

City of McKinney

Purchasing Policy and Procedures Manual



Office of the City of McKinney Purchasing Department

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City of McKinney
Purchasing Policy and Procedures Manual
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Chapter 1: Introduction

Background

This Purchasing Policies and Procedures Manual provides city departments information to assist in making decisions regarding the purchase of goods and services necessary to perform the functions of their offices and/or departments effectively.

Mission

The mission of the City of McKinney Purchasing Department is to:

- Ensure compliance with local, state and federal laws applicable to city purchasing;
- Provide all vendors, including HUBS, equal access to the City's competitive processes for the acquisition of goods and services;
- Provide an ongoing supply of quality goods and services to all City offices; and
- Protect the interests of City of McKinney taxpayers by avoiding any undue influence or political pressures.

Goals of Public Purchasing

Public purchasing has several goals including:

- purchasing the proper goods and services;
- obtaining the best possible price for the goods or services, without sacrificing the quality needed; and
- ensuring a continuing supply of goods and services are available where and when needed.

Public purchasing must also ensure:

- **Responsible bidders are given a fair opportunity to compete for the City's business.** This goal can be accomplished by abiding with statutory requirements regarding competitive bids and proposals, and through the City's purchasing policy.
- **Public funds are safeguarded.** The Purchasing Department should attempt to see that the best value is received for the public dollar.
- **Public spending is not used to enrich elected officials or City employees, or to confer favors.** Adoption and implementation of a code of ethics and employee training and awareness of their responsibilities in the public purchasing area accomplish this goal.
- **Historically underutilized businesses (minority and women-owned) have an equal opportunity in the contract awards process.** City of McKinney achieves this goal through complying with Texas Local Government Code Section 252.0215.

City of McKinney has adopted a partially centralized purchasing function that provides many benefits including, but not limited to, the following:

- It allows for the consolidation of smaller purchases by individual departments into larger purchases for the entire city, resulting in lower unit prices and cost savings;

- Vendors and the business community have a single central link to the city procurement process to facilitate consistent communication and understanding;
- Purchasing Department personnel accumulate a solid foundation of knowledge and experience about purchasing, market trends, prices, and vendors. This expertise helps user departments save money by better defining their needs. It also promotes a more efficient procurement process; and
- Centralized expertise places the purchasing processes on a professional footing and inspires public confidence in the City's actions.

Other Duties

In addition to the above, the Purchasing Department is responsible for:

- Historically Underutilized Business (HUB) Program;
- Interlocal Purchasing Agreements and Cooperative Purchasing Agreements;
- Inventory and Warehouse Management;
- Disposition of Seized Property; and
- Auctions of Surplus and Salvaged Property.

The Purchasing Department is committed to promoting effective, professional, and consistent procurement for the City of McKinney, as well as championing the public perception that tax dollars are wisely spent. To be successful, the system must be backed by proper attitudes and cooperation of not only every department head and official, but also every supervisor and employee of the City.

The purchasing process is not instantaneous. Time is required to complete the steps required by law. In order to accomplish timely purchasing of products and services at the least cost to the City, all departments must cooperate fully. Prior planning and the timely submission of requisitions are essential to expedite the purchasing process and assure the process is both orderly and lawful.

This purchasing manual is not static. Purchasing procedures in the City of McKinney will change as needed, particularly evolving to incorporate technological advances and changing laws.

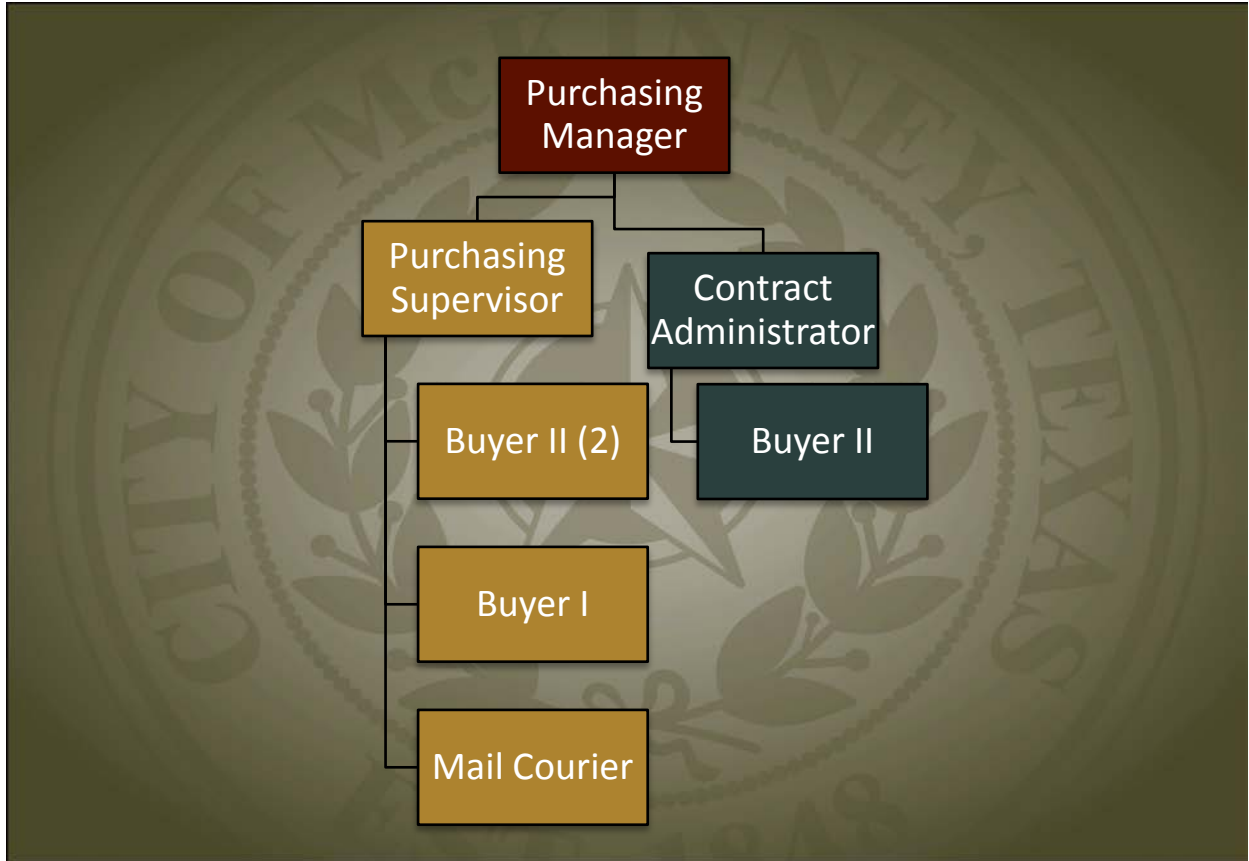
The organizational chart of the Purchasing Department is attached as Exhibit 1.

There are many terms used throughout this manual that pertain to purchasing activities. Definitions of key terms are found in Chapter 2.



Ms. Lisa Littrell, CPPO, CPPB
City of McKinney Purchasing Manager

**Exhibit 1:
City of McKinney
Purchasing Department Organizational Chart**



Chapter 2: Definitions

Advertisement - A public notice in a newspaper of general circulation containing information about a solicitation in compliance with legal requirements

“After-the-Fact” Purchases - Purchases, which are typically unauthorized, that deviate from City of McKinney policies regarding purchases.

Alternate Delivery Method – A method of procuring construction services other than “traditional” competitive bidding. Methods may include best-value competitive bidding, competitive sealed proposals, design-build, construction manager (either at risk or as agent), and job order.

Amendment/Addendum - A document used to change the provisions of a Contract or a Solicitation. An Amendment typically changes a provision in a Contract and requires the consent of the parties to that Contract. An Addendum typically adds an omitted requirement or condition to a Solicitation before its due date and does not require mutual agreement. An Addendum may also add provisions to, delete provisions from, or otherwise modify a Contract prior to the execution of and as a part of the consideration for the execution of the underlying Contract.

Annual Term Contract - A recurring contract for goods or services, usually in effect on a 12 month basis.

ARS - City of McKinney Financial Management System that includes modules for accounting and purchasing.

Best Value - A method of evaluating competitive bids that includes an evaluation based on more factors than just price and whether the presumptive low bidder is responsible. The “best value” process allows the City to consider the following criteria:

1. the price;
2. the bidder’s experience and reputation;
3. the quality of the bidder’s goods or services;
4. the impact on the ability of the city to comply with rules relating to historically underutilized businesses;
5. the bidder’s safety record;
6. the bidder’s proposed personnel;
7. whether the bidder’s financial capability is appropriate to the size and scope of the project; and
8. any other relevant factor specifically listed in the request for bids, proposals, or qualifications.

Best value allows for the selection of the best and lowest overall life cycle cost proposal taking into consideration various factors depending on what is being procured and the factors set forth in the procurement document.

Bid Bonds – A deposit required of bidders to protect the City if a low bidder withdraws its bid following submission or fails to enter into a contract following award. Acceptable forms of bid

deposits are limited to: cashier's check, certified check, or irrevocable letter of credit issued by or drawn upon a financial institution chartered by and subject to the laws of the State of Texas and formal Bid Bonds underwritten by a surety company authorized to do business in the State of Texas and identified as a company authorized to underwrite federal obligations as reflected on the most recent edition of the United States Department of the Treasury's Circular 570.

Bidder – A vendor that submits a bid including anyone acting on behalf of the vendor that submits a bid, such as agents, employees and representatives.

Bidders' List - An automated list of vendors who have stated in writing an interest in submitting bids for particular categories of goods and services.

Centralized Master Bidders' List (CMBL) - A list maintained by the Texas Procurement and Support Services of the Office of the Texas Comptroller of Public Accounts containing the names and addresses of prospective bidders.

Change Order, Contracts - A document used in connection with construction contracts to change a contract after the performance of the contract is begun if changes in the plans or specifications are necessary or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, or adjusting the time for performance. A change order cannot be used to change the scope of the project for which the contract was awarded. Please be aware that there are certain legal requirements regarding the approval of change orders and the amount by which a change order may increase or decrease a contract amount.

Change Order, Purchase Order – A document used to modify a Purchase Order for the purchase of goods and services written on the city's standard purchase order form and which change, when accepted by the contractor without qualification within the specified time limit, becomes an amendment to the existing Purchase Order and operates as the vendor's authority to deliver and invoice for goods or services as modified.

City Council - City of McKinney City Council.

Commodity Code - The accounting system classification of goods and services with a unique number assigned to each description.

Competitive Bidding – A transparent procurement process in which bids from competing contractors, suppliers or vendors are invited by openly advertising the scope, specifications, and terms and conditions of the proposed contract. The aim of competitive bidding is to obtain goods and services at the lowest price for such goods or services through competition and preventing favoritism. The City determines the lowest bidder that is responsible and awards the contract to the low responsible bidder.

Competitive Proposal Process – A transparent procurement process in which proposals from competing contractors, suppliers or vendors are invited by openly advertising the scope and specifications for a particular work, goods or services that also specifies the relative importance of price and other evaluation factors. The City ranks the proposers and then engages in negotiations with the top ranked proposer until an agreement is reached. If an agreement cannot be reached the City moves to the next highest ranked proposer and negotiates with the next highest ranked proposer until an agreement is reached, and so forth. Once the City concludes negotiating with a proposer and moves on to the next highest ranked proposer the

City cannot return to negotiations with a previously higher ranked proposer. The aim of competitive proposals is to select the responsible proposer whose proposal is determined to be the most advantageous to the city considering the relative importance of price and the other evaluation factors included in the request for proposals. The competitive proposal process allows the City more flexibility in product solicitation and negotiation to obtain the best final offer in compliance with Section 252.042 of the Texas Local Government Code than is allowed in competitive bidding.

Component Purchases - A series of purchases of component parts of goods that in normal purchasing practices would be purchased in one purchase.

Consultant – A person who provides or proposes to provide advice and counsel in a specialized area.

Contract - A formal, written agreement executed by the City and a third-party containing the terms and conditions under which particular work, goods or services are furnished to the City typically in exchange for the payment of money by the City or the granting of some other form of benefit or consideration from the City to the third-party.

Contractor - A third-party that has been awarded a contract by the City of McKinney.

City - City of McKinney.

City Attorney – The attorney selected and hired by the City Council to handle legal matters for the City and his designated representatives.

Cycle Time - The time between when a purchase requisition is received in the Purchasing Department and placement of a purchase order with a vendor. Cycle time does not include the time required for delivery or the time it takes for the Purchasing Department to obtain corrections to line item accounts, commodity codes, and other necessary information.

Design-Build Contract – A single contract through which the City contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility.

Design Criteria Package – A set of documents that provide the specifications for the work that must be performed including the explicit goals and end results desired in sufficient detail to permit a contractor, supplier or vendor to prepare a response to City's request for competitive bids, proposals or qualifications and any additional information requested, including criteria for selection.

Department – That division or group of special expertise or responsibility within the City that deals with a specific subject or area of activity including all city offices and subdivisions of them as well as component agencies when the purchases are funded even partially with city funds.

Director - Any Director of a Department and any person authorized to act on his or her behalf.

Emergency Purchase - An item that must be purchased immediately because of a public calamity to relieve the necessity of the citizens or to preserve the property of the City. An emergency purchase might also include a purchase that is required: (a) to preserve or protect

the public health or safety of the City's residents; or (b) as a result of unforeseen damage to public machinery, equipment or other property.

Employee - Any city appointed official, or employee.

Formal Competitive Bidding - The bidding process in compliance with Chapter 252 of the Texas Local Government Code which requires approval by the City Council.

Goods - Any personal property purchased by the City, including equipment, supplies, material, and component or repair parts.

Historically Underutilized Business (HUB) - Texas Administrative Code, Chapter 2161 defines a "Historically Underutilized Business" or "HUB", in part, as one with ownership by "a person who is economically disadvantaged because of the person's identification as a member of a certain group, including black Americans, Hispanic Americans, women, Asian Pacific Americans, and American Indians, who have suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control". Also referred to as a disadvantaged business, Minority/Woman-owned Disadvantaged Business Enterprise or M/W/DBE.

Invitation to Bid (ITB) - Specifications and formal bidding documents requesting pricing for a specified work, good or service which has been advertised for bid in a newspaper.

Invitation to Quote (ITQ) - Specifications and informal bidding documents requesting pricing for a specified work, good or service within a designated time frame.

Lease - A contract for the use of personal property or real property for a period of time in return for a specified compensation.

Lowest Responsible Bid - The offer that provides the lowest price meeting all requirements of the specifications, terms, and conditions of the Invitation to Bid including any related costs to the City in a total cost concept and which submittal, including all reported references contained therein, provides the City with sufficient evidence of the bidder's financial and practical ability to perform the contract, references of past performance indicating the ability to comply with the Contract and satisfactorily complete the subject work, and other information provided to or obtained by the City demonstrating the subject bidder's capabilities, competence and success.

Modification - A document used to change the provisions of a contract.

Negotiations – A bargaining process between the City and one or more third-parties seeking to reach an agreement regarding the terms of a transaction or to resolve a dispute.

Occupant Department - The department that ultimately uses the finished goods or services when the purchase or construction is completed, which may be different from the user department.

Official - Any elected or appointed official and any person authorized to act on his or her behalf.

Payment Bond - A surety bond executed in connection with a contract that secures solely for the protection and benefit of those persons or entities that have a direct contractual relationship with the Contractor to supply public work labor or material ("Payment Bond Beneficiaries") and

with which such Contractor the City has contracted for a particular contract the payment obligation of that Contractor to the Payment Bond Beneficiaries.

Performance Bond – A surety bond that provides assurance to the City that the Contractor will faithfully perform the work in accordance with the plans, specifications, and contract documents.

Personal Service – Services performed personally by the specific person who contracted to perform the services.

Policy – This Purchasing Policies and Procedures Manual.

Pre-Bid/Proposal Conference - A conference conducted by the Purchasing Department for the benefit of those wishing to submit a response for services or supplies required by the City that is held in order to allow vendors to ask questions about the proposed contract and particularly about the contract specifications.

Professional Services - Services directly related to professional practices as defined by the Professional Services Procurement Act, including those services within the scope of the practice of accounting; architecture; optometry; medicine; land surveying; and professional engineering.

Professional Services, Other – Those services usually referred to as a professional service, but not specifically listed in the Professional Services Procurement Act and that are within the scope of practice of actuaries, attorneys, business consultants, computer programmers, copywriters, developers, efficiency experts, executive search firms, facilitators, funeral directors, public relations, recruiters, real estate brokers, translators; or any other professional service as determined by approval of the City Council from time to time and made a part of this policy.

Proprietary Information - Information provided in responses to solicitations to which a vendor claims ownership or exclusive rights and which may be protected from disclosure under the Texas Public Information Act (Texas Government Code, chapter 551) because such information contains trade secrets, would give advantage to a competitor or bidder or supports certification as a HUB or M/W/DBE provided that the vendor identifies such information as being proprietary.

Public Works - Constructing, altering, repairing or maintaining a public building, public infrastructure or other public asset or facility.

Purchase Order - An order issued by the Purchasing Department for the purchase of goods and services written on the City's standard purchase order form and which, when accepted by the contractor without qualification within the specified time period, becomes a contract or an amendment to an existing contract that authorizes the vendor to deliver to and invoice the City for goods or services specified and commits the City to accept the specified goods or services for an agreed upon price.

Purchase Requisition - An automated request from a user department submitted to the Purchasing Department that authorizes the Purchasing Department to enter into a contract with a vendor to purchase goods or services for the City and authorizes the Finance Department to charge the appropriate department budget and which request is for internal use only and cannot be used by a department to order materials directly from a vendor.

Purchasing - The acquisition of goods and services including, but not limited to, construction and professional services.

Purchasing Department – The Office of the City of McKinney Purchasing Manager and her staff.

Purchasing Liaisons – The contact person within each department designated to communicate directly with the Purchasing Department.

Purchasing Manager – Means and includes the Purchasing Manager or her designee and may also mean or include the Finance Director in the absence of the Purchasing Manager.

Request for Information (RFI) - A general request to contractors for information regarding a potential future solicitation that is used as a research and information gathering tool for preparation of specifications and requirements.

Request for Proposal (RFP) - A document requesting a proposal from vendors that specifies the relative importance of price and other evaluation factors, and which allows for negotiations after a proposal has been received and before award of the contract for the goods and services sought. *See also* “Competitive Proposal Process,” above.

Request for Qualifications (RFQ) - A document that requests details about the qualifications of professionals whose services must be obtained in compliance with the Professional Services Procurement Act or in conjunction with an alternative bid delivery process.

Responsive – A vendor who has complied with all material aspects of the solicitation document, including submission of all required documents.

Responsible – A vendor who has the capability to perform fully and deliver in accordance with the contract requirements based on consideration of past performance, financial capabilities, and business management together with any other pertinent information.

Sealed Bids - Offers in response to an Invitation to Bids that is advertised in a newspaper and submitted to the Purchasing Department in a manner that conceals the price.

Separate Purchases - Purchases made separately in different orders for goods and services that in normal purchasing practices would be purchased in a single order or in one purchase.

Sequential Purchases - Purchases of items made over a period of time that in normal purchasing practices would be purchased at one time or in one purchase.

Services - The furnishing of labor by a contractor that includes all work or labor performed for the City on an independent contractor basis, including maintenance, construction, manual, clerical, personal or professional services.

Sole Source Good or Service - A good or service that can be obtained from only one source due to patents, copyrights, secret processes, or natural monopolies. The purchase of captive replacement parts or components for equipment that is already owned by the City may also be considered for acquisition as a sole source good or service.

Solicitation - A document, such as an invitation to bid, invitation to quote, request for proposal, request for information or request for qualifications issued by the Purchasing Department that

contains terms and conditions for a contract to solicit a response from vendors to provide work, goods or services needed by the City.

Solicitation Conference – A meeting chaired by purchasing staff, designed to help potential vendors understand the requirements of a solicitation. Also known as a pre-bid or pre-proposal conference

Specifications - A total description of a good or service to be purchased by the City, and the requirements the vendor must meet to be considered for the contract which may include requirements for testing, inspection, or preparing any good or service for delivery, or preparing or installing it for use. See *a/so* “Design Criteria Package,” above.

User Department - The Department, defined above, from whose budget line item the contract is paid.

Vendor - A business entity or individual that seeks to have or has a contract to provide goods or services to the City.

Chapter 3: Purchasing Authority and Policy

Purchasing Laws

The Texas Legislature has enacted laws regulating the purchase of goods and services by government entities. It is the policy of the City of McKinney to fully comply in all aspects with these laws as they may be amended from time to time.

The City Manager has directed that the Purchasing Manager oversee and provide a framework for a partially-centralized purchasing system.

The Purchasing Department, 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 vendors. Further, City procurement will be conducted in a manner that promotes and fosters public confidence in the integrity of the City's procurement process.

Purchasing Policy and Procedures Manual

The purpose of this Purchasing Policies and Procedures Manual ("Policy") is to:

- Seek the best quality, lowest priced goods and services that meet the needs of City and its personnel;
- Provide all responsible vendors and contractors, including historically underutilized businesses ("HUBs"), equitable access to serving the needs of the City and its personnel through competitive acquisition of goods and services;
- Comply with all federal and state laws that apply to city purchasing and comply with the requirements in this Policy;
- Manage City inventory efficiently and accurately; and
- Dispose of all surplus, salvage and seized property in a manner that benefits the taxpayers of City, fosters interlocal cooperation and provides assistance to other governmental entities, and complies with applicable law.

Application

The Policy applies to all City officials and employees. The Purchasing Department and City personnel must purchase or lease all goods and services, including maintenance and repair, for all departments in accordance with the Policy.

The requirements and procedures set forth in this Policy are adopted by the City Council.

Effective Date

This Policy shall become effective upon approval by the City Council.

Precedents and Interpretation

- This Policy shall be interpreted liberally to accomplish its purpose.
- If there is any conflict between this Policy and a State or Federal law, or a rule adopted under a State or Federal law, the stricter of the conflicting provisions prevails.
- 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.
- Headings and titles at the beginning of the various sections of this Policy 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 Policy.

- If any provision of this Policy 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 Policy and the application of its provisions to other persons and circumstances shall not be affected.
- In general, the Purchasing Manager interprets this Policy. Any questions regarding the Purchasing Manager's interpretation and/or application of the Policy may be taken to the Chief Financial Officer for his review and consideration. The City Manager shall resolve any question about any interpretation and/or application of this Policy when there is a conflict with the Chief Financial Officer's determination.

Additional Resources

For additional information, the following are listed as references:

- Comptroller of Public Accounts, State of Texas Cooperative Purchasing Manual
http://www.window.state.tx.us/procurement/prog/coop/coop_manual.pdf
- The State of Texas Contract Management Guide, Version 1.6
<http://www.cpa.state.tx.us/procurement/pub/contractguide/>

Chapter 4: City of McKinney Purchasing Code of Ethics

Policy	<p>It is the policy of City of McKinney that the following ethical principles should govern the conduct of every employee involved, directly or indirectly, in the City's procurement process.</p>
Accountability	<p>It is essential for employees to take ownership of, and be responsible for, their actions to preserve the public trust and protect the public interest.</p> <p>Principles: Employees should:</p> <ul style="list-style-type: none">• Apply sound business judgment.• Be knowledgeable of and abide by all applicable laws and regulations.• Be responsible stewards of public funds.• Maximize competition to the greatest extent practicable.• Practice due diligence.• Promote effective, economic and efficient acquisition.• Support economic, social and sustainable communities.• Use procurement strategies to optimize value to stakeholders.
Ethics	<p>It is essential for employees to act in a manner true to these values to preserve the public's trust.</p> <p>Principles: Employees should:</p> <ul style="list-style-type: none">• Act and conduct business with honesty and integrity, avoiding even the appearance of impropriety.• Maintain consistency in all processes and actions.• Meet the ethical standards of the profession.
Impartiality	<p>It is essential for employees to engage in unbiased decision-making and action to ensure fairness for the public good.</p> <p>Principles: Employees should:</p> <ul style="list-style-type: none">• Be open, fair, impartial and non-discriminatory in all processes.• Treat suppliers equitably, without preference or discrimination, and without imposing unnecessary constraints on the competitive market.• Use sound professional judgment within established legal frameworks to balance competing interests among stakeholders.
Professionalism	<p>It is essential for employees to uphold high standards of job performance and ethical behavior to balance diverse public interests.</p> <p>Principles: Employees should:</p> <ul style="list-style-type: none">• Follow the lead of, and learn from, those with education, experience, and professional certification in public procurement.• Continually contribute value to the organization.• Continually develop as a professional through education, mentorship, innovation, and partnerships.• Develop, support, and promote the highest professional standards in order to serve the public good.• Seek continuous improvement through on-going training, education, and skill enhancement.
Service	<p>It is essential for employees to assist other City employees and citizens in a professional manner to support the public good.</p>

Principles: Employees should:

- Be a crucial resource and strategic partner within the organization and community.
- Develop and maintain relationships with other City employees.
- Develop collaborative partnerships to meet public needs.
- Maintain a customer-service focus while meeting the needs, and protecting the interests, of the organization and the public.

Transparency

It is essential for employees to have and follow easily accessible and understandable policies and processes that demonstrate responsible use of public funds.

Principles: Employees should:

- Exercise discretion in the release of confidential information.
- Maintain current and complete policies, procedures and records.
- Provide open access to competitive opportunities.
- Provide timely access to procurement policies, procedures and records.

Responsibility to City

Employees shall avoid activities that compromise or give the perception of compromising the best interests of the City of McKinney. Employees shall not knowingly use confidential proprietary information for actual, perceived or anticipated personal gain.

Conflict of Interest

Employees shall avoid any activity that might create a conflict between their personal interests and the interests of the City of McKinney. Conflicts exist in any relationship where the City's best interest may be different from the employee's best interests or the best interest of someone associated with the employee. Conflicts of interest include an employee participating in any way in any procurement in which:

- The employee or any member of the employee's family within the first degree of relationship by blood or marriage (a "close family member"), has a financial interest in the results of the City procurement process;
- A business or organization in which the employee, or a close family member, has an employment relationship or an ownership of interest has a financial interest in the result of the City procurement process; or
- Any other person, business, or organization with whom the employee or a close family member is negotiating for or has an arrangement concerning prospective employment.

If conflicts of interest exist, the employee shall notify the Purchasing Manager in writing and remove him or herself from the City procurement process.

Perception

Employees shall avoid the appearance of unethical or possibly compromising practices in relationships, actions and communications associated with the City procurement process.

Gratuities

Employees shall not solicit or accept money, loans, gifts, favors or anything of value, from present or potential contractors that might influence or appear to influence a purchasing decision or the City procurement process. If anyone is in doubt about whether a specific transaction complies with this policy, the person should disclose the transaction to the Purchasing Manager for a determination of compliance.

Confidential Information

Employees shall, to the extent allowed by Texas law and not otherwise in conflict with City policies and procedures, keep the proprietary information of vendors that is obtained during the procurement process confidential. **Employees shall not disclose**

vendor proposal information obtained from a solicitation to any person or party who is not a member of City staff necessary to a discussion regarding the proposal (hereinafter referred to as an “unauthorized person”) until such time as the contract has been awarded.

Confidentiality Statement

The City of McKinney Purchasing Department uses a confidentiality statement (Exhibit 2) to ensure compliance with the City’s ethics policy regarding the confidentiality of proprietary information. Before the evaluation of confidential proposals, the Purchasing Department sends the confidentiality statement to evaluation committee members for signature and certification, which signature and certification may be confirmed electronically. The statement contains the following requirements to which the evaluation committee member is expected to adhere during the course of the evaluation process and **until an award is approved by the City Council:**

- All information in the vendor’s response is to be kept confidential to the extent allowed by Texas law and not otherwise in conflict with City policies and procedures.
- No discussion of the proposal is to occur with any unauthorized person. Notwithstanding the foregoing, an evaluation committee member may discuss the proposal with the City Manager or one or more Deputy City Managers and Assistant City Managers upon request and consult with subject matter experts employed by the City regarding the proposal(s) provided that the subject matter expert has signed the applicable confidentiality statement.
- Evaluation committee members must be familiar with and read the City of McKinney Purchasing Code of Ethics and agree to comply with its requirements including reporting any violations of the Purchasing Code of Ethics and any potential conflict of interest as well as any attempt to exercise undue influence or attempted communications from vendors and other third-parties during the evaluation process.

Compliance with the requirements outlined in the Confidentiality Statement is crucial. If proprietary information of any vendor is compromised during the procurement process, all proposals may be rejected.

Exhibit 2: Example City of McKinney Confidentiality Statement

CONFIDENTIALITY STATEMENT
DISCLOSURE OF SOURCE SELECTION INFORMATION

In accordance with the City of McKinney Purchasing Policy, this project was issued as a competitive proposal, and, therefore, all information contained in the response should be kept **CONFIDENTIAL** until an award is approved by City Council. I certify that I will make no disclosure or release of any source selection information to any person or party who is not a member of City staff necessary to a discussion regarding the proposal (hereinafter referred to as an “unauthorized person”). This includes the contents of proposals submitted in response to the City of McKinney’s Request for Proposal for (insert project name) and any evaluation thereof prior to final execution of the contract.

I further certify that I will not discuss with any unauthorized person the Evaluation Team’s findings or decisions, the contractor’s approaches, or any information generated during the selection process. I understand that disclosure or release of any such information to an unauthorized person may subject me to adverse administrative action and may require the rejection of all proposals. Notwithstanding the foregoing it is specifically understood and agreed that I may discuss the proposal with the City Manager or one or more Deputy City Managers or Assistant City Managers upon request and consult with subject matter experts employed with the City regarding the proposal(s).

Please refer all questions for information to (insert buyer’s name).

To the best of my knowledge, neither I nor my spouse, ex-spouse (if applicable), children, stepchildren, parents, siblings or in-laws (collectively “close family member”) has a direct or indirect financial interest in, including any part-time or full-time employment with, any of the prime respondents (see attached list) that conflicts or appears to conflict with my duties as an evaluation team member; nor do I or a close family member have any other interest that might impact my independent judgment in connection with this evaluation. (I understand that a financial interest of any amount, no matter how small is considered a disqualifying financial interest for such purposes.)

In the event I later become aware of a conflict, I agree to disqualify myself and report this fact to the Purchasing Manager.

NOTE: Application for employment is considered a financial interest and must be reported.

PRINT NAME

SIGNATURE

DATE

Chapter 5: Purchasing Manager Authority and Responsibilities

Authority

The City of McKinney Home-Rule Charter, Chapter VI, "Finance Department," Sec. 49 – Purchasing Department, establishes a Purchasing department which shall purchase, store and distribute all supplies, materials and equipment required by any office, department or agency of the City.

Statutory Authority and Duties

All Purchasing Department activity shall be conducted in compliance with the City of McKinney Home-Rule Charter, Chapter VI, Sections 49 and 50, the Code of Ordinances, City of McKinney, Texas ("McKinney Code"), Texas Local Government Code, Chapters 252 and 271, and Texas Government Code, Chapters 2252, 2253, 2254 and 2269 as any and all of such provisions may hereafter be added to, subtracted from, amended, revised or deleted.

- The Purchasing Department shall purchase all supplies, materials, and equipment required or used, and contract for all repairs to property used by the City or a subdivision, officer, or employee of the city, except purchases and contracts required by law to be made on competitive bid.
- The Purchasing Manager shall participate in all purchases made on competitive bid and shall see that all purchased supplies, materials, and equipment are delivered to the proper city officer or department in accordance with the contract terms.
- The Purchasing Manager shall recommend the transfer of City surplus or seized goods that are not needed or used, from one department or employee, to another department or employee requiring the goods or the use of the goods.
- The Purchasing Manager shall ensure compliance with the Professional Services Procurement Act.
- Only the City Manager, or his designee, has signature authority to execute contracts of any nature (i.e. agreements, statement of work, etc.) which have been approved by Council via the budget or agenda item.
- The City Manager has authorized the Purchasing Manager to sign tax exemption forms and credit applications.
- Rules and procedures adopted by this Purchasing Policy include rules and procedures for employees to use City purchasing cards to pay for City purchases under the direction and supervision of the Purchasing Department.
- The Purchasing Manager shall confer with the City Attorney when necessary to interpret this Policy or requirements under applicable State and Federal laws.

Additional Responsibilities

In addition to statutory duties, the Purchasing Manager:

- Encourages and supports compliance with Texas purchasing laws;
- Works in conjunction with the Finance Department and other City officials in the development of efficient financial processes;
- Promotes local business participation in City procurement processes; and
- Provides the business community with a central link to City business

Chapter 6: Purchasing Process, Policy, Roles and Responsibilities

Purchasing Process

The general purchasing process as outlined in Exhibit 3 contains several stages with responsibilities that are often designated by statute. It begins with requirements planning and identification culminating with the receipt of and payment for goods and services.

Exhibit 3: Purchasing Process

Step	Performed By:
Identify requirements and obtain budget	User Department (Purchasing Department may assist)
Define/finalize requirements	User Department and Purchasing Department
Submit electronic requisition outlining requirements to Purchasing	User Department
Solicit, advertise, and generate Purchase Orders and Contracts from requisition and send to vendor	Purchasing
Submit electronic requisition identifying increase change to dollar value for Purchase Orders, (budget confirmation) reference original Purchase Order in reason field	User Department
Submit email requesting changes to Purchase Orders for correction of vendors and product/service descriptions	User Department
Generate Purchase Order change order from requisition and/or email and send to vendor	Purchasing
Receive good/service and verify completeness against contract	User Department (Purchasing Department coordinates)
Electronically receive item in the City's automated requisitioning system ("ARS") upon receipt of good/service and submit original invoice to Finance Department.	User Department
Match received amount with invoice and audit	Finance Department
Process and approve payment of invoice.	Finance Department
Disburse payment of invoice	Finance Department

User Do's and Don'ts

Coordination among many City departments and offices is necessary for the process to work smoothly. To avoid delays and comply with the Policy and state law, user departments should remember the following:

- **Do not authorize the purchase of any goods or services.**
- **Do not purchase any goods or services for your own personal benefit.**
- **Do not authorize product demonstrations, trials or wear tests without knowledge and coordination by the Purchasing Department.**

- **Do not obligate the City for the purchase of goods that are delivered for use on a trial basis.**
- **Do not commit to acquire goods or services without an authorized purchase order.** Anyone obligating an expenditure of funds for goods or services before securing a purchase order may be held personally responsible for the payment, and may face criminal charges.
- **Do not use purchasing strategies to avoid the requirements of this Policy or which may violate the law.** Strategies that are prohibited by law include:
 - purchasing component parts that would normally be purchased in one purchase (component purchases);
 - separately purchasing items that normally would be purchased in one purchase (separate purchases); and
 - purchasing items over a period of time, that normally would be purchased in one purchase (sequential purchases).

A city officer or employee who intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements of Texas Local Government Code Section 252.021 is committing a Class B misdemeanor according to Texas Local Government Code Section 252.062 (a). In addition, a city officer or employee who intentionally or knowingly violates the competitive bidding requirements of Texas Local Government Code Section 252.021 in some other manner is also committing a Class B misdemeanor. Tex. Loc. Gov't Code § 252.063. The final conviction of a City officer or employee for a violation of Section 252.021, as explained above, also results in the immediate removal of that person from any office or employment with the City; and, prohibits the removed individual from being appointed or elected to public office in the State of Texas and further prohibits the individual from working for the City or receiving any compensation through a contract with the City for a period of four years from the date of conviction. See Tex. Loc. Gov't Code § 252.063.

- **Adhere to the City Purchasing Code of Ethics and avoid activities and behaviors that are unethical or create a conflict of interest or the perception of a conflict of interest.** Examples of activities that are inappropriate include:
 - soliciting or accepting money, loans, gifts, favors or anything of values of any kind from present or potential contractors that might influence or appear to influence a purchasing decision;
 - failing to disclose in writing to the Purchasing Manager a conflict of interest and not removing yourself from the procurement process when there is a conflict; and
 - disclosing confidential proprietary information from solicitations to other vendors or using the information for personal gain.
- **Ensure funding is available before submitting a requisition.** Texas law does not allow expenditures of funds that exceed the City's fiscal year budget. Purchasing does not process requisitions for which there is not adequate funding in the current budget.

- **Plan purchases to minimize the use of emergency and expedited purchases.** Rush purchases are generally more expensive and they delay other requisitions already in the system. Vendors may attempt to charge premium prices for goods and services needed in an expedited manner. Costs can be elevated when there is insufficient time allowed to explore alternative sources or options.
- **Plan purchases to allow sufficient time to process purchase requests.** The Purchasing Department is committed to processing all requisitions within a reasonable amount of time. In general, departments should allow 1-2 weeks for all non-contract purchases between \$25,000 and \$50,000 and 6–8 weeks on all purchases requested over \$50,000 that are not covered by an existing contract. Existing contract requisitions and requisitions under \$25,000 are generally processed within one day of receipt.
- **Ensure that purchasing policies and procedures are understood before ordering.** Departments must assure that all employees responsible for making department purchase requests have read and understand the purchasing procedures set forth in this Policy. Departments should also ensure that employees attend any training provided by the Purchasing Department.
- **Coordinate with Purchasing on receipt of goods and services.** Since the City does not have centralized receiving, each department is responsible for individually receiving goods and services. Departments should contact the individual listed as the buyer on the purchase order to make Purchasing aware of vendor performance issues such as shortages, late delivery, or damaged merchandise. If the item received is a fixed asset the item must be reported to Finance for tracking.

Roles and Responsibilities

There are specific roles and responsibilities for both user departments and the Purchasing Department during the procurement process. The City’s Procurement Process protects the integrity of the internal processes and provides fair and equal access to all vendors seeking to do business with the City. Exhibit 4 outlines the primary roles and responsibilities.

Policy Deviations

If there are indications that a requisition is for an after-the-fact purchase, an explanation setting forth the reasoning for a requisition after the purchase has been made must be provided. Forms for this purpose will be made available by the Purchasing Department. The form must be signed by the employee’s Director and include statements describing the following:

How did the purchase occur prior to a requisition being issued and the circumstances surrounding it?

Whether or not the actions that occurred were in the best interest of the City, and if not, to what extent were these actions detrimental to the City?

Actions taken to correct the circumstances which led to the deviation from City policy or procedure and to prevent future deviation.

Disciplinary action may be taken against the employee(s) involved where actions were not justifiable. Steps to reinforce policy and use of positive administrative action(s) such as staff training, establishment of internal procedures, realignment of staff responsibilities, etc., are to be undertaken to correct any existing problem(s) that may discourage adherence to policy.

Exhibit 4: Formal Purchasing Process Roles and Responsibilities

Process	User Department Role/Responsibility	Purchasing Department Role/Responsibility
Requirements Definition/ Specification Development	<ol style="list-style-type: none"> 1. Identifies what is needed, when it is needed, the quantity needed and where it is needed and works with Purchasing Department to document need in writing a specification 2. Ensures funding (budget) is available to support need 3. Sends specification and requisition with funding to Purchasing Department 4. Works with Purchasing Department to develop evaluation criteria/ formats (as applicable) 5. Drafts agenda request for Purchasing approval 	<ol style="list-style-type: none"> 1. Consults with User Department in development of specification and procurement process to be used 2. Works with City Attorney to prepare or review solicitation and contract documents 3. Reviews specification to ensure that it is descriptive and specific but does not prevent competitive bidding of comparable goods 4. Works with user department to develop evaluation criteria/formats (as applicable) 5. Prepares agenda item for City Council (if applicable) 6. Reviews/edits agenda request and files in Legistar
Solicitation	<ol style="list-style-type: none"> 1. Reviews solicitation documents before issuance to ensure department needs are met 2. Provides Purchasing Department with a list of potential vendors that can meet the solicitation requirements 3. Provides technical clarifications to Purchasing Department if vendor questions arise 4. Supports pre-solicitation conferences (as applicable) 	<ol style="list-style-type: none"> 1. Develops solicitation documents based on specification and sends to user department for review before final issuance 2. Issues solicitation to vendors registered on electronic bidding system (and those identified by user department) 3. Advertises solicitation in accordance with State law 4. Conducts pre-solicitation conferences (as applicable) 5. Provides answers or clarifications to vendors through addenda before solicitation closes 6. Receives and logs vendor responses 7. Prepares responses for evaluation and sends to user department
Evaluation and Negotiation (as applicable)	<ol style="list-style-type: none"> 1. Evaluators from department sign confidentiality statement and send to Purchasing Department (as applicable) 2. Evaluates response based on established evaluation criteria and formats 3. Completes evaluation and submits recommendation to Purchasing Department 4. Works with Purchasing Department to develop negotiation strategy (as 	<ol style="list-style-type: none"> 1. Issues confidentiality statement to all evaluators before evaluation commences (as applicable) 2. Supervises evaluation process to ensure consistent and fair application of evaluation criteria 3. Acts as point of contact for evaluator requests and communications to vendors for additional information 4. Compiles individual evaluation results and works with users to

Process	User Department Role/Responsibility	Purchasing Department Role/Responsibility
	<p>applicable)</p> <ol style="list-style-type: none"> 5. Participates as member of negotiating team to negotiate Best and Final Offers (as applicable) 6. Works with Purchasing Department to co-develop final recommendation for award 7. Provides information to Purchasing Department (memorandum) to support contract award agenda development 	<p>develop recommendation for award and prepares contract award agenda item for City Council or</p> <ol style="list-style-type: none"> 5. Works with user department to develop negotiation strategy (as applicable) 6. Leads negotiating team to negotiate Best and Final Offers (if applicable) 7. Receives Best and Final Offers and co-develops final recommendation for award (if applicable) and 8. Prepares contract award agenda request for City Council
Contract Modifications	<ol style="list-style-type: none"> 1. Request modifications in writing to Purchasing Department 2. Reviews draft and final modification to ensure it meets department needs 	<ol style="list-style-type: none"> 1. Evaluates modification request and works with user department to develop modifications 2. Coordinates with vendor and user department to develop draft modifications 3. Works with City Attorney to review and finalize modifications 4. Obtains appropriate signatures (vendor, attorney, etc.) 5. Either Purchasing Manager approves modifications or develops City Council agenda item for approval depending on type and amount of modification
Contract Performance Monitoring	<ol style="list-style-type: none"> 1. Receives copy of contract and monitors vendor performance and delivery 2. Notifies Purchasing Department of non-performance and provides written documentation outlining details of non-performance (dates, description of problem, etc.) 3. Works with Purchasing Department to develop acceptable corrective actions (as applicable) 	<ol style="list-style-type: none"> 1. Maintains complete contract file with supporting documentation during term of contract 2. Works with vendor to resolve performance issues as identified by user department 3. Develops corrective actions and timetables for completion to resolve performance issues and documents in contract file (as applicable) 4. Works with user department and City Attorney to terminate contract when necessary because of non-performance

Chapter 7: Historically Underutilized Business Program

Policy	<p>The policy of the City of McKinney Purchasing Department is to ensure a good faith effort is made to assist certified HUB vendors and contractors in receiving contracts in accordance with State law:</p> <p><i>Texas Local Government Code, Chapter 252.0215. A municipality, in making an expenditure of more than \$3,000 but less than \$50,000, shall contact at least two historically underutilized businesses on a rotating basis, based on information provided by the comptroller pursuant to Chapter 2161 of the Texas Government Code. If the list fails to identify a historically underutilized business in the county in which the municipality is situated, the municipality is exempt from this section.</i></p>
Informal Solicitations	<p>For expenditures over \$3,000 and less than \$50,000, the Purchasing Department solicits a quote from two certified HUBs, if available.</p>
Formal Solicitations	<p>The Purchasing Department uses a third party vendor to maintain the Bidders List. All registered vendors within a specific commodity and sub-commodity category are solicited. All HUB vendors are encouraged to register with the third party vendor so they are included in formal solicitations within the commodity code they select.</p>
Eligibility	<p>City of McKinney does not certify HUB vendors. HUB vendors must complete the certification process with the State of Texas Comptroller of Public Accounts. The HUB vendor must hold a current valid certification from the Comptroller.</p>

Chapter 8: Other General Purchasing Policies

IT Review of Data Processing Equipment

The Information Technology Department (IT) shall review and approve all purchase requests made by departments for software, hardware and other data processing equipment save and except Pre-approved Marketplace Items (defined below). This procedure is to ensure compatibility and standardization of the City's computer system. IT may provide the Purchasing Manager with a list of the goods and services that have been pre-approved and need no additional review ("Pre-approved Marketplace Items"). Pre-approved Marketplace Items also include renewals and re-purchases of previously approved software applications, but do not include updates or new versions that may by their revisions be rendered incompatible. To purchase any other data processing goods or services, the user department must obtain IT approval.

Risk Management Coverage

When departments sustain loss or damage to goods or buildings, and funding for replacement or repair is coordinated through the Risk Management Department, the actual purchase is processed by the Purchasing Department. Additionally, the Risk Manager must notify the Finance Department so that fixed asset inventory files can be updated, if applicable.

After Hours Emergency Purchases

Each department must have written internal procedures consistent with this Policy that address Emergency Purchases (defined in Chapter 2 of this Policy) in an amount of less than \$50,000 that occur after regular work hours. If you have any questions regarding whether a particular purchase meets the state law definition of an emergency purchase, please contact the Purchasing Manager.

Each department's written internal procedures should require that department employees contact their immediate supervisor or other designated person for approval prior to making an Emergency Purchase. On the first working day after the Emergency Purchase, the department must enter a purchase requisition into the ARS and complete the Emergency Purchase Justification form, available on the City's Intranet, and submit to the Purchasing Manager.

Interlocal Agreements

All interlocal agreements with other governmental and quasi-governmental entities which will provide for a Cooperative Purchasing Program, only, between the City and other governmental and quasi-governmental entities must be reviewed by the Purchasing Manager and may be approved by the City Manager pursuant to Resolution No. 2000-08-093.

Best Value

If the competitive sealed bidding requirement applies to the contract for goods or services, and if so specified in the bid documents, the contract must be awarded to the lowest responsible bidder or alternatively, if so specified in the bid documents, to the bidder who provides goods or services at the best value for the City. In determining the best value for the municipality, the City may consider:

- the purchase price;
- the experience and reputation of the bidder and of the bidder's goods or services;
- the quality of the bidder's goods or services;
- the extent to which the goods or services meet the City's needs;
- the bidder's past relationship with the City;

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

Electronic Transactions

Electronic sealed bids or proposals shall be accepted in accordance with Section 252.0415(a) of the Local Government Code requiring the identification, security, and confidentiality of electronic bids or proposals to remain effectively unopened until the proper time.

- Invitations to Bid and Requests for Proposals will be advertised and issued through the City's electronic service provider. A notification will be added to bid terms and conditions stating suppliers may/should submit responses electronically through City's service provider at the appropriate electronic address listed. An automatic "e-mail return notification" will be sent to the submitting supplier upon receipt of their bid or proposal.
- At the specified bid closing time, a *password-enabled* employee in the Purchasing Department will open, download, and print all bids and the bid tabulation summary assembled by the City's service provider. The printing operation will occur in the controlled environment of the Purchasing Department where purchase order equipment is currently located. By law, a bid that is submitted non-electronically will be accepted manually and then entered electronically by Purchasing after the bid opening, as stated in bid and proposal document terms and conditions.

Purchasing staff will read aloud all bid responses received by the stated bid closing time and date to any interested parties present at the bid opening. After tabulation of bids or proposals, staff will post the bid tabulation electronically with a qualifying statement: "The tabulation listing of a bid should not be construed as a comment on its responsiveness or an indication that the City accepts such bid as responsive".

Vendor List

The Purchasing Department maintains a list of vendors who have requested that they be sent notices of advertised solicitations through our third party electronic service provider. The vendor is responsible for registering on-line via the City's website www.mckinneytexas.org. They may categorize their business by the commodity codes for the goods and services that they are capable of providing. The Purchasing Department utilizes a third party vendor for maintenance of the vendor list and publication of solicitations.

As a courtesy to vendors, and as a means of encouraging competition, notification of each solicitation is provided to appropriate vendors via email. The Purchasing Department also advertises solicitations on the City's cable television channel, on the City Purchasing website at <http://www.mckinneytexas.org>, and in a newspaper of general circulation as required by law.

Stock Requisition

A City stock room will be maintained for use by all departments. Departments may obtain materials directly from this stock room through electronic supply requisition (stock req.). Materials and supplies in the stock room have already been purchased by the City based upon anticipated needs. Consequently, a purchase order is not needed to obtain such items, only a supply requisition.

Petty Cash

Incidental items under \$50 (with the exception of items available on fixed price contracts) may be purchased utilizing petty cash.

Field Purchase Order (FPO)

Payments, in which use of a purchase order would not be practicable (no need to shop for services), are allowed by electronic field purchase order (or by hard copy check request where FPO is unavailable). FPO's should not be used for recurring services. Electronic field purchase orders/check requests may be utilized for the following items:

- Seminar, conferences (registration, fees – not travel advances)
- Employee reimbursements (mileage)
- Advertisements
- Subscriptions, dues and memberships (magazines, professional/trade annual fees)
- Refunds (Parks, Community Center, UB, Court only)
- Utility payments (electric, gas, phones)
- Banking/Financial Fees (credit card fees, debt service payments, broker fees, etc.)
- Food (for council meetings, department meetings)
- Land Acquisition (easements, right of way or land purchases only)
- Personal Services (artists, instructors, judges, translator)
- Legal Fees (attorneys, legal services)
- Doctors/Medical Services
- Contributions/Support (grant or program support, prisoner retention)
- Other payments as authorized by the Finance Director

Ethical Procurement

City of McKinney departments are encouraged to do business with companies who adhere to the federal and state labor law and regulations, including but not limited to:

- The Fair Labor Standards Act through limiting child labor, requiring payment for overtime work and requiring payment of at least the general prevailing daily wage rate for work of a similar character performed in the same locality.
- The Occupational Health and Safety Act which requires safe working practices and procedures in all projects.
- The provision of workers' compensation insurance, by the general contractor and all subcontractors, in accordance with the Texas Workers' Compensation Act on any City building or construction project.
- Any state or federal law prohibiting discrimination or harassment based on age, gender, race, religion, or national origin in the work place.

The City of McKinney, including the Purchasing Department, is strongly committed to upholding these beliefs in ethical and humane business practices.

Grant Funded Purchases

Grants should be administered via a written contractual agreement between the City and the party providing the service. Grants administered by the State are governed by Chapter 2261 of the Texas Government Code, which includes grants in the definition of a contract unless certain criteria are met. All purchases made with grant monies will comply with the terms and conditions of the grant, as well as the City's procedures regarding all purchases. Grants often have short time frames to meet and although every effort will be made to expedite purchasing processes where possible to meet these deadlines, the department is responsible to provide the Purchasing Manager a copy of all procurement requirements in the grant document in a timely manner.

Chapter 9: The Requisitioning Process

Definition	Requisitioning is the formal request for a purchase to be made. It is the first step after the need for goods or services is recognized.
Purpose	The department's purchase requisition authorizes the Purchasing Department to enter into a contract with a vendor to purchase goods or services. This automated form is for internal use and cannot be used by a department to order materials directly from a vendor.
Policy	City of McKinney uses an automated requisitioning system, commonly referred to as the ARS. Based on pre-established budget line items, the user department enters purchase requisitions into the ARS. Adequate budget funds must be available in the departmental line item(s) before the Purchasing Department can purchase the requested goods and services.
Procedure	<p>Purchase requisitions should fully describe what to buy, when it is required, and where the goods are to be delivered or the services are to be performed. The user department needs to “build” a complete description of the item(s) needed. Exhibit 5 identifies the information and steps the user department should follow to obtain the full descriptive information needed to process requisitions expeditiously. The information should be researched and obtained before the user department enters a requisition in the ARS.</p> <p>After the Purchasing Department receives a purchase requisition, it determines the appropriate purchasing method based on the cost of the purchase, the goods and services to be purchased, the existing contracts for goods and services and other relevant factors.</p> <p>Specific instructions on entering purchase requisitions into the automated ARS are not covered in this manual. The user department can contact the Purchasing Department for training.</p> <p>Note: Cycle time to process a requisition refers to the time between when a purchase requisition is received in the Purchasing Department and when an actual purchase order is placed with a vendor.</p> <p>Reminder: It is the department's responsibility to track the progress of their requisition to make sure it is released from the Financial Service's queue. Time the requisition may spend in the Financial Service's queue is not included in cycle time.</p> <p>Emergency Requisitions: Please contact the Purchasing Department prior to entering an emergency requisition into the automated ARS and inform the Purchasing Department that you are submitting an emergency requisition so the emergency requisition can be promptly retrieved from the ARS and processed.</p>

Exhibit 5: Open Market Requisition Checklist

Step	Reference Source:
<p>Identify the commodity and sub-commodity code for the item(s) to determine the accounting line item(s) to be used and ensure that there are sufficient budgeted funds available. Perform budget transfer if necessary, before submitting requisition.</p>	<p>ARS (purchasing module for commodity/sub-commodity and financial module for account line item balances)</p>
<p>Find the desired item(s) and obtain the following information:</p> <ul style="list-style-type: none"> ✓ Manufacturer Name (e.g. Dell) ✓ Model Number (e.g. Pentium series II, model Number 135867) ✓ Unit of measure (e.g. each) ✓ Unit price, quantity, and total price ✓ Item description (complete description with as much detail as possible) 	<p>Vendor catalog, Internet research</p> <p>Helpful hint: copy the model description information from the source and either type it in the requisition or e-mail to purchasing. Also, identify where you got the information (e.g. Office Depot catalog p.22 or online at www.officedepot.com, item xxx)</p>
<p>Obtain the full description for the item(s) being purchased. Example of full description (file cabinet): File Cabinet, Vertical, 2 Drawer, Letter Size, Dimensions 27 3/4"H x 17 11/16"W x 25"D, Color: Steel Gray Shipping Weight: 320 Lb. MFG: FireKing P/N FK25 (seen online at Office Depot catalog)</p>	<p>Vendor catalog, Internet research</p>
<p>Check the vendor name to see if the vendor exists in the ARS and verify the vendor number. If the vendor does not exist, obtain the following to enter into requisition comments:</p> <ul style="list-style-type: none"> ✓ Vendor name ✓ Vendor address ✓ Vendor telephone number ✓ Vendor point of contact (who you talked with to get product information) ✓ Email and/or fax number 	<p>ARS Purchasing module (requisition function)</p>
<p>Identify shipping and delivery information including:</p> <ul style="list-style-type: none"> ✓ Date required ✓ Shipping (determine if it is included in price or is a separate item) ✓ Department point of contact to whom item will be delivered ✓ The "Ship to" location ✓ Any specific delivery instructions (location, time of day etc.) ✓ Any special options that are available, but not part of description (color, fabric, etc.) 	<p>ARS Purchasing module (requisition function)</p>

Chapter 10: Open Market Purchases Under \$3,000

Policy	For open market purchases of goods and services totaling less than \$3,000, end user shall seek a source with fair and reasonable pricing.
Considerations	<p>To protect the integrity of the process, all solicitations of quotes shall comply with the following:</p> <ul style="list-style-type: none">• Except for the reverse auction process allowed by law and conducted only by Purchasing, suppliers will not be privileged to quotes from other suppliers;• Purchasing should be contacted if additional sources for a particular product or service are needed;• Quotes should be entered in the appropriate space on the electronic requisition and forwarded to Purchasing for supplier selection/confirmation, price confirmation and issuance of a Purchase Order;• In accordance with State statutes, under no circumstances is the user department authorized to place an order without Purchasing approval or unless a purchase order has been obtained from the Purchasing Department; and• Contact the Purchasing Department with any concerns or questions you may have.

Chapter 11: Procurement Cards

Purpose	The City of McKinney Procurement Card Program has been made available through a contracted banking services provider, hereafter called the Bank. The card will allow selected employees to purchase items required for the daily operations of their departments. The intent of the procurement card is to enhance the capabilities of City personnel to perform operational tasks without the administrative delay of obtaining Departmental Purchase Orders. The card is offered to promote ease of operation; however, it should not be used to replace pre-planning. All purchases made with the Procurement Card are to follow the City of McKinney's Purchasing Policies, Cardholder/Supervisor guides, the City of McKinney's cardholder agreement, the Travel Policy and any other applicable policies. All policies and guides are available for reference on the Purchasing intranet page.
Issuance	Cards will be issued in the name of each individual and the City of McKinney. The card will remain the property of the City of McKinney. Each potential cardholder will attend a training session and sign a procurement cardholder agreement prior to being issued the card.
Statements	Statements will be mailed to cardholders by the Bank. Cardholders are to reconcile their receipts with the transactions shown by the Bank. Attach all documentation, note any additional information pertinent to the purchase, receive necessary approvals and forward to Finance. Statements are to be reconciled by the department on a monthly basis and all receipts must be forwarded to Finance per the timeline listed in the cardholder guide.
Returns, Credits and Disputed Charges	Should a problem arise with a purchased item, service or charges, every attempt should be made by the cardholder to first resolve the issue directly with the supplier. Review of future statements is vital to ensure the account is properly credited for returns, credits or disputed charges. The returned, credited or disputed item should be documented.
Returns	If a cardholder needs to return an item to a supplier, cardholder must contact the supplier and obtain instructions for return. Note that some suppliers may charge a restocking fee for returns. Returns must be documented.
Credits	If the supplier accepts an item as a return, a credit for this item should appear on the following statement. Cardholder must follow up with the supplier until the credit appears.
Disputed Charges	If a cardholder finds a discrepancy on a monthly statement, the cardholder should contact the supplier and attempt to resolve the problem directly. All disputed items should be indicated on reports forwarded to Finance. If a cardholder cannot resolve a disputed item directly with the supplier, the cardholder should contact the Program Administrator. Bank provider will place the charge in a "State of Dispute" and the account may be given a provisional credit until receipt of adequate documentation from the supplier is received. If the documentation appears to be in order, the transaction will be re-posted to the account and the dispute considered closed. If the charge is considered to be fraudulent, the card will be immediately locked, the account may have a provisional credit (if given) and an investigation of the charge will continue. A new card will be re-issued to the cardholder, if appropriate. If the charge appears legitimate after investigation, the transaction will then post to the new account.
Security of The Card	The cardholder is responsible for the security of the card. This city-issued credit card should be treated with at least the same level of care that cardholder would use with

his/her own personal credit cards. Guard the Procurement Card Number carefully. It should not be posted in a work area. Do not leave the card in a conspicuous place, but rather keep it in an accessible, secure location. Cardholder shall always keep the procurement card in the protective sleeve provided by the city and only remove it from the sleeve for official City business use.

The only person authorized to use the Procurement Card is the cardholder whose name appears on the card. The card is to be used for business purposes only.

Lost or Stolen Cards

Record the Bank's Customer Service number in a handy location. If a Procurement card is lost or stolen, the cardholder shall immediately contact the Bank's Customer Service number. After contacting the Bank, the cardholder shall immediately notify the Program Administrator. Prompt action can reduce the City's and the cardholder's liability for fraudulent activity.

It is imperative that Purchasing and Finance be notified immediately of any of the aforementioned problems.

Responsibility of Cardholders

The Procurement Card may be used ONLY for CITY RELATED BUSINESS. No personal use of the card will be allowed. Misuse of the Procurement Card may subject the cardholder to discipline up to termination and criminal prosecution.

Purchases should be made by use of the Procurement Card only if it is the most efficient and most cost effective method. Procurement Cards should not be used to replace planning for the department's needs. The City promotes progressive productive work methods and supports planning ahead to achieve the best possible results.

Cards must be used under SECURE CONDITIONS ONLY. Only secure websites are allowed for online transactions. Look for either a "lock" icon at the top of the screen or an added 's' in prefix of the site's URL, specifically "https://". If one of these indications is not present, do not complete the transaction. Cardholders are to use caution when providing a card number by telephone or by facsimile.

The City of McKinney is exempt from sales tax. BE SURE TO CHECK ALL RECEIPTS TO ENSURE THAT TAX HAS NOT BEEN INCLUDED.

Card Restrictions

Cardholders are prohibited from using the Procurement Card to purchase local business meals with the exception of the City Manager, Deputy City Managers and Directors (who are authorized to purchase reasonable business meals as determined by the City Manager). Business meal receipts shall be documented to include attendee names and purpose of the meeting.

Travel/Training – related meals are handled on per-diem basis. Therefore, the Procurement Card shall not be used for these type meals. See travel policy.

The Procurement Card shall not be used for items and/or services on contract, CIP projects, fixed assets or capital outlays. The City Marketplace is the only exception where payment for contracted items can be made with a procurement card.

To remain in compliance with Texas Local Government Code Section 252.0215, the cardholder must solicit quotes from [HISTORICALLY UNDERUTILIZED BUSINESSES](#) if total expense for a commodity reaches \$3,000 or more. (Contact Purchasing or refer to 'Purchasing' on the intranet for "how-to" information.)

For examples of appropriate purchases, refer to the City of McKinney Procurement Card Program, Quick Reference Cardholder Guide.

**Director and
Approving Officer
Responsibilities**

Directors will set expenditure and purchase limits.

- Predetermined card limits of \$1000 per transaction have been set. However, if a Director requests a lower limit for certain cards the cardholder will be notified by their Director. Directors have the authority to assign higher per transaction and per cycle limits.
- In the event that the cardholder misuses the card the Director may cancel the card and require the return of the card. Further disciplinary action may result.

Approving Officers will review all purchases.

- The Approving Officer is responsible for timely reviewing and approving of cardholder monthly transactions. Notwithstanding the foregoing, an Approving Officer or Director shall not review and approve their own cardholder monthly transactions. Rather, such cardholder monthly transactions shall be reviewed and approved by their respective Supervisors.
- The Director will counsel cardholders and their Approving Officers whenever cardholders are not adhering to all requirements and guidelines of the card. In the event that a cardholder misuses the card, the Program Administrator may cancel their card. The Finance Director, Program Administrator and Human Resources Director will work in conjunction with Director on appropriate disciplinary action for card misuse. The Purchasing Department will conduct audits of the Procurement Card usage in the same manner as is done with Departmental Purchase Orders.
- Neither the Bank nor the merchant bears any responsibility for inappropriate purchases. If the cardholder makes a purchase, the merchant will be paid and the department budget charged unless the City returns the merchandise and the merchant agrees to accept and issue a credit.
- The Approving Officer shall immediately report any inappropriate purchases made by any cardholder to their Director. The Supervisor of the Approving Officer, if the Director is not the Approving Officer's Supervisor, shall immediately report any inappropriate purchases made by the Approving Officer to their Director. The Director shall counsel the offending cardholder, including an offending Approving Officer, and report the offending cardholder and/or offending Approving Officer and inappropriate purchase to the Program Administrator.
- In the event a Director makes any inappropriate purchases, such inappropriate purchases shall be immediately reported to the Assistant City Manager or Deputy City Manager charged with oversight of that Director's Department as well as the City Manager. The Assistant City Manager or Deputy City Manager charged with oversight of that Director's Department and/or the City Manager shall counsel the Director and report the Director and inappropriate purchase to the Program Administrator.

Director will request new cards and/or cancellation of existing cards.

- The Director is responsible for notifying the Program Administrator to process the application of an authorized cardholder, cancel the card of a cardholder and for turning in a card to be cancelled.
- Whenever the employment of a cardholder ends, or the individual is transferred to other duties, the Director is responsible for returning the card to the Program Administrator for cancellation.

**Program
Administrator
Responsibilities**

The Program Administrator will be responsible for:

- processing applications to obtain Procurement Cards for staff members and for canceling cards returned by the Director upon their request.
- keeping a current list of all cardholders, card numbers, card limits and card history. They will also be responsible for the integrity of the system and as such may request a full audit of the cardholder account.
- reviewing the appropriateness of purchases made with the Procurement Cards and any misuse and/or abuse of card privileges (collectively "Occurrence") will be dealt with as follows:
 - Occurrence 1 – The Director determines if the cardholder should be individually responsible for the charge, if the individual should continue in the program, and any disciplinary action up to and including termination. Program Administrator will be notified of the disposition of the incident.
 - Occurrence 2 – Program Administrator and Director will meet to determine if the individual will continue in the card program and the Director will determine the need for disciplinary action up to and including termination.
 - Occurrence 3 – Program Administrator and Finance Director may terminate the cardholder's participation in the program, and the Director will determine the need for disciplinary action up to and including termination.
- Each occurrence is subject to discipline at the Director involvement consultation.
- Merchant Category Codes (MCC) will be assigned to give the purchaser optimum buying capability. Samples of the MCC, which will be available, are:
 - Tools
 - Auto Parts
 - Janitorial Supplies
 - Auto Repair
 - Office Supplies
 - Safety Supplies

The Procurement Card will cover most of the purchases that a department makes. A complete listing is available through the Program Administrator. Should a department determine that they have additional needs beyond the MCC the department should submit a written request to the Program Administrator and at that time, if deemed necessary, the new MCC will be added.

Chapter 12: Open Market Purchases between \$3,000 - \$25,000

Policy For open market purchases of goods and services totaling between \$3,000 and \$25,000, **Purchasing** will solicit price quotations from a minimum of three sources to assure fair and reasonable competition. Any exception must be approved by the Purchasing Manager and documented on the requisition.

The Purchasing Department shall contact at least two Historically Underutilized Businesses (HUBs) when making expenditures in this category, on a rotating basis based on information provided by the Texas Procurement and Support Services pursuant to Chapter 2161 of the Texas Government Code. If the HUB list fails to identify a historically underutilized business within Collin County for the service or goods sought, the City is exempt from this requirement, and the Purchasing Department will obtain the required quotes. The Purchasing Department will maintain the proper documentation reflecting compliance with this obligation.

Considerations To protect the integrity of the process, all solicitations of quotes shall comply with the following:

- Except for the reverse auction process allowed by law and conducted only by Purchasing, suppliers will not be privileged to or provided information regarding quotes from other suppliers;
- Purchasing should be contacted if additional sources for a particular product or service are needed;
- Quotes should be entered in the appropriate space on the electronic requisition for supplier selection/confirmation, price confirmation and issuance of a Purchase Order. Results regarding the solicitation of price quotations from HUBs will be documented and kept on file by the Purchasing Department;
- In accordance with State statutes, under no circumstances is the User Department authorized to place an order without Purchasing's prior approval or unless a purchase order has been obtained from the Purchasing Department; and
- Contact the Purchasing Department with any concerns or questions you may have.

Chapter 13: Purchases between \$25,000 - \$50,000

Policy	Formal written quotes are obtained <i>by Purchasing</i> for these purchases
Considerations	<p>To protect the integrity of the process, all solicitations of quotes shall comply with the following:</p> <ul style="list-style-type: none">• Department shall submit a requisition to Purchasing for services and/or products required;• Department shall provide Purchasing with the scope of work and/or specifications for services and/or products required;• Purchasing shall review documents submitted by departments to ensure that the requirements are not unreasonably restrictive thereby preventing fair and reasonable competition. Purchasing shall incorporate appropriate terms and conditions to develop the Invitation to Quote (ITQ). Invitation to Quote will be forwarded to prospective suppliers and shall state a specific date, time and location for quote submittal. Purchasing will be responsible in these instances for complying with the State's HUB requirements; and• Departments must allow adequate time (at least one to two weeks) for processing orders in this category.

Chapter 14: Purchases over \$50,000

Policy Texas State law (Texas Local Government Code Chapter 252) sets the requirements for formal solicitations. By law, purchases of more than \$50,000 require that a competitive sealed bid or a competitive sealed proposal process, including public notice, public opening of the bids and City Council award, be utilized. See Policy, [Chapter 16](#). Certain expenditures are exempt from the competitive bidding requirements. See Tex. Loc. Gov't Code § 252.022. A department must contact Purchasing to determine if an exemption applies. See Policy, [Chapter 19](#).

Considerations No specifications are to be written with the intent to exclude a possible bidder. Tex. Loc. Gov't Code § 252.047 allows that competitive bidding can be let on either a lump-sum or a unit price basis. If unit price bids are solicited, the approximate quantities of each item needed are to be estimated in the requisition based on the best available information but payment to the contractor must be based on the actual quantities involved. *Id.*

The competitive sealed bid process is used for most purchases. Electronic receipt of bids and the Reverse Auction procedures may be used if the Purchasing Manager deems those processes to be the best method for the solicitation. Bids are awarded based on lowest responsible bidder or best value, as established in the bid documents. See Chapter 8 of this Policy for a discussion regarding "Best Value" bidding.

The competitive sealed proposal process may be used when circumstances dictate and the Purchasing Manager has designated, through the proposal process, that this process is the best method of procurement for the particular item and/or service. Proposals are awarded based on the most responsible offeror whose proposal is determined to be the most advantageous to the municipality, considering the relative importance of price and the other evaluation factors included in the request for proposals.

To protect the integrity of the process, all solicitations shall comply with the following:

- Department shall submit a requisition to Purchasing for services and/or products required;
- Department shall provide Purchasing with the scope of work and/or specifications for services and/or products required;
- Purchasing shall review documents submitted by departments to ensure that the requirements are not unreasonably restrictive thereby preventing fair and reasonable competition. Purchasing shall incorporate appropriate terms and conditions to develop the Invitation to Bid (ITB) or Request for Proposals (RFP) in consultation with, as needed, the City Attorney. Bid documents will be forwarded to prospective vendors and shall state a specific date, time and location for submittal; and
- Departments must allow adequate time for processing orders in this category.

Chapter 15: Specifications

Definition

A specification is a concise description of goods or services that user departments seek to buy and the requirements the vendor must meet to be considered for the award. A specification may include requirements for testing, inspection, preparing any goods or services for delivery, or installing them for use. The specification is the total description of the goods and services desired to be purchased.

Purpose

The primary purposes of any specification is to provide vendors with firm criteria about a minimum standard acceptable for goods or services by providing reasonable tests and inspections to determine their acceptability and to provide purchasing personnel with clear guidelines of the needs of the department which will be used to produce the purchase documents. As a result, the specification also:

- promotes competitive bidding; and
- provides a means to make an equitable award to the lowest and/or best bid from a responsible bidder.

Preparation

In writing specifications, user departments are encouraged to obtain an existing specification (i.e. City or another public entity-created RFP) before starting to write a new one. The existing specification can provide ideas and examples that can be customized for City of McKinney purposes. The user department should contact the Purchasing Department for assistance in obtaining existing specifications to facilitate the specification development process.

There are numerous sources for specifications. These include other departments within the City, the City Attorney's Office, other governments, professional trade associations, professional purchasing associations and user knowledge. Some specification libraries that are available include:

- Texas Specification Library located at the Texas Comptroller of Public Accounts website: www.window.state.tx.us/procurement/pub/specifications-library/
- General Services Administration, Federal Supply Service – Specifications Section found at www.gsa.gov
- Texas Department of Transportation Standard Specification Index located at http://www.dot.state.tx.us/gsd/purchasing/tssi_alpha.htm
- National Institute of Governmental Purchasing. Contact Purchasing for assistance because this is available to members only.

The user department, occupant department or an outside agency may propose specifications. To ensure compliance with legal purchasing requirements, the Purchasing Department has final determination of the language included in specifications, except for specifications for construction projects. Specifications for construction projects shall be developed in coordination with the City Attorney. The User Department Director is responsible for obtaining final approval of the specifications. This ensures proper quality control and avoids the proliferation of conflicting specifications in the different City departments.

To facilitate specification development and avoid duplication of their efforts, user departments should submit their specifications in electronic format to the Purchasing Department.

Characteristics

An effective specification has the following characteristics:

- **Simple:** Avoids unnecessary detail, but is complete enough to ensure that purchased goods and services satisfy their intended purpose.
- **Clear:** Uses terminology that is understandable to the user department and vendors.
 - Eliminates confusion by using correct spelling and appropriate sentence structure.
 - Avoids the use of jargon and “legalese”.
- **Accurate:** Uses units of measure that are compatible with industry standards, identifies all quantities and describes packing requirements.
- **Competitive:** Identifies at least two commercially available brands, makes, or models (whenever possible) that satisfy the intended purpose.
 - Avoids unneeded specifications or “extras” that could reduce or eliminate competition and increase costs.
- **Flexible:** Avoids situations that prevent the acceptance of a response that could offer greater performance for fewer dollars.
 - Uses approximate values that are within a 10% range for the dimensions, weight, speed, etc. (whenever possible) if these values can satisfy the intended purpose.

Types

The Purchasing Department uses a number of specification types:

- **Design** - Details description of a good or service, including details of construction or production, dimensions, chemical composition, physical properties, materials, ingredients and all other information needed to produce an item of minimum acceptability. Design specifications are usually required for construction projects, custom-produced items and many services.
- **Performance** – Details required performance parameters such as required power, strength of material, test methods, standards of acceptability, and recommended practices. Performance specifications are usually used for capital equipment purchases.
- **Brand Name or Equal** - Lists goods or services by brand-name, model, and other identifying specifics, except that products with performance equivalent to the characteristics of the named brand are specified as acceptable. Other manufacturers may provide a nearly identical product under another brand name. **The Purchasing Department uses this method only if there is a business purpose justification. The burden of justification rests with the user department.**
- **Industry Standard** – States an industry standard that is identical, regardless of manufacturer that results in acquisition of goods of uniform quality. The UL standard for electrical products is an example of an industry standard.

Chapter 16: Competitively Solicited Purchases Exceeding \$50,000

Definitions and Use

There are two primary types of solicited purchases - competitive bidding and competitive proposals. Competitively solicited purchasing means letting available vendors compete with each other to provide goods or services.

The Dallas 5th District Court of Appeals explains the use or process of competitive bidding as follows:

"Competitive bidding requires due advertisement, giving opportunity to bid, and contemplates a bidding on the same undertaking upon each of the same material items and services covered by the contract; upon the same thing. It requires that all bidders be placed upon the same plane of equality and that they each bid upon the same terms and conditions involved in all the items and services and parts of the contract, and that the proposal specify as to all bids the same, or substantially similar specifications." Sterrett v. Bell, 240 S.W. 2d 516 (Tex. Civ. App.-Dallas 1951, no writ).

Purpose of Competitive Bidding

The Dallas 5th District Court of Appeals further explains the purpose of competitive bidding as follows:

"The purpose of competitive bidding is to stimulate competition, prevent favoritism, and secure the best work and materials at the lowest practicable price for the best interest of the taxpayers and property owners." Sterrett v. Bell, 240 S.W. 2d 516 (Tex. Civ. App.-Dallas 1951, no writ).

The first purpose of competitive solicitations is to ensure the best possible value is received. Competitive solicitations also increase the likelihood that public monies are spent properly, legally, and for public projects only.

The second purpose is to give those qualified and responsible vendors who desire to do business with the City a fair and equitable opportunity to do so.

Competitive Bidding: The term "Formal Competitive Bidding" generally applies to public purchasing when the solicitation process complies with Texas Local Government Code § 252.021, and the solicitation award requires approval by the City Council.

Competitive "sealed" bids are solicited through an advertisement for bids for public works projects, goods and supplies and non-personal services expected to exceed \$50,000. The advertisement for bids contains the specifications, terms, general conditions and special conditions for the public works project, and/or the procurement of goods and supplies and non-personal services ("Bid Documents") as well as the agreement and related performance, payment and maintenance bonds that with the Bid Documents comprise the "Contract Documents" for the project. A formal set of Bid Documents that include the City's standard terms and conditions, reviewed by the City Attorney's Office, must be used for any procurement in excess of \$50,000.

The City Council must accept and award the contract for any public works projects, and/or the procurement of goods and supplies and non-personal services that exceed \$50,000 which are solicited through the competitive sealed bid process to the lowest responsible bidder or (if previously noticed) the bidder that provides the best value to the city timely responding to the advertisement for bids and returning a fully completed

and signed Bid Proposal and Bid Bond. The User Department and Purchasing Department work together to determine whether the presumptive low bidder is the lowest responsible bidder or (if previously noticed) the bidder that provides the best value to the city and prepare a bid tabulation regarding the bids received together with an agenda item recommending to the City Council that the project be awarded to the appropriate bidder. The Contract Documents once signed by the bidder and the City Manager following approval of the City Council form the contract between City of McKinney and the vendor. **Competitive sealed bids are not negotiated and are based upon the terms and conditions set out in the Bid Documents and Contract Documents.**

The competitive sealed bid method is the most preferred method of procuring the performance of public works projects, goods and supplies and non-personal services. It is used when the requirement can be definitively described, is readily available and is an off-the-shelf type of acquisition. Competitive bid contents are not disclosed until after the contract is awarded. In the event that the Bid Documents call for the submission of background documents that are trademarked or proprietary such documents may remain confidential pursuant to the Texas Public Information Act provided that certain steps are timely followed to protect the confidential information from disclosure. (Please contact the City's Public Information Officer and the City Attorney promptly upon receipt of a public information request.)

Competitive Proposals: The term "Formal Competitive Proposal" generally applies to public purchasing in amounts exceeding \$50,000 when the solicitation process complies with Texas Local Government Code § 252.021, and the solicitation award requires approval by the City Council.

Competitive proposals are solicited through a sealed Request for Proposals (RFP) process. Vendors submit responses to the RFP for consideration. The RFP solicits proposals from vendors in response to the City's requirements and contractual terms and conditions. A formal contract that includes the City's standard terms and conditions, reviewed by the City Attorney's Office, must be approved by the City Council for any procurement in excess of \$50,000.

While the RFP process is similar to the competitive sealed bid process, there are notable differences. The primary difference is that the RFP results in a negotiated procurement. Cost is not necessarily the primary determining evaluation factor; however, its relative importance to other evaluation factors must be specified in the RFP and considered in recommending the award of the contract. Also, the proposals in the RFP process are received, but are not opened and read publicly at the time of receipt. Proposal contents are not disclosed until after the contract is awarded to the responsible proposer whose proposal is determined to be the most advantageous to the city under the pertinent evaluation factors. Proposal contents that are trademarked or proprietary may remain confidential pursuant to the Texas Public Information Act provided that certain steps are timely followed to protect the confidential information from disclosure. (Please contact the City's Public Information Officer and the City Attorney promptly upon receipt of a public information request.)

In accordance with Texas Local Government Code § 252.021, the formal competitive proposal (RFP) method may also be used to purchase other items more typically bid through the competitive sealed bid process when the Purchasing Manager determines it is in the best interest of the City.

Procedures

In the City of McKinney, competitive solicited procurements which call for approval by City Council due to an expenditure in excess of \$50,000 are required to comply with the

requirements of the Texas Local Government Code and, with few exceptions, are accomplished by the process set forth in this chapter. Throughout this chapter, “bids” are vendor responses in the competitive sealed bid process and “proposals” are vendor responses in the RFP process. Unless specifically noted, the procedures apply to both the competitive sealed bid and RFP.

Pursuant to Section 50 of the Charter of the City of McKinney, the City Manager generally has the authority to authorize purchasing expenditures under either the competitive sealed bid process or the RFP process if, and only if, (a) the bid or proposal received by the City is for an amount of less than \$50,000, (b) the subject of the bid or proposal is contained within the then current City budget, (c) the amount of the bid or proposal does not exceed the budget for such public works projects, goods and supplies and non-personal services and, (d) such bid or proposal is otherwise exempt from the State of Texas’ laws regarding the competitive procurement processes. All purchases required to be competitively bid or which require a competitive procurement process shall conform to applicable State law, provided further that only the City Council shall have the right to reject any and all bids.

Defining the Need

Competitive Sealed Bid: When the need for a good or service costing more than \$50,000 is identified, the user department should immediately contact the Purchasing Department for assistance in developing the specifications. The specification should be comprehensive and broadly defined to allow for maximum competition.

RFP: When the need for the goods or services (greater than \$50,000) is identified, the user department should immediately contact the Purchasing Department for assistance in defining the requirements to be used for the solicitation. The user department is responsible for submitting a Statement of Work (SOW) or Technical Requirements that functionally define the needs and requirements of the department regarding such goods or services. Purchasing Department staff will review to ensure that the SOW or Technical Requirements is quantified and structured to:

- secure the best economic advantage utilizing best value;
- state the needs or requirements clearly;
- be contractually sound;
- treat all vendors fairly and without favoritism;
- encourage innovative solutions to the requirement described; and
- permit free and open competition to the maximum extent reasonably possible.

Purchase Requisition

A written memo submitted to the Purchasing Manager and signed by the Director, or designee, or a direct e-mail from the Director, or designee, serves as the initial purchase requisition for goods or services. The memo must include the budget line items from which the purchase is funded or an explanation about how funding is obtained before the Purchasing Department will proceed with the preparation of the competitive solicitation.

Requirements or specifications should be attached to the memo and forwarded electronically to the Purchasing Department. If requirements or specifications are not attached, Purchasing and the user department will work to jointly develop them.

The user department must follow up the memo request with the entry of a purchase requisition in the ARS. The Purchasing Department will not proceed with a purchase unless:

- The appropriate budget line item includes sufficient unencumbered funds for the purchase; or
- The Financial Services Department verifies that funds are available through budget transfers; and
- The Director, or designee, of the user department has approved the proposed requirements or specifications prepared or as revised by the Purchasing Department.

Notice

Once the Purchasing Department has finalized the specification or requirements with the Director, or designee, of the user department, the Purchasing Department prepares the solicitation for issuance and submits the solicitation to the Director of the user department for final approval. Following receipt of the Director's approval the Purchasing Department publishes a notice of the proposed purchase that complies with the requirements in Texas Local Government Code § 252.041.

According to Section 252.041, notice of a proposed purchase must be published at least once a week in a newspaper published in the municipality. The date of the first publication must be before the 14th day before the date set to publicly open the bids and read them aloud. To ensure vendors sufficient time to complete and return the solicitation, the Purchasing Department generally advertises for 21 days. If necessary, advertising time can be extended or decreased, but in no event can the time for publication be shortened to less than 15 days. The notice must include:

- The specifications (requirements) describing the goods and services to be purchased, or a statement of where the specifications (requirements) may be obtained;
- The time and place for receiving and opening solicitations and the name and position of the employee to whom the paper solicitations are sent as well as the appropriate electronic address for the City's electronic source provider through which electronic submissions may be submitted; and
- The type of bond required from the vendor, if applicable.
- If unit pricing is required, City must specify approximate quantities, estimated on the best available information.

The Purchasing Department publishes the notice of the proposed purchase.

Special Considerations

If the solicitation is for high technology goods and services, IT must review it before it is advertised.

If the solicitation is for rolling stock, the Fleet Manager must review it before it is advertised.

Amendment of Solicitation

The Purchasing Department may extend the proposal opening date on the notice of a solicitation if an error is discovered or if the nature of the goods or services requires an

extension. The Purchasing Manager may amend a solicitation, after consultation with the Director, or designee, of the user department:

- If inquiries about the meaning indicate the need for an amendment to clarify its original intent or to correct clerical errors; and
- If the amendment does not change the general scope.

There should be at least three days between the date of the amendment and the opening date in the notice. If there are less than three days, the opening date should be extended to allow for a minimum of three days between the date of the amendment and the opening date in the notice.

Pre-Bid (Proposal) Meeting

The Purchasing Department may invite potential vendors to attend a pre-bid (pre-proposal) meeting to discuss contract requirements and answer vendor questions. The Purchasing Manager will work with the user department to determine if a pre-bid (pre-proposal) meeting is necessary. The Purchasing Department manages any pre-bid (pre-proposal) conference and requests that the user department makes staff available to answer questions at the meeting.

Receipt of Responses to Competitive Solicitations

To ensure the identification, security, and confidentiality of responses to solicitations, both electronic and paper, the following procedures are adhered to:

- The Purchasing Manager receives all responses as specified by the solicitation document.
- **Responses to solicitations are not accepted after the opening time on the day of response opening.** All responses offered after the opening time are returned unopened to the vendor with a letter, or a cover email in the case of an electronic submission, from the Purchasing Manager notifying the vendor that the submitted response arrived after the due date and time.

Paper Responses:

- Paper responses shall be submitted in a sealed envelope with the bid/proposal number and title to which it responds printed on the outside of the envelope.
- The Purchasing Department stamps the date and time a response to a solicitation is received upon receipt in the Purchasing Department.
- After a response is received, the Purchasing Department will provide a secure place to hold the solicitation until the opening date. The responses are only accepted if sealed. Responses remain sealed until the Purchasing Department opens them in a public forum at the advertised date and time.
- On occasion, responses that are received in the mail or by other independent carrier may be inadvertently opened. If this situation occurs, another employee of the Purchasing Department is immediately called to act as a witness that the details of the response (especially the price for a bid) were not reviewed and the response will be sealed by the receiving employee of the Purchasing Department, with the incident documented.

Electronic Responses:

- Electronic responses shall be submitted to the specified electronic address, with electronic signature of a person having authority to bind the vendor in a contract. FACSIMILE TRANSMITTALS SHALL NOT BE ACCEPTED.
- Electronic responses shall be submitted to: <https://mckinney.ionwave.net>. This electronic address is a confidential, reserved address for submittal of bid/proposal responses only. All other communications should be addressed specific to the intended recipient.
- The response may be submitted in one or more of the following formats: Microsoft Word, Microsoft Excel, Microsoft PowerPoint, or Adobe Acrobat. Multiple formatted “documents” responding to a solicitation shall be submitted in one single message. Example; if you have one bid submission that includes a Microsoft Word document and a Microsoft Excel spreadsheet, both “documents” must be attached to the one message. Submissions received in any format not listed above may be rejected.
- Electronic responses shall be submitted and received by City in accordance with the date and time set forth in the Bid Documents/RFP. Any responses received after the listed closing date and time shall not be considered. City is not responsible for equipment or software failure that may cause delay or non-delivery of an electronic response.
- City is not responsible for electronic responses containing viruses that cannot be eradicated, or that are corrupted as a result and cannot be opened.
- At the advertised date and time, the City will download the applicable contents of the reserved electronic address and in a public manner, the Purchasing Department will print the electronic responses and make them public accordingly.

The above stated process for paper responses and electronic responses shall be performed in a manner that precludes any perception of favoritism and avoids revealing prices or response information. Publicly receiving sealed responses and recording the submission of requested responses inhibits any perception that the Purchasing Department is manipulating the receipt of solicitations.

Public Opening of Solicitations

Competitive Sealed Bid: The Purchasing Manager, or designee, publicly opens paper responses and electronic responses, reads aloud and documents the bids at the date, time, and place specified in the notice. Preliminary tabulations are provided to the public upon request. Disclosure of trade secrets and confidential proprietary information contained in bid responses, if any, obtained from a vendor is subject to the provisions of the Texas Public Information Act.

RFP: The Purchasing Manager publicly opens and documents sealed proposals, paper and electronic, at the date, time and place specified in the notice. Only the names of vendors submitting proposals are announced.

Proposals are opened to avoid disclosure of contents to competing proposers and are kept secret during the process of negotiation. All proposals that have been submitted are available and open for public inspection after the contract is awarded. Disclosure of trade secrets and confidential proprietary information contained in proposals obtained from a vendor is subject to the provisions of the Texas Public Information Act.

Confidentiality Statement

RFP: Please see Chapter 4 of this Policy for a discussion regarding the use and protection of proprietary information or confidential information and the Purchasing Department's use of a confidentiality statement to ensure compliance with the City's ethics policy related to keeping proprietary information confidential; and requirements related to the disclosure of any potential conflict of interest, and any attempted communication by the vendor directly with the evaluation committee members during evaluation.

Evaluation

Competitive Sealed Bid:The Purchasing Department evaluates all bids with assistance from the user department and recommends the lowest responsible bid or best value bid to the City Council for award. The Purchasing Department evaluates bids based on:

- The purchase price;
- The reputation of the bidder and the bidder's goods or services;
- The quality of the bidder's goods or services;
- The extent to which the goods or services meet the municipality's needs;
- The bidder's past relationship with the municipality;
- The safety record of the bidder (when allowed under Tex. Loc. Gov't Code § 252.0435);
- The impact on the ability of the municipality to comply with laws and rules relating to contracting with HUBs and non-profit organizations employing persons with disabilities;
- The total long-term cost to the municipality to acquire the bidder's goods or services; and
- Any relevant criteria specifically listed in the request for bids or proposals.

The Purchasing Department forwards the bids, the Bid Tabulation, evaluation forms (if applicable) to the Director for completion. The user department recommendation and other appropriate documentation from the user department are submitted with the City Council agenda request to justify the recommended award.

When the lowest priced bid is not the best bid, based on value or responsibility of bidder, clear justification for not selecting the lowest bid must be documented.

RFP: The Purchasing Department supervises the evaluation process performed by the user department or committee to ensure that the evaluation is conducted fairly and consistently and that the integrity of the process is maintained. Depending on the procurement, there may be additional technical evaluation assistance provided by other departments, if applicable.

The RFP must specify the relative importance of price and other evaluation factors; the relative weight of each factor must be stated. Evaluators may only use the specified factors in evaluating the proposals. Purchasing staff leads the evaluation team and is responsible for:

- Tabulating scores;
- Calculating values; and
- **either**
 - Coordinating follow-up meetings to obtain best final offers from all proposers after submission and prior to awarding the contract and recommending an award; or
 - Discontinuing the process.

Please note state law requires that proposers shall be treated fairly and equally with respect to any opportunity for discussion and revision of proposals. See Tex. Loc. Gov't Code § 252.041. After the evaluation is completed, Purchasing forwards an evaluation summary to the Director of the user department for concurrence with the selection and a request that the Director submit a memo to the Purchasing Department signifying the user department's concurrence in the evaluation. The Purchasing Department works with the Director of the user department to develop the recommendation for award and present it for approval to the City Council.

Negotiations (RFP)

The Purchasing Manager, or designee, supervises all negotiations. Any conversations with proposers must be coordinated with the Purchasing Manager, or designee. Departments that contact proposers without coordinating with the Purchasing Department risk jeopardizing the integrity of the City procurement process.

Contract Award

Competitive Sealed Bid:The Purchasing Department along with user department recommends contract award to City Council. The City Council either:

- Awards the contract; or
- Rejects all bids and publishes a new notice if the goods or services are still needed.

If two responsible bidders submit the lowest and best bid, the City Council decides between the two bidders by drawing lots in a manner prescribed by the City Council.

After City Council approves the contract, the Purchasing Manager issues a Notice of Contract Award. This notice and the Contract Documents identified in the original solicitation form the complete contract. A complete original contract is maintained in the City Secretary's Office. A copy will be distributed to the user department.

RFP: The award of the contract is made by City Council to the responsible proposer, whose proposal is determined to be the best evaluated offer resulting from negotiations, taking into consideration the relative importance of price and other evaluation factors in RFP. Negotiations are instituted with the highest ranked proposer. If an agreement is not successfully negotiated with the highest ranked proposer, those negotiations are formally ended and negotiations commenced with the next highest ranked proposer and so forth until an agreement can be successfully negotiated. Failed negotiations are not subject to renewed discussion.

Change Orders

The City Council shall approve change orders that increase the amount of a contract by more than \$50,000, whether that amount is exceeded by one change order or the cumulative amount of all change orders for the contract. The City Council shall also

approve change orders that increase the amount of a contract beyond the initial “not to exceed” amount established by the City Council when the contract was approved.

The City Manager has authority to approve change orders that involve a decrease or an increase to construction contracts which are \$50,000 or less and that are within the range of the “not to exceed” amount approved by the City Council.

In no case shall the original contract price be increased, based on the total of all change orders, by more than 25 percent. The original contract price may not be decreased by more than 25 percent without the express written consent of the contractor.

A change order shall not be issued until it is determined that the necessary funds are budgeted and available. A statement to that effect should be included with the back-up documentation.

Change orders are not required for contracts that are exempted or excepted from the competitive bidding requirements as provided in Chapter 252 of the Texas Local Government Code. But, please note a contract that was originally entered into with a vendor or contractor in an amount that did not require compliance with the state’s competitive bid statutes cannot later be increased to an amount that would have required compliance with the state’s competitive bid statutes. Such a purchase or acquisition would be considered a sequential or component purchase that violates the competitive bid statutes and for which conduct criminal penalties may attach. Regardless, any increases in the amount of the contract in excess of \$50,000 requires City Council approval and increases of \$50,000 or less may be approved by the City Manager.

**Re-Solicitation
of Annual
Contracts**

The Purchasing Department monitors the expiration dates of all contracts. Purchasing notifies user departments by email at least four months before contract expiration and verifies whether the goods or services continue to be needed and the contract needs to be re-bid, renewed or extended, if renewals or extensions are available. Purchasing also sends the existing specifications or requirements to the user department and requests any changes before the solicitation is reissued. The user department returns the specifications or requirements with any additions, deletions, or corrections.

**Reverse
Auctions**

In purchasing goods and services, the Purchasing Manager may use reverse auction procedures under Texas Government Code, Chapter 2155. Reverse auction means:

- A real-time bidding process usually lasting less than one hour and taking place at a previously scheduled time and Internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services; or
- A real-time bidding process usually lasting less than two weeks and taking place during a previously scheduled period and at a previously scheduled Internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services.

**On-going
Maintenance**

An often-overlooked cost of equipment or software is on-going maintenance. All on-going maintenance issues should be considered, evaluated and priced in the initial procurement process.

Exhibit 6: Procurement Methods

Procurement Method	Use When	Advantages	Disadvantages
Competitive Bids (Invitation to Bids)	Adequate competition exists. The product or service is available from more than one source.	Award process is simpler. Award is made to the lowest responsive, responsible bidder or the bidder providing the best value to the City.	Defined specifications may be difficult to develop. Does not encourage innovative solutions.
Competitive Proposals (Request for Proposals)	When factors other than price are evaluated. When negotiations are desired. Vendor is expected to provide innovative ideas.	Allow factors other than price to be considered. Allows for customized proposals suggesting different approaches to the same business need. Allows for negotiations in order to obtain the best value for the City.	Lead times for procurement may be greater. Evaluations are more complex.
Request for Information	There is insufficient information to write specifications for any procurement method.	Provides information to prepare a complete bid or proposal document. Allows the business community to have input into the solicitation document based on current industry practices and market factors. Informs City of any potential problems early in the procurement.	Lengthens the procurement process.
Request for Qualification/Services	Selection is made solely on the skills and qualifications of the professional.	Emphasizes the competency of the proposed professional contractors	Contractor is tentatively selected before price is negotiated.

Chapter 17: State Purchasing Programs

Background and Statutory Authority

There are three types of purchasing programs that allow local governments to purchase goods and services using contracts competitively awarded by the State of Texas or other governments through the Texas Procurement and Support Services Cooperative Purchasing Program (State of Texas Co-op). The Procurement and Support Services Division (TPASS) of the Texas Comptroller's Office manages two of them. The third program allows local governments to purchase computer technology directly from the state's Department of Information Resources (DIR).

- **Term Contracts** (authorized by sections 271.081 through 271.083 of the Texas Local Government Code). The City may purchase from vendors on the same terms and conditions as the State. The State has entered into term contracts after using competitive bidding procedures. The TPASS manages this program for the State.
- **Texas Multiple Award Schedule (TXMAS)** (authorized by section 2155.502 of the Texas Government Code). The City may purchase goods and services from a schedule of multiple award contracts developed by the TPASS. The schedule is adapted from General Services Administration (GSA) Federal Supply Service contracts. TXMAS contracts take advantage of the most favored customer (MFC) pricing and under certain circumstances; the City may negotiate a lower price for the goods or services offered on a scheduled contract.
- **Department of Information Resources (DIR)** (authorized by the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code). The City may purchase computer-related equipment through the DIR and its contracted vendors.

Official Representative

The Purchasing Manager acts as the official representative for the City of McKinney in all matters related to the purchase of goods and services from a vendor under any contract based on a State Purchasing program. The City is responsible for making payments directly to these vendors should the City choose to utilize a State Purchasing program contract.

State Term Contract Purchases

Policy

City of McKinney participates in the purchasing program of TPASS for local governments.

Procedure

The Purchasing Manager either submits requisitions to the TPASS under a contract or electronically sends purchase orders directly to vendors and reports to TPASS on actual purchases in compliance with TPASS regulations. The Purchasing Manager monitors vendor compliance with all the conditions of delivery and quality of the purchased goods and services. The Purchasing Manager may coordinate and deliver all necessary documents for all purchases under this program made for the City.

To initiate this process, the user department submits a purchase requisition. The Purchasing Department determines if the requested goods or services are available from TPASS contracts. If they are available, the Purchasing Department assigns a state requisition number that is used for reporting and payments.

Texas Multiple Award Schedules (TXMAS) Purchases

Policy

City of McKinney participates in the purchasing program of the TPASS using TXMAS contracts developed from contracts that have been competitively awarded by the federal government or any other governmental entity of any state.

Procedure

The Purchasing Manager monitors vendor compliance with all the conditions of delivery and quality of the purchased goods and services. The Purchasing Manager may coordinate and deliver all necessary documents for purchases under this program for City of McKinney.

To initiate this process, the user department may research goods and services on the TPASS website to determine if the goods or services are available from TXMAS. Based on its research, the user department submits an “open market” purchase requisition and identifies in the requisition comments that the good or service may be available through TXMAS. The Purchasing Department determines if the requested goods or services are available from TXMAS and compares prices among TXMAS vendors to obtain the best value. The Purchasing Department works with the user department to determine best value and then issues a purchase order with the selected vendor providing the best value.

Department of Information Resources (DIR) Purchases

Policy The City purchases computer-related equipment and services through the state’s Department of Information Resources (DIR) and from its contracted vendors. The City contracts with DIR and uses its Go DIRect program.

Procedure The Purchasing Manager either submits requisitions to the DIR under any contract or electronically sends purchase orders directly to DIRect vendors. The Purchasing Manager monitors vendor compliance with all the conditions of delivery and quality of the purchased goods and services. The Purchasing Manager may coordinate and deliver all necessary documents for purchases under this program made on behalf of the City.

To initiate this process, the user department may research goods and services on the DIR website to determine if the goods or services are available from DIR or its contracts. Based on its research, the user department submits an “open market” purchase requisition and identifies in the requisition comments that the good or service is available from DIR. The Purchasing Department determines whether or not the requested goods or services are available from DIR, and if available, the Purchasing Department compares prices among DIR vendors to obtain the best value. The Purchasing Department works with user department to determine best value and issues a purchase order with the selected vendor providing the best value. For larger, more complex IT purchases, the Purchasing Department may work with the City Attorney’s Office on a supplemental contract to ensure the best interests of the City are covered. The user department should plan their procurements accordingly to allow sufficient time to negotiate and enter into a contract with the selected vendor, if necessary.

If the purchase is from a vendor who is part of the Go DIRect program, the City issues the purchase order directly to the vendor and pays the vendor directly. If the purchase is to a vendor that is not part of the Go DIRect program, the City issues the purchase order to DIR, which authorizes a separate purchase order to the vendor.

Chapter 18: Cooperative Purchasing Agreements

Background and Statutory Authority

The Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, authorizes local governments to contract directly with other governments to increase their efficiency and effectiveness. Texas Government Code Section 791.025(c) states that a local government that purchases goods and any services reasonably required for the installation, operation or maintenance of those goods under the Interlocal Cooperation Act satisfies the requirement of the local government to seek competitive bids for the purchase of goods and their services. The City has a variety of interlocal agreements with other governmental entities that allow the City to participate in cooperative purchasing programs.

Policy

The City participates in the purchasing programs of various local, state and national cooperatives such as Houston Area Council of Governments (H-GAC), Texas Association of School Boards (BuyBoard), The Cooperative Purchasing Network (TCPN), U.S. Communities and Federal Supply Schedules. Before using any cooperative, the Purchasing Department researches and recommends cooperatives. The City Council has delegated authority to the City Manager to enter into an interlocal agreement with other governmental and quasi-governmental entities that will allow the City to participate in a cooperative purchasing program which acknowledges the terms and conditions for using each cooperative, including any fee schedules, and authorizes the Purchasing Department to make purchases under the terms of the interlocal agreement. See Resolution 2000-08-093 (R), dated August 15, 2000.

Official Representative

The Purchasing Department acts as the official representative for the City of McKinney in all matters relating to cooperative purchasing programs, including the purchase of goods and services from a vendor under any contract.

Procedure

The Purchasing Department must review and recommend approval of all interlocal agreements involving the purchase of goods, repair, or maintenance agreements before the agreement is submitted to City Manager for approval.

To initiate this process, the user department may research goods and services on the approved cooperative's website to determine if the needed goods or services are available from the cooperative. Based on its research, the user department submits an "open market" purchase requisition and identifies in the requisition comments that the good or service is available from the cooperative. The Purchasing Department determines whether or not the requested goods or services are available from a specific cooperative. If available, the Purchasing Department compares prices among cooperative and local vendors to obtain the best value. The Purchasing Department works with the user department to determine best value and issues a purchase order with the selected vendor using the purchasing method that provides the best value.

The Purchasing Department either submits requisitions to the applicable cooperative or electronically sends purchase orders directly to vendors using the processes defined by the specific cooperative. The Purchasing Department monitors vendor compliance with all conditions of delivery and the quality of the purchased goods and services. The Purchasing Department may coordinate and deliver all necessary documents for purchases under cooperative purchasing programs made on behalf of the City.

Contract Award

The Purchasing Department may execute all purchase orders for purchases through interlocal agreements that are procured in compliance with this chapter, including purchases in excess of \$50,000, provided funding for the purchase has been approved by the City Council.

**Interlocal
Agreements**

All interlocal agreements that involve the purchase of goods, services, repair or maintenance agreements must be approved in writing by the Purchasing Department before being submitted to City Manager for approval.

**Federal
Supply
Schedules**

Texas Local Government Code Section 271.103 states that a local government that purchases goods and services available under Federal supply schedules of the United States General Services Administration, to the extent permitted by federal law, satisfies the requirement of the local government to seek competitive bids for the purchase of those goods and services.

Under the Cooperative Purchasing Program, state and local government entities may purchase a variety of Information Technology (IT) products, software, and services from contracts awarded under [GSA Federal Supply Schedule 70](#), Information Technology.

State and local government entities may also purchase alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing and related services from contracts awarded under [GSA Federal Supply Schedule 84](#), Total Solutions for Law Enforcement, Security, Facility Management Systems, Fire, Rescue, Special Purpose Clothing, Marine Craft, and Emergency/Disaster Response.

Chapter 19: Procurement of Professional Services

Background and Statutory Authority

The Professional Services Procurement Act, Chapter 2254 of the Texas Government Code, prohibits a governmental entity from selecting a provider of professional services or a group or association of providers of professional services or otherwise awarding a contract for professional services on the basis of competitive bids. Texas Government Code § 2254.003. Rather, the governmental entity must make the selection and award a contract for professional services on the basis of demonstrated competence and qualifications to perform the services, and for a fair and reasonable price which does not exceed any maximum provided by law. *Id.* “Professional services” is defined in Section 2254.002 of the Texas Government Code as those services:

- within the scope of the practice, as defined by state law, of accounting, architecture, landscape architecture, optometry, medicine, land surveying, professional engineering, real estate appraising or professional nursing, or
- provided in connection with the professional employment or practice of a person who is licensed or registered as an architect, an optometrist, a physician, a surgeon, a certified public accountant, a land surveyor, a landscape architect or professional engineer, a state certified or state licensed real estate appraiser, or a registered nurse.

The Professional Services Procurement Act does not address all professional services. A municipality has the ability to determine whether particular services, in addition to those services identified in Chapter 2254 of the Texas Government Code, are “professional services” for the purpose of exemption from competitive bidding requirements. See Texas Local Government Code § 252.022. The competitive bid statute (Chapter 252 of the Texas Local Government Code) provides that professional services are exempt from competitive bidding. Remember that just because an item is exempt from competitive bidding that does not mean the item cannot be competitively bid. A city can choose to not take advantage of the exemption and competitively bid except to the extent prohibited. Read in conjunction with the Professional Services Procurement Act, this means that the determination to competitively bid professional services is discretionary with the exception of services in the fields of accounting, architecture, landscape architecture, optometry, medicine, land surveying, professional engineering, real estate appraising or professional nursing. Atty. Gen. Op. DM-106 (1992).

The Purchasing Manager relies on court cases and attorney general opinions, and may also consult with the City Attorney, to determine what additional services may be included in the list of professional services. For the purpose of this policy, “professional services” shall be defined as those services “requiring special knowledge or attainment and a higher order of learning, skill, and intelligence.” Op. Tex. Att’y Gen. Nos. JM-1038 (1989), JM-940 (1988), MW-344 (1981). Other services defined by the City of McKinney as professional services, which are not specifically listed in Chapter 2254 of the Government Code, include;

- Those services within the scope of practice of actuaries, attorneys, business consultants, computer programmers, copywriters, developers, efficiency experts, executive search firms, facilitators, funeral directors, public relations, recruiters, real estate brokers, translators; or

- Any other professional service as determined by approval of the City Council from time to time and made a part of this policy.

Contracts for the procurement of these professional services **may not be awarded on the basis of bids**. Instead, services must be awarded on the basis of demonstrated competence and qualifications.

Professional Services Procurement Act

Request for Qualifications /Proposals (RFQ/RFP)

To ensure professional firms a fair and equal opportunity to do business with the City, and to ensure that the services of the most qualified professional are obtained, professional services should be procured using the Request for Qualifications (RFQ) or Request for Proposals (RFP) process to identify the most highly qualified provider of those services on the basis of demonstrated competence and qualifications, when necessary, and then attempt to negotiate a contract at a fair and reasonable price as outlined in Chapter 2254 of the Texas Government Code.

Informal Procedures

Unless specifically exempted by the City Manager, all professional services anticipated to cost less than \$50,000 should be procured using the informal RFQ/RFP process. Departments forward a recommendation memo to the Purchasing Manager when professional services are required and a highly qualified provider of those professional services needs to be identified on the basis of demonstrated competence and qualifications. The memo identifies the following:

- Scope of work;
- Qualification and experience requirements;
- Project description and deliverables;
- Time frame(s) for performance;
- Budgeted amount and budget line items; and
- Suggested professional and rationale for determining qualification based selection.

The user department follows up the memo request with entry of a requisition into the ARS.

Formal Procedures

Unless specifically exempted by the City Manager, all professional services anticipated to cost more than \$50,000 should be procured using the formal RFQ or RFP process following procedures outlined by Chapter 2254.

Either a memo submitted to the Purchasing Department, signed by the Director, or designee, of the user department, or a direct email, from the Director, or designee, of the user department, **serves as the initial requisition. The memo must include the budget line** items from which the purchase is funded or an explanation that is acceptable to the Purchasing Department about how funding is obtained before the Purchasing Department prepares the RFQ/RFP. Detailed requirements (scope of work) and necessary qualifications should be attached to the memo and also forwarded electronically to the Purchasing Department. If requirements and necessary qualifications are not attached, Purchasing and the user department may jointly develop them.

The user department follows up the memo request with entry of a requisition into the ARS.

The RFQ/RFP must specify the evaluation factors to be used to determine minimum qualifications and demonstrated experience. Evaluators may use only the specified evaluation factors in evaluating the responses. Purchasing staff leads the evaluation team and is responsible, in consultation with the Director, or designee, of the user department, for:

- Developing evaluation matrix and criteria;
- Tabulating scores;
- Calculating values;
- Coordinating follow-up meetings for negotiations and recommending an award; or
- Discontinuing the process.

Notice

After development of requirements and qualification and preparation of the RFQ/RFP, and following approval of the Director, or designee, of the user department, a legal notice is published by the Purchasing Department.

The legal notice must be published at least once a week in a newspaper of general circulation in the City, with the first day of publication occurring before the 14th day before the date of the solicitation opening. To ensure firms sufficient time to complete and return their solicitation, Purchasing generally advertises for 21 days. If necessary, advertising time can be extended or decreased, but in no event can the time for publication be shortened to less than 15 days.

Amendment of RFQ

The Purchasing Department may extend the response opening date on the notice of an RFQ if an error is discovered, or the nature of the services requires an extension. The Purchasing Manager may amend an RFQ to clarify its original intent or to correct clerical errors, after consultation with the Director, or designee, of the user department, if:

- Inquiries about the meaning of the RFQ indicate the need for an amendment; and
- The amendment does not change the general scope of the RFQ.

There must be at least three days between the date of the amendment and the opening date specified in the notice. If less than three days exist, the opening date should be extended to allow for a minimum of three days between the date of the amendment and the opening date specified in the notice.

Pre-Proposal Conference

The Purchasing Department works with the user department to determine if a pre-proposal conference is necessary. Purchasing staff manages any pre-proposal conference and requests that the user department makes staff available to answer questions at the conference. , or a cover email in the case of an electronic submission,

Receipt of Responses

To ensure confidentiality, the following procedures are adhered to when receiving responses:

- The Purchasing Manager receives all responses as specified by the RFQ/RFP.

- All responses are stamped with the time and date received. The "Date Stamp Clock" in the Purchasing Department serves as the **official** time clock for identifying the date and time a response is received in the Purchasing Department.
- **Responses are not accepted after the opening time on the day of opening.** All responses offered after the opening time are returned unopened to the offeror with a letter, or a cover email in the case of an electronic submission, from the Purchasing Manager notifying the offeror that the submitted response arrived after the due date and time.

Paper Responses:

- Paper responses shall be submitted in a sealed envelope with the RFQ/RFP number and title to which it responds printed on the outside of the envelope.
- The Purchasing Department stamps the date and time a response to a solicitation is received upon receipt in the Purchasing Department.
- After responses are received, the Purchasing Department keeps them secured until the opening date. The responses are to be received sealed and remain sealed until they are opened by the Purchasing Department on the advertised date and time.
- On occasion, responses that are received in the mail, or by some other independent carrier, may be inadvertently opened. If this situation occurs, another employee of the Purchasing Department is immediately called to act as a witness that the details of the response were not reviewed and the response will be sealed by the receiving employee, with the event documented.

Electronic Responses:

- Electronic responses shall be submitted to the specified electronic address, with electronic signature of a person having authority to bind the vendor in a contract. FACSIMILE TRANSMITTALS SHALL NOT BE ACCEPTED.
- Electronic responses shall be submitted to: <https://mckinney.ionwave.net>. This electronic address is a confidential, reserved address for submittal of bid/proposal responses only. All other communications should be addressed specific to the intended recipient.
- The response may be submitted in one or more of the following formats: Microsoft Word, Microsoft Excel, Microsoft PowerPoint, or Adobe Acrobat. Multiple formatted "documents" responding to a solicitation shall be submitted in one single message. Example; if you have one bid submission that includes a Microsoft Word document and a Microsoft Excel spreadsheet, both "documents" must be attached to the one message. Submissions received in any format not listed above may be rejected.
- Electronic responses shall be submitted and received by City in accordance with the date and time set forth in the RFQ/RFP. Any responses received after the listed closing date and time shall not be considered. City is not responsible for equipment or software failure that may cause delay or non-delivery of an electronic response.
- City is not responsible for electronic responses containing viruses that cannot be eradicated, or that are corrupted as a result and cannot be opened.

- At the advertised date and time, the City will download the applicable contents of the reserved electronic address and in a public manner, the Purchasing Department will print the electronic responses and make them public accordingly.

The above stated process for paper responses and electronic responses shall be performed in a manner that precludes any perception of favoritism and avoids revealing prices or response information. Publicly receiving sealed responses and recording the submission of requested responses inhibits any perception that the Purchasing Department is manipulating the receipt of solicitations.

Opening of Responses

Sealed responses, paper and electronic, are opened and documented by the Purchasing Department. Only the names of firms submitting responses are announced. The Purchasing Manager, or designee, opens the responses on the date specified in the notice.

Responses to proposals are opened to avoid disclosure of contents to competing proposers and are kept secret during the process of negotiation. All responses to proposals, paper and electronic, that have been submitted are available and open for public inspection after the contract is awarded. Disclosure of trade secrets and confidential proprietary information obtained from a firm is subject to the provisions of the Texas Public Information Act.

Confidentiality Statement

Please see Chapter 4 of this Policy for a discussion regarding the use and protection of proprietary information or confidential information and the Purchasing Department's use of a confidentiality statement to ensure compliance with the City's ethics policy related to keeping proprietary information confidential; and requirements related to the disclosure of any potential conflict of interest, and any attempted communication by the vendor directly with the evaluation committee members during evaluation.

Evaluation

The evaluation committee must select the most highly qualified provider of the services on the basis of demonstrated competence and qualifications. Purchasing shall issue a letter to the firm which has been determined the most highly qualified provider requesting a defined scope of work and proposed cost. The committee shall then attempt to negotiate with that provider a scope of work and cost. If a satisfactory contract cannot be negotiated with the most highly qualified provider the committee will formally end negotiations with that provider and select the next most highly qualified provider. The committee shall continue the process described above until a provider is selected and a contract finalized. Failed negotiations are not subject to renewed discussion as this would contradict the prohibition against competitive bidding for professional services. The committee shall review the contract for form and content, verify the scope is consistent with that submitted with the approved project submission, verify that the proposed costs are fair and reasonable and recommend to City Council that they proceed with contract award and execution.

The Purchasing Department supervises the evaluation process performed by the user department or committee to ensure that it is conducted fairly and consistently and that the integrity of the process is maintained. Depending on the procurement, there may be additional technical evaluation assistance provided by other departments, if applicable.

Recommendation for Award

After the evaluation of proposals has been completed, Purchasing forwards an evaluation summary to the Director, or designee, of the user department for concurrence with the evaluation summary and requests that the Director, or designee, submit a memo to the Purchasing Department with their recommendation.

The Purchasing Department works with the Director, or designee, to develop the recommendation for award and present it for approval to the City Council, or City Manager as appropriate.

Written Contract

Before services for any specific project are rendered, a contract for professional services for that project, must be prepared in writing, and approved and signed by the City Manager if the proposed work has been previously budgeted by the City Council and the amount of the contract is \$50,000 or less. All other contracts for professional services require City Council approval. A standard template professional services agreement has been prepared by the City Attorney's Office for departmental use and City Manager execution without Council approval for contracts of less than \$50,000 in value and City Council approval for contracts of more than \$50,000 in value.

**Vendor
"Pools"**

If, as a result of an RFQ/RFP, City enters into contracts with more than one qualified professional firm a pool of these professionals is created to provide services as needed. Thereafter, user department forwards a memo to the Purchasing Department including rationale/determination as to which firm within the pool is the most qualified to provide services for the subject project. The user department must ensure that an RFQ/RFP is distributed at least once every 3 years so that newly qualified professionals may be added to the pool.

Chapter 20: Construction Procurement

Purchasing Statutes

Section 252.021 of the Local Government Code and Section 2269 of the Government Code govern the competitive procurement procedure for award of construction contracts.

Construction procurement is consistent with other procurement procedures in this Policy and with pertinent statutes. The Purchasing Manager supervises all construction procurements. All competitive bids are accomplished by the process set forth in this chapter:

Purchase Requisition

A memo or email submitted to the Purchasing Manager serves as the initial notification that a competitive bid is needed. After receipt of the memo, Purchasing provides a bid number to the project manager to be included in the project manual and plans. An electronic copy of the manual and plans are sent to Purchasing for review and approval of the bidding and general requirements. The Purchasing Manager reviews the specifications for compliance with the Purchasing laws and policies.

The user department must provide the Purchasing Department at least five (5) workdays to review the documents. During this time, Purchasing will review the procurement schedule detailing the milestones of the solicitation, including dates and times for the pre-bid conference, bid opening, pre-award conference, if applicable, and pre-construction conference.

Bidding Notice

The Purchasing Department publishes the advertisement for bid, which must generally include the following:

- Description of work;
- The location at which plans and specifications may be obtained and the amount of the deposit required;
- Time and place for submitting bids;
- Time and place of bid opening;

If the contract is to be awarded on a unit price basis, the notice must also include the approximate quantities of the goods and services needed that are to be bid on and the quantities must be based on the best available information.

Notice of a proposed purchase must be published at least once a week in a newspaper of general circulation in the City, with the first day of publication occurring before the 14th day before the date of the bid opening. To ensure bidders sufficient time to complete and return Bid Documents, Purchasing generally advertises for 21 days. If necessary, advertising time can be extended or decreased, but must be at least 15 days.

Consideration of Safety Records

If the Bid Documents provide that the safety record may be considered in determining the responsibility of the bidder, and the Bid Document includes the Safety Record Questionnaire, the City may consider the bidder's safety record in determining the responsible bidder because the City Council has adopted a resolution approving that consideration as required by state law. The safety record includes compliance with requirements for the safety of the environment. In relation to the safety record, bidder includes not only the bidder, but also the firm, corporation, partnership or institution represented by the bidder, or anyone acting for such a firm corporation, partnership or institution.

The definition and criteria for determining the safety record of a bidder include, but are not necessarily limited to, the following provided that such criteria are included in the Bid Documents:

- If the bidder reveals more than two (2) cases in which final orders have been entered by the Occupational Safety and Health Review Commission (OSHRC) against the bidder for serious violations of OSHA regulations within the past three (3) years, City may, at its discretion, disqualify the bidder.
- If the bidder reveals more than one (1) case in which bidder has received a citation from an environmental protection agency for violations within the past five (5) years, City may, at its discretion, disqualify the bidder.
- Environmental Protection Agencies include the U.S. Army Corps of Engineer (USACOE), the U.S. Fish and Wildlife Service (USFWS), the Environmental Protection Agency (EPA), the Texas Commission on Environmental Quality (TCEQ), and its past associated agency the Texas Natural Resource Conservation Commission (TNRCC), the Texas State 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 laws or regulations and similar regulatory agencies of other states of the United States. Citations include notice of violation, notice 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. Notice of Violations and Notice of Enforcement received from TCEQ shall include those classified as major violations and moderate violations under TCEQ's regulations for documentation of Compliance History, 30 TAC, Chapter 60.2 (c) (1) and (2).
- If the bidder reveals, or the City otherwise learns, that the bidder has been convicted of a criminal offense within the past ten (10) years which resulted in serious bodily harm or death, City may, at its discretion, disqualify the bidder.
- Bidder may be required to provide their company's safety Experience Modifier Rate (EMR), Recordable Incident Rate (RIR) and their Loss Indicator Rate (LIR).

Bonding

Bonds are required for construction contracts.

Bid Bonds

If the Purchasing Manager decides that a bid bond is required for a particular contract, the Bid Documents state that a bid security in the amount of 5% of the contract price is required and that it must be executed by a surety company authorized to do business in Texas. The bid security may be in the form of a bond or cashier's check.

Performance Bonds

For all public work contracts in excess of \$100,000 for the construction, repair or alteration of a public work or the prosecution or completion of any public work, prior to the commencement of work, the vendor must execute a performance bond on the form approved by the City Attorney that is:

- payable to the City of McKinney, Texas;
- in the full amount of the contract;
- conditioned on faithful performance of the work in accordance with the plans, specifications, and contract documents;

- solely for the protection of City of McKinney Texas; and
- executed in accordance with Chapter 2253 of the Texas Government Code, by a surety company authorized to do business in Texas.

In addition, for any bond in excess of \$100,000 the surety company shall also be qualified as a surety on obligations permitted or required under federal law as indicated by publication of the surety's name in the current U.S. Treasury Department Circular 570 as required by Texas Gov't Code § 3503.005. In the alternative, an otherwise acceptable surety company (not qualified on federal obligations) that is authorized and admitted to write surety bonds in Texas must obtain reinsurance on any amounts in excess of One Hundred Thousand Dollars (\$100,000) from a reinsurer that is authorized and admitted as a reinsurer in Texas who also qualifies as a surety or reinsurer on federal obligations as indicated by publication of the surety's or reinsurer's name in the current U.S. Treasury Department Circular 570. *Id.*

Payment Bonds

For all public work contracts in excess of \$50,000 for the construction, repair, or alteration of a public work or the prosecution or completion of any public work, the vendor, before commencing work, must execute a payment bond that is:

- solely for the protection and use of payment bond beneficiaries who have a direct material for a public work;
- payable to City of McKinney, Texas;
- in the full contractual relationship with the prime contractor or a subcontractor to supply labor or amount of the contract; and
- executed in accordance with Chapter 2253 Government Code, by a surety company authorized to do business in Texas.

In addition, for any bond in excess of \$100,000 the surety company shall also be qualified as a surety on obligations permitted or required under federal law as indicated by publication of the surety's name in the current U.S. Treasury Department Circular 570 as required by Texas Gov't Code § 3503.005. In the alternative, an otherwise acceptable surety company (not qualified on federal obligations) that is authorized and admitted to write surety bonds in Texas must obtain reinsurance on any amounts in excess of One Hundred Thousand Dollars (\$100,000) from a reinsurer that is authorized and admitted as a reinsurer in Texas who also qualifies as a surety or reinsurer on federal obligations as indicated by publication of the surety's or reinsurer's name in the current U.S. Treasury Department Circular 570. *Id.*

Maintenance Bonds

For all public work contracts for the construction, repair, or alteration of a public work or the prosecution or completion of any public work, the vendor, before commencing work, may be required to execute a maintenance bond that is:

- solely for the protection and use of the City of McKinney, Texas,
- payable to City of McKinney, Texas,
- in the amount of 15% of the contract sum,
- provides for maintenance, repair or replacement of all the work performed under the terms of the contract, and

- executed by a surety company authorized to do business in Texas.

Pre-Bid Conference

The Purchasing Department provides detailed information on the bidding requirements set out in the Bid Documents to ensure that purchasing procedures are complied with, the user department provides technical information and to ensure compliance with the technical standards. Purchasing will schedule the pre-bid conference and assist in conducting the conference as follows:

- Have all attendees sign the attendance roster.
- Provide a detailed Agenda which:
 - Provides a brief introduction of the project title, magnitude, and performance period.
 - Indicates whether there has been any addendum issued, and if so, provides all attendees and project document holders with a copy.
 - Discusses the Purchasing Department role in the procurement and administration process.
 - Establishes a “cut-off” date for questions and requests for clarifications, as well as a final date for issuance of addendum.
- Have the project Engineer, Architect or Project Manager discuss the specifics of the project including review of the plans and specifications and allow for a question and answer session.
- Determine whether any issues raised during the conference require issuance of an addendum. The Purchasing Manager may extend the date specified in the notice if needed. The Purchasing Department issues the amendment only if there are at least three (3) days between the date of the addendum and the date specified for bid opening. If less than three days exist, the opening date should be extended to allow for a minimum of three days between the date of the addendum and the opening date specified in the addendum.
- Have the project Engineer, Architect or Project Manager discuss the specifics of the project
- Have the user department provide Purchasing with the technical documents (i.e. changes or additions to the plans and or specifications).
- Prepare addendum using standard forms and distribute the addendum to all attendees and project document holders.

Receipt of Competitive Bids

The following procedures are adhered to when receiving bids:

- The Purchasing Department receives all bids as specified by the ITB.
- **Bids are not accepted after the opening time on the day of bid opening.** All bids offered after the opening time are returned unopened to the bidder with a letter from the Purchasing Manager notifying the bidder that the submitted bid arrived after the due date and time.

- The Purchasing Department records the name of the vendor submitting the bid, as well as the time and date the bid was submitted.
- As bids are received, the Purchasing Department provides a secure place to hold the bids until the opening date. The bids are to be received sealed and remain sealed until the Purchasing Department opens them in a public forum on the advertised date and time.
- On occasion, bids that are received in the mail or by some other independent carrier may be inadvertently opened. If this situation occurs, another employee of the Purchasing Department is immediately called to act as a witness that the details of the bid, especially the price, were not reviewed, then the bid will be sealed again by the receiving employee, with the incident documented.

The above process shall be undertaken in a manner that precludes any perception of favoritism and avoids revealing bid prices or any bid information. Publicly receiving sealed bids and recording the submission of requested bids inhibits the perception that the Purchasing Department is manipulating the receipt of bids.

Public Opening of Bids

The Purchasing Department publicly opens and documents sealed bids on the date, time and place specified in the notice. Preliminary bid tabulations, once prepared, may be provided to the public upon request. The Purchasing Department and the user department determine who is responsible for creating the bid tabulation and, if it is the user department, then the user department provides a copy to the Purchasing Department which may be distributed to the general public.

The Purchasing Manager provides a copy of the preliminary bid tabulation to the City Council with the contract award package. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price. In cases of discrepancy between the price written in words and the price written in numerals, the price written in words shall govern. If a conflict between the unit price and total contract amount/price exist, the unit price shall govern.

Evaluation of Bids

The user department evaluates all bids with assistance from the City consultant and Purchasing to jointly develop a recommendation for award to City Council. The evaluation of bids is based on the following factors unless stated otherwise in the Bid Documents:

- the relative prices of the bids, including the cost of repair and maintenance of heavy equipment, if that is subject of the bid, or the cost of delivery and hauling, if road construction equipment is the subject of the bids;
- the compliance of goods and services offered with the user department specifications; and
- the responsibility of the vendor, including the vendor's past performance, the vendor's financial and practical ability to perform the contract and the vendor's safety record, if City Council has adopted a definition of safety that is stated in the Bid Documents.

The user department, with the assistance of Purchasing, is responsible for placing the item on the agenda of the City Council.

When the lowest priced bid is not the recommended bid, based on best value or the responsibility of the bidder, clear justification for not selecting the lowest bidder must be documented to the City Council. This recommendation may be supported by clear and concise documentation from the user department that determines the rationale for

awarding to a bidder other than the lowest bidder. A joint review of the bid by the user department and the Purchasing Department is required.

Pre-Award Conference

To ensure the vendor understands all the requirements of the project manual and plans, and to provide the vendor the opportunity to voice any concerns or issues they may have with the project or the project documents as designed, a pre-award conference may be held prior to contract award. The pre-award conference ensures, to the greatest extent practical, the successful award, performance and completion of the project.

Pre-award conferences are normally reserved for more complex and complicated construction projects or in some instances where it is the vendor's first construction project with the City.

A joint determination, by the Purchasing Department and the project manager, is made as to the necessity of a pre-award conference. The Purchasing Department schedules the conference, prepares the agenda, and conducts the meeting. The project manager ensures the vendor has a clear understanding of the project's technical requirements, and that the bid covers all requirements, and addresses any issues/problems with the project documents or design.

Contract Award

The user department's Director and Purchasing jointly recommend contract award to City Council, during the applicable Council meeting. The Council shall be responsible for:

- Awarding the contract to the responsive and responsible bidder who submits the lowest and best bid; or
- Rejecting all bids.

If two responsive and responsible bidders submit the lowest and best bid, the City Council shall decide between the two by drawing lots in a manner prescribed by the Mayor.

After an award is made, the contract shall be submitted to the City Manager for signature. Copies of all documents are furnished to the user department, City Secretary and Financial Services departments.

A Notice-of-Award ("NOA") letter, issued by the end user department, accompanies the contractor's copy of the contract. The NOA letter includes the requirements for the contractor to submit various documents, and the time period within which they must be submitted. For example, Payment Bonds and Performance Bonds in the form acceptable to the City and an Insurance Certificate must be submitted within ten (10) workdays after contractor's receipt of the NOA letter. Unless otherwise indicated, the NOA also states that Notice-to-Proceed ("NTP") is not issued unless the contractor submits the required documents within the specified time period. If the contractor does not submit the required documents within the specified time period, the City has the option of holding the bid security and awarding the contract to the next lowest, responsible bidder or, depending on the proper bid application, the bidder providing the next best value.

Pre-Construction Conference

The end user department schedules the Pre-Construction Conference (also known as the Pre-Performance Conference). The user department is responsible for all technical presentations and the Purchasing Department ensures that all applicable purchasing procedures are followed. Purchasing assists in conducting the conference by:

- Having all attendees sign the attendance roster, introduce themselves, and briefly explain their involvement in the project;
- Discussing briefly the contract requirements, amount, and any other pertinent information about the project. The user department representative (technical representative) is responsible for providing a thorough synopsis of contract requirements and any City policies to which contractor must adhere;
- Establishing dates for submissions of all required documents such as material submittals, progress reports, payrolls, (when applicable), etc.

Note: The NTP is not issued until all required bonds and insurance certificates have been received, reviewed and verified with the appropriate agency (i.e. surety or insurance agency);

- Ensuring a complete understanding by all participants on issues raised before adjourning.

Purchasing works with the user department on the timing of the issuance of the NTP. After Purchasing receives all of the required documents, the user department determines when the NTP will be issued. If and when all documents have been received and approved by the user department, Purchasing issues the NTP.

Contract Administration

The user department is responsible for monitoring and documenting contractor performance and compliance. The user department provides Purchasing with copies of performance and compliance documentation, which keeps the Purchasing Department informed about all outstanding or prior issues. Discussions that merely explain the interpretation of the specifications may be dealt with by the user department.

If poor performance or non-compliance with the contract is evidenced, the user department initiates written corrective action with the contractor after providing Purchasing with an advance copy of all written correspondence directing correction of a discrepancy.

The user department must not provide any instructions or requests for changes directly to the contractor. The user department takes the necessary steps relative to correcting non-compliance with the contract, but must consult with the City Attorney before taking any steps toward suspension or termination of the contract, unless emergency, life safety or property damage issues require immediate temporary work stoppage. Before any letters, notices or other communication related to termination or suspension are sent to the contractor, the contents of the communication must be reviewed by the City Attorney in order to protect the City's position in the event of potential litigation.

Documentation of contractor performance is often overlooked and is important if suspension or termination is necessary. To enforce contractual terms, documentation of specific non-compliance must be available. Specific dates, locations, examples, etc. must be documented.

Contract administration duties are basic daily, weekly, and monthly activities of the user department staff and must take place to ensure successful completion of the project and to ensure the City receives the goods and services for which it has contracted. Unless otherwise noted, the following are responsibilities of the user department:

- Assist in conducting the pre-construction conference.

- Maintain a comprehensive, neat, and orderly contract file that includes all documentation related to the procurement process including the pre-solicitation, solicitation, contract award, post award, and administration phases of the project.
- Monitor the continued insurance coverage and obtain updated insurance certificates on a timely basis.
- If project is federally funded, receive and review copies of contractor payrolls to ensure payments made to contractor's employees comply with the prevailing wage rate classifications, by trade, which are included in the contract.
- Perform periodic visits to the construction site to perform spot labor interviews to ensure contractor compliance with prevailing labor laws.
- Receive and review copies of contractor invoices for accuracy. Discrepancies are reported to the contractor for resolution. The user department verifies that the invoice is appropriate for payment before submitting it to Finance for payment.
- Maintain and monitor correspondence: All correspondence, concerning major issues involving non-compliance, between the contractor and the City are to be documented and forwarded to the Purchasing Department. This ensures that the Purchasing Department is aware of any directives being issued to the contractor or any potential problems that may occur in the performance of the contract.

In emergency situations, or those regarding minor issues, correspondence may be issued directly to the contractor by the user department. **However, Purchasing must be provided a copy of the correspondence immediately.** The professional judgment of the user department representative determines what constitutes an emergency, and what is considered to be a minor issue.

Change Orders

Change orders in excess of \$50,000, or the "not-to-exceed" amount in excess of the proposed contract amount as approved by the City Council, shall be approved by City Council.

The City Manager has authority to approve change orders that involve a decrease or an increase to construction contracts which are \$50,000 or less, if the funds for such increase have been approved by the City Council.

In a contract governed by Local Government Code Chapter 252, the original contract price may not be increased by more than 25 percent. The original contract price may not be decreased by more than 25 percent without the consent of the contractor.

A change order shall not be issued until it is determined that the necessary funds are budgeted and available and it is also determined that any such increase or decrease conforms to state law. A statement to that effect should be included with the backup documentation.

Close Out Procedures

The user department ensures that all applicable warranty certificates are received and safeguarded throughout the term of the warranty.

The user department supervises return of bonds to ensure that the contract is complete in all respects before payment or performance bonds are returned. Every subcontractor and/or materialman must provide a release that states that the subcontractor or

materialman releases City of McKinney from all claims arising from labor or materials provided for the project.

**Alternative
Project
Delivery
Methods**

Section 2269 of the Government Code applies if an alternative project delivery method (that is, not “traditional” competitive bidding) is being utilized. Specific procedures and requirements are developed for each specific project using an alternative delivery method. If an alternative project delivery method is not being used, the provisions of Chapter 252 of the Texas Local Government Code apply.

Chapter 21: Exemptions to the Competitive Procurement Process

Purchasing Law

Section 252.022 of the Texas Local Government Code lists the available exemptions from the requirements of competitive bidding which are available for purchases made out of current funds, bond funds, or through time warrants. The following is a list of circumstances that are generally exempt from competitive bidding:

- An emergency procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the City's residents or to preserve the property of the City;
- An emergency procurement necessary to preserve or protect the public health or safety of the City's residents;
- An emergency procurement necessary because of unforeseen damage to public machinery, equipment or other property;
- A procurement for personal, professional or planning services;
- A procurement for work performed that is performed and paid for by the day as the work progresses;
- A purchase of land or right-of-way;
- A procurement of items that are available from only once source, including:
 - Goods and services for which competition is precluded because of the existence of patents, copyrights, secret processes or monopolies;
 - Films, manuscripts or books;
 - Gas, water and other utility services;
 - Captive replacement parts for equipment;
 - Books, papers, and other library materials available only from the persons holding exclusive distribution rights to the materials;
 - 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;
- A purchase of rare books, papers, and other library materials for a public library;
- 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 the property that will benefit from the improvements;
- 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;
- A payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212 of the Texas Local Government Code and in which the City's contribution is limited to no more than 30% of the total contract amount;
- Personal property sold:
 - At an auction by a state licensed auctioneer;
 - At a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code;

- By a political subdivision of this state, a state agency of this state, or an entity of the federal government; or
- Under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391;
- Services performed by blind or severely disabled persons;
- Goods purchased by a municipality for subsequent retail sale by the municipality;
- Electricity; or
- Advertising, other than legal notices.

Public Finance Act

In addition, section 271.056 of the Texas Local Government Code lists all the circumstances when exemptions are available for purchases made from funds obtained from certificates of obligation.

Policy

Exemption orders from the competitive procurement process must be processed through the Purchasing Manager.

Procedure

The Director of the user department submits a memo to the Purchasing Manager requesting an exemption to the competitive procurement process and identifying the basis for the exemption (e.g. emergency). The memo must state specific details and explain why an exemption from the competitive procurement process is requested and the basis for the exemption. When possible, it should also contain the name of the vendor, goods or services covered by the order and the expected maximum cost and other relevant information justifying the exemption.

Emergency

The City Manager, Deputy City Manager, or Assistant City Manager must approve all emergency purchases. Whenever possible, approval should be obtained in advance of the purchase. If prior approval is not possible, written approval must be obtained within 48 hours thereafter and submitted to Purchasing with the requisition.

Sole Source Goods and Services

Sole-source goods and services require completion of the Sole Source Form and submission to the Purchasing Department for verification and approval prior to purchase of goods and services.

Chapter 22: Receipt of Goods and Payment

Policy	Departments must notify the Purchasing Department if goods are not received by the due date, if goods are missing from a delivery or if damaged goods are delivered.
Verify Order	<p>Department employees receiving shipments must pay particular attention to the delivery ticket, and determine whether it matches the City's purchase order. The person receiving the goods must verify that all goods were shipped as stated on the delivery ticket, and sign in his or her own name (a full signature in ink) on all of the appropriate receiving documentation, particularly the City copy.</p> <p>The user department must acknowledge receipt and acceptance of delivered goods through the ARS immediately upon receiving goods. (Please do not accept items in the ARS if damaged goods have to be returned.) Timely recording of receipt of goods in the ARS is critical to the timely processing of payments to vendors in compliance with Texas Government Code, section 2251.021, et seq., Prompt Payment Act. According to the Prompt Payment Act, payment for goods or services received is overdue on the 31st day after the later of:</p> <ul style="list-style-type: none">• the date the City receives the good under the contract.• the date the performance of the service under the contract is complete, or• the date the City receives and invoice for the goods or service.
Damaged Goods	<p>When a shipment arrives, the user department must inspect the condition of all cartons. If goods are undamaged, the department receiving the shipment should sign the freight bill. If goods are visibly damaged, the receiving department must instruct the freight line driver to:</p> <ul style="list-style-type: none">• Note the damage on the freight bill, and;• Sign the freight bill. <p>If there is concealed damage, save the shipping cartons so that the Purchasing Department can notify the freight line and request an "inspection and report of concealed damage". A receiving report noting the damage should be completed and matched with the receiving copy of the purchase order.</p> <p>All boxes and packing materials should be kept in the event of visibly damaged and concealed damage goods shipments.</p> <p>Damaged goods must be reported to the freight line within 15 days after delivery. After 15 days the freight line is no longer liable for the damage.</p> <p>All goods not received properly or not in compliance with the contract should be documented and reported to the Purchasing Department as soon as possible so that the contractor can be notified and instructed about corrective action. To comply with the Prompt Payment Act, the Purchasing Department notifies the contractor within 21 days of any damaged goods received to avoid the assessment of interest by the contractor.</p> <p>Damaged goods should not be returned to the freight line or the contractor, unless such action is specifically requested and then only if a claim has been filed or if authorization has been given by the contractor or the Purchasing Department to return the goods.</p>

Documentation

All receiving documentation must be maintained by the user department for their records. All vendor invoices are sent directly to Finance. The department should provide documentation to Finance regarding any disputes in the receipt of goods.

Chapter 23: Contract Modifications

Policy During the term of a contract, it may be necessary to make changes to the contract. These changes can be minor, administrative changes such as a change of address or the changes can be substantial that affect the price and delivery.

There are basically two ways to change a contract. One way is a bilateral modification, in which both parties to the contract agree in writing that a modification is necessary. Both parties must sign the written modification, amendment or change order to indicate their agreement. The second way is a unilateral modification. In this case, terms and conditions in the original contract set forth the situations under which the City may exercise a right to modify the contract without the contractor's consent. A unilateral modification, if allowed, would also be in writing and signed by the City.

Unilateral Changes The Purchasing Manager may modify contracts, in writing, if the changes are within the general scope of the contract including changes to any of the following:

- method of shipment or packing;
- place of delivery;
- correction of errors of a general administrative nature or other mistakes;
- increases or decreases in the quantity of items purchased;
- time extensions allowed by the contract terms and conditions;
- contract name changes;
- assignments of payment; and
- additions or deletions of products.

Chapter 24: Contract Administration

Policy

Contract administration and oversight includes four general processes:

- Planning
- Monitoring Contractor Performance
- Payment Approval
- Change Management

All aspects of contract administration are important. Documentation of specific non-compliance must be established and maintained to enforce contractual terms. Documentation includes a description of specific dates, locations, examples, etc. of non-performance and any contact or communication with the contractor about non-compliance.

The user department has primary responsibility for monitoring and documenting contractor performance and compliance. The user department must provide copies of all documentation of non-compliance to the Purchasing Department. Copies may be sent by e-mail to the Purchasing Manager. The Purchasing Department maintains all documents including matters related to contract performance and documents related to clarification of expected performance during the term of the contract. The user department does not need to provide copies of documentation about clarification of expected performance standards with which the contractor complied after clarification. The user department should contact the Purchasing Department if there is any question about documentation.

If the user department observes poor performance or non-compliance with the contract, Purchasing communicates with the contractor and initiates any corrective action. The Purchasing Manager takes all steps related to obtaining contract compliance.

Contract Administration

The objectives of contract administration are to:

- Ensure the contract requirements are satisfactorily performed before payment;
- Properly discharge the responsibilities of both parties;
- Identify any material breach of contract by assessing the difference between contract performance and material non-performance;
- Determine if corrective action is necessary and take that action, if required; and
- Resolve any disputes.

The statement of work is the guide for contract administration. Therefore, planning for contract administration occurs before issuance of the solicitation. Effective contract administration minimizes or eliminates problems which can result in potential claims and disputes.

Good contract management ensures that the contract requirements are satisfied, that the goods and services are delivered in a timely manner, and that the financial interests of the City are protected. The contractor must perform and meet the requirements of

the contract. To do so, contractors sometimes need technical direction and approval from City staff. City staff must provide this technical direction and approval in a timely and effective manner. All guidance provided to a contractor must be within the scope of the contract.

Contract Management

The responsibilities of the contract manager are:

- Participating, as necessary, in developing the solicitation and writing the draft documents;
- Monitoring the contractor's progress and performance to ensure goods and services conform to the contract requirements;
- Managing any city property used in contract performance;
- Authorizing payments consistent with the contract documents;
- Exercising remedies, as appropriate, where a contractor's performance is deficient;
- Resolving disputes in a timely manner;
- Documenting significant events; and
- Maintaining appropriate records.

A contract manager should ensure that the contract requirements are satisfied, that the goods and services are delivered in a timely manner, and that the financial interests of the City are protected.

Post Award Conference

A post award conference is a meeting with the contractor that includes the principals responsible for administering the contract. The conference is typically held soon after the contract is awarded. It is an orientation for the contractor to ensure a clear and mutual understanding of all contract terms and conditions, and the responsibilities of all parties. The conference also serves as a tool to clarify and resolve any potential misunderstandings early. Although both the contractor and City staff should be fully aware of the contract requirements, the post award conference ensures that those involved directly in the contract administration process understand all requirements of contract performance.

Monitoring Performance

Monitoring the performance of a contractor is a key function of contract administration. The purpose is to ensure that the contractor is performing all duties in accordance with the contract and for the user department to be aware of and address any developing problems or issues.

Monitoring by Third Parties

In some instances the obligation to monitor the progress of a contract is assigned to another contractor. This is known as independent oversight. For example, in a construction contract, the architectural firm that provided the construction plans may perform the task of ensuring progress in accordance with the contract.

Termination for Default

A contract may be terminated for default when the City concludes that the contractor fails to perform, fails to make progress, or in any other way commits a substantial breach of the contract.

Termination for default should be used as the last resort and not as punishment. The City should do everything within reason to assist the contractor in curing any default. Factors to consider before making a termination for default decision include:

- The provisions of the contract and applicable regulations,
- The specific contractual failure(s) and the explanation provided for the failures,
- The urgency of the need for the contracted supplies or services,
- The availability of the supplies or services from other sources and the time required to obtain them, and
- Availability of funds or resources to re-purchase if the costs cannot be recovered from the delinquent contractor. In the event of a termination of a contract for default, under the City's standard contract terms and conditions, the City may obtain re-procurement costs from the defaulting contractor.

Contract File

Keeping a complete master contract administration file is critical. The file provides a basis for settling claims and disputes, if they arise in administrative or court actions. Throughout the life of the contract, the contract file should contain such things as:

- A copy of the current contract and all modifications;
- A copy of the agenda request(s);
- A copy of all specifications, drawings or manuals incorporated into the contract by reference;
- The solicitation document, the contractor's response, evaluation determination and the notice of award document;
- A list of contractor submittal requirements;
- A list of City furnished property or services;
- A copy of the pre-award conference summary, if applicable;
- A copy of all general correspondence related to the contract;
- The originals of all contractor data or report submittals;
- A copy of all notices to proceed, to stop work, to correct deficiencies and change orders;
- The records or minutes of all meetings, both internal and external, including sign-in sheets and agendas;
- A copy of the original bidders list; and
- Any other information required by the standard contract file checklist.

Please note that a contract file could provide a basis for determining a contractor lacks the required responsibility for the award of future contract opportunities with the City.

Chapter 25: Electronic Bidding and Reverse Auctions

Electronic Bidding	Electronic sealed bids or proposals shall be processed in accordance with Section 252.0415(a) of the Local Government Code requiring the identification, security and confidentiality of electronic bids or proposals to remain effectively unopened until the proper time.
Identification	Invitations to Bids and Requests for Proposals will be advertised and issued in the current manner. A notification will be added to bid terms and conditions stating suppliers should submit responses electronically through City's service provider at the appropriate electronic address listed. An automatic "e-mail return notification" will be sent to the submitting supplier upon receipt of their bid or proposal.
Security	At the specified bid closing time, a <i>password-enabled</i> employee in the Purchasing Department will open, download, and print all bids and the bid tabulation summary assembled by the City's service provider. The printing operation will occur in the controlled environment of the Purchasing Department where purchase order equipment is currently located. By law, a bid that is submitted non-electronically will be accepted manually and then entered electronically by Purchasing after the bid opening, as stated in bid and proposal document terms and conditions.
Confidentiality	Purchasing staff will read aloud all bid responses received by the closing time and date to any interested parties present at the bid opening. After tabulation of bids or proposals, staff will post the bid tabulation electronically with the following, or similar, qualifying statement: "The tabulation listing of a bid should not be construed as a comment on its responsiveness or an indication that the City accepts such bid as responsive".
Reverse Auctions	<p>Electronic reverse auctions shall be conducted in accordance with Section 271.906 of the Texas Local Government Code and as specified in Section 2155.062(s) requiring a real-time bidding process taking place during a previously scheduled Internet location with multiple suppliers, anonymous to each other, submitting bids to provide goods or services.</p> <ul style="list-style-type: none">• "Real-time" Bidding Process<ul style="list-style-type: none">➤ Reverse auctions will be advertised and issued in the same manner as invitations to bid and requests for proposals are noticed. A notification will be added to bid terms and conditions stating suppliers should submit responses electronically through the City's service provider at the appropriate electronic address listed. The real-time bidding process will usually last up to one (1) hour and take place during a previously scheduled period and scheduled internet location.• Multiple Bidders<ul style="list-style-type: none">➤ Purchasing staff, along with its selected internet service provider, shall insure multiple, qualified bidders are available, interested and notified electronically, or otherwise, of any current reverse bidding opportunity. A notification will be added to bid terms and conditions stating suppliers should submit responses electronically through the City's service provider at the appropriate electronic address listed.

- Anonymous Bidders
 - City's selected Internet Service Provider (ISP) shall insure the anonymity of all responding bidders through the assignment of a "bidder number" to the supplier (as opposed to their supplier name) which will be reflected on the ISP's website during the reverse auction bidding process. The ISP website will reflect all active suppliers bidding by a) the supplier's assigned bidder number and b) their last entered bid price. After the tabulation of bids, staff will post the bid tabulation.

Chapter 26 Disposal of Surplus Items

- Policy**
- All departments shall review their assets each year and determine which items are no longer needed. A list of surplus, obsolete or unused supplies, materials or equipment, including description, make, model, and serial numbers should be forwarded to the Purchasing Division.
- The Purchasing Division may transfer these items from one department to another should the need arise.
- The Purchasing Division will forward to the Accounting Division, a list of items to be sold for removal of City of McKinney property labels and removal from fixed asset list.
- Upon approval of the City Manager, the Purchasing Manager may sell, via online auction or sealed bid, surplus, obsolete or unused supplies, materials or equipment.
- The City may donate surplus, obsolete or unused supplies, materials or equipment to other governmental agencies providing preference to agencies residing in or adjacent to the City of McKinney with the City Manager's approval.
- Monies received from sale of surplus items will be returned to the appropriate City of McKinney funds.