

# City of McKinney

## Procurement Policy and Procedures Manual



**Office of the City of McKinney  
Procurement Services Department**

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## Chapter 1: Introduction

### Background

This 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 Procurement Services Department is to:

- Ensure compliance with local, state and federal laws applicable to city procurement;
- 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 Procurement

Public procurement has several goals including:

- procuring 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 procurement 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 procurement policy.
- **Public funds are safeguarded.** The Procurement Services 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 procurement 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 centralized procurement 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;
- Procurement Services Department personnel accumulate a solid foundation of knowledge and experience about procurement, 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 procurement processes on a professional footing and inspires public confidence in the City's actions.

## **Other Duties**

In addition to the above, the Procurement Services Department is responsible for:

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

The Procurement Services 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 procurement process is not instantaneous. Time is required to complete the steps required by law. In order to accomplish timely procurement 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 procurement process and assure the process is both orderly and lawful.

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

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

## 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 after the Contract or Solicitation has been fully executed. 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. Typically, both the Addendum and the Contract must be fully executed by all parties.

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

**Automated Requisitioning System (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 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 or expand beyond the general scope or focus 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. A change order amends the original Contract.

**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** – City of McKinney

**City Attorney** - The attorney selected and hired by the City Council to handle legal matters for the City and their designated representatives.

**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.

**Cycle Time** - The time between when a purchase requisition is received in the Procurement Services 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 Procurement Services 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 their 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.

**Facilities Construction** - The department which is responsible for construction and renovation of City facilities.

**Facilities Maintenance** - The department responsible for maintaining City facilities and facility-based equipment (i.e., generators, plumbing, HVAC, etc.)

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

**Goods** - Any personal property purchased by the City, including equipment, supplies, material, and components 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.

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

**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. A modification may sometimes be unilateral under the provisions of the Contract. A modification may introduce or cancel certain specifications or terms in a Contract without effecting the terms of the Contract. A mutually agreed change is usually called an amendment or change order.

**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 their 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 Procurement Policies and Procedures Manual.

**Pre-Submittal Conference** - A conference conducted by the Procurement Services 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 Procurement Services 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 Procurement Services Department that authorizes the Procurement Services 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 or Procurement** - The acquisition of goods and services including, but not limited to, construction and professional services.

**Procurement Services Department** – The Office of the City of McKinney Procurement Services Manager and their staff.

**Procurement Services Manager** – Means and includes the Procurement Services Manager or their designee and may also mean or include the Finance Director in the absence of the Procurement Services 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.

**Salvage Property** - Personal property, other than items routinely discarded as waste, that because of use, time, accident, or any other cause is so damaged, used, consumed, or obsolete that it has no value for the purpose for which it was originally intended. The term may include used or new personal property and may or may not have value.

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

**Separate Purchases** - Purchases made separately in different orders for goods and services that in normal procurement 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 procurement 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 Procurement Services 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 Procurement Services staff, designed to help potential vendors understand the requirements of a solicitation. Also known as a pre-submittal 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 *also* "Design Criteria Package," above.

**Surplus Property** - Personal property that is no longer needed or required for the City's foreseeable needs but still has some usefulness for the purpose it was originally intended or some other purpose. The term may include used or new personal property and may or may not have value.

**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**

### **Procurement 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 Procurement Services Manager oversee and provide a framework for a centralized purchasing system.

The Procurement Services 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.

### **Procurement Policy and Procedures Manual**

The purpose of this Procurement 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 Procurement Services 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 Procurement Services Manager interprets this Policy. Any questions regarding the Procurement Services Manager's interpretation and/or application of the Policy may be taken to the Chief Financial Officer for their 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:

The most recent edition of the *State of Texas Procurement and Contract Management Guide* that may be found on the website of the Texas Comptroller of Public Accounts at: <https://comptroller.texas.gov/purchasing/publications/procurement-contract.php>

The most recent edition of *Texas Municipal Procurement Laws Made Easy* that may be found on the website of the Texas Municipal League at: <https://www.tml.org/351/Purchasing>

## **Chapter 4: City of McKinney Procurement Services Code of Ethics**

### **Policy**

It is the policy of the 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.

### **Accountability**

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.

Principles: Employees should:

- 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**

It is essential for employees to act in a manner true to these values to preserve the public's trust.

Principles: Employees should:

- 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**

It is essential for employees to engage in unbiased decision-making and action to ensure fairness for the public good.

Principles: Employees should:

- 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**

It is essential for employees to uphold high standards of job performance and ethical behavior to balance diverse public interests.

Principles: Employees should:

- 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**

It is essential for employees to assist other City employees and citizens in a professional manner to support the public good.

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 Procurement Services Manager in writing and remove themselves 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 Procurement Services 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 Procurement Services Department uses a confidentiality statement (Exhibit 1) to ensure compliance with the City’s ethics policy regarding the confidentiality of proprietary information. Before the evaluation of confidential proposals, the Procurement Services 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 1: Example City of McKinney Confidentiality Statement**

### **CONFIDENTIALITY STATEMENT DISCLOSURE OF SOURCE SELECTION INFORMATION**

In accordance with the City of McKinney Procurement 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 Assistant City Managers upon request and consult with subject matter experts employed with the City regarding the proposal(s).

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 Procurement Services Manager.

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

\_\_\_\_\_  
**PRINT NAME**

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**DATE**



## **Chapter 5: Procurement Services Manager Authority and Responsibilities**

### **Authority**

The City of McKinney Home-Rule Charter, Chapter VI, "Finance Department," Sec. 49 – Procurement Services Department, establishes a Procurement Services 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 Procurement Services 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 Procurement Services 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 Procurement Services 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 Procurement Services Manager shall recommend the transfer of City surplus or seized goods that are not needed or used, from one department to another department requiring the goods or the use of the goods.
- The Procurement Services Manager shall ensure compliance with the Professional Services Procurement Act.
- Only the City Manager, or their 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 Procurement Services Manager to sign tax exemption forms and credit applications.
- The City Manager has authorized the Procurement Services Manager, or their designee, to sign vehicle registration titles and associated paperwork for title transfers when vehicles are sold at auction.
- Rules and procedures adopted by this Policy include rules and procedures for employees to use City purchasing cards to pay for City purchases under the direction and supervision of the Procurement Services Department.
- The Procurement Services 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 Procurement Services 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: Procurement Process, Policy, Roles and Responsibilities

### Procurement Process

The general procurement process as outlined in Exhibit 2 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 2: Procurement Process

Step	Performed By:
Identify requirements and obtain budget	User Department (Procurement Services Department may assist)
Define/finalize requirements	User Department and Procurement Services Department
Submit electronic requisition outlining requirements to Procurement Services	User Department
Solicit, advertise, and generate Purchase Orders and Contracts from requisition and send to vendor	Procurement Services Department
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	Procurement Services Department
Receive good/service and verify completeness against contract	User Department (Procurement Services 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 Procurement Services 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's Procurement Services 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 Procurement Services 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. Procurement Services 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 Procurement Services 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 \$3,000 and \$100,000 and 6–8 weeks on all purchases requested over \$100,000 that are not covered by an existing contract. Existing contract requisitions and requisitions under \$3,000 are generally processed within one day of receipt.
- **Ensure that procurement policies and procedures are understood before ordering.** Departments must ensure that all employees responsible for making department purchase requests have read and understand the procedures set forth in this Policy. Departments should also ensure that employees attend any training provided by the Procurement Services Department.
- **Coordinate with Procurement Services 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 Procurement Services 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 Procurement Services 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 3 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 Procurement Services 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 3: Formal Procurement Process Roles and Responsibilities

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

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

## Chapter 7: Historically Underutilized Business Program

### Policy

The policy of the City of McKinney Procurement Services 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:

***Texas Local Government Code, § 252.0215. A municipality, in making an expenditure of more than \$3,000 but less than \$100,000, 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.***

Furthermore, the City of McKinney is committed to working with businesses certified as a Historically Underutilized Business (HUB). The goal of this good-faith effort is to actively involve HUBs in the procurement process and ensure they receive a fair opportunity to compete for our business. To engage and develop HUB participation in McKinney's procurement process, the Procurement Services Department maintains the following objectives:

- Identify HUB suppliers through the State of Texas HUB database.
- Provide HUB supplier outreach and awareness of McKinney's procurement procedures, including electronic bidding.
- Maintain a HUB supplier webpage on the City website to provide education and HUB supplier resource links.
- Exceed state requirements for HUB supplier notification of bid opportunities.

### Informal Solicitations

For expenditures over \$3,000 and less than \$100,000, the Procurement Services Department solicits a quote from two certified HUBs, when available.

### Formal Solicitations

The Procurement Services 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. Additionally, all active HUB vendors certified with the State of Texas within the applicable commodity code, will be invited to participate in formal solicitations.

### Eligibility

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 to be identified as a HUB vendor on the City's Bidders List. Visit the State of Texas Comptroller website for information on registering as a historically underutilized business.

## **Chapter 8: Local Business Differential (or Geographic Preferences)**

The City of McKinney believes it is important to provide local vendors with opportunities to provide goods and services to the City of McKinney. This belief is based upon the fact that the active uses of commercial properties in the City benefits the community through stabilization of the property tax base, the creation of local sales tax and the provision of employment opportunities for citizens of the community and surrounding region.

### **Scope**

The purpose of this chapter is to comply with Sections 271.905 and 271.9051 of the Texas Local Government Code allowing for "Consideration of Location of Bidder's Principal Place of Business" in the award of competitively bid contracts.

This chapter applies to the purchase of real property, personal property that is not affixed to real property, or services (including construction services) through a Competitive Bid.

- Lowest Responsible Bid - Price and the responsibility of the bidder in performing and completing projects are the determinant factors when awarding a bid to a responsible bidder.
- Best Value Bid - Price is only one of a number of determining factors that are weighted for evaluation purposes. (Texas Local Government Code 252.043, see Chapter 9 of this Policy)

### **Criteria**

#### **Lowest Responsible Bids:**

- A three percent (3%) price differential will apply to all bids, excluding services and construction, if the governing body of the local government determines, in writing, that the local bidder offers the local government the best combination of contract price and additional economic development opportunities for the local government created by the contract award, including the employment of residents of the local government and increased tax revenues to the local government.
- A three percent (3%) price differential will apply to construction bids less than \$100,000 and all other bids, including services, less than \$500,000, if the governing body of the local government determines, in writing, that the local bidder offers the local government the best combination of contract price and additional economic development opportunities for the local government created by the contract award, including the employment of residents of the local government and increased tax revenues to the local government. This price differential does not apply to telecommunication and "information services" as defined by 47 U.S.C. Section 153.

#### **Best Value Bids:**

- Price is only one of a few determining factors that are weighted for evaluation purposes as allowed by Texas Local Government Code § 252.043. As a result, an additional weighted factor may be added to all such bids. Bidders must meet local business presence criteria as defined in the chapters referenced above. The City may include a local business presence criterion of 3% to best value solicitations should it be deemed in the City's best interest to include a local presence criterion.

Local Business Differential Consideration Application (Exhibit 4):



- A new and complete application must be submitted with each competitive bid by the due date. This application serves to ensure the qualification of a bidder as a local bidder and serves as the basis for meeting the requirement that the governing body find, in writing, that a bidder is a local bidder.

Bidders seeking local business differential must meet all specifications and minimum requirements contained in the bid documents.

Save and except to the extent Texas law allows the City to provide a local preference, all procurement transactions should be conducted in a manner that provides full and open competition in accordance with the requirements of Texas law and applicable federal law for projects involving federal funding.

## Exhibit 4: Local Business Differential Consideration Application

### LOCAL BUSINESS PRESENCE CONSIDERATION APPLICATION For Bidders whose business is located within the McKinney city limits

The City of McKinney requires the following information for consideration in award of competitive bids:

1. Location Eligibility:

Principal place of business is defined herein as any business which owns or leases a commercial building within the City limits and uses the building for actual business operations. Is company's principal place of business within the City Limits of McKinney, Texas?

a. If yes, identify the following:

Business Name: \_\_\_\_\_

Address: \_\_\_\_\_

Business Structure: \_\_\_\_\_  
(sole proprietorship/partnership/corporation/other)

b. Name and city of residence of owner(s)/partners/corporate officers, as applicable.

Name/Title: \_\_\_\_\_

City of Residence: \_\_\_\_\_

2. Economic Development benefits resulting from award of this contract:

a. Total number of current employees who are residents of the City of McKinney? \_\_\_\_\_

b. Will award of this contract result in the employment/retention of residents of the City of McKinney? \_\_\_ Yes \_\_\_ No

c. Will award of this contract result in increased tax revenue to the City? \_\_\_ Yes \_\_\_ No

d. If yes, check types of taxes? \_\_\_ Property Taxes \_\_\_ Sales Taxes \_\_\_ Hotel Occupancy Taxes

e. Other economic development benefits deemed pertinent by applicant:

\_\_\_\_\_  
\_\_\_\_\_

**Certification of information:**

The undersigned does hereby affirm that the information supplied in its bid and this application are true and correct as of the date hereof, under penalty of perjury.

\_\_\_\_\_  
Company Name Date

\_\_\_\_\_  
Signature Print Name

## **Chapter 9: Other General Procurement 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 Procurement Services 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 Procurement Services 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 \$100,000 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 Procurement Services 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 it to the Procurement Services 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 Procurement Services 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 Texas 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 Procurement Services Department will open and download all bids, including the bid tabulation summary assembled by the City's service provider. A bid that is submitted non- electronically will be accepted manually and then entered electronically by Procurement Services after the bid opening, as stated in the bid and proposal document terms and conditions.

Procurement Services 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 Procurement Services 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](http://www.mckinneytexas.org). They may categorize their business by the commodity codes for the goods and services that they are capable of providing. The Procurement Services Department utilizes a third-party vendor for 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 Procurement Services Department also advertises solicitations on the City's cable television channel, on the City's Procurement Services website at <http://www.mckinneytexas.org>, and in a newspaper of general circulation as required by law.

## **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 goods/services), are allowed by electronic field purchase order. 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 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 workplace.

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

## **Facilities Construction**

All purchases related to the construction or renovation of a City facility shall be reviewed and approved by the Facilities Construction Department. This procedure is to ensure that City construction standards are upheld and subject matter experts are consulted to ensure successful delivery of the project. Such projects may be referred by the Facilities Construction Manager to the Facilities Maintenance Department after review of project specifics.

## **Facilities Maintenance**

Projects involving maintenance of facilities, facility-based systems, or replacement components of such systems, shall be reviewed, coordinated, and executed by the Facilities Maintenance Department.

## **Contract Execution**

All Contracts for the purchase of goods and/or services shall be routed via the City's established document routing procedures. These procedures ensure that each required department head or reviewer is able to confirm compliance with their respective area of expertise. All Contracts that involve the purchase of goods, purchase of services, sale of City surplus property, or donation of City property require the review and approval of the Procurement Services Manager or their designee. Fully executed City documents are maintained by IT Records.

## **Chapter 10: Grant Funded Purchases**

All grant-funded purchases must comply with the most recent Grant Policies and Procedures Manual, as approved by the City Council.

Grants should be administered through a written contract between the City and the grant provider. In addition, grants that are awarded by or passed through the City to a grant recipient should be administered through a written contract between the City and the grant recipient.

State-administered grants are generally governed by Chapter 2261 of the Texas Government Code, which chapter treats grants under which a recipient is required to perform a specific act or service, supply a specific type of product, or both as contracts with certain exceptions. Federally administered grants are generally governed by federal law including but not limited to 2 CFR Part 200 subject to additional compliance with the requirements of Texas law. In addition, purchases involving grants from the Federal Transportation Authority (“FTA”) are also subject to the then-current version of the FTA Master Agreement.

Procurement, in collaboration with the Grants Program Manager, will annually review local, state, and federal regulations including, but not limited to, 2 CFR Part 200 to ensure required grant-related contract clauses are included in solicitations and contract documents. In addition, Procurement and the Grants Program Manager will annually review the FTA Master Agreement to ensure FTA-required third-party contract clauses are included in solicitations and contract documents involving FTA grant funding.

Purchases made with grant funds must also comply with both the grant terms and conditions and the City’s purchasing procedures. The department receiving or administering a grant is responsible for providing Procurement with a copy of the grant’s procurement requirements in a timely manner.

For all grant-funded procurements, the solicitation documents must clearly describe the technical requirements for the materials, products, or services to be procured. These documents should also specify the requirements that offerors must fulfill and outline the evaluation criteria for bids or proposals.

## Chapter 11: 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 Procurement Services 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 Procurement Services Department can purchase the requested goods and services.

### Procedure

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.

After the Procurement Services 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.

Specific instructions on entering purchase requisitions into the automated ARS are not covered in this manual. The user department can contact the Procurement Services Department for training.

**Note:** Cycle time to process a requisition refers to the time between when a purchase requisition is received in the Procurement Services Department and when an actual purchase order is placed with a vendor.

**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.

**Emergency Requisitions:** Please contact the Procurement Services Department prior to entering an emergency requisition into the automated ARS and inform the Procurement Services Department that you are submitting an emergency requisition so the emergency requisition can be promptly retrieved from the ARS and processed.



### Exhibit 5: Open Market Requisition Checklist

Step	Reference Source:
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.	ARS (purchasing module for commodity/sub-commodity and financial module for account line item balances)
Find the desired item(s) and obtain the following information: <ul style="list-style-type: none"> <li>✓ Manufacturer Name (e.g. Dell)</li> <li>✓ Model Number (e.g. Pentium series II, model Number 135867)</li> <li>✓ Unit of measure (e.g. each)</li> <li>✓ Unit price, quantity, and total price</li> <li>✓ Item description (complete description with as much detail as possible)</li> </ul>	Vendor catalog, Internet research  <b>Helpful hint:</b> copy the model description information from the source and either type it in the requisition or e-mail to Procurement Services.
Obtain the full description for the item(s) being purchased. <b>Example of full description (file cabinet):</b> 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)	Vendor catalog, Internet research
Check the vendor's 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 add into requisition comments: <ul style="list-style-type: none"> <li>✓ Vendor name</li> <li>✓ Vendor address</li> <li>✓ Vendor telephone number</li> <li>✓ Vendor point of contact (who you talked with to get product information)</li> <li>✓ Email and/or fax number</li> </ul>	ARS Purchasing module (requisition function)
Identify shipping and delivery information including: <ul style="list-style-type: none"> <li>✓ Date required</li> <li>✓ Shipping (determine if it is included in price or is a separate item)</li> <li>✓ Department point of contact to whom item will be delivered</li> <li>✓ The "Ship to" location</li> <li>✓ Any specific delivery instructions (location, time of day etc.)</li> <li>✓ Any special options that are available, but not part of description (color, fabric, etc.)</li> </ul>	ARS Purchasing module (requisition function)

## **Chapter 12: Open Market Purchases Under \$3,000**

### **Policy**

For open market purchases of goods and services totaling less than \$3,000, the end user shall seek a source with fair and reasonable pricing.

### **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 Procurement Services, suppliers will not be privileged to quotes from other suppliers;
- Procurement Services 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 Procurement Services for supplier selection/confirmation, price confirmation and issuance of a Purchase Order;
- In accordance with State statutes, under no circumstances, other than after hours emergency purchases described in Chapter 9 of this policy, is the user department authorized to place an order without Procurement Services approval or unless a purchase order has been obtained from the Procurement Services Department; and

Contact the Procurement Services Department with any concerns or questions you may have.

## **Chapter 13: 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 Procurement 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 Procurement Services 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 made available to cardholders by the Bank on the Bank's website. It is each Cardholders responsibility to create and maintain an account for the Bank's website. 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, the cardholder must contact the supplier and obtain instructions for return. Note that some suppliers may charge a restocking fee for returns. It is the cardholder's responsibility to understand the supplier's return policies and terms of business. 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. Cardholders 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 cardholders would use with their 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. Cardholders 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 Procurement Services 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, Assistant 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 a 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 Procurement Services or refer to 'Procurement Services' on the intranet for "how-to" information.)

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

## **Director and Approving Officer Responsibilities**

### Director

- 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.
- Directors will set expenditure and purchase limits.
- Directors have the authority to assign and adjust per transaction and per cycle limits.
- The Director will counsel cardholders and their Approving Officers whenever cardholders are not adhering to all requirements and guidelines of the card.

### Approving Officers

- The Approving Officer shall serve in a supervisory role within the City. They are 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.
- 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 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.

## 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.
- Conduct audits reviewing the appropriateness of purchases made with the Procurement Cards. 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. The 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 may terminate the cardholder's participation in the program, and the Director will work in conjunction with the Program Administrator, Finance Direction and Human Resources on appropriate disciplinary action for card misuse.

Each occurrence is subject to discipline at the Director involvement consultation.

## Chapter 14: Open Market Purchases between \$3,000 - \$100,000

### Policy

For open market purchases of goods and services totaling between \$3,000 and \$100,000, **Procurement Services or User Department** will solicit price quotations from a minimum of three sources on a rotating basis with preference being provided to City of McKinney vendors, to the extent reasonably practicable, to assure fair and reasonable competition. Any exception must be approved by the Procurement Services Manager and documented on the requisition.

The Procurement Services 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 Comptroller's Office 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 Procurement Services Department will obtain the required quotes. The Procurement Services 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 Procurement Services, suppliers will not be privileged to or provided information regarding quotes from other suppliers;
- Procurement Services 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 Procurement Services Department;
- In accordance with State statutes, under no circumstances is the User Department authorized to place an order without Procurement Services' prior approval or unless a purchase order has been obtained from the Procurement Services Department; and
- Contact the Procurement Services Department with any concerns or questions you may have.

Procurement Services will review documents submitted by departments to ensure requirements are not unreasonably restrictive thereby preventing fair and reasonable competition. Procurement Services shall incorporate appropriate terms and conditions to develop the Invitation to Quote (ITQ). The ITQ will be forwarded to prospective suppliers and shall state a specific date, time and location for quote submittal. Procurement Services will be responsible in these instances for complying with the State's HUB requirements; and Departments must allow adequate time for processing orders in this category.

## **Chapter 15: Competitive Purchasing Requirements**

### **Policy**

Texas Local Government Code Chapter 252 outlines the requirements for formal solicitations. Under this law, any purchase exceeding the formal threshold established by the state must follow a competitive sealed bid or competitive sealed proposal process. This process includes public notice, a public bid opening, and award by the City Council. (See Policy, Chapter 17.) In addition, Tex. Loc. Gov't Code Chapter 252 allows a municipality to comply with one of the "alternative" procurement methods described in Texas Government Code Chapter 2269 in specific situations. (See Policy, Chapter 21).

Certain types of expenditures are exempt from competitive bidding requirements. (See Tex. Loc. Gov't Code § 252.022.) Departments must contact Procurement Services to determine whether an exemption applies. (See Policy, Chapter 22.) The formal threshold is a strict limit; no purchase exceeding this amount may be made without completing the required competitive process as defined by Texas law.

### **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 Procurement Services 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 9 of this Policy for a discussion regarding "Best Value" bidding.

The competitive sealed proposal process may be used when circumstances dictate and the Procurement Services 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 Procurement Services for services and/or products required;
- Department shall provide Procurement Services with the scope of work and/or specifications for services and/or products required;
- Procurement Services shall review documents submitted by departments to ensure that the requirements are not unreasonably restrictive thereby preventing fair and reasonable competition. Procurement Services 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 16: 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 purpose 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 Procurement Services 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 Procurement Services 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.

The user department, occupant department or an outside agency may propose specifications. To ensure compliance with legal purchasing requirements, the Procurement Services 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 Procurement Services 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 Procurement Services 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 Procurement Services 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 17: Competitively Solicited Purchases Exceeding \$100,000

### 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 \$100,000. 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 \$100,000.

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 \$100,000 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 Procurement Services 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. Responses to Competitive Bids and Proposals are not disclosed until after the subject 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 \$100,000 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 \$100,000.

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 Procurement Services 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 \$100,000 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 \$100,000, (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 \$100,000 is identified, the user department should immediately contact the Procurement Services 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 \$100,000) is identified, the user department should immediately contact the Procurement Services 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. Procurement Services 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 Procurement Services 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 or e-mail must include the budget line items from which the purchase is funded or an explanation about how funding is obtained before the Procurement Services Department will proceed with the preparation of the competitive solicitation.

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

The Procurement Services 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 Procurement Services Department.

## Notice

Once the Procurement Services Department has finalized the specification or requirements with the Director, or designee, of the user department, the Procurement Services 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 Procurement Services 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 have sufficient time to complete and return the solicitation, the Procurement Services 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 Procurement Services 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 Procurement Services 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 Procurement Services 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 no less than 48 hours between the date of the amendment and the opening date in the notice. If there are less than 48 hours, the opening date should be extended to allow for a minimum of 48 hours between the date of the amendment and the opening date in the notice.

### **Pre-Bid (Proposal) Meeting**

The Procurement Services Department may invite potential vendors to attend a pre-bid (pre-proposal) meeting to discuss contract requirements and answer vendor questions. The Procurement Services Manager will work with the user department to determine if a pre-bid (pre-proposal) meeting is necessary.

The Procurement Services 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 Procurement Services 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 Procurement Services Manager or designee to the vendor explaining that the submitted response arrived after the due date and time and was therefore not considered.

### 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 Procurement Services Department stamps the date and time a response to a solicitation is received upon receipt in the Procurement Services Department.
- After a response is received, the Procurement Services 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 Procurement Services 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 Procurement Services 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 Procurement Services Department, with the incident documented.

### Electronic Responses:

- Electronic responses shall be submitted to the City's specified electronic address, with electronic signature of a person having authority to bind the vendor in a contract. FACSIMILE TRANSMITTALS AND E-MAILS SHALL NOT BE ACCEPTED.
- Electronic responses shall be submitted to: <https://mckinneytexas.bonfirehub.com>. This secure web portal is a confidential system for submittal of bid/proposal responses only.
- 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 Procurement Services Department will unseal 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 Procurement Services Department is manipulating the receipt of solicitations.

## **Public Opening of Solicitations**

**Competitive Sealed Bid:** The Procurement Services 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 Procurement Services Manager, or designee 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 Procurement Services 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 Procurement Services 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 Procurement Services 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 Procurement Services 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 Procurement Services 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. Procurement 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, Procurement Services forwards an evaluation summary to the Director of the user department for concurrence with the selection and a request that the Director acknowledges the user department's concurrence in the evaluation. The Procurement Services 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 Procurement Services Manager, or designee, supervises all negotiations. Any conversations with proposers must be coordinated with the Procurement Services Manager, or designee. Departments that contact proposers without coordinating with the Procurement Services Department risk jeopardizing the integrity of the City procurement process.

## **Contract Award**

**Competitive Sealed Bid:** The Procurement Services Department along with the 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 Procurement Services Manager, or designee 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 Records Management Office or 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 the contract beyond the initial "not to exceed" amount established by the City council when the contract was approved through a competitively solicited process.

The City Manager has authority to approve change orders that involve a decrease or an increase to construction contracts, awarded through a competitively solicited process, that are within the range of the "not to exceed" amount approved by the City Council.

The City Manager has also been delegated authority to approve change orders that involve a decrease or an increase of \$50,000 or less, if the funds for such an increase have been 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. 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.

## **Re-Solicitation of Annual Contracts**

The Procurement Services Department monitors the expiration dates of all contracts. Procurement 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. Procurement 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 Procurement Services 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 7: Procurement Methods

Procurement Method	Use When	Advantages	Disadvantages
Competitive Bids (Invitation to Bids)	<p>The Cost may require an expenditure of more than \$100,000</p> <p>Adequate competition exists.</p> <p>The product or service is available from more than one source.</p>	<p>Award process is simpler.</p> <p>Award is made to the lowest responsive, responsible bidder or the bidder providing the best value to the City.</p>	<p>Defined specifications may be difficult to develop.</p> <p>Does not encourage innovative solutions.</p>
Competitive Proposals (Request for Proposals)	<p>The Cost may require an expenditure of more than \$100,000</p> <p>When factors other than price are evaluated.</p> <p>When negotiations are desired.</p> <p>Vendor is expected to provide innovative ideas.</p>	<p>Allow factors other than price to be considered.</p> <p>Allows for customized proposals suggesting different approaches to the same business need.</p> <p>Allows for negotiations in order to obtain the best value for the City.</p>	<p>Lead times for procurement may be greater.</p> <p>Evaluations are more complex.</p>
Request for Information	<p>There is insufficient information to write specifications for any procurement method.</p>	<p>Provides information to prepare a complete bid or proposal document.</p> <p>Allows the business community to have input into the solicitation document based on current industry practices and market factors.</p> <p>Informs City of any potential problems early in the procurement.</p>	<p>Lengthens the procurement process.</p>
Request for Qualification/Services	<p>The Cost may require an expenditure of more than \$100,000</p> <p>Selection is made solely on the skills and qualifications of the professional.</p>	<p>Emphasizes the competency of the proposed professional contractors</p>	<p>Contractor is tentatively selected before price is negotiated.</p>

## Chapter 18: 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 Statewide Procurement Division's (SPD) Cooperative Purchasing Program (State of Texas Co-op). The SPD of the Texas Comptroller's Office manages these contracts. 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 SPD 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 SPD. 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 Procurement Services 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 and Texas Multiple Award Schedules (TXMAS) Purchases

### Policy

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

### Procedure

The Procurement Services Department submits a purchase order in the SPD system via the TxSmartBuy program on actual purchases in compliance with SPD regulations. The Procurement Services Department and requesting department monitor vendor compliance with all the conditions of delivery and quality of the purchased goods and services. The Procurement Services Department 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 Procurement Services Department determines if the requested goods or services are available from SPD contracts. If they are available, the Procurement Services Department assigns a state purchase order through TxSmartBuy system that is used for reporting.

## **Texas Multiple Award Schedules (TXMAS) Purchases**

### **Policy**

City of McKinney participates in the purchasing program of the SPD 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 Procurement Services Department and requesting department monitor vendor compliance with all the conditions of delivery and quality of the purchased goods and services. The Procurement Services Manager may coordinate and deliver all necessary documents for purchases under this program for City of McKinney.

To initiate this process, the Procurement Services Department determines if the goods or services are available from TXMAS and compares prices among TXMAS vendors to obtain best value. The Procurement Services Department works with the user department to determine best value and then issues a purchase order via the City ARS and TxSmartBuy systems 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.

### **Procedure**

The Procurement Services Department electronically sends purchase orders directly to DIR vendors. The Procurement Services Department and requesting department monitor vendor compliance with all the conditions of delivery and quality of the purchased goods and services. The Procurement Services Department 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 Procurement Services Department determines whether or not the requested goods or services are available from DIR, and if available, the Procurement Services Department compares prices among DIR vendors to obtain the best value. The Procurement Services 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 Procurement Services 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.

## **Chapter 19: 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. Before using any cooperative, the Procurement Services 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 Procurement Services Department to make purchases under the terms of the interlocal agreement. See Resolution 2000-08-093 (R), dated August 15, 2000.

### **Official Representative**

The Procurement Services 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 Procurement Services 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 Procurement Services Department determines whether or not the requested goods or services are available from a specific cooperative. If available, the Procurement Services Department compares prices among cooperative and local vendors to obtain the best value. The Procurement Services 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 Procurement Services 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 Procurement Services Department monitors vendor compliance with all conditions of delivery and the quality of the purchased goods and services. The Procurement Services Department may coordinate and deliver all necessary documents for purchases under cooperative purchasing programs made on behalf of the City.

### **Contract Award**

The Procurement Services Department may execute all purchase orders for purchases through interlocal agreements that are procured in compliance with this chapter, including purchases in excess of \$100,000,



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 Procurement Services 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 20: 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. See 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 Procurement Services 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 Texas 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, 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 \$100,000 should be procured using the informal RFQ/RFP process. Departments forward a recommendation memo to the Procurement Services 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 \$100,000 should be procured using the formal RFQ or RFP process following procedures outlined by Chapter 2254.

Either a memo submitted to the Procurement Services 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 Procurement Services Department about how funding is obtained before the Procurement Services 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 Procurement Services Department. If requirements and necessary qualifications are not attached, Procurement and the user department may jointly develop them.

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. Procurement 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 Procurement Services 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 have sufficient time to complete and return their solicitation, Procurement 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 Procurement Services 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 Procurement Services 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 Procurement Services Department works with the user department to determine if a pre-proposal conference is necessary. Procurement staff manages any pre-proposal conference and requests that the user department makes staff available to answer questions at the conference.

## Receipt of Responses

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

- The Procurement Services 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 Procurement Services Department serves as the **official time clock** for identifying the date and time a response is received in the Procurement Services 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 Procurement Services 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 Procurement Services Department stamps the date and time a response to a solicitation is received upon receipt in the Procurement Services Department.
- After responses are received, the Procurement Services Department keeps them secure until the opening date. The responses are to be received sealed and remain sealed until they are opened by the Procurement Services 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 Procurement Services 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 AND E-MAILS SHALL NOT BE ACCEPTED.
- Electronic responses shall be submitted to: <https://mckinneytexas.bonfirehub.com> . This secure web portal is a confidential system for submittal of bid/proposal responses only.
- 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 Procurement Services Department will unseal 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 Procurement Services Department is manipulating the receipt of solicitations.

## **Opening of Responses**

Sealed responses, paper and electronic, are opened and documented by the Procurement Services Department. Only the names of firms submitting responses are announced. The Procurement Services 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 Procurement Services 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. Procurement Services 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 Procurement Services 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 of Award**

After the evaluation of proposals has been completed, Procurement Services 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, acknowledge concurrence with the evaluation Committee's recommendation.

The Procurement Services 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 \$100,000 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 \$100,000 in value and City Council approval for contracts of more than \$100,000 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. The user department must ensure that an RFQ/RFP is distributed at least once every five (5) years so that newly qualified professionals may be added to the pool. The user department will also, to the extent reasonably practicable, provide preference to City of McKinney vendors.

## **Chapter 21: Construction Procurement**

### **Purchasing Statutes**

Section 252.021 of the Texas Local Government Code and Section 2269 of the Texas 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 Procurement Services Manager supervises all construction procurements. All competitive solicitations are accomplished by the processes set forth in this chapter:

### **Purchase Requisition**

A memo or email submitted to the Procurement Services Manager serves as the initial notification that a competitive solicitation is needed. After receipt of the memo, Procurement Services 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 Procurement Services for review and approval of the bidding and general requirements. The Procurement Services Manager reviews the specifications for compliance with the Procurement laws and policies.

The user department must provide the Procurement Services Department at least five (5) workdays to review the documents. During this time, Procurement Services 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 Procurement Services Department publishes the advertisement for submissions, 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 responses to a competitive solicitation;
- Time and place of opening responses to competitive solicitation;

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 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 Contractors sufficient time to complete and return Solicitation Documents, Procurement Services 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 Solicitation Documents provide that the safety record may be considered in determining the responsibility of the Contractor, and the Solicitation Document includes the Safety Record Questionnaire, the City may consider the Contractor's safety record in determining the responsible Contractor 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, Contractor includes not only the Contractor, but also the firm, corporation, partnership or institution represented by the Contractor, or anyone acting for such a firm corporation, partnership or institution.

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

- If the Contractor reveals more than two (2) cases in which final orders have been entered by the Occupational Safety and Health Review Commission (OSHRC) against the Contractor for serious violations of OSHA regulations within the past three (3) years, City may, at its discretion, disqualify the Contractor.
- If the Contractor reveals more than one (1) case in which Contractor has received a citation from an environmental protection agency for violations within the past five (5) years, City may, at its discretion, disqualify the Contractor.
- 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 Contractor reveals, or the City otherwise learns, that the Contractor 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 Contractor.
- Contractor may be required to provide their company's safety Experience Modifier Rate (EMR), Recordable Incident Rate (RIR) and their Loss Indicator Rate (LIR).

## **Bonding**

Bid, Performance, Payment, and Maintenance Bonds are required for construction contracts. Departments shall be responsible for maintaining possession of required bonds. Upon completion of the project, Department shall return the project bonds to the contractor/surety.

## **Bid Bonds**

If the Procurement Services Manager decides that a bid bond is required for a particular Competitive Solicitation, the Competitive Solicitation 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 Contractor must execute a performance bond on the form approved by the City Attorney that is:

- payable to the City of McKinney, Texas;
- in 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 Contractor, before commencing work, must execute a payment bond that is:

- solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the Contractor or a Subcontractor to supply public work labor or material for a public work;
- payable to City of McKinney, Texas;
- in the amount of the contract; 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.

### **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 Contractor, 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 100% 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 Procurement Services Department provides detailed information on the requirements set out in the Competitive Solicitation Documents to ensure that purchasing procedures are complied with, the user department provides technical information and to ensure compliance with the technical standards. Procurement Services will schedule the pre-bid conference and assist the user department 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 Procurement Services 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 Procurement Services Department may extend the date specified in the notice if needed. The Procurement Services Department issues the amendment only if there are at least 48 hours between the date of the addendum and the date specified for bid opening. If less than 48 hours exist, the opening date should be extended to allow for a minimum of 48 hours between the date of the addendum and the opening date specified in the addendum.
- Have the user department provide Procurement Services with the technical documents (i.e., changes or additions to the plans and or specifications).
- Prepare addendum using standard forms and issue the addendum.

## Receipt of Competitive Solicitations

The following procedures are adhered to when receiving responses to Competitive Solicitations:

- The Procurement Services Department receives all responses to Competitive Solicitations as specified by the ITB.
- **Competitive Solicitations are not accepted after the opening time on the day of competitive solicitation opening.** All competitive solicitations offered after the opening time are returned unopened to the Contractor with a letter from the Procurement Services Manager notifying the Contractor that the submitted competitive solicitation arrived after the due date and

time and was therefore not considered.

- The Procurement Services Department records the name of the Contractor submitting the competitive solicitation, as well as the time and date the competitive solicitation was submitted.
- As competitive solicitations are received, the Procurement Services Department provides a secure place to hold the competitive solicitations until the opening date. The competitive solicitations are to be received sealed and remain sealed until the Procurement Services Department opens them in a public forum on the advertised date and time.
- On occasion, competitive solicitations that are received in the mail or by some other independent carrier may be inadvertently opened. If this situation occurs, another employee of the Procurement Services Department is immediately called to act as a witness that the details of the competitive solicitations, especially the price, were not reviewed, then the competitive solicitations 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 competitive solicitation prices or any competitive solicitation information. Publicly receiving sealed competitive solicitations and recording the submission of requested competitive solicitations inhibits the perception that the Procurement Services Department is manipulating the receipt of competitive solicitations.

### **Public Opening of Competitive Solicitations**

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

The Procurement Services Manager provides a copy of the preliminary tabulation to the City Council with the contract award package. A competitive solicitation 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 competitive solicitations with assistance from the City consultant and Procurement Services to jointly develop a recommendation for award to City Council. The evaluation of competitive solicitations is based on the following factors unless stated otherwise in the Competitive Solicitations Documents:

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

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

When the lowest priced competitive solicitation is not the recommended competitive solicitation, based on best value or the responsibility of the Contractor, clear justification for not selecting the lowest Contractor 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 Contractor other than the lowest Contractor. A joint review of the solicitation by the user department and the Procurement Services Department is required.

## **Pre-Award Conference**

To ensure the Contractor understands all the requirements of the project manual and plans, and to provide the Contractor 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 Contractor's first construction project with the City.

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

## **Contract Award**

The user department's Director and Procurement Services 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 Contractor who submits the lowest and best competitive solicitation response; or
- Rejecting all bids.

If two responsive and responsible Contractors submit the lowest and best solicitation response, the City Council shall decide between the two by awarding to the City of McKinney Contractor or 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 Contractor or, depending on the proper competitive solicitation application, the Contractor 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 Procurement Services Department ensures that all applicable purchasing procedures are followed. Procurement Services 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.

Procurement works with the user department on the timing of the issuance of the NTP. After Procurement 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, Procurement Services issues the NTP.

## Contract Administration

The user department is responsible for monitoring and documenting contractor performance and compliance. The user department provides Procurement Services with copies of performance and compliance documentation, which keeps the Procurement Services 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 Procurement Services 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 a 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 Procurement Services Department. This ensures that the Procurement Services 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, Procurement 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 the "not-to-exceed" amount previously approved by City council, shall require additional City Council approval.

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

Notwithstanding the foregoing, in a contract governed by Texas Local Government Code Chapter 252, the original contract price may not be increased by more than 25 percent. Similarly, 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 for that purpose 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 Texas 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.

Job Order Contracting (JOC) may be used by departments as allowed per Section 2269 of the Texas Government Code. JOC projects are solely for maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is of a recurring nature but the delivery times, type, and quantities of work required are indefinite, and indefinite quantities and orders are awarded substantially on the basis of predescribed and prepriced tasks. Use of JOC is specifically restricted to this purpose and shall not be used for any civil construction or civil engineering work or work which involves new construction which is not incidental to an existing facility.<sup>1</sup>

The user department shall enter a requisition into the system with specifications describing the work which is required for any such project. Upon receipt of the requisition, the Procurement Services Department shall assist the department with sourcing a JOC contractor to provide a proposal from a City contract or from a cooperative entity. Confirmation of the contractor's status with the cooperative entity or City contract shall be confirmed by the Procurement Services Department.

To ensure price validity, the Procurement Services Department recommends obtaining multiple proposals for each project. Each work order for JOC contractors shall be executed by the City Manager. If a JOC contractor is selected from a cooperative entity, the City's standard supplemental JOC contract shall be routed for signature in addition to the work order.

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<sup>1</sup> A JOC cannot be used for:

- (1) a highway, road, street, bridge, utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction; or
- (2) a building or structure that is incidental to a project that is primarily a civil engineering construction project. Tex. Gov't Code § 2269.402.



## Chapter 22: 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 of the Texas 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 Procurement Services Manager. These procurements may or may not require City Council approval depending on the dollar amount involved, whether the funds for such purchase are identified appropriately in the budget, and whether the expenditure is limited to the current fiscal year.

## **Procedure**

The Director of the user department submits a memo to the Procurement Services 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 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 Procurement with the requisition.

## **Sole Source Goods and Services**

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

## **Software Renewals**

The User Department and Procurement Services are responsible for establishing the most efficient process for renewing existing software licenses and agreements. The decision to continue using the current software lies with the User Department, which may extend or renew the software on an annual basis through an addendum or a new agreement, provided that no additional renewals remain under the original contract.

## Chapter 23: Receipt of Goods and Payment

### Policy

Departments **must** notify the Procurement Services 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

Department employees receiving shipments must pay particular attention to the delivery ticket(s) 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 their own name (a full signature in ink)** on all of the appropriate receiving documentation, particularly the City copy.

The user department must acknowledge receipt and acceptance of delivered goods through the ARS immediately upon receiving goods. (Please **do not** receive or 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:

- 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

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 reject inferior or damaged goods and report the rejected delivery to Procurement Services.

If there is concealed damage, save the shipping cartons so that the Procurement Services Department can notify the freight line of the concealed damage". A receiving report noting the damage should be completed and attached to the receiving copy of the purchase order.

All boxes and packing materials should be kept in the event of visibly damaged and concealed damage goods shipments.

All goods not received properly or not in compliance with the contract should be documented and reported to the Procurement Services 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 Procurement Services Department must notify the contractor immediately of any damaged goods received to avoid the assessment of interest by the contractor.

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 Procurement Services Department to return the goods. The Procurement Services Department must also be notified any time such damaged goods are returned to avoid a duplication of effort.

## **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 24: 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 two ways to change a contract. One way is a bilateral modification, amendment or change order, 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 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 directing the change to be made.

### **Unilateral Changes**

The Procurement Services 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 25: 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 Procurement Services Department. Copies may be sent by e-mail to the Procurement Services Manager. The Procurement Services 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 Procurement Services Department if there are any questions about documentation.

If the user department observes poor performance or non-compliance with the contract, Procurement communicates with the contractor and initiates any corrective action. The Procurement Services 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 in accordance with contract documents.

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 in accordance with contract documents;
- 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 the 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 whether a contractor lacks the required responsibility for the award of future contract opportunities with the City.

## **Chapter 26: Electronic Bidding and Reverse Auctions**

### **Electronic Bidding**

Electronic sealed bids or proposals shall be processed in accordance with Section 252.0415(a) of the Texas 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 the 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 password-enabled employee in the Procurement Services Department will unseal and download all bids including the bid tabulation summary assembled by the City's service provider. A bid that is submitted non- electronically may be accepted manually and then entered electronically by Procurement Services after the bid opening, as stated in bid and proposal document terms and conditions.

### **Confidentiality**

Procurement Services 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.

### **Reverse Auctions**

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.

- "Real-time" Bidding Process
  - 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
  - Procurement 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 27: Disposal of Surplus Property and Salvage Property**

### **Policy**

Procurement Services is responsible for disposition of all City-owned salvage property and surplus property. Each department must review its assets annually to identify items that are no longer needed or required for the foreseeable future, or that are damaged, used, consumed or obsolete such that they no longer have value for their originally intended purpose. A list of surplus, damaged, obsolete, or unused materials or equipment, including description, make, model, age, and serial numbers, should be forwarded to Procurement Services. No items that are so identified may be picked up, sold, donated, or disposed of without prior notification and consent of Procurement Services.

Procurement Services may transfer surplus items and salvage items between departments, as needed.

The Procurement Services Manager may sell surplus items and salvage items through online auctions or sealed bids. If Procurement Services is unable to sell surplus property or salvage property at auction or determines that the same has no resale value, then the surplus property or salvage property may be destroyed or disposed of as worthless only with approval by the Procurement Services Manager. In addition, any salvage property that is broken, unusable, or beyond repair may be disposed of with the Procurement Services Manager's approval.

Procurement Services will evaluate surplus items and salvage items for trade-in credit towards replacement or supplemental purchases.

City Manager may authorize surplus items and salvage items to be donated or sold to other governmental agencies or assistance organizations (e.g., nonprofit organizations, faith-based groups) with preference given to organizations located in or near McKinney.

Departments may identify recyclable items that are no longer needed or required for the foreseeable future, or that are damaged, used, consumed or obsolete, such that they no longer have value for their originally intended purpose, such as metals or technology-related materials, and determine the appropriate recycling process, with the Procurement Services Manager's approval.

Procurement Services will forward a list of items to be sold, donated, or recycled as well as those items to be destroyed or disposed of as worthless to the Finance Department for removal from the City's fixed asset list.

Monies received from the sale of surplus items or salvage items will be returned to the appropriate City funds.