes discovered before proposal opening may be modified by written notice received in Purchasing prior to the time set for proposal opening.

*Revisions, Mistakes and Withdrawals after proposal opening; cancellation of awards* – The City may permit revisions to proposals after submission and before the award of the contract to obtain the best final offers. A proposal that has been opened may not be modified by the offeror for the purpose of correcting an error in the price. Mistakes discovered after proposal opening but before award may be withdrawn only to the extent that the offeror can show that the mistake is of so great a consequence that to enforce the proposal as made would be unconscionable, the mistake relates to a material feature of the proposal, and the withdraw does not result in prejudice to the City except for the loss of the bargain. After proposal opening but before award, modifications to proposal provisions (other than pricing) made by mistake may be permitted by the City if not prejudicial to the interest of the City and does not provide an unfair advantage to an offeror.

All decisions to permit the withdrawal of a proposal after opening shall be supported by a written determination made by the Procurement Agent. Only the City Council may reject any and all proposals.

*Evaluation criteria* - The RFP shall state the criteria to be used in the evaluation of the proposals and shall include their relative importance. No other factors or criteria may be used in the evaluation.

*Evaluation Committee* - The City shall evaluate and rank each proposal submitted in relation to the published selection criteria. A committee may be formed to evaluate each proposal using the



criteria as defined within the RFP. The use of a committee is recommended for complex, large expenditures, or when multiple proposals are received. This committee will consist of a diverse group of City staff, and consultants when applicable. Committee members are selected by the using department and/or Procurement on the basis of their knowledge of the particular project being developed and/or of their knowledge of the particular field involved. Procurement participates, as a non-voting member, to provide oversight, guidance and assistance as needed. Procurement may remove evaluation team members if a conflict of interest arises. Conflicts of interests must be documented in accordance with the City's Ethics Policy (Reference No. 10.0).

*Contract award* - Contract award shall be made to the responsible offeror whose proposal is determined in writing to be the best value to the City taking into consideration the weighted evaluation criteria set forth in the RFP. The contract file shall contain the basis on which the award is made.

*Award Approvals* - Awards of RFPs exceeding \$100,000 shall be routed through the appropriate reviewing board, commission, or committee as applicable in advance of City Council consideration.

*Public record* - The evaluations shall be available for public inspection not less than the 7<sup>th</sup> day after contract award except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with this Manual.

## **6.7 PUBLIC WORKS OVER \$100,000 – ALTERNATIVE PROJECT DELIVERY METHODS**

Each of the APDMs has its own procurement procedure prescribed by the applicable section of GC 2269. Solicitation will be by IFB, RFP, and/or RFQ as prescribed by Sections 7.6 and 7.7 or as otherwise provided in this Section. Notice of the solicitation must be given in a newspaper of general circulation once each week for at least two (2) weeks prior to the deadline for submission of bids, qualifications or proposals.

In determining the award of an APDM contract for public works, the City may consider one or more of the following criteria, dependent upon the sourcing method selected:

- (a) the price;
- (b) the offeror's experience and reputation;
- (c) the quality of the offeror's goods or services;
- (d) the impact on the ability of the governmental entity to comply with rules relating to HUBs;
- (e) the offeror's safety record;
- (f) the offeror's proposed personnel;
- (g) whether the offeror's financial capability is appropriate to the size and scope of the project;  
and
- (h) any other relevant factor specifically listed in the request for bids, proposals, or qualifications.



In determining the award of a contract using APDMs, the City must consider and apply any existing laws, including any criteria, related to HUBs.

The City may utilize any purchasing or procurement method or procedure authorized by law to purchase or contract for goods, services, or public works. Pursuant to the authority of the City Council to delegate its authority under GC 2269.053, and as authorized by GC 2269.056, the Procurement Agent is authorized to determine which of the APDM in this Section provides the best value for the City. This Manual and the Centralized Purchasing Policy shall constitute notice of the delegation, limits of delegations, and person designated with the authority to determine which method provides the best value to the City pursuant to GC 2269.053 and GC 2269.056. A determination by the Procurement Agent that an APDM method (other than competitive sealed bidding) provides the best value for the City is required prior to advertising of an APDM. The City shall base its selection among offerors on applicable criteria listed for the particular method used. The City shall publish in the request for proposals or qualifications:

- (a) the criteria that will be used to evaluate the offerors; and
- (b) the applicable weighted value for each criterion.

### **COMPETITIVE SEALED BID – IFB**

Competitive Sealed Bid will follow all policies outlined in Section 7.7 with the following exceptions -

*Bid acceptance and bid evaluation* - Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Manual. Bids shall be evaluated based on the requirements set forth in the invitations for bids, which may include criteria listed in this section. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that is not set forth in the IFB. These selection criteria can only be used to determine whether the contractor is a responsible bidder, because the award can only be made to the lowest responsible bidder.

### **COMPETITIVE SEALED PROPOSAL – RFP**

Competitive Sealed Proposal will follow all policies outlined in Section 7.8 with the following exceptions –

*Civil works project definition* - roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water distribution and wastewater conveyance facilities, desalination projects, wharves, docks, airport runways and taxiways, storm drainage and flood control projects, or transit projects

*Preparation of requests* – Documents should include construction documents, selection criteria and the weighted value for each criterion, estimated budget, project scope, estimated project completion date, and other information that a contractor may require to respond to the request.



*Evaluation criteria* - The RFP shall state the criteria to be used in the evaluation of the proposals and shall include their relative importance. No other factors or criteria may be used in the evaluation. City Council delegates authority to Procurement to select evaluation criteria and their weighted value. For Civil works projects the weighted value assigned to price cannot be less than 36.9 percent of the total weighted value of all selection criteria.

*Evaluation Committee* - Not later than the 45<sup>th</sup> day after the date on which the proposals are opened, the City shall evaluate and rank each proposal submitted in relation to the published selection criteria. A committee may be formed to evaluate each proposal using the criteria as defined within the RFP. The use of a committee is recommended for complex, large expenditures, or when multiple proposals are received. This committee will consist of a diverse group of City staff, and consultants when applicable. Committee members are selected by the using department and/or Procurement on the basis of their knowledge of the particular project being developed and/or of their knowledge of the particular field involved. Procurement participates, as a non-voting member, to provide oversight, guidance and assistance as needed. Procurement may remove evaluation team members if a conflict of interest arises. Conflicts of interests must be documented in accordance with the City's Ethics Policy (Reference No. 10.0).

*Contract Award* – The City begins negotiation with the first ranked proposer, and if negotiations are not successful, terminates negotiations with that proposer and moves to the next-ranked proposer until a contract is selected or all proposers are rejected.

## **DESIGN-BUILD**

*Design-build* means a project delivery method in which:

- (a) There is a single contract for design services and construction services.
- (b) Design and construction of the project may be in sequential phases or concurrent phases.

## **CONSTRUCTION MANAGER – AT- RISK**

*Construction-manager-at-risk* - A project delivery method in which:

- (a) There is a separate contract for design services and a separate contract for construction services.
- (b) The contract for construction services may be entered into at the same time as the contract for design services or at a later time.
- (c) Design and construction of the project may be in sequential phases or concurrent phases.
- (d) Preconstruction services and other related services may be included.

## **CONSTRUCTION MANAGER – AGENT**

*Construction Manager-Agent* is a delivery method by which the City contracts with a construction manager-agent to provide consultation or administrative services during the design and construction phase and to manage multiple contracts with various construction prime contractors.

## **JOB ORDER CONTRACTING**

*Job-order-contracting* means a project delivery method in which:

- (a) The contract is a requirement contract for indefinite quantities of construction.
- (b) The construction to be performed is specified in job orders issued during the contract.
- (c) Maintenance services and other related services may be included.
- (d) The project limit shall be set by Council approved not-to-exceed expenditure amount.

Job order contracting cannot be used for civil works projects such as roads, utilities and drainage systems.

## **6.8 BONDING REQUIREMENTS**

The bonding requirements of the City of Denton are intended to protect the contractor, the service provider and the City of Denton. Unless otherwise stated in state law, or otherwise established in this Manual, the following bonding requirements apply for public works:

- (a) Performance Bonds - For contracts in excess of \$100,000, a 100% performance bond must be executed in the full amount of the contract and which covers the time period for the public work construction and for two additional years beyond the completion date of the construction of the public work. The bond must be executed by a corporate surety, in accordance with the law.
- (b) Payment Bonds - For contracts in excess of \$50,000, a payment bond must be executed in the full amount of the contract, and which covers the time period the project will be allowed for construction. The bond must be executed by a corporate surety, in accordance with the law.
- (c) Bid Bonds – The City reserves the right to require a bid bond for a public works project in an amount to be deemed fair and reasonable.
- (d) Maintenance Bonds – The City reserves the right to require a maintenance bond for projects in an amount to be deemed fair and reasonable.

## **6.9 PREVAILING WAGE RATES**

**THE TEXAS LEGISLATURE HAS GIVEN SPECIAL TREATMENT TO PUBLIC WORKS PROJECTS, NOT NECESSARILY APPLIED TO OTHER EXPENDITURES OR PURCHASES BY A MUNICIPALITY. WAGES FOR WORKERS ON CONSTRUCTION PROJECTS SHALL NOT BE PAID AT LESS THAN THE SCHEDULE OF GENERAL PREVAILING RATES OF PER DIEM WAGES AS DETERMINED BY THE CITY COUNCIL, WHICH SHALL BE THE LESSER OF WAGES DEFINED BY THE UNITED STATES DEPARTMENT OF LABOR DAVIS AND BACON WAGE DETERMINATION AT [HTTP://WWW.DOL.GOV/WHD/CONTRACTS/DBRA.HTM](http://www.dol.gov/whd/contracts/dbra.htm) AND AT THE WAGE DETERMINATIONS WEBSITE ([WWW.WDOL.GOV](http://www.wdol.gov)) FOR DENTON COUNTY, TEXAS (WD-2509), AS AMENDED, OR AS DETERMINED BY THE CITY BY CONDUCTING A SURVEY OF THE WAGES RECEIVED BY CLASSES OF WORKERS EMPLOYED ON**



**PROJECTS OF A CHARACTER SIMILAR TO THE CONTRACT WORK IN THE CITY. THE PREVAILING WAGE RATE OR A LINK TO THE WAGE RATES SHALL BE INCLUDED IN BIDS FOR THE CONTRACT AND IN THE CONTRACT ITSELF FOR PUBLIC WORKS PROJECTS.**

**THE PREVAILING WAGE RATE DOES NOT APPLY TO WORK DONE DIRECTLY BY A PUBLIC UTILITY COMPANY OR FOR MAINTENANCE WORK.**

## **6.10 INSURANCE REQUIREMENTS**

The minimum insurance required will be the types and amounts required by the Procurement Agent and Risk Manager. The Procurement Agent, Risk Manager, City Engineer, Consulting Engineer, or Architect may provide input on a possible increase to the amounts of insurance required for any project.

For construction and construction-related projects, all contractors and sub-contractors, including those delivering equipment or materials, performing service on a public works project, shall provide Texas workers' compensation for all employees. All Contractors shall provide proof of coverage satisfactory to the City. Prime Contractors are responsible for seeing that sub-contractors carry the same or higher insurance amounts as those required of the prime contractor. Contractors shall post required signs at job site(s) informing all workers of their right to workers' compensation coverage.

## **6.11 RETAINAGE**

The City requires retainage on all public works contracts exceeding \$100,000. Five percent of the total contract amount shall be held as retainage on public works contracts. The City may elect to require alternative retainage percentages. For retainage percentages in excess of five percent, the City will deposit the retainage into an interest-bearing account and pay the interest earned to the contractor on completion of the contract. If the value of the public works contract is less than 5M or related to the construction or maintenance of a dam, the City cannot withhold more than 10% retainage. If the value of the public works contract is 5M or more, the City cannot withhold more than 5% retainage.

A release of retention shall only be considered when a project is fully completed and accepted in compliance with the contract and specifications. A project manager shall review and approve a request for release of retention. If applicable, an engineer/architect shall review and approve the request. The project manager shall also provide Procurement the consent of the surety for final payment and release of retainage from the bonding company. All lien notices shall be forwarded to the project manager.

Partial release of retainage may occur, at Procurement's discretion, before the project is completed. This is generally considered for large projects with longer construction periods.  
(GC 2252.031, 2252.032, 2252.033)





## 7.0 CONTRACT TERMS AND CONDITIONS

Federal and/or grant funded procurements may require additional terms and conditions as set forth in *Office of Management and Budget (OMB) Uniform Guidance 2 CFR Part 200 Subpart C Pre-Federal Award Requirements and Contents of Federal Awards, Subpart D Post Federal Awards Requirements Procurement Standards, and Appendix II Contract Provisions for Non-Federal Entity Contracts Under Federal Award*.

Department directors are required to sign contracts for financial and operational obligations and business terms before contract award by Council.

## 8.0 CONTRACT MODIFICATIONS (CHANGE ORDERS)

A contract modification (and/or change order) occurs when a change to an executed contract is necessary. The modification may involve a change to quantities, specifications, terms or any number of contract requirements. Any modification to an awarded contract, regardless of sourcing method, shall be documented, reviewed and approved through a contract amendment and/or change order.

Contract modifications and/or individual change orders for a **cumulative** total increase or decrease over \$50,000 require approval by the City Council, unless exempt under requirements of LGC 252.022. The change order authority limit resets after each City Council approval of a change order. A contract amendment and/or change order, or the cumulative total of contract modification and/or change orders, cannot increase the original contract price by more than twenty-five percent (25%) except as provided under state law. Modification and/or changes in excess of twenty-five percent (25%) require re-solicitation. Contract modifications and/or change orders reducing a contract or purchase order by more than twenty-five percent (25%) require the consent of the contractor.

If applicable, an engineer/architect shall review and approve a contract amendment and/or change order prior to submitting for approval by any other body, including the Public Utilities Board and City Council. Upon approval, a contract amendment and/or change order will be reviewed, signed and executed by Procurement. A copy of the change order will be forwarded to the contractor and a copy retained in the Procurement file.

## 9.0 COST PRINCIPLES



*Cost principles* - The Procurement Agent shall adopt rules setting forth cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs.

*Cost or pricing data* - The submission of current cost or pricing data may be required in connection with any award, change order or contract modification.

## 10.0 DISPOSAL OF CITY-OWNED PERSONAL PROPERTY, MATERIALS, AND EQUIPMENT

The following terms are related to the management of property:

**Abandoned Property** means personal property which has been left unattended as defined by Texas Property Code 72, Texas Property Code 75, and Texas Transportation Code, Chapter 683.

**Damaged or Destroyed** means personal property that is not operable due to damage or accident and would require excessive repair (cost and/or manpower) to return the asset to serviceable condition.

**Donation** means personal property which has been donated to a charitable organization, as allowed within City Ordinance 2008-113.

**Excess** means personal property that which is no longer needed (in excess of the department's requirements) but are still serviceable or useable.

**Lost or Stolen** mean personal property that is assigned to or acquired by a department but has been lost or stolen and deemed unrecoverable. Stolen City-owned property shall be properly documented with a police report.

**Obsolete** means personal property that no longer meet department specifications or requirements but is still serviceable or useable.

**Property** means assets with a useful life of more than one (1) year.

**Property transfer** means the transfer of fixed assets between using agencies or transfer of property to or from the surplus property program.

**Scrap** means personal property that no longer functions, is unserviceable and has no market value, except for the basic material content, which can be recycled through appropriate means.

**Surplus property** means property no longer needed by using agencies for their operations, property in poor or non-working condition, or property that is a by-product (e.g. scrap metal, used tires and oil, etc.).

**Trade-in** means personal property which has been traded, for similar new property, and the transaction has been recorded within the purchase order.

**Unclaimed, lost and confiscated property** means all property used as evidence in the courts and remaining unclaimed after final disposition, property seized by a peace officer as being used unlawfully, and all property coming into the hands of any City officer or employee as lost or unclaimed.

**Worn** means personal property that may still be operable but require excessive maintenance or repair (cost, manpower) to remain in an operable condition.



The Procurement Agent shall establish guidelines for and shall be responsible for the management of:

- (a) The transfer of surplus property and operation of the surplus property program.
- (b) The sale or disposal of surplus, worn, scrap, obsolete, excess, damaged, abandoned, unclaimed, lost and confiscated property by competitive sale or other authorized method.
- (c) The trade-in of surplus property for purchase of new equipment.

The Procurement Agent shall control and supervise all existing and future City facilities (warehouses) established for the purpose of purchasing, storing and issuing supplies. The Procurement Agent shall also be responsible and accountable for all warehouse materials and maintain a perpetual inventory record thereof. The Procurement Agent will establish policies and procedures governing the addition or deletion of items carried in inventory, the sale or other disposal of inventory items no longer needed, delivery and other services provided to using agencies, and any policies or procedures required for efficient and effective operation of the inventory system.

The transfer, donation, or sale of City property shall be administered in compliance with state law and this Manual. The Procurement Agent will operate a surplus property program for the purpose of receiving, storing, transferring, or selling surplus property no longer needed by the City.

## **10.1 METHODS FOR DISPOSAL**

Departments and the Procurement Agent shall determine the most appropriate disposition method for personal property, City-owned materials and equipment that are deemed to be in the best interests of the City. If the original cost of the equipment is over \$5,000, the department director shall notify the Finance Department, so the fixed assets records will reflect the appropriate change(s). Options for disposal are as follows:

*Transfer between City Departments* - Excess or obsolete City-owned personal property that is no longer required by one City department (sending department) can be transferred either to another group within the same department or to another City department in need (receiving department).

*Transfer to Another Governmental Entity* - Any transfer by the City of City-owned personal property to another governmental entity, except through the auction process, shall be pursuant to an Interlocal Agreement approved by the City Council if in excess of \$50,000.

*Public Sale, Trade-in, Donation, Destruction or Returned for Credit* – If the item is no longer of value to the City and valued more than \$100, the Procurement Agent is authorized to sell, trade, donate, scrap, or return the item for credit. The following methods of disposition are available:

- (a) *Public Sale or Auction* - A public auction (sale) held on site, at a City facility, or on-line and conducted by an auctioneer licensed by the State of Texas.



After determining the time and place for a public auction, the Procurement Agent shall give notice of the auction by advertising in the official newspaper of the City or posting on the City website.

- (b) **Sealed Bid** – Property may be disposed of through the sealed bid process and sold to the highest bidder, unless rejected by the using department and Procurement. The guidelines of LGC 252, for competitive bidding, shall be followed.
- (c) **Trade-In** - Offer the property as a trade-in for new property of the same general type if the Procurement Agent and owning department consider that action to be in the best interest of the City. If determined necessary to determine “fair market value”, the Procurement Agent may employ outside resources to make such determination. In all instances, best value for City owned property will be achieved and properly documented by the Procurement Agent and credit shall be applied to the appropriate department.
- (d) **Third Party Appraisals** - The City may utilize third party consultants to determine authenticity or market value of any commodity. The department responsible for the commodity shall consent to and pay for the third-party appraisal.
- (e) **Donation** - Dispose of the property by donating it to a civic or charitable organization or another governmental entity, if allowed by law. However, in such case, City Council approval will be necessary if the item has value of more than \$3,000.
- (f) **Destruction** - The Procurement Agent may order any of the property to be destroyed or otherwise disposed of if the replacement value is less than \$100 and is not considered in good working order, the City attempts to sell the property and receives no viable offers or it is determined to be scrap material(s).
  - i) **Scrap**: City owned personal property which has been transferred to Procurement and has been found to be damaged, destroyed, or in any other way having no recoverable value will be accumulated and disposed of in accordance with existing scrap metal/refuse contracts or as otherwise directed by the Chief Financial Officer.
    - a. **Contract with third party**: City owned personal property that is deemed to have no value, but is not scrap metal or subject to a current refuse contract, to the City by the relevant department can be transferred to a third party via contract. Procurement will issue a notice of intent to contract or other form of solicitation.
  - ii) **Materials Management Scrap Bin(s)**: Procurement shall ensure accurate accounting of all scrap proceeds and report all sales proceeds to the Finance Department. All City employees shall ensure the proper disposal of scrap material in the identified location, and City-owned materials shall not be converted for private use or personal use.
- (g) **Returned for Credit** - Excess or obsolete City-owned property may be returned, if possible, to the vendor from which the property was originally purchased. Prior to such return, department



staff, directors, and officers shall coordinate this action with the Procurement Agent, to ensure credit has been fully received, documented, and reported to the Finance Department.

## **10.2 DISPOSAL OF ABANDONED PROPERTY**

Disposition of abandoned or unclaimed property seized by a government entity, officers, or employees must be conducted in accordance with this Manual, Denton local policy, Texas Code of Criminal Procedure, and in compliance with Texas Transportation Code, Chapter 683. Equipment deemed appropriate for retention will be in accordance with state law (i.e., confiscated equipment by the Denton Police Department).

## **10.3 PURCHASE BY OFFICERS AND EMPLOYEES**

An officer or employee of the City, who recommends and/or authorizes the sale of materials and equipment for their department, shall not, directly or indirectly, submit a bid for, purchase or acquire ownership of that department's property. An officer or employee of the City shall not, directly or indirectly, submit a bid, purchase, or acquire ownership of "impounded property".

## **10.4 DISPOSITION OF FEDERAL AND GRANT FUNDED ASSETS**

No disposition of federal or grant funded assets will be initiated unless it is allowable in accordance with the guidelines outlined in the *Office of Management and Budget (OMB) Uniform Guidance 2 CFR Part 200 Property Standards* and the *Texas Grant Management Standards (TxGMS)*, subject to the specific guidelines of the grantor agency. Additionally, no disposition of federal or grant funded assets will be initiated unless the City's grant program administrator as applicable and the department director of the grantee department have recommended such disposition. If proceeds result from the disposition through sale of grant funded property, the Procurement Agent, working with the department director and grant program administrator as applicable, will ensure that proper notifications are provided to and instructions and approvals obtained from the grantor agency concerning how proceeds are to be handled. Depending upon the grantor agency or source involved and the dollar level of the proceeds, funds may or may not need to be returned or credited to the grantor agency or source. In all instances where proceeds have been gained by the City, the Procurement Agent shall provide a full accounting of such proceeds to the City's Chief Financial Officer. Where possible and allowable upon the closing of a grant, the City will seek to transfer the property to another allowable grant in lieu of sale or other disposition method.

## **10.5 DISPOSITION OF ITEMS FUNDED WITH BONDS**

The disposition of bond funded assets will be communicated to the Finance Department. If proceeds result from the disposition of bond funded assets, the Procurement Agent, shall provide a full accounting of such proceeds to the Finance Department.

## **10.6 TRANSFER OF OWNERSHIP OF CERTAIN EMERGENCY VEHICLES**



In accordance with Texas Transportation Code 728.021, emergency vehicles used to transport sick or injured persons must have vehicle equipment removed, including lights, sirens or devices which only an authorized emergency vehicle may be equipped with, and must remove or obliterate any emblem or marking on the vehicle that identifies the vehicle as an authorized emergency vehicle. This statute doesn't apply if the City is transferring ownership to a person who holds a license as an emergency service provider, who is in the business of buying and selling used vehicles in this state and who specializes in authorized emergency vehicles, or who operates in a foreign country.

## **11.0 PROTESTS AND APPEALS**

### **11.1 DEFINITIONS**

*"Filed"* means delivery to the contract officer or to the Procurement Agent, whichever is applicable. A time and date of receipt shall be documented in a verifiable manner for purposes of filing.

*"Governing instruments"* means those legal documents that establish the existence of an organization and define its powers including articles of incorporation or association, constitution, charter and by-laws.

*"Interested party"* means an actual or prospective bidder, respondent, or offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract or by the failure to award a contract. Whether an economic interest exists will depend upon the circumstances of each case. An interested party does not include a supplier, subconsultant or subcontractor to an actual or prospective bidder, respondent or offeror.

*"Receipt"* means the earlier of actual receipt or the first attempted delivery by certified mail, or by any other means that provides evidence of the attempt, to the persons' last known address.

### **11.2 AUTHORITY OF THE PROCUREMENT AGENT**

The Procurement Agent shall have the authority to settle and resolve protests. Appeals from the decisions of the Procurement Agent may be made to the City Manager pursuant to the provisions of this Manual.

### **11.3 RIGHT TO PROTEST**

Any interested party who is aggrieved in connection with a solicitation or award of a contract above the formal threshold may protest to the Procurement Agent.

### **11.4 FILING OF A PROTEST**



*Content of protest* - The protest shall be in writing (letter received by physical mail delivery or by electronic submission) and shall include the following information:

- (a) The name, address, telephone number and email address of the protestant;
- (b) The signature of the protestant or its representative;
- (c) Identification of the solicitation or contract number;
- (d) A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
- (e) The form of relief requested.

Protests will not be considered if not supported by adequate documentation as defined in this Manual or if not received within the parameters as defined in this Manual and any specific solicitation.

## **11.5 TIME FOR FILING PROTESTS**

Protests based upon alleged improprieties in a solicitation that are apparent before the solicitation due date shall be filed not less than five (5) working days before the solicitation due date. In all other cases, protests shall be filed within five (5) days of notice of intent to award or in the absence of a notice of intent to award, prior to the award date. The Procurement Agent shall give notice of the protest to the successful contractor if award has been made or, if no award has been made, to all interested parties. Interested parties have the right submit a written response to the protest.

## **11.6 STAY OF PROCUREMENT DURING THE PROTEST OR APPEAL PROCESS**

In the event of a timely protest, or in the event of timely appeal of the Procurement Agent's decision, the City shall stay the solicitation or award of the contract unless the Procurement Agent makes a written determination that there is a reasonable probability that the protest or appeal will be denied and that proceeding further with the solicitation or award of the contract is in the best interests of the City. The stay shall automatically continue throughout the protest or appeal process unless the Procurement Agent makes a written determination to lift it.

## **11.7 CONFIDENTIAL INFORMATION**

See Section 1.5

## **11.8 DECISION BY THE PROCUREMENT AGENT ON A PROTEST**

The Procurement Agent shall issue a written decision within ten (10) days after a protest has been filed. The decision shall contain an explanation of the basis of the decision. The Procurement Agent shall furnish a copy of the decision to the protestant, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

The time limit for decisions may be extended for a reasonable time not to exceed thirty (30) days beyond the original ten (10) day time period. The Procurement Agent shall notify the protestant in



writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued. If the Procurement Agent fails to issue a decision within the time limits set forth in this Section, the protestant may proceed as if an adverse decision had been issued. The decision shall contain a statement regarding the appeals process that is available pursuant to this Manual.

## **11.9 REMEDIES FOR A PROTEST**

If the Procurement Agent sustains the protest in whole or part and determines that a solicitation, evaluation process, proposed contract award, or contract award does not comply with this Manual, the Procurement Agent shall implement an appropriate remedy.

In determining an appropriate remedy, the Procurement Agent shall consider all the circumstances surrounding the procurement or proposed procurement including, but not limited to:

- (a) The seriousness of the procurement deficiency;
- (b) The degree of prejudice to other interested parties or to the integrity of the procurement process;
- (c) The good faith of the parties;
- (d) The extent of performance;
- (e) Costs to the City;
- (f) The urgency of the procurement; and
- (g) The impact of the relief on the using agency's mission.

An appropriate remedy may include, but is not limited to, one or more of the following:

- (a) Reject all bids, responses or proposals;
- (b) Terminate the contract;
- (c) Reissue the solicitation;
- (d) Issue a new solicitation;
- (e) Award a contract consistent with the procurement codes; and
- (f) Such other relief as is determined necessary to ensure compliance with this Manual.

## **11.10 APPEALS TO THE CITY MANAGER**

An appeal from a decision entered or deemed to be entered by the Procurement Agent shall be filed with the City Manager within seven (7) days from the date the decision is issued. The appellant shall also file a copy of the appeal with the Procurement Agent.

*Content of appeal* - The appeal shall contain:

- (a) The information set forth in this Article 12;
- (b) A copy of the decision of the Procurement Agent; and
- (c) The precise factual or legal error in the decision of the Procurement Agent from which an appeal is taken.

## **11.11 NOTICE OF APPEAL**





The City Manager shall give notice of the appeal to the successful contractor if award has been made or, if no award has been made, to interested parties. Such interested parties shall have the right to request copies of the appeal and to intervene in the proceedings. The City Manager shall, upon request, furnish copies of the appeal to all interested parties.

#### **11.12 PROCUREMENT AGENT REPORT ON AN APPEAL**

*Report* - The Procurement Agent shall file a report on the appeal with the City Manager within five (5) days from the date the appeal is filed. At the same time, the Procurement Agent shall furnish a copy of the report to the appellant by certified mail, return receipt requested or any other method that provides evidence of receipt, and to any interested parties who have responded to the notice given pursuant to this Section. The report shall contain copies of:

- (a) The appeal;
- (b) Any other documents that are relevant to the protest; and
- (c) A statement by the Procurement Agent setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.

*Extension for filing of report* - The Procurement Agent may request in writing an extension of the time period setting forth the reason for extension and a new date for the submission of the report to the City Manager. If the City Manager grants an extension, the Procurement Agent shall notify the appellant in writing that the time for the submission of the report has been extended and the date by which the report will be submitted.

*Comments on report* - The appellant shall file comments on the Procurement Agent's report with the City Manager within seven (7) days after the report is filed. Copies of the comments shall be provided by the appellant to the Procurement Agent and all other interested parties. The comments must contain a statement or confirmation as to the appellant's requested form of relief.

The City Manager may grant an extension on the time period to file comments pursuant to a written request made by the appellant within the period set forth in this Manual stating the reason an extension is necessary. The City Manager's determination on the request shall be in writing, state the reasons for the determination and, if the extension is granted, set forth a new date for the filing of comments. The City Manager shall notify the Procurement Agent of any extension.

#### **11.13 REMEDIES FOR AN APPEAL OF A PROTEST**

The City Manager may dismiss, affirm or deny the Procurement Agent's decision in whole or in part based on criteria described in Section 12.9. If the Procurement Agent's decision is denied in whole or in part and a determination is made that a solicitation, evaluation process, proposed award, or award does not comply with state law or this Manual, the City Manager may direct the Procurement Agent to make the appropriate remedy described in Section 12.9. The City Manager shall dismiss, upon a written determination, an appeal if the appeal does not state a valid basis, including a detailed statement of the legal and factual grounds, for protest; or the appeal is untimely.



## 12.0 VENDOR DISQUALIFICATION

### 12.1 GENERAL OVERVIEW AND APPLICABILITY

*“Disqualification”* means an action taken by the Procurement Agent under this Article to prohibit a person from participating in City procurements.

*Purpose* - City departments are responsible for managing their contracts and for identifying and controlling the risks associated with vendor performance. Vendors may be disqualified from bidding on City contracts under certain circumstances in order to minimize the City’s risk of losses.

In order to ensure that the City is receiving quality goods, services and construction and in order to ensure that the City is receiving value for public money, vendors may be disqualified from participating in City procurement opportunities for prescribed time periods.

A decision to disqualify a vendor from participating in City procurement opportunities must be supported by evidence, exercised in accordance with the factors set out in this Manual and appropriately approved. A decision to place a vendor on the disqualification list is discretionary; however, such discretion must be exercised consistently and fairly.

### 12.2 REASONS FOR DISQUALIFICATION

*Reasons for Disqualification* - The City may disqualify a vendor for one of the following six categories of reasons:

(a) *Litigation*: If a vendor engages in litigation against the City, the City may consider whether or not such litigation should disqualify that vendor from participating in future City procurement opportunities. Note that litigation brought by the City against a vendor is addressed in Subsection 6 (Poor Performance) below.

A vendor who engages in litigation against the City should only be disqualified in connection with litigation proceedings if there are valid commercial or business reasons for doing so. Disqualification should not be exercised to “punish” the vendor for bringing a lawsuit. Litigation against the City in respect of matters unrelated to a procurement process or contracts for the provision of goods, services or construction should not be considered under this Manual. In evaluating whether a litigious vendor should be disqualified, the City should consider the following qualitative factors in its analysis:

- Is the litigation in relation to a City procurement process or a contract with the City for the provision of goods, services or construction?
- Is there a history of litigious conduct with the vendor and has that history resulted in increased costs to the City?

- What was the outcome of the previous litigation? For example, was it frivolous/vexatious or were damages awarded in favor of the vendor?
  - Does the vendor's litigation with the City call into question the vendor's ability to provide work or services to the City under future contracts?
1. Failure to honor a Bid: If a vendor submits a bid in response to a City procurement opportunity and that vendor subsequently refuses to honor its bid or the pricing included in that bid, the City may consider disqualifying that vendor from participating in future City procurement opportunities. However, a vendor should not be disqualified if their failure to honor a bid was a legitimate withdraw of that bid. Accordingly, the reason why a vendor did not honor its bid must be analyzed and considered in making a decision to disqualify that vendor. Factors that the City may consider in such analysis include, but are not limited to:
    - (a) If the City and a selected vendor in a negotiated procurement process attempt to negotiate an agreement in good faith and for valid business reasons are unable to come to an agreement, that vendor should not be disqualified.
    - (b) If a vendor fails to honor its submitted pricing because of a change in market conditions, the City should consider whether pricing fluctuations are common in the industry. If price increases are common, the City should consider whether the vendor should have factored this into their pricing. For example, could the market conditions have been reasonably predicted within the industry? If the City's acceptance of the bid took significantly longer than anticipated, the City should consider the impact of the delay on the vendor's willingness to honor its submitted pricing.
    - (c) If a vendor does not honor its submission because it is too busy on other contracts at the time its bid is accepted, and City's acceptance of the bid was within the time period set out in the bid document, the City should consider disqualifying that vendor because vendors should only submit proposals if they are capable of delivering the goods or services.
    - (d) Other reasons for a vendor's failure to honor a submission or pricing should be reviewed contextually and fairly.
  2. Failure to disclose a conflict of interest or violate the Ethics Ordinance: If a vendor fails to disclose a conflict of interest during a City procurement opportunity or during the performance of a contract with the City and the City subsequently discovers that such a conflict of interest exists, the City may disqualify that vendor from participating in future procurement opportunities after conducting an analysis using the following factors:
    - (a) The nature of the conflict of interest, including whether it is perceived or an actual conflict of interest and the materiality of the advantage that such a conflict may have given the vendor.
    - (b) Whether the vendor knowingly failed to disclose such a conflict of interest.
    - (c) The impact such a failure to disclose the conflict of interest has or may have on the City, including its reputation and the impact on its obligation to conduct a fair competitive procurement process.

- (d) Whether the vendor violates the Ethics Ordinance.
3. Participating in bidding practices prohibited by statute: If the City has reason to suspect a vendor or vendors are engaged in bid-rigging, price-fixing, bribery or collusion or other behaviors or practices prohibited by federal or state statutes in connection with a City procurement opportunity, the City should contact the appropriate authorities and provide such assistance as is required and support a subsequent investigation and if applicable, prosecution. If a vendor is convicted of bid-rigging, price-fixing or collusion in connection with a City procurement or in connection with other public sector procurements, the City shall disqualify that vendor.
  4. Unethical bidding practices: A vendor may engage in unethical bidding practices that do not amount to a criminal or statutory offense, but such practices may still warrant disqualification from bidding on the City procurement opportunities. Examples of such unethical bidding practices include inappropriate offers of gifts to City employees, elected officials, officers, consultants, advisors or other City representatives and misrepresentations in proposals and inappropriate in-process lobbying of or communication with City employees, elected officials, officers, consultants, advisors or other City representatives during a procurement process. The City must conduct a full review of the unethical practice in question and perform a contextual analysis to determine whether the vendor or vendors in question should be disqualified. For example, did the unethical bidding practice compromise the City's ability to run a fair procurement process?
  5. Poor Performance: If a vendor performs poorly on a contract with the City, the City may consider disqualifying that vendor in the following circumstances:
    - (a) The contract was terminated for performance issues prior to expiry;
    - (b) There were un-rectified performance issues on a contract that resulted in extra costs and or delays to the City;
    - (c) The goods were defective and were not replaced or repaired or required multiple repairs;  
or
    - (d) The City brought litigation proceeding against the vendor in connection with issues related to the contract.

All performance issues in connection with City contracts must be escalated to Procurement. Performance issues must be supported by documentation evidencing the notification to the vendor of performance issues and all escalation of such performance issues.

### **12.3 DISQUALIFICATION PROCESS**

*Disqualification Process* - Any decision to disqualify a vendor must be supported by a written recommendation containing all details connected with the analysis using factors set out above. The written recommendation shall be from the department director in consultation with Procurement.



The written recommendation should also include the length of the disqualification. A vendor may be disqualified for period of up to three (3) years. The length of the disqualification period should be proportional to the reasons for the disqualification and fair and the full three-year disqualification should only be applied in the most serious of disqualifications. A disqualification can either be a blanket disqualification or a disqualification to provide specific goods, services or construction and the recommendation should clearly set out the scope of the disqualification.

Before the vendor is officially disqualified, the vendor must be notified in writing of the potential disqualification and shall be allowed to provide a written response within 10 calendar days of notification, including any supporting documentation necessary to support their case against disqualification. All decisions to disqualify a vendor must be approved by the department director, Procurement Agent, and City Attorney's Office.

Procurement shall notify the vendor in question of the disqualification recommendation in writing via an electronic signature application or certified mail. The notification letter should contain:

- Full details as to the reasons for the disqualification, including copies of any documents or correspondence to support such a disqualification.
- The length of the recommended disqualification period and scope, if applicable.
- The vendor's right to re-apply for eligibility within the prescribed time period and the process.

*Review of Disqualification* - A disqualified vendor may apply to be re-eligible to participate in City procurement opportunities upon the completion of half of the original disqualification period. For example, if the original disqualification period was two years, the vendor may apply for review of the disqualification after one year. In order to apply to be re-eligible, the vendor must submit a written case for re-instatement, including supporting documentation, if necessary, that provides reasons why the original reason for the disqualification would no longer prove a risk for the City. Applications for review of eligibility are to be reviewed by the department director, the Procurement Agent, and City Attorney's Office.

If the department director, the Procurement Agent, and City Attorney's Office are convinced that the reasons for the original disqualification will no longer present risk for the City should it do business again with the vendor in question, then the Procurement Agent may re-instate that vendor.

*Disqualification List* - Procurement shall maintain an up-to-date and current list of all disqualified vendors. Any vendor having an officer or director that was an officer or director of a vendor on the disqualified list at the time it was disqualified is also considered disqualified. The list should contain the full name of the vendor, the names of the officers or directors of the vendor, the reasons for the disqualification, the file number where the written recommendation for the disqualification is filed, the length of the disqualification period and the date of the expiry of the disqualification period. Review of the disqualification list against a list of vendors and their officers or directors should be conducted for each procurement to ensure the disqualified vendors are not allowed to continue in the process.

### 13.0 COOPERATIVE BUYING AGREEMENT

The City may purchase goods and services through cooperative contracts.

*Applicability* - Agreements entered into pursuant to this Manual shall be limited to the areas of procurement of materials, services, professional services, construction or construction services, warehousing or materials management.

*Cooperative agreements required* - The City is not authorized to participate in cooperative buying agreement unless a cooperative agreement described in GC 791 or LGC 271 is executed between the parties or the parties are members of a cooperative purchasing group or authority that permits cooperative use amongst its membership. All cooperative agreements entered into pursuant to this Manual shall be approved by the City Council.

*Cooperative purchasing authorized* - The City may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any materials, services, professional services, construction or construction services with one or more government agencies in accordance with an agreement entered into between the participants. Multiple agency procurement collaboration can help share the admin costs of purchasing and aggregate there buying power to achieve cost savings. Parties under a cooperative purchasing agreement may:

- (a) Sponsor, conduct or administer a cooperative agreement for the procurement or disposal of any materials, services, or construction.
- (b) Cooperatively use materials or services.
- (c) Commonly use or share warehousing facilities, capital equipment and other facilities.
- (d) Provide personnel, except that the requesting eligible procurement unit may pay the public procurement unit providing the personnel the direct and indirect cost of providing the personnel, in accordance with the agreement.
- (e) On request, make available to other eligible public procurement units informational, technical or other services that may assist in improving the efficiency or economy of procurement. The public procurement unit furnishing the informational or technical services has the right to request reimbursement for the reasonable and necessary costs of providing such services.

*Approval to purchase from cooperative contracts* - If the purchase is \$100,000 or less, Procurement may approve the expenditure. Purchases in excess of \$100,000 will require Council approval, possibly with a prior recommendation through a board, committee or commission as appropriate and applicable. The City must have an interlocal agreement in place with the cooperative agency before a purchase can be made. Additional documentation may be required to ensure that the cooperative contract provides the best value to the City.

Examples of cooperative contracts available to the City are:

- Texas Multiple Award Schedule (TXMAS)
- State of Texas Department of Information Resources (DIR)





- Sourcewell
- Buy Board Cooperative Purchasing
- Houston Council of Governments (HGAC)
- Tarrant County Cooperative Program
- United States General Services Administration (GSA) for applicable schedules only. These include information technology, law enforcement, facility management systems, and fire, rescue, and disaster response purchases.
- Omnia Partners
- Texas Education Agency – Region 8 (TIPS)

*Prohibitions* - If a member of the governing body or an appointed board or commission of a municipality or county belongs to a cooperative association, the municipality or county may purchase equipment or supplies from the association only if no member of the governing body, board, or commission will receive a pecuniary benefit from the purchase, other than as reflected in an increase in dividends distributed generally to members of the association.

## **14.00 LEASES**

Leases of City Property – Unless the lease is related to a procurement or presents a competitive opportunity, Real Estate will handle the lease of City owned property.

City as Tenant – procurement and the department will decide together the best vehicle for such lease which may include a market study or solicitation.

## **15.0 NON-DISCRIMINATION**

No City contractor or vendor shall engage in any discriminatory employment practice. No person shall, on the grounds of race, sex, gender, sexual orientation, age, disability, religion, color, genetic testing, gender identity, or national origin, or any protected classification under Federal or state law be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from contracts with the City.

No City contractor or vendor, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the Americans with Disabilities Act (ADA).

## **16.0 PREFERENCES**

### **16.1 ENVIRONMENTALLY PREFERABLE PURCHASING (“EPP”)**

The City may establish EPP policies to promote the purchase of environmentally preferable products throughout City departments, by incorporating environmental considerations into public





purchasing to the extent it available, practical, and reasonably permitted by the Texas purchasing laws or any future policies directed by City Council.

Resolution No. R2007-032

Resolution No. R2008-42

Resolution No. R2014-008

## 16.2 VENDORS THAT MEET OR EXCEED AIR QUALITY STANDARDS

A preference may be given in the purchase of goods or services to a vendor if the vendor demonstrates that they meet or exceed any state or federal environmental standards, including voluntary standards, relating to air quality; or may require that the vendor demonstrate that they meet or exceed any state or federal environmental standards, including voluntary standards, relating to air quality.

The preference may be given only if the cost to the governmental agency for the goods or services would not exceed 105 percent of the cost of the goods or services provided by a vendor who does not meet the standards.

Resolution No. R2008-42

## 16.3 LOCAL PREFERENCE PURCHASES

In compliance with LGC 271.905 and 271.9051, Procurement reserves the right to apply a local preference during consideration of a bid from a bidder whose principal place of business is in the City.

This section applies to the purchase of real property and personal property that is not affixed to real property or services (including construction services) through a competitive bid. This shall include IFBs awarded based upon lowest responsive, responsible bid or awarded based upon best value.

*Criteria for Application of Local Bid Preference –*

*Lowest Responsible Bids* - A five percent (5%) price differential will apply to construction bids less than \$100,000 and all other bids, including services, less than \$500,000. This excludes telecommunication and information services. A three percent (3%) price differential will apply to bids, excluding construction and services, *greater than \$500,000*. The chart below is a summary of the criteria for Lowest Responsible Bids:

Local Government Code 271.9051	Local Government Code 271.905
5% price differential	3% price differential
Construction bids between \$50,000 and \$100,000	All other bids, excludes construction and services, greater than \$500,000



All other bids, including services, between \$50,000 and \$500,000	
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*Best Value Bids* - Price is only one of a number of determining factors that are weighted for evaluation purposes. As a result, an additional weighted factor will be added to all such bids for bidders meeting local preference criteria. The appropriate weight, either 5% or 3%, will be consistent with the criteria outlined in the chart above.

*Local Bidder Preference Consideration Application* - A new and complete application must be submitted before award of each competitive bid, including a Tax Certification from the Denton County Tax Assessor/Collector. This provision supersedes Resolution R2012-012.

*Exceptions* - This section does not apply to purchases obtained through an RFQ, RFP, bids involving federal funds, Cooperative Programs or Interlocal Agreements.

## 16.4 RECIPROCAL LAW

GC 2252.002 relates in part to bids by nonresident bidders for any type of contract awarded by a municipality, such as general construction, improvements, supplies, services, a public work project or for purchase of supplies, materials, or equipment.

GC 2252.002 states: , “A government entity may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the greater of the following: (1) the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident’s principal place of business is located, or (2) the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which a majority of the manufacturing relating to the contract will be performed.” The City reviews the applicability of this statute for all expenditures over \$100,000.

## 17.0 ETHICS

Suppliers who transact business with the City will be dealt with equally and in a manner that is consistent with best practices, organizational ethics, and the requirements of the law. All prospective bidders shall be given identical information, and all solicitation materials will be prepared in a language familiar to the trade and in a manner that will encourage competitive bidding. Suppliers are subject to the City’s Ethics Ordinance.

City employees shall adhere to all requirements set forth in the Ethics Policy (Policy 10.0):

- Employees shall avoid actions or conduct that they know, or should know, is likely to impact their personal or financial interests or the personal or financial interests of their immediate family or members of their household;



- Employees shall avoid actions or conduct that they know, or should know, is likely to impact the personal or financial interests of outside clients, secondary employers, boards, committees, or any other entities for which they serve as an officer, director, or policy maker;
- Employees shall be proactive and transparent with any relationships that are a potential conflict of interest, submitting a disclosure form as soon as they are aware of the potential conflict;
- Employees will be recused from any decision-making, influence, or solicitations that involve vendor(s) or individual(s) identified as a potential conflict of interest;
- Employees shall neither solicit, nor accept, gifts or favors offered from an individual, business, or organization due to their position with the City;
- Employees shall neither solicit nor accept meals offered from an individual, business, or organization due to their position with the City;
- Employees shall neither solicit nor accept discounted or complimentary registration, transportation, meals, or lodging for events due to their position with the City.

Consequence for failure to comply with applicable state law:

- (a) A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly makes or authorizes separate, sequential, or Component Purchases to avoid the competitive bidding requirements of LGC 252.021 or otherwise violates LGC 252.021. An offense under LGC 252.062(a)-(b) is a Class B misdemeanor.
- (b) A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly violates LGC 252.021, other than by conduct described by Subsection (a). An offense under LGC 252.062(c) is a Class C misdemeanor.

Consequence for failure to comply with this Policy:

- (a) Disciplinary action for City employees, up to or including termination.
- (b) Vendor disqualification as outlined in Article 13.



## APPENDIX A

### STATE AND LOCAL REGULATIONS APPLICABLE TO CITY PROCUREMENT

SOURCE	CITATION
Government Code (“GC”)	Title 10, Subsection F 271.907, 2155.062, 2252, 2252.002, 2252.031, 2252.032, 2252.033, 2252.908 2253, 2253.021, 2254, 2254.003, 2254.004 2269, 2269.001, 2269.052
Local Gov’t Code (“LGC”)	Title 8, Subsections A & C 171, 176.003, 252, 252.021, 252.0215 252.022, 252.024, 252.041, 252.0415 252.042, 252.043, 252.048, 271, 271.003 271.027, 271.06, 271.102, 271.901 271.905, 271.9051, 271.906 Sub Chp H, Chp 271 Sub Chp J, Chp 271
Texas Public Info Act	GC 552
Transportation Code	728.021, 683
Texas Health & Safety Code	386.001
Texas Occupational Code	1001.003, 1001.053, 1001.407, 1051, 1051.703
Texas Labor Code	406.096
Texas Criminal Code	18.17
Denton Code of Ordinances	Ch 10, Art II 2-106, 2-107, 10-26, 10-28
Ordinance/Resolutions	2001-376, 2006-237, 2007-032, 2007-042 R2008-042, 2008-11, 2008-113, 2009-034 2009-189, 2014-008, R2015-002, R2012- 012, 2018-757, R20-354
City Administrative Directives	103.01, 407.07, 503.03, 10.00