



CITY OF WATAUGA –PERSONNEL, ADMINISTRATION AND FINANCIAL POLICIES AND PROCEDURES MANUAL

POLICY TITLE	Purchasing Policy and Procedures
INITIAL EFFECTIVE DATE	January 10, 2022
LAST REVISION DATE	Replaces <i>Section 23.1, 23.2, 23.3, 23.4, 23.5, 23.6, 23.7, 23.8, 23.9, 23.10, 23.11 and 23.12</i> of the Personnel, Administration and Financial Policies and Procedures Manual approved on February 24, 2014, and last updated June, 2018.
POLICY NUMBER	13.01

OBJECTIVE: This policy sets forth measures to effectively manage purchasing by City employees using City funds.

PURPOSE: The purpose of this Purchasing Policy is to ensure accountable, efficient, transparent, and ethical practices are used to acquire products and services. The policy is intended to promote the best interest of the citizens of the City and compliance with State purchasing statutes.

SCOPE: This policy applies to all purchasing activities of the City. Adherence to the Purchasing Policy and Procedures is an individual and departmental responsibility. A breach of this policy or unauthorized departure from the procedures derived from this policy may result in removal from the procurement process; discipline in accordance with City policy including termination and possible criminal penalties as outlined in Subchapter D of the Local Government Code Chapter 252.

PROCUREMENT REQUIREMENTS AND LEGAL CONSIDERATIONS:

All purchases shall be in accordance with the laws of the State of Texas, including, but not limited to, Chapters 252 and 271 of the Texas Local Government Code, compliance with federal grant regulations, and the City of Watauga Charter, as applicable. All City purchases shall adhere to sound purchasing practices to ensure that Watauga taxpayers receive the best value for products and services procured with tax dollars.

Section 9.08 of the Home Rule Charter states that all contracts, purchases, and expenditures exceeding the maximum amount permitted by state law in effect at the time of the expenditure without requiring competitive bidding or proposals, must be expressly approved in advance by the City Council and be subject to competitive bidding or competitive sealed proposals and shall be let to the bidder who is the most responsive to the needs of the City after consideration of all facts and circumstances surround the bid, including, but not limited to, the lowest price. The City Council retains the right to reject all bids.

The exceptions to bidding requirements as stated in Local Government Code, Section 252.022, as now or hereafter amended, shall constitute exceptions to this provision. Procurements necessitated because of a public calamity, as authorized by law and as set forth in the Local Government Code, as now or

hereafter amended, may be negotiated by the City Council or the City Manager, if granted authority by the City Council, without the necessity of competitive bidding. Such public calamity shall be declared by the City Manager and approved by City Council or may be simply declared by the City Council. All expenditures must be supported by documentation justifying such expenditures.

GENERAL:

Purchasing is a function of each department. The Purchasing division in Finance shall provide guidance and assistance to departmental personnel regarding purchasing and shall monitor compliance with purchasing laws, City policies, and procedures.

PURCHASING POLICY:

The following are the policies and procedures for procurement activities by the City of Watauga. All procurement activities for the City shall be administered in accordance with the provisions of this policy, State and local laws and regulations, and City Charter and ordinances. Its purpose is to provide guidance and instruction to all employees for the procurement process. It is the intention to promote open and fair conduct in all aspects of the procurement process.

Departments shall ensure adherence to this policy. Directors shall determine and assign the appropriate approvers within their department. Approvers are responsible for ensuring that departmental purchases adhere to this policy and all budgetary requirements.

- All purchases shall be in accordance with the laws of the State of Texas including, but not limited to, Chapters 252 and 271 of the Texas Local Government Code, federal grant requirements, and the City of Watauga City Charter
- All purchasing shall adhere to sound purchasing practices to ensure the Watauga taxpayers receive the best value for city purchases
- Purchasing activities will be managed with proper controls, and all requisitions will be processed in a timely manner to ensure efficient practices
- When required or preferred, a competitive bidding process will be utilized to obtain purchases at the lowest possible cost, and to provide for an open and process for all interested vendors

Purchases of supplies and services per commodity must comply with the applicable state laws and must have prior approval by City Council when applicable. When purchasing these items each department shall provide enough lead time to allow for the appropriate solicitation and City Council approval when required.

Items or services on an existing contract with a vendor should not be procured from any other vendor. To do so may constitute a breach of contract and may result in violations of the competitive bidding statutes.

It is the purpose of this policy and procedures to establish uniform guidelines for procurement of supplies, materials, and services for the City. The policy and procedures are designed to:

- Ensure compliance with state and local laws pertaining to municipal purchasing
- Ensure compliance with federal grant requirements, as applicable
- Meet the operational needs of the City
- Provide a timely and cost effective method for acquiring goods and services
- Provide reasonable and efficient internal controls
- Assist in prevention of any unauthorized purchases by the City and collusion by

vendors

- Provide the citizens and taxpayers of the City assurance that the best use of the available resources of the City are being realized
- Promote competition among bidders and vendors interested in providing products or services to the City

Finance is responsible for ensuring that the City complies with federal, state, and local statutes regulating the public procurement process and should be included in all stages of acquisition - planning, requisition, ordering, and receiving. Finance will monitor compliance with purchasing laws, City policies and procedures. Finance is responsible for issuing purchase orders and bids and negotiating and executing contracts to deliver goods and services. This is to ensure compliance with State of Texas purchasing statutes and the City's policies.

Bidding Parameters

Purchases less than \$50,000 are not subject to competitive bidding, as defined by the Texas Local Government Code. It is the policy of the City, however, that all purchasers seek to acquire goods and services in a competitive environment. Departments may authorize purchases less than \$50,000 as stated below:

1. Purchases less than the HUB requirements:

Texas Local Government Code 252.0215 or its successor statute sets the Historically Underutilized Business (HUB) requirements. No quotes are required but are recommended when possible. Only departmental approval as determined by the Director is required. These are purchases of \$3,000 or less. Individual Directors may exercise discretion regarding the procurement of these purchases.

2. Purchases within the HUB requirement range:

At least two (2) of the contacts must be to vendors on the State's current certified HUB list per Local Government Code 252.0215. The code states: a municipality, in making an expenditure of more than \$3,000 but less than \$50,000, shall contact at least two HUBs on a rotating basis. If the list fails to identify a HUB in the county in which the City is situated, the City is exempt from this requirement.

- **Purchases of \$3,000 and less than \$10,000:**

These purchases require at least three (3) informal written quotes/bids and must be obtained in writing, completed by the user department and submitted to Finance through the electronic requisition. The Department is responsible for the selection of the vendor and compliance with HUB requirements.

The written quotations must be retained in the requisition documents for auditing purposes.

The Department attaches the following to the requisitions:

- HUB search results
- If HUBS exist, documentation that the Department contacted HUB vendors
- All written quotes

- Other documentation that supports the purchase if applicable
- **Purchases of \$10,000 and less than \$25,000:**
The purchases require a minimum of three (3) quotes/bids utilizing the Informal Quote Form and Finance assistance as needed. The quote form and all backup support shall be submitted to Finance through the electronic requisition.

The Department attaches the following to the requisitions:

- HUB search results
- If HUBS exist, documentation that the Department contacted HUB vendors
- All written quotes
- Completed Informal Quote Form, including reason/justification why the Department selected the vendor
- Other documentation that supports the purchase if applicable
- **Purchases of \$25,000 and less than \$50,000:**
An annual estimated spend with a vendor of \$25,000 to \$50,000 requires formal Quote and is subject to HUB requirements. The process consists of the following steps:
 - Department creates and submits to Finance the specifications of the product/scope of services sought.
 - Finance reviews the specifications, creates the Request, including the Best Value criteria, if applicable and returns the draft to Department for review.
 - Department and Finance work on revisions and determine how long to leave the Request open based on the complexity of the requirements.
 - Finance posts the final Request on the City's electronic bidding platform, which vendors access from the City's website. Finance sends a notification of the Request to required HUB vendors. The platform automatically notifies applicable vendors registered.
 - Department and Finance select the evaluation committee and Finance coordinates the evaluations as applicable.
 - Finance determines if the submission followed the required elements stated in the specifications. If a submission does not, Finance disqualifies the submission and there is no determination of the submission.
 - Assigned evaluators score the submissions based on pre-established best value criteria in the Request, if applicable.
 - Once scoring is complete and evaluation by Finance, Finance reviews the results with the Department for final approval.
 - Once approved, the Department proceeds with the PO process attaching the following to the requisition:
 - Vendor request response
 - Vendor agreement/contract as applicable
 - Other supporting documentation referencing the Request

3. Purchases Governed by the Competitive Purchasing Requirement (purchases \$50,000 and greater):

Under State law, before the City plans to make purchases of more than \$50,000 with a vendor, the City must meet the competitive purchasing requirements. Texas Local Government Code 252 or its successor statute sets competitive purchasing requirements. The City may use either Competitive Sealed Bids or Competitive Sealed Proposals for expenditures or purchases subject to competitive purchasing requirements. Contracts required to be procured by competitive purchasing are awarded or rejected by City Council.

- City employees are prohibited from making “separate, sequential, or component” purchases to avoid the competitive bidding requirements
- City Council approval is required for the purchases of goods and services \$50,000 and greater, unless an exception applies
- A Form 1295 Certificate of Interested Parties must be acquired by vendor through the Texas Ethics Commission website. This requires registration, generation of Form 1295 with a unique Certificate Number and filing date, printing the form, notarizing and submitting the form to Finance for all items presented to City Council for approval.

The process begins when the Department and Finance determine the best way to purchase the product/services is through a formal bid/proposal process. The timing of the process, including the final award by City Council, depends on the complexity of the service/product sought and the response rate of both the Department and Finance throughout the process. Departments should plan on the process taking 2-3 months, consisting of the following steps:

- Department creates and submits to Finance the specifications of the product/scope of services sought.
 - Finance reviews the product specifications/scope of services, creates the Request draft, including all required criteria and returns the draft to Department for review.
 - Department and Finance work on revisions and determine how long to leave the Request open based on the complexity of the bid/proposal requirements.
 - Department and Finance set the evaluation committee as needed, consisting of a minimum of three people.
 - Finance posts the final Request on the City’s electronic bidding platform, which vendors access from the City’s website. The platform automatically notifies applicable vendors registered.
 - Finance creates the required newspaper advertisement and sends to the City Secretary Office for publication (see notice requirements section for more details).
 - As part of the competitive purchasing requirements, the City advertises a formal request for bid/proposal for a minimum of 14 days before the opening date. The City normally leaves the Request open for a minimum of 21 days to allow vendors to ask questions and create quality submissions. Vendors shall direct all questions to Finance, if a Department is contacted directly by a vendor, the Department must direct them to the appropriate Finance contact as identified in the specifications.
 - Finance opens the bids in the bidding platform and reads aloud the vendor’s name and bid amounts for Request for Bids at the time and place published in the notice. Finance reads aloud only the vendor names for Request for Proposals.
- a) **Competitive Sealed Bids:** A purchasing method by which a governmental entity will indicate specific requirements and specifications for its purchasing need and then posts a notice inviting vendors to submit bids with offered pricing.

Formal sealed bids are required. Notice to vendors must be publicly advertised in the newspaper for two consecutive weeks, with the first publication being before the 14th day before the date of the opening of the bids. All bids must be sealed and submitted to the Finance Department prior to the due date. Finance will conduct a public bid opening and tabulate the bids received. Contracts procured by competitive bids are awarded by the City Council.

The City will indicate in the bid specifications that the contract may be awarded by either to the lowest responsible bidder or to the bidder who provides goods and services at the best value to the City. The City will further indicate in the bid specifications that it reserves the right to reject any or all bids and reopen the bidding process if it is in the best interest of the City.

In determining the “best value” for the City, the City may consider:

- Purchase price
- Reputation of the bidder and the bidder’s goods and services
- Quality of the bidder’s goods or services
- Extent to which the goods or services meets the City’s needs
- Bidder’s past relationship with the City
- Impact on the ability of the City to comply with laws and rules relating to contracting with historically underutilized businesses and non-profit organizations employing persons with disabilities
- Total long-term cost to the City to acquire the bidder’s goods or services
- Any other relevant criteria specifically listed in the request for bids

- b) **Competitive Sealed Proposals:** A purchasing method by which a governmental entity may request proposals and pricing information based on the scope of work provided, rank the offers, negotiate a contract, and then award to the vendor that offers the best value and most advantageous proposal.

Request for Proposals must solicit quotations and must specify the relative importance of price and other evaluation factors. Discussions in accordance with the terms of a request for proposal may be conducted with vendors who submit proposals and are determined to be qualified for the award. Offerors shall be treated fairly and equally with respect to any opportunity for discussion and revisions of proposals. To obtain the best final offers, revisions may be permitted after submissions and before award.

Formal sealed proposals are required. Notice of the Request for Proposals must be publicly advertised in the newspaper for two consecutive weeks, with the first publication before the 14th day before the date of the opening of the proposals. All proposals must be sealed and submitted to the Finance Department prior to the due date.

All proposals are opened by Finance so as to avoid disclosure of the contents of proposals to competing proposers until after award of the contract. Contracts awarded by competitive sealed proposals are awarded by City Council.

Specifications:

The purpose of any specification is to provide personnel with clear guides to finance, and to provide vendors with firm criteria of minimum product or service acceptability. A good specification has four characteristics:

1. It sets a minimum acceptability of the goods or services. The Term “minimum acceptability” is key since the vendor must know the minimum standards to determine what to provide. A standard too high means tax dollars will be wasted. A standard too low means the goods or services will not meet the expectations of the user department.
2. It should promote competitive bidding. The maximum number of vendors should be able to bid the specification. Restrictive specifications decrease competition.
3. It should contain provisions for reasonable tests and inspections for acceptability of the goods or services. The methods and timing of testing and inspection should be indicated in the specifications. Tests should refer to nationally recognized practices and standards, whenever possible.
4. It should provide for an equitable award to the lowest responsible bidder or to the bidder who provides goods and services at the best value to the City, as applicable. The buyer obtains goods or services that will perform to expectations, and the vendor is able to provide the goods or services at an agreeable price.

Preparing Specifications:

Specifications may be prepared by Finance, the user department, or by a professional consultant hired by the City. The ultimate responsibility for accurate and comprehensive specifications rests with the requesting department. For more information or assistance on writing proper specifications, please contact Finance.

Responsibilities:

Departments are responsible for submitting requests for bids and proposals to Finance in sufficient time for the necessary advertisements prior to opening dates. Finance will coordinate with the City Secretary’s Office for placing the advertisements as required. Finance is responsible for preparing the requests and ensure each firm known to be interested in bidding on the goods or services receives notification.

Notice Requirements:

Section 252.041 of the Local Government Code specifies the notice requirements for municipalities and states: if the notice applies to competitive bidding the notice of time and place at which the bids will be publicly opened and read aloud must be published at least once a week for two consecutive weeks 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.

If the notice applies to competitive proposals, notice of the request must be given in the same manner as above.

If the notice applies to the purchase of machinery for the construction or maintenance of roads or streets, the notice for bids and the order for purchase must include a general specification of the machinery desired.

Pre-Bid Conference:

A pre-bid conference, coordinated by Finance and Department, may be held prior to opening of bids to allow vendors the opportunity to voice any concerns in relation to, or ask any clarifications of, the specifications. Pre-bid conferences are not mandatory, however, a site visit prior to submission of bids may be required as part of the specifications.

Opening of Bids:

All bids are opened by Finance at the time and location designated in the notice. Finance opens the bids in the bidding platform and reads aloud the vendor's name and bid amounts for Request for Bids. Finance reads aloud only the vendor names for Request for Proposals.

Evaluation of Responses:

It is the responsibility of Finance, with technical assistance and input from the initiating Department, to evaluate all responses to bids/proposals. State law mandates that bids are awarded to the "lowest responsible bidder" or to the bidder who provides goods and services at the best value to the City. If the recommended bidder is not the lowest bidder or the bidder who provides goods and services at the best value to the City, the Department must outline specifically how the bid does not meet specifications.

Pre-Award Meeting:

Prior to the Council agenda item being prepared, a meeting will be held with the apparent successful bidder, if applicable. The meeting, coordinated by Finance and the Department will be to go over the bid response to ensure interpretation of the specifications by the bidder was correct and all items/services are being furnished as specified.

All multi-year agreements must have a non-appropriation provision in the contract that gives the City the right to terminate the agreement without penalty in the event the City does not appropriate funding in any year of the contract or in any renewal year.

The type of approval should be limited to contract with a total collective term (initial and renewals) of 5 years.

If the award is a multi-year contract award totaling \$50,000 or more for the duration of the contract, the contract must be approved by City Council.

Construction Projects:

Construction project bids/proposals are coordinated through Public Works Administration and follow a different process, that follows state purchasing laws for construction contracts. Architects and engineers create the documents with the Public Works Department. Finance and Public Works oversee the document-creation process and Finance administers the procurement process.

Exceptions to Competitive Purchasing Requirements:

Texas Local Government Code Section 252.022 or its successor statute outlines exemptions from the Competitive Purchasing requirements, including public calamities. Except for those contracts and/or bids which have been awarded by other local governmental entities with which the City has an existing interlocal or cooperative purchasing agreement, purchases in excess of \$50,000 shall be competitively procured, unless an exception to the competitive bidding statute applies. All purchases in excess of \$50,000 shall be awarded by the City Council.

Any questions regarding these exemptions or their application should be directed to Finance.

Vendor Contract Covered by an Interlocal Agreement:

Governmental entities in Texas are allowed by the Interlocal Cooperation Act, Texas Government Code, Chapter 791, to contract with other local governments, including local government corporations, to perform governmental “functions and services.” These functions and services include routine operations of government.

“Governmental functions” are those functions that are enjoined on a city by law, and are exercised and provided by a city in the interest of the general public, including but not limited to:

- Police protection and detention services
- Fire protection
- Street, roads and drainage
- Public health and welfare
- Parks and recreation
- Library and museum services
- Records center services
- Waste disposal
- Planning
- Engineering
- Administrative functions
- Public funds investment
- Comprehensive health care and hospital services
- Other governmental functions in which the contracting parties are mutually interested

Whenever it is determined to be advantageous to the City, Interlocal Agreement purchasing with other local government entities may be used. If all the following requirements are met, the State’s competitive purchasing requirements are also met through a vendor contract covered by an Interlocal Agreement:

- Another government entity has a contract with a vendor that was procured in compliance with the State’s competitive purchasing requirements for the service/product sought
- The City has an interlocal purchasing agreement with the governmental entity
- The vendor honors the same pricing and terms in the other governmental entity’s contract with the City

Verify that the City has a current Interlocal Agreement with the governmental entity by checking with Finance. If the City does not have a current Interlocal Agreement with the governmental entity, Finance can determine if the City can enter into an Interlocal Agreement with the entity.

In the Notes tab of the requisition, the Department will reference that competitive requirements were met through the Interlocal Agreement with the name of the entity and the entity’s bid number being utilized. Department attaches the following to the requisition:

- Signed vendor contract/bid with the other governmental entity
- Vendor quote referencing that the prices and terms are based on the other governmental entity’s contract/bid, including the contract/bid number
- Other documentation that supports the purchase such as City Council agenda as applicable

Vendor Contract Covered by a Cooperative Purchasing Agreement:

In addition to City contracts, the State law allows the City to purchase goods or services through other State approved purchasing programs if the City has established a cooperative purchasing agreement with the approved organization. Cooperative purchasing agreements are approved by City Council and allow the City to utilize a contract that would benefit the City in the daily function of procuring goods and services in the most cost effective manner.

Whenever it is determined to be advantageous to the City, cooperative purchasing with purchasing organizations may be used. If all the following requirements are met, The State's competitive purchasing requirements are also met through a vendor contract covered by a cooperative purchasing agreement:

- The City has an agreement or membership with the cooperative purchasing organization
- The cooperative purchasing organization has a contract with a vendor that was procured in compliance with State's competitive purchasing requirements for the service/product sought

Examples of cooperative purchasing programs include, but not limited to:

- DIR
- TXMAS
- TX SmartBuy
- Buyboard
- TCPN
- National IPA
- Choice Partners
- HGACBuy
- TIPS
- Tarrant County

Verify the City has a current agreement with the cooperative purchasing organization by checking with Finance. If the City does not have a current cooperative agreement with the organization, Finance can determine if the City can enter into an agreement.

In the Notes tab of the requisition, Department references that competitive requirements were met through the Cooperative Agreement with the name of the organization and the number being utilized. Department attaches the following to the requisition:

- Vendor quote with the Cooperative Agreement number on it
- Current cooperative contract summary page
- Other documentation that supports the purchase such as City Council agenda as applicable

New Construction or Repair of Public Structures or Roads:

Currently, for expenditures greater than \$50,000 the City must follow one of the three basic procurement methods:

- Competitive sealed bid or proposal
- Reverse auction procedure
- An alternative procurement method
 - Design-build
 - Construction management
 - Job order contracting
 - Construction manager at risk

Alternative delivery methods for construction of structures:

Texas Government Code Chapter 2267 provides the authority to use alternative delivery systems, including best value competitive bidding, competitive proposals, design-build, and construction management, construction manager at risk and job order contracting to Texas cities. If the City considers an alternative delivery method it must be designated and approved by City Council before notice is given to bidders.

Procurement of Professional Services:

Contracts for professional services shall comply with Section 2254 of the Government Code. The City Council shall authorize any professional services contract/agreement which will exceed \$50,000 during a fiscal year period, as outlined in Chapter 2254 of the Government Code.

In professional work, experience has demonstrated that the public is best served by requiring “professional” practitioners to be judged upon responsiveness of their proposed service, and the competitive bidding based on the price only is not in the best interest of the public.

Texas Government Code Chapter 2254 Professional Service Procurement Act states that a governmental entity may not select a provider of professional services, or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or the services, but shall make the selection and award on:

- The basis of demonstrated competence and qualifications to perform the services
- For a fair and reasonable price

As defined by Texas Government Code Chapter 2254 Professional Services Procurement Act, “means services within the scope of the practice, as defined by state law, of accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, professional nursing, or forensic science, or provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant, architect, landscape architect, land surveyor, physician including a surgeon, optometrist, professional engineer, state certified or state licensed real estate appraiser, a registered nurse or forensic analyst or forensic science expert, or provided by a person lawfully engaged in interior design.

Contracts for professional services shall comply with Section 2254 of the Government Code. The Department adds a note to the requisition stating that the purchase falls under the professional services exemption to competitive procurement and under the Professional Service Procurement Act, along with support for same. The City may use Request for Qualifications to solicit the services. The following guidelines shall apply to procurement of professional services:

- Professional services may not be awarded on the basis of competitive bids
- Professional services must be awarded on the basis of demonstrated competence and qualifications
- The City Manager may authorize and approve professional services contracts less than \$50,000 during a fiscal year period, without specific City Council approval, provided funds are within the current budget
- The City Council shall authorize any professional services contract which exceeds \$50,000 during a fiscal year period, on the basis of the above criteria

If this exemption is applicable, the Department makes note that it is exempt under professional services in the “notes” tab of the requisition and attaches the following to the requisition:

- Vendor quote/contract
- Other documentation that supports the purchase as applicable

Procurement of Services from a Professional:*Fees that do not exceed \$50,000*

When procuring services from a professional the initiating department shall use a two-step process.

The City's Finance staff and/or initiating department shall solicit qualifications from a qualified professional and the director of the initiating department will select the individual or firm capable of performing the service, on the basis of demonstrated competence and qualifications.

The department director will enter into negotiations with the selected individual/firm and follow the procedures established by the Professional Services Procurement Act. The department shall enter into negotiations on a contract at a fair and reasonable cost.

If the department is unable to negotiate a satisfactory contract with the most highly qualified individual or firm, it shall formally end negotiations with that person/firm and then proceed to the next most highly qualified and repeat the process. Negotiations are carried on in this sequence until a contract is made. If any agreement or contract is entered into with one of the above mentioned professionals on the basis of a competitive bid, it is contrary to public policy and is void.

Fees estimated to be more than \$50,000

The Request for Qualifications (RFQ) shall be prepared by Finance with technical assistance from initiating department.

- The RFQ shall contain sufficient information to inform a potential professional as to the type of project, scope of services to be performed, and the selection criteria to be used.
- The RFQ will give the relative importance, or weighting, assigned to each of the criteria to be used in the selection process. The following criteria shall be used, but the RFQ is not limited to these criteria:
- The Professional's experience in successfully performing similar assignments, scope, and size, for other governmental entities
- The Professional's current staff, both size and related experience, is qualified to provide the desired services
- Sufficient finances and other resources available to accomplish the assignment, within the time allowed by the City and the firm will be able to provide continuing service
- Previous clients, for similar projects, express satisfaction with the firm's work
- The Professional's response, as perceived by City staff, is complete and of acceptable quality
- The Professional may be selected after the evaluation of the RFQ responses, or it may be necessary to interview several of the firms and further evaluate them on the basis of the interview or a presentation, narrowing the field until one firm is selected for negotiation
- When negotiations are successfully concluded, a recommendation will be made to City Council that a contract is awarded to the chosen firm.
- A modified process incorporating any of the steps outlined may be utilized when the qualified firm is identified on the basis of a continuing phase of a project, partnership with a private sector or a partnership with another governmental entity. In these situations where a provider of services is already working on an earlier project and has superior knowledge of the area, partners, and the project, the formal process would be ineffective use of the City's or other service providers' resources.

The City's Finance staff and/or initiating department shall solicit qualifications from a qualified professional and the director of the initiating department will select the individual or firm capable of performing the service, on the basis of demonstrated competence and qualifications.

The department director will enter into negotiations with the selected individual/firm and follow the procedures established by the Professional Services Procurement Act.

HUB Requirements – Purchases Between \$3,000 and \$50,000

Under State law, before the City plans to make purchases between \$3,000 and \$50,000 with a vendor in a fiscal year, the City must meet the Historically Underutilized Business (HUB) purchasing requirements. The City must contact at least two historically underutilized businesses from the State's current certified HUB list, on a rotating basis, based on information provided by the Texas 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 City is situated, the City is exempt from this requirement.

If HUB vendors are unresponsive, the Department has met the HUB requirement by notifying them and giving them the opportunity to submit. All correspondence with HUB vendors must be submitted with the quotes backup to Finance and should be identified as such.

- Departments should contact Finance for assistance with this compliance

Some exceptions to the HUB purchasing requirements include the following:

- Vendor contract covered by interlocal agreement
- Vendor contract covered by a cooperative agreement
- Formal competitive sealed bid/proposal resulting in a City contract
- Professional services exemption
- Sole source exemption
- Public calamity purchase exemption
- Other exemptions as defined in State law

If the purchase is procured under competitive purchasing requirements, the HUB purchasing requirements are not applicable to the purchase.

Criminal Penalties:

A City officer or employee commits an offense if the officer or employee intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements of Texas Local Government Code Section 252.021 (Competitive Requirements for Purchases) or any other requirement of Chapter 252 of the Code.

Surplus Property:

The City shall dispose of a surplus property item with an estimated net auction value greater than \$500 through public auction or internet sale to the highest bidder. For heavily damaged or items with an estimated net auction value less than \$500, the City may declare a public purpose and donate the item, recycle, or dispose of the item. The cost of storage of these items and personnel time required to manage the auction items, including meeting the highest bidder is significantly more than the net proceeds and therefore, not cost effective.

When a Department identifies an item for disposal, they complete the disposal form as directed by Public Works Building Division. If no other Department can use the item, Public Works Building Division works with Finance to determine the estimated net auction value. If the estimated net auction value is less than \$500, Finance determines the disposal method for the item.

Acceptance of Bids:

Department Directors and Finance have the discretion to select which vendor/bid acceptance to purchase from on purchases up to \$50,000. On purchases \$50,000 and more, the City Council will make the final award.

Sole Source Exemption Purchases:

Under State law, a purchase of a service/product that is available from only one source due to patents, copyrights, secret processes, natural monopolies, or captive replacement parts or components for equipment, is exempt from competitive purchasing requirements.

A product is eligible for sole source purchase only when there is a significant functional difference between the product and other similar products on the market, and when the item is available from only one vendor. The following are not sufficient justifications for a sole source purchase:

- Product is made by only one manufacturer, if products from other manufacturers are available that perform a similar function
- A particular name brand of product is preferred over other brands
- Other vendors who offer the product can meet the City's needs

Sole source purchases in excess of \$50,000 will be approved by the City Manager and the City Council prior to the purchase. When City Council approval is necessary, a detailed explanation of the sole source basis for the purchase will be included by the Department on the agenda request.

If the exemption is applicable, the Department attaches the following to the requisition:

- A signed and dated sole source letter from the vendor stating it is the only vendor which can provide the service/product to the City and why. The City must obtain this letter annually as circumstances may change and the service/product may no longer qualify under a Sole Source Exemption. There are a few circumstances where a letter can be non-expiring as determined by Finance.
- A completed and signed Sole Source Justification Form.
- Vendor quote
- Other documentation that supports the purchase as applicable

Other Exemptions as Defined in State Law:

Under State law, there are other less common exemptions to the competitive purchasing requirements. If the department is struggling to determine the best way to meet the competitive purchasing requirements, it should contact Finance to discuss. Finance shall consider if any less common exemption may apply. If a less common exemption is applicable, Finance instructs the Department on how to document the exemption.

The following is an inclusive list of exemptions from statutory bidding requirements (Local Government Code 252.022):

- A 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
- Procurement necessary to preserve or protect the public health or safety of the City's residents
- Procurement necessary because of unforeseen damage to public machinery, equipment, or other property
- Procurement for personal, professional, or planning services
- Procurement for work that is performed and paid for by the day as the work progresses
- Purchase of land or a right of way
- Procurement of items that are available from only one source including:

- i. Items that are available from only one source because of patents, copyrights, secret processes, or monopolies
 - ii. Films, manuscripts, or books
 - iii. Gas, water, or other utility services
 - iv. Captive replacement parts or components for equipment
 - v. Books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the material
 - vi. 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
- 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 through special assessments levied on property that will benefit from the improvements
 - 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 voters
 - Payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212, Local Government Code
 - Personal property sold:
 - i. At an auction by a state licensed auctioneer
 - ii. At a going out of business sale held in compliance with Subchapter F, Chapter 17, Business and Commerce Code
 - iii. By a political subdivision of this state, a state agency of this state, or an entity of the federal government
 - iv. 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
 - Advertising, other than legal notices

This section only exempts items that fall under subsection C.iii. from the requirement to competitively bid the item. If a purchase is for \$50,000 or more, it still requires City Council approval, even if it is exempt from competitive bidding requirements.

Contract Amendment:

Annual contracts are contracts which set pricing as well as terms and conditions for a set period, usually one year with up to 4 one-year renewals (total of 5 years). A contract amendment is required to add additional, similar items to a current annual contract. Under State law, contract amendments shall not increase the original contract amount by more than 25% without additional bidding processes nor reduce the original contract amount by more than 25% without vendor approval.

The Department works with Finance to obtain pricing for any additional items requested. This is reviewed to determine if a contract amendment is appropriate or if the additional services/products are subject to separate bidding requirements.

If a contract amendment is appropriate, Finance drafts the contract amendment and sends to vendor for signature. Once the signed amendment is received back from the vendor, Finance attaches to the current contract information and forwards to the City Manager for execution and to the City Secretary

Office for record. City Council approval is only required for contracts exceeding the \$50,000 requirement.

Authorization and Approval of Change Orders:

The City Council hereby authorizes the City Manager or their appointed designee to approve any and all individual or cumulative change orders which involve a decrease or an increase of \$50,000 or less, provided the total contract expenditures do not exceed the budgeted amount. Individual or cumulative change orders involving a decrease or an increase in excess of \$50,000 will require approval of the City Council, in accordance with Local Government Code, Section 252.048 Change Orders. Individual or cumulative change orders may not increase more than 25% of the original contract price or decrease the original contract by more than 25%. Any individual or cumulative change greater than 25% will require a new solicitation (or a finding by the City Council than an exception to bidding, such as “health and safety” is applicable to the additional amount).

Emergency Purchases:

Emergency purchases must meet one of the qualifications for exempt purchases in Local Government Code Section 252.022. Emergency purchases are extremely unique and must be considered on a case-by-case basis. An employee who is making a purchase that falls under one of the categories below is not required to comply with the competitive bidding process but shall still comply with the general purchasing procedure. The three basic categories per the Local Government Code include:

- A purchase made because of a public calamity and the prompt purchase of items is required to provide for the needs of the public or to preserve the property of the City
- The item is necessary to preserve or protect the public health or safety of the residents of the City
- The item is made necessary by unforeseen damage to public machinery, equipment, or other property

Purchases made in an emergency situation are generally more costly than routine purchases. Therefore, they must be kept to a minimum. Poor planning, overlooked requirement, or negligence are not true emergencies.

Process of emergency purchases (see normal business hours and outside of business hours for specific direction):

- The user department must obtain approval from the City Manager or their designed for all emergency purchases
- The department should coordinate with Finance to ensure funds are available
- User department should communicate with the vendor(s) and Finance in order to complete the request
- User department will submit a purchase requisition within 48 hours after the issuance of an emergency order

When an emergency purchase occurs during normal business hours, the Department immediately notifies Finance to assist in locating and arranging delivery of the product/services required. The Department creates a requisition as normal to authorize the payment but can proceed with the emergency purchase before the requisition is processed and approved.

When an emergency purchase occurs outside of business hours, the authorized Department official may take necessary steps to procure required supplies, services, or equipment to relieve the emergency. If possible, the Department should only procure those products/services requires during the evening, weekend, or holiday. On the next business day, the Department Director or designee certifies, in writing, that the emergency purchase was necessary because of one of the three reasons listed above. The Department also creates a requisition as normal to authorize the payment.

If this exemption is applicable, the Department attaches the following to the requisition:

- Emergency purchase memo explaining the circumstances requiring the purchase
- If available, vendor quote
- Other documentation that supports the purchase
- Minutes or agenda from City Council meeting approving the emergency purchase demonstrating the City Council has ratified the expenditure as required by state law procurement. This documentation may be added to the purchase order when available.

If an emergency purchase is \$50,000 or more, the Department Director or designee will prepare the documentation to have the expenditure ratified by City Council at the next available Council meeting.

Petty Cash:

Expenditures for purchases and reimbursements made from petty cash are not to exceed \$75 without Finance Director approval.

Procurement Ethics:

Procurement ethics are established to provide ethical standards to be used by City employees and officials regardless of department, position, or procurement activity. Public employment is a public trust. Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible vendors and contractors. Moreover, employees should conduct themselves in such a manner as to foster public confidence in the integrity of the procurement process while avoiding the perception of immoral, illegal, or unethical behavior. When in doubt, it is best to avoid any situation which might influence or appear to influence purchasing decisions. At all times, City officials and employees shall:

- Comply with all State and local regulations governing conflicts of interest, including Texas Local Government Code Chapter 171
- Not knowingly use confidential information for actual or anticipated personal gain
- With the exception of the Finance staff, not communicate with vendors during the solicitation process which can lead to vendor disqualification

Employee responsibility to the City:

- Follow the policies and lawful instructions of the City
- Understand the purchasing authority granted to the employee by the City
- Avoid activities that would compromise or give the perception of compromising the best interest of the City
- Reduce the potential for any charges of preferential treatment by actively promoting the concept of competition

Principles and Standards:

- Avoid the intent and appearance of unethical or compromising practice in relationships, actions, and communications.
- Demonstrate loyalty to the City by diligently following the lawful instructions of the City, using reasonable care, and only granted authority.
- Refrain from soliciting or accepting moneys, loans, credits, or prejudicial discounts and the acceptance of a gift, entertainment, favors or services from present or potential suppliers that might influence, or appear to influence, procurement decisions.
- Promote positive supplier relationships through courtesy and impartiality in all phases of the purchasing cycle.
- Refrain from agreements that restrain competition.

- Know and obey the spirit and letter of the laws governing the purchasing function and remain alert to the legal ramifications of purchasing decisions.
- Encourage all segments of society to participate by demonstrating support for small, minority and women owned businesses.
- Never discriminate unfairly by dispensing of special favors or privileges to anyone, whether as payment for services or not; and never accept for themselves or for family members, favors or benefits under circumstance which might be construed by reasonable persons as influencing the performance of governmental duties.
- Handle confidential or proprietary information belonging to employer or suppliers with due care and proper consideration of ethical and legal ramifications and governmental regulations.
- Never use any information gained confidentially in the performance of governmental duties as a means of making private profit.

Conflict of Interest:

Conflicts of interest arise when personal involvement and/or gain in a decision could lead to prejudice, or the appearance of prejudice in that decision. All employees shall comply with the conflicts of interest provisions of the Texas Local Government Code.

Employees Relations with Businesses or People Doing Business with the City:

It cannot be overstated that Watauga’s values can be greatly compromised by the improper acceptance of gifts. Even the appearance of accepting gifts can be damaging.

No City employee shall accept any gift that might reasonably tend to influence the employee in the discharge of their official duties, or grant any improper favor, service, or thing of value. Neither shall any employee use their official position to secure special privileges or exemptions for themselves or others.

Bidding and contracting can bring great discredit upon the City if it is not conducted in a legal and appropriate manner. Any private gain by employees of the City or any gain beyond reasonable compensation for the contractor is prohibited.

No gift, reward, favor, or any other considerations shall be accepted or retained for services rendered by the employee. The employee shall notify their supervisor of any such offer and the employee’s refusal. Gifts, rewards, favors or any other considerations which are given to an employee under circumstances which do not permit the employee’s immediate refusal shall be reported and given to the employee’s department director immediately. The department director shall return the gift with a proper letter expressing an explanation to the person giving the gift. A copy of the letter will be sent to the City Secretary’s Office.

When a gift, reward, favor, or any other consideration cannot be returned it will be used for the benefit of all employees in the department involved or otherwise disposed of so no individual gains from the gift. The manner of disposal of the gift shall be reported in writing to the City Secretary’s Office. Small items such as cakes, cookies and candy may be accepted if used for the entire department. Large gifts or donations of gratitude to benefit the employee of a department are not permitted. Any such individual or group wishing to express their gratitude may contribute to a charitable organization in the name of that department.

Any service rendered by an employee is considered part of the employee’s job, and since the employee is paid, no special gratitude is necessary.

Debarment:

The City of Watauga may suspend or debar vendors from the consideration of award of contracts. Grounds for suspension or debarment include, but are not limited to:

- If the vendor misrepresents its qualifications, experience or provides false information on a bid, proposal, or quote response
- If the vendor is indicted at the time of submitting a bid, proposal, or quote response for or otherwise criminally or civilly charged by a governmental entity with commission of other misrepresentation or fraud
- If the vendor, within a three year period preceding the bid, proposal or quote due date, had one or more public transactions terminated for cause or default
- If the vendor violates any federal, state, and local governmental laws, rules, and regulations relating to its responsibilities, as set forth in the documents or agreement

Order Processing:

Purchase Requisition is an internal electronic form that is part of the City’s Tyler Technology Incode Financial software system. It is used to inform Finance of the needs of a department and to identify the goods or services requested for purchase. All purchase requisitions are entered into the automated procurement system. Requisitions should be prepared far enough in advance so as not to create an emergency situation. This allows Finance adequate time to ensure compliance with policies, laws, and bids, obtain quotes or bids as needed, and ensure reasonable delivery by the vendor.

All requisitions must be approved by the Department Director prior to submitting to Finance for assignment of a purchase order. Requisitions numbers are not the same as purchase order numbers. REQUISITION NUMBERS MAY NOT BE USED AS PURCHASE ORDERS. The end result of a requisition is the purchase order.

Requisitions in the system that do not have the necessary information will not be approved until all requested information is received by Finance.

Once a requisition is approved, the funds for that purchase are “encumbered” or reduced from your available budget.

Purchase Orders are prepared in Finance by converting the information on the purchase requisition into a purchase order. A purchase order is the vendor’s authorization to ship materials or provide services as specified. It acts as a contract between the City and the vendor. No orders are to be placed with vendors except through the issuance of a purchase order by Finance.

Finance will approve packets daily to ensure a timely ordering process. All purchase orders will be processed with vendors (unless otherwise indicated by end user) by Finance upon approval.

Separate and Sequential purchases are prohibited by Texas Local Government Code.

- Separate purchases are purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase
- Sequential purchases are purchases made over a period, of items that in normal purchasing practices would be purchased in one purchase

Exceptions:

Emergencies do occur. There may be purchasing requirements that are an emergency or of an immediate need in nature. In these instances, contact Finance and an appropriate procedure will be worked out so that your department needs are met within a timely manner.

Blanket Purchase Orders:

Blanket purchase orders may be created for repetitively ordered supplies or services. These are created as a convenience and should be limited to small, repetitive items. Such orders are appropriate when they will reduce the number of purchase orders, administrative costs, and paperwork. Rather than issue

a separate purchase order for each purchase, one purchase order is issued in advance to cover all purchases made during a specified time period.

The Finance Department shall provide the vendor with the names of City employees authorized to make a purchase under each blanket purchase order.

Canceling Purchase Orders:

Finance may cancel a purchase order upon written request from the User Department. Upon cancellation of the purchase order, all encumbered funds are released.

Receiving:

Department inspects the product received for damage, defect, and whether the product received is the product ordered, and verifies the quantity received or the service provided is per the agreement and any deliverables are received.

It is the Department's responsibility to ensure that the order is complete and inspected for quality and quantity and to report any discrepancies to the vendor. There should be an actual inventory of the goods at the time of delivery. If the shipment is complete and undamaged, then the packing slip, and/or delivery ticket along with the authorized receiving purchase order should be sent to Finance. The signed authorized receiving purchase order is to be sent to Finance as authorization and verification that the products and services have been received and are complete and ready for payment. The Department Director, or appointed designee, should sign these purchase orders.

No invoice, with exception of blanket purchase orders, will be sent to the Department from Finance. If there is a discrepancy in the invoice amount and the purchase order, the User Department will be notified prior to any payment.

Should the Department receive only a partial shipment or return part of a shipment due to damage or the wrong item delivered, this must be noted on the packing slip, delivery ticket or receiving purchase order before sending to Finance.

If the Department receives an invoice with the shipment, it should be sent immediately to Finance for payment processing.

If the service/product is damaged, defective, or not per specifications outlined, the Department works with the vendor to correct. The Department documents any issues with a vendor. If the Department has issues with a vendor which are not resolved promptly after contacting the vendor, the Department contacts Finance for assistance and begins the invoice dispute process.

State statute requires the City to make prompt payment to vendors no later than the 30th calendar day following the day on which the City received supplies, materials, or equipment, or the day on which performance of services was completed, or the day, on which the City received an invoice, whichever is later. It is very important that the Department promptly process the receiving documents once the products have been received or the services have been completed.

Payment is not required by these deadlines if there is a bona fide dispute over the invoice and/or delivery or service.

If payments are to be made in multiple payments, make copies of the purchase order for each payment, mark through the total amount, write "partial payment" and write the amount to be paid with this payment.

Returns:

When the materials received are not the same as ordered on the purchase order, contact Finance and the vendor immediately. The Department should notify the vendor as to the discrepancy and arrange exchange, return, or cancellation of the materials. Finance should be made aware of all correspondence with vendors. A detailed account should be recorded and forwarded to Finance.

Canceling or Changing Orders:

The information on a purchase order may need to be altered for several reasons, which may include incorrect pricing, substitute item, etc., or canceled altogether. In the event any changes are needed, the Department should notify Finance immediately. The purchase order will be revised as needed by Finance and the revised purchase order will be sent to the vendor and copied to the Department. The distribution of the revised purchase order will be the same.

In the event an order is to be canceled, the Department is to notify Finance immediately. Finance will notify vendor that the order is being canceled, followed by confirmation to the Department that the order has been canceled. The receiving purchase order should be sent to Finance with "CANCELED" indicated and Finance will then void the order from the system.

Payment Authorization:

Finance shall review all purchases prior to issuing payments. Payment authorizations must be properly completed with all necessary signatures. Authorization signatures verify that all products have been received or services rendered in compliance with the order.

An invoice is an itemized statement of products and/or services provided by the vendor. Vendors shall submit invoices directly to Finance either by mail or email. Vendors should not mail AND email an invoice.

Accounts Payable Discrepancies:

Before Accounts Payable (AP) can pay an invoice, there must be a 3-way match of the purchase order. Payment to vendor is based on three documents:

- Purchase order – authorizes the purchase and receiving record showing the quantity/amount the City received from the order.
- Appropriately authorized and signed receiving purchase order from department indicating receipt of product or services.
- Invoice.

Payment will not be made without these three documents. If the invoice matches both the PO and the quantity/amount received by the Department, AP is authorized to pay the invoice. If they do not match, no payment is authorized, and AP will contact the Department for further information.

Invoice Dispute Process:

State law requires the City to pay for goods and services received within 30 days after the latter of the delivery of the product/service or the invoice date; otherwise, the City is required to pay the vendor interest. Therefore, it is important for Departments to submit payment authorization to Finance as soon as products/services are complete.

An invoice may need to be disputed for such reasons as product not received, product damaged, services not received, and invoice amount incorrect. Under state law, the City is required to notify the vendor of a disputed invoice before the 21st day after the invoice is received. Therefore, a Department shall work with Finance and the vendor to resolve the issue.

General Steps In Procurement Process:

- Department identifies purchase need

- Department generates purchase requisition
- Department Director approves purchase requisition
- Finance ensures compliance in procurement and converts requisition to purchase order
- Purchase order is sent to vendor and User Department as requested by User
- Department receives products or services
- When order is complete, the Director, or authorized designee, signs copy of the receiving purchase order as complete and authorization for payment and sends it along with shipping documents to Finance
- Finance matches invoice(s) to purchase order and receiving documents and if all match, payment is made. If there is a discrepancy, Finance will notify the User Department and appropriate action will be taken

General Provisions:

The following are general provisions to be followed with regard to the bid or proposal procedures and projects:

- As bids and proposals are received by the City, they shall be recorded with the date and time of receipt and remain unopened.
- On the date and time of bid opening as designated in the published notice, Finance or other persons as designated open the bids at a public meeting. Upon request, bidders should be provided a tabulation of the bids/proposals received and should be informed of the process and schedule to be observed in awarding the contract.
- If the contract is for construction of public works, the successful bidder must provide a bond for the faithful performance for the full amount of the contract.
- Consistent with the Watauga City Charter, the City Manager must execute all contracts for procurement and related instruments, and the City Council must approve any contract, purchase or expenditure that exceeds the maximum amount permitted by state law at the time of the expenditure subject to competitive bidding or sealed proposals including utilization of purchasing agreements with other entities.
- It shall not be permissible to make several purchases of the same or similar items for the purpose of circumventing the competitive bidding or proposal requirement.
- Watauga Economic Development Corporation Board and the Watauga Crime Control and Prevention District Board may impose more stringent requirements concerning purchasing and payment authorization requirements.
- Per Government Code Sec. 2252.202. Uniform Purchasing Condition; Rules. (a) Except as provided by Sec 2252.203, the uniform general conditions for a project in which steel products will be used require that the bid documents provided to all bidders and the contract include a requirement that any iron or steel products produced through a manufacturing process and used in the project be produced in the United States. (b) A governmental entity subject to the requirements for a project described by Subsection (a) shall adopt rules to promote compliance with this section.

GENERAL PURCHASING INFORMATION:

Departments shall make purchases using a purchase order (PO) or utilizing a purchasing card (p-card). Departments shall only utilize purchasing cards for training, travel, and small purchases upon prior approval by Finance. Departments shall make all purchases according to the City’s Purchasing Policy regardless of the payment method.

Sales Tax:

As a municipality, the City is exempt from paying sales tax on all purchases. The only exception would be travel related expenses. The City’s tax exemption certificate is available on the City’s intranet or in the City information folder.

Freight and Shipping:

The preferred method for shipping items to the City is FOB (Free on Board) Destination, which makes the vendor responsible for the shipment until the City inspects and accepts it. The vendor selects the shipper and is responsible for the risk of transportation, including filing for losses or damages.

Recycled Materials:

Preference shall be given in purchasing of products made of recycled materials if the product meets applicable specifications as to quantity and quality and the average price of the product is not more than 10% greater than the price of comparable nonrecycled products. Preferences will be applied in accordance with state procurement statutes and rules.

Responsibilities in the Purchasing Process:

Finance is responsible for the procurement management of all items or services obtained by the City, including:

- Ensuring statutory compliance by the City with all applicable laws and regulations pertaining to purchasing activity
- Working with Departments to ensure prompt delivery of goods and services as requested
- Developing and maintaining reliable alternate sources of supply and a competitive atmosphere in pricing and performance by vendors
- Selecting sources of supply from which to secure prices, obtaining quotes, and documenting reasons for the selection of a given vendor
- Contacting a vendor in regard to poor performance. Unsatisfactory product quality or service performance can be a factor in subsequent award determination; continued poor performance may be a cause for removal from the vendor list
- Where possible and practical, combining purchases of similar items to allow for better pricing and establish a more competitive atmosphere
- Coordinating, organizing, and assisting departments in the specification writing process for procurement
- Ensuring specifications written are not proprietary, and if bid response is anticipated to be very narrow, ensuring proper documentation exists as to reasoning of narrow specifications
- Verifying the System for Award Management (SAM) for vendor debarments on all federal and state grant purchases. Vendors not in SAM must register to be eligible to use for purchases
- Conducting periodic purchasing training for all employees who process requisitions, payment authorizations, blanket purchase orders, and who receive orders and write or develop any specifications. The training class is required for all employees who are authorized to purchase for their department. End users who make purchases on behalf of departments must complete the training.
- Conducting departmental audits and issuing any subsequent reports to ensure that all employees and potential vendors adhere to the applicable statutes, policies, and procedures.
- Coordinating the solicitation of all bids and posting all legal advertisements and contact with vendors.
- Responding to questions pertaining to bids, coordinating communications between departments and bidders, receiving and opening bids at the indicated times, and tabulating results

Requesting/Initiating Departments:

- Working with and submitting specifications to Finance far enough in advance to allow for specification coordination, development, and the bid process. Departments should allow for the typical time frame of 2-3 months to process a bid through City Council approval and purchase order.

- Advising Finance in writing and providing evidence when unsatisfactory performance from a vendor is experienced at the time the deficiency takes place
- Assisting Finance in accomplishing the combining of purchases of similar items to allow for better pricing and establishment of a more competitive atmosphere
- Adhering to this policy and federal, state, and local statutes for procurement
- Verifying that all required forms are signed and complete prior to submission to Finance
- Assisting Finance with specifications that require a technical background or specific knowledge and expertise
- Evaluating bids and proposals for compliance with specifications, evaluating bids based on the criteria defined in the specifications and making recommendations for award
- Receiving and inspecting purchased goods and services

Compliance with House Bill 1295:

Prior to obtaining City Council approval, all contracts that require City Council approval, must comply with House Bill 1295 as described below. Information regarding how to use the filing application may be found at <https://www.ethics.state.tx.us/whatsnew/elfinfoform1295.htm>

In 2015, Texas Legislature adopted House Bill 1295, which added Section 2252.908 of the Government Code. The City may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the City at the time the business submits the signed contract to the City.

The law applies (with few exceptions) only to a contract between a business entity and the City that (1) requires an action or vote of the City Council before the contract may be signed, (2) has a value of at least \$1 million; or (3) is for services that would require a person to register as a lobbyist under Chapter 305 of the Government Code. The disclosure requirement applies to a contract entered into on or after January 1, 2016.

The Texas Ethics Commission has adopted rules necessary to implement the law, prescribed the disclosure of interested parties form, and posted a copy of the form on the commission's website.

A Form 1295 is not required for:

- A sponsored research contract of an institution of higher education
- An interagency contract of a state agency or an institution of higher education
- A contract related to health and human services if:
 - i. The value of the contract cannot be determined at the time the contract is executed; and
 - ii. Any qualified vendor is eligible for the contract
- A contract with a publicly traded business, including a wholly owned subsidiary of the business
- A contract with an electric utility, as that term is defined by Section 31.002, Utilities Code
- A contract with a gas utility, as that term is defined by Section 121.001, Utilities Code

Filing Process

The commission has made available on its website a filing application that must be used to file Form 1295. A business entity must:

- Use the application to enter the required information on Form 1295
- Print a copy of the completed form, which will include a certification of filing that will contain a unique certification number
- Contract number should be the bid/proposal number and bid title
- Sign the printed copy of the form (an authorized agent of the business must sign)
- Either include your personal information or have the form notarized

- File the completed Form 1295 with the certification of filing with the City which the business is entering into a contract

The person filing a Form 1295 needs to complete an “unsworn declaration.” The City must notify the commission, using the commission’s filing application, of the receipt of the filed Form 1295 with the certification of filing not later than the 30th day after City receives the Form 1295. The commission will post the completed Form 1295 to its website within seven business days after receiving notice from the City.

Procurement of Automated Information Systems and Service:

Through the State of Texas Information Purchasing Program (DIR)

This program provides a standardized procedure for the procurement of automated information systems and services through the state DIR purchasing program. The DIR allows local government entities that qualify for cooperative purchasing under Section 271.082 and 271.083 under the Local Government Code to purchase products and services under this program. Furthermore, the DIR program allows user entities to negotiate additional terms and conditions, and any other details of an offer for a product or service.

Procurement of High Technology Items not Purchased Through DIR

A Request For Proposal may be used when purchasing services of a highly technical nature such as the following:

- Data processing equipment and software
- Telecommunications equipment, radio, and microwave systems
- Electronic distributed control systems such as building energy management systems

Specifications are written as a Request for Proposal instead of a Request for Bid. All evaluation criteria must be defined. The contract is not awarded to the lowest response, but instead to the response who provides the products/services at the best value for the City.

Computer Software/Hardware Procurement:

Purchasing computer software/hardware and services are to be coordinated with the Information Technology (IT) department to ensure capability with existing systems.

Software/hardware vendors will not be allowed access to the City computer systems unless authorized and in the presence of IT personnel. All computer software/hardware demonstrations must be approved in advance by IT and an appropriate IT employee will attend each demonstration.

It will be the responsibility of the individual departments to obtain written approval from IT before a request is submitted to Finance. Requisitions submitted without prior approval by IT will not be approved.

Fleet Equipment and Vehicle Procurement:

Before any mobile equipment/vehicle to be maintained by Fleet Services is purchased, it must be reviewed and approved by Fleet Services to verify it will be supported and/or maintained, to ensure capability with existing City equipment, and is eligible for replacement if applicable. These purchases must be made from an authorized vendor, have warranty and support Fleet Services standards.

Purchasing Procedure Violations:

The Department Director is responsible for ensuring that employees comply with the policies and procedures outlined in this manual. Department personnel will be held accountable for the proper use and administration of the purchasing process.

Violation # 1: Finance will notify the employee of the department and the department director of the first error on an informal basis, continued failure to correct procedural errors will result in a violation notification being issued.

Violation # 2: written notification of the violation shall be sent to the employee, supervisor, and department director, stating that the next violation may result in the employee's suspension from the purchasing process for their department.

Violation # 3: a third violation may result in all purchasing privileges being suspended from the employee. Notification of suspension will be sent to the department director, and the City Manager and/or designee, for further review.

Violations of purchasing policy and procedures may result in disciplinary action, up to and including termination.

Supply Contracts:

A contract is a binding agreement between the City and a vendor for the supply of goods or services at a fixed price for a certain length of time.

Annual supply contracts for goods or services shall be obtained when such contracts appear to be in the best interest of the City. Finance will attempt to combine bulk purchases for materials by means of annual contracts when it is possible to realize financial and time savings by doing so.

Supply contracts may be initiated by either Finance or a department. If the department is repeatedly purchasing the same type of item over a short period of time, they should work with Finance to establish a supply contract to provide ease of purchasing and assure a certain pricing structure.

Following the award of a supply contract to a vendor, the department will submit a requisition for the products. If a contract is of the ongoing maintenance or service variety and the exact cost is known, funds should be encumbered by utilizing a blanket purchase order.

Since the award of a supply contract went through a competitive procedure, departments are not required to receive quotes for any work performed under \$50,000. If any purchases require an expenditure of \$50,000 or more the competitive sealed bid process must be followed.

Employees making purchases against orders placed on blanket purchase orders must be approved by their department director and must reference the purchase order number.

Contested Bids/Protest:

If a department is made aware of or is contacted by a vendor regarding a project relating to advertising of sealed bid notices deadlines, bid opening, or any other related procedures under the Local Government Code, as well as any protest relating to alleged improprieties or ambiguities in the specifications, the department should either contact Finance or instruct the vendor to contact Finance.

Finance will attempt to determine the reasons behind the potential protest, and failing to satisfy the vendor, will instruct the vendor to prepare a written protest.

The written protest should:

- Include both the name and address of the protestor, as well as the vendor they represent, if different
- Identify the bid number and item

- Contain a statement of the grounds for the protest and any supporting documentation
- Be submitted within 5 business days of the instruction to submit a protest
- A decision and response to the protest will be prepared by Finance, in consultation with the initiating department within 10 days of receipt of the protest. The response to the protest may include information regarding staff's position and its recommendation of award.

Appeal of Award Decision

Appeal award of less than \$50,000

Appeal of a decision for award of a contract in an amount less than \$50,000 may be appealed in writing to the City Manager within 10 days prior to the award date. The City Manager shall provide a written response to the vendor within 15 days of receipt of the appeal. The City Manager's decision is final.

Appeal award \$50,000 or more

Appeal of a decision for award of a contract \$50,000 or more shall be filed with the City Secretary and a copy to the City Manager and City Attorney.

The appeal filed shall:

- Include both the name and address of the protestor, as well as the vendor they represent, if different
- Identify the bid number and item
- Contain a statement of the grounds for the protest and any supporting documentation
- Be submitted within 5 business days prior to the bid award date

The City Manager, after consultation with the City Attorney, shall provide a written response to the vendor within 10 business days of receipt of the appeal. If the vendor does not agree with the decision of the City Manager, the vendor may request consideration of the matter by City Council.

Bonds:

Bid, performance and payment bonds will be required for building construction and public works projects. The purpose of 3 types of bonds are as follows:

Bid Bond: a bid bond is required of a contractor to ensure that the contractor will enter into the contract for which they have submitted a formal written bid and/or proposal.

Performance Bond: required by state statute Government Code Chapter 2253 for all construction or public work projects exceeding \$100,000; obtained from an insurance company and must be equal to 100% of the contractor's total bid price; written to protect the City in the event the contractor fails to complete the project; contractor submits with signed contract.

City policy for projects up to \$100,000: Payment will be due upon completion and acceptance of work performed by the contractor. If the contractor desires payment in stages as the work progresses, the contractor shall furnish a performance bond in an amount equal to at least 100% of the contract price as security for the faithful performance of a contract.

Payment Bond: required by state statute Government Code Chapter 2253 for projects exceeding \$50,000; obtained from an insurance company and must be equal to 100% of the contractor's total bid price; written to protect laborers, mechanics, and subcontractors in the event the contractor fails to pay them; contractor submits with signed contract.

Rejection of Bids:

Receiving less than 3 bids or proposals:

If the City receives less than 3 bids or proposals in response to its request, the City will determine the need to either accept, reject, or reschedule the bid opening. Once bids are opened the City may accept the bids or proposals received, reject the bids or proposals, and re-advertise, or reject the bids or proposals and decide not to undertake the project.

Rejecting all bids:

Once Finance staff opens the bids or proposals and if no bid is found to be acceptable, all bids will be rejected, and the bidding process repeated.

A written memo outlining the specific reason why bids should be rejected from the department and Finance will be required.

The Director of Finance has the authority to reject all bids submitted that are less than \$50,000 in value. All bids \$50,000 or more must be submitted to City Council for approval to reject.

Low bidder:

When a bid is rejected there must be reasonable grounds that the bidder could not fulfill the contract. Disqualifying or rejecting a bidder should not be done lightly. If a bidder has had past unsatisfactory contracts with the City, the experiences should be thoroughly documented in order to support any later disqualifications.

Request to Withdraw a Bid After Bid Closing:

No bid may be withdrawn after bid closing without acceptable reason given in writing and with the approval of Finance. The vendor must show that:

- A calculable damage of a significant nature will result if they are required to abide by the bid
- An error occurred from preliminary paperwork in preparing the bid
- An obvious error is noticeable when comparing the bid to other bids or the real value of the item

Vendor Performance Review:

It is an essential function of the contract administration process to review a vendor's performance. This information assists Finance in review of the vendor, the service or supply being provided and the effectiveness of the contract or bid specifications.

Departments should notify Finance immediately of any problems or issues with vendors in the performance of service or the supply of products. These issues should never go unreported.

