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JACK HARPER    CITY MANAGER

ADMINISTRATIVE DIRECTIVE #18-03

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**City of Fulshear**

**Purchasing Procedures**

**October 22, 2018**

\_\_\_\_\_  
Jack Harper, City Manager

\_\_\_\_\_  
Date



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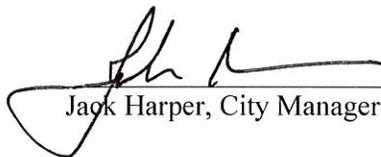
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**SECTION 1. PURPOSE.**

- a) The purpose of this policy is to establish procedures and guidelines for procurement of supplies, materials, and services for the City of Fulshear, Texas (City).
- b) This policy shall also establish the internal control procedures that all vendors and City personnel are to follow. Internal control is required to assist in prevention of any unauthorized purchases by the City, and any evidences of collusion by vendors.
- c) This policy shall further establish guidelines in order to provide the citizens and taxpayers of the City assurance that the best uses of the available resources of the City are being realized. Further, this policy is intended to promote competition among the bidders and vendors interested in providing products or services to the City.
- d) The statutory authority for these policies and procedures shall be the Local Government Code (the Code), V.C.T.A., Section 252, and other State of Texas statutes referenced herein, and other applicable policies and procedures.

**SECTION 2. DEFINITIONS.**

As used in this policy, the following terms and definitions shall apply:

- a) "Purchases" shall mean the procurement of supplies, materials, and services by and for the City;
- b) "Vendor" shall mean a supplier of materials or services to the City;
- c) "User Department" shall mean a department or agency of the City;
- d) "Personal" or "professional services" shall mean any service provided or performed by a certified public accountant, consultant, licensed architect, physician, optometrist, surgeon, registered surveyor or engineer, or any group or association thereof;
- e) "High Technology Procurement" shall mean the procurement of equipment, goods, or services of a highly technical nature, including:
  - 1) data processing equipment and software and firmware used in conjunction with data processing equipment;
  - 2) telecommunications equipment and radio and microwave systems;
  - 3) electronic distributed control systems, including building energy management systems; and
  - 4) technical services related to those items.
- f) "Chief Financial Officer" or "Purchasing Officer" shall mean the Chief Financial Officer of the City of Fulshear, or his authorized designee; and
- g) Gender. Unless otherwise specified, the use of the masculine pronouns, he, him, or his shall refer to both male and female gender.

- h) “Tangible” property is anything which can be touched and includes both real/physical property (i.e.: supplies, materials) and the usage of personnel (i.e.: labor, services).
- i) “Intangible” property has no physical substance. Such items are such that a person or corporation have ownership of and can transfer ownership of to another person or corporation.

### **SECTION 3. THE PURCHASING FUNCTION.**

- a) The basic function of a municipal purchasing system is to support and enhance the delivery of City services. The optimum performance of this function requires that the purchasing system continually provide the departments of the City the proper quality as well as quantity of requested commodities within an acceptable time frame at the lowest cost.
- b) The City currently utilizes the concept of decentralized purchasing, rather than centralized purchasing. In a decentralized purchasing system, each user department shall be responsible for following these established procedures. A centralized purchasing system, in contrast, is a system where all purchase requests are processed through a centralized purchasing office, with the central office responsible for purchasing and procurement.

### **SECTION 4. PURCHASING PROCEDURES.**

- a) Supplies or materials that are not available at any central warehouse of the City shall be purchased by following the procedures outlined in this policy. Further, replenishment of supplies at any central warehouse of the City shall also be purchased by following these procedures.  
**Available and sufficient funding in the user department’s budgetary authority shall be the basis for all purchases.**
- b) Approval of Purchases
  - 1) Purchases less than \$50,000 shall be approved by the Department Head of the user department and verified by the Finance Department for compliance with the City’s purchasing policy
  - 2) Purchases competitively solicited in excess of \$50,000 shall be awarded only by City Council, or as otherwise prescribed in this policy.
- c) Emergency Purchases.
  - 1) Emergency purchases less than \$50,000 shall be permitted under this policy. During periods of an emergency, discretion is provided to the Department Head for authority to purchase supplies or materials in an emergency situation. Emergency purchases shall not relieve the user department from following normal purchasing procedures and guidelines as outlined in this policy.
  - 2) Emergency purchases in excess of \$50,000 which are made without solicitation of competitive bids, shall be permitted under this policy, in accordance with Local Government Code V.T.C.A., Section 252.022, as amended. All emergency purchases shall be approved by the Department Head of the user department and the City Manager or Chief Financial

Officer. In addition, the reason for the waiver of the competitive bid/proposal requirements must be cited, in writing, using the appropriate section of the Code.

- d) No employee of the City shall have the authority to enter into a contract for purchase of goods or merchandise without first following the procedures put into place by this policy, except for emergency purchases as defined in this policy. In the event of an emergency purchase, the employee shall be responsible for full compliance of the policies relating to emergency purchases, as defined in this policy. **All contracts shall be reviewed by legal counsel prior to execution (as provided under Section 8-d)**
- e) Approved Vendors.
  - 1) All vendors shall complete a Vendor Data Form (A-4) and be approved by the Finance Department prior to procurement. The department head shall be responsible for obtaining a completed Vendor Data Form and Form W9 from all vendors prior to purchasing. The department head shall verify that the Vendor is an approved Vendor of the City prior to procuring materials or services.

## **SECTION 5. PRICE QUOTATIONS AND PURCHASE AWARDS**

- a) **Negotiated Purchases Not Subject to Competitive Bidding.** In order to obtain the best merchandise at the least possible cost to the City in a timely manner, the following procedures are recommended:
  - 1) Competitive pricing by vendors shall be encouraged in order to obtain the best merchandise at the least possible cost;
  - 2) Quantity discounts shall be utilized in order to obtain the least possible cost per unit for the purchases made by the City; and
  - 3) Use of local vendors for purchases of materials and supplies is encouraged, provided prices quoted by local vendors are within acceptable limits (five (5) percent over the lowest bidder). In order to promote price competition among local vendors and non-local vendors, it is recommended that local vendors having State of Texas purchasing contracts provide the appropriate contract prices to the City.
  - 4) Procedures for Negotiated Purchases Not Subject to Competitive Bidding.
    - A. User departments shall endeavor to obtain competitive price quotations from vendors. The guidelines of this policy require that the user department obtain at least three (3) price quotations from vendors for all purchases in excess of \$3,000. Single supplier or single source vendors should be duly noted, in writing, by the user department. (Single supplier or single source purchases are defined as purchases which are available from only one supplier because of patents or copyrights, or because the vendor is the only one which can supply the product or service.) Purchases between \$3,000 and \$50,000 must comply with Texas Local Government Code 225.0215 relating to historically underutilized businesses (HUB). At least two (2) HUB vendors must be

contacted. If the list fails to identify a HUB vendor within Fort Bend County, the city is exempt from this requirement.

- B. While it is not encouraged purchases less than \$5,000 may be obtained by verbal quotations from vendors. Discretion is provided to the user department in order to determine whether written price quotations are to be requested from vendors for purchases less than \$5,000. (See A-2 Verbal Quotation Form)
- C. Purchase requisitions for \$3,000 to \$50,000. Purchases in excess of \$3,000 and less than \$50,000 will require written competitive price quotations from at least three (3) vendors. Failure of the vendor to provide price quotations in writing may be grounds for exclusion of that vendor from future bidding processes.
  - 1. Purchases between \$10,000 and \$50,000 will require a certificate of insurance on award of contract for General Liability coverage naming the City as an additional insured EXCEPTION – Any contract for demolition shall require a certificate of insurance on award of contract for General Liability coverage naming the City as an additional insured regardless of the amount of the contract.
  - 2. No bidders' bond or cashiers' check will be required as bid security.
- b) Purchases Subject to Competitive Bidding. Purchases in excess of \$50,000 shall be competitively bid and awarded by the City Council, except as otherwise provided in this policy. Such purchases shall be solicited by formal competitive bids or proposals. Purchases exceeding \$50,000 during a fiscal year period shall be deemed as meeting the competitive bidding requirements of these policies.
- c)
  - 1) For one time jobs in excess of \$50,000, the City requires \$500,000 General Liability coverage, as well as Employers' Liability coverage, with the City being named as an additional insured.
  - 2) For more significant work, (i.e. infrastructure construction, etc.), the City requires \$1,000,000 in General Liability coverage minimum combined single-limit General Liability coverage per occurrence and \$2,000,000 General Aggregate for bodily injury and property damage coverage, as well as Employers' Liability coverage. If the work will exceed \$1,000,000 these limits may be increased upon recommendation of the Chief Financial Officer. The City will be named as an additional insured.
  - 3) Workers' Compensation coverage will be required as set forth by State Law.
  - 4) Vehicle Liability Insurance coverage will be required as the same limits as General Liability coverage for any contractor who uses his own vehicles in the course of the work (not just driving to and from, but actually performing the work).
  - 5) Items specifically excluded from competitive bidding requirements by Section 252.022 as follows:

- a. 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;
- b. A procurement necessary to preserve or protect the public health or safety of the City's residents;
- c. A procurement necessary because of unforeseen damage to public machinery, equipment, or other property;
- d. A procurement for personal or professional services;
- e. A procurement for work that is performed and paid for by the day as the work progresses;
- f. A purchase of land or right-of-way;
- g. A procurement of items that are available from only one source, including:
  - i. items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies;
  - ii. films, manuscripts, or books;
  - iii. gas, water, and other utility services;
  - iv. captive replacement parts or components for equipment;
  - v. books, papers, and other library materials for a public library that are available from the persons holding exclusive distribution rights to the materials; and
  - 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.
- h. A purchase of rare books, papers, and other library materials for a public library;
- i. 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;
- j. A public improvement project, authorized by the voters of the City, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes authorized by the voters;
- k. A payment under a contract by which a developer participation the construction of a public improvement as provided by Subchapter C, Chapter 212.
- l. 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 (V.T.C.A) Chapter 17, Business and Commerce Code; or
  - 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.
- m. Services performed by blind or severely disabled persons;
  - n. Goods purchased by a municipality for subsequent retail sale by the municipality;
  - o. Electricity; or
  - p. Advertising, other than legal notices.

Although the items listed in subsection a-p. above do not require competitive bidding, it is in the City's best interest to attempt to solicit competitive proposals when practical, in order to assure the most effective use of City resources.

**SECTION 6. PURCHASE ORDERS.**

- a) Procurement of any item or service over \$3,000.00 shall be accompanied by an approved purchase order prior to the purchase being made and in accordance with Sections 4 and 5 of this policy. (See A-3 Purchase Order Form)
  - 1) Standardized purchase order numbers will be assigned on an annual basis.
  - 2) The Finance Department is responsible for issuing and tracking purchase orders for all purchases.
  - 3) Dept. Heads should maintain and prepare a monthly purchase order reconciliation report to the Finance Department at minimum quarterly.
  - 4) No purchases shall be made under this policy without the accompaniment of an approved purchase order. Failure to do so will result in delayed payment of invoices. Purchases made without an approved purchase order will be subject to City Manager approval before payment is made. In such case it will be up to the department head to present such case to the City Manager and may result in disciplinary action.

**SECTION 7. COMPETITIVE BIDDING/PROPOSALS REQUIRED.**

- a) In accordance with Local Government Code, V.T.C.A. Section 252.021, as amended, competitive bidding is required in order for the City to enter into a contract requiring an expenditure of more than \$50,000, except for those items or procurements excluded from competitive bidding requirements, as herein provided. Such bids shall be solicited by sealed bids or proposals. The

Code specifies the following purchases avoid competitive bidding requirement and, as a result, may subject the City as well as employee to criminal charges:

- 1) Separate Purchases. Purchases of items made separately, that in normal purchasing practice would be bought in one purchase, i.e., splitting on purchase in excess of \$50,000 into two purchases of \$25,000 each.
  - 2) Sequential Purchases. Purchases made over a period of time that, in normal purchasing practice would be bought in one purchase.
  - 3) Component Purchases. Purchases of parts of an item, in normal purchasing practice would be bought in one purchase.
- b) Types of Competitive Bidding. Competitive bidding consists of two types of solicitations; (1) competitive bidding and (2) competitive proposals.
- 1) Competitive Bidding. Formal sealed bids shall be solicited for all purchases in excess of \$50,000, except as otherwise provided herein. These bids are to be advertised, and subsequent contracts or awards shall be based on the detailed specifications and conditions of purchase. Generally a competitive bid may not be negotiated after bid opening.
  - 2) Competitive Proposals. Competitive proposals are similar to competitive bids, but are limited in scope by Texas statutes. These proposals may be used for procurements of high technology products or services and insurance. The primary difference between competitive bids and competitive proposals is that the specifications for competitive proposals are written using performance standards rather than the description of the good or service. Further, the specification also lists the factors by which the proposal will be evaluated, and the weight to be given to each evaluation factor. In a competitive proposal, vendors may submit proposals of their own design for a system to satisfy the requirement set forth in the proposal. After a competitive proposal has been received, the City may enter into negotiations with as many vendors as have submitted feasible proposals in order to arrive at the best possible proposal for each vendor.
- c) Preparation of Invitation for Bid (IFB) and Request for Proposal (RFP). Bid invitations and RFP's shall be prepared by the user department, or an authorized agent of the City, such as a registered engineer or architect. IFB's and RFP's shall be submitted to the City Attorney for review and for preparation of legal documents prior to distribution to prospective bidders. In some instances, it may be necessary for the City Council to approve plans and/or specifications prior to the user department proceeding with the preparation of an IFB or RFP.
- 1) Bids or RFP's Prepared by User Department. A standardized IFB/RFP format is recommended to be used by the City when practical. The IFB/RFP shall be prepared in accordance with statutory provisions and user department recommendations. User departments shall review all IFB/RFP drafts, and recommend any changes necessary to ensure competitive bidding. Upon completion of IFB/RFP's the user department may provide a distribution list of prospective bidders. The user department will coordinate the distribution of the final IFB/RFP to prospective bidders. Each IFB/RFP shall be sequentially numbered by the City, and any correspondence relating to an IFB/RFP should reference the bid number.

- 2) Bids or RFP's Prepared by Agents of the City. For more technical, or design IFB/RFP's (for example, public works projects), the use of an authorized agent of the City may be necessary in order to prepare the bid document(s). Such agents or representatives may include registered professional engineers, architects, or consultants. The user department shall provide any information necessary for competitive bidding practices to the City's representative. The City's representative should also coordinate the bidding process with the City Attorney. IFB/RFP's prepared by City representatives may or may not be sequentially numbered, although for bid reference purposes, it is recommended that bids prepared by agents of the City utilize the City's bid numbering system.
- 3) High Technology Procurements. Competitive proposals or RFP's for high technology procurements may be prepared by the user department or an authorized agent of the City, and must specify the relative importance of price and other evaluation factors.
- 4) Notice Requirements. Notice requirements concerning competitive bidding shall follow the Local Government Code, V.T.C.A., Section 252.041, which states in part:
  - A. Notice of the time and place at which the contract will be awarded must be published at least once a week for two consecutive weeks in a newspaper published in the City. The date of the first publication must be before the 14th day before the date set to award the contract.
  - B. If the competitive sealed proposal requirement applies to the contract, notice of the request for proposal (RFP) must be given in the same manner as that prescribed above.
  - C. Criteria for Notice Requirements. Additional requirements of proper notice at a minimum must contain the following information:
    1. time, place, date and location or mailing address where the bid/proposal is to be submitted;
    2. the closing date the bid/proposal is due (the due date);
    3. a brief description of the item(s) being bid or proposed;
    4. a name and department to contact for bid documents and information;
    5. if applicable, state the time, date and location of any pre-bid conference;
    6. state whether or not a bid security is required; and
    7. disclose the City's right to reject all bids. All notices should state "The City reserves the right to reject any and all bids or accept any bid deemed advantageous of it."
- 5) Pre-bid conferences may be arranged by the City with prospective bidders when deemed necessary. Prospective bidders will be invited to the conference to inquire about any part of the bid specifications or procedures.

- 6) Submission of Sealed Bid/Proposals. Bids or proposals shall be mailed or hand-delivered in duplicate to the address stated in the IFB/RFP. Each bid or proposal must be returned in a separate, sealed envelope, with the bid or proposal number indicated on the outside of the envelope. Only one bid per envelope is to be submitted. All bids received will be filed unopened until the date and time stated in the IFB/RFP for bid opening.
- 7) The City shall expressly reserve the right to reject any and all bids, or to accept the bid deemed to be most advantageous to the City.
- 8) Bid Opening. Bids shall be opened by the Chief Financial Officer or his designee on the date and at the time specified in the IFB/RFP. Bidders, vendors, and the public are encouraged to attend the bid opening.
- 9) Disqualifications for Bids. Bids may be disqualified due to one or more of the following reasons:
  - A. Non-compliance with any part or section of the bidding instructions or specifications, or omission of any requested information;
  - B. Late bids, which will be returned to the bidder unopened, in accordance with the terms specified in the IFB/RFP;
  - C. Failure to state deviations from bid specifications or terms; or
  - D. Unsigned bids or bids signed by unauthorized individuals.
- 10) Correction or Withdrawal of Bid/Proposal. Correction or withdrawal of inadvertently erroneous bids before or after bid opening may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice received in the office designated in the IFB/RFP prior to the time set for bid opening. After the bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a non-judgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no change in bid prices or other provisions of bids prejudicial to the interest of the City of fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:
  - A. The mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
  - B. The bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Chief Financial Officer.
- 11) Bid Bond, Performance Bond, Letters of Credit.
  - A. Bid Bond. All bids for contracts subject to the competitive bidding and competitive proposal requirements by law, if the contract exceeds \$50,000, shall be accompanied by an official bidder's bond signed by both the surety and bidder, in an amount equal to five

percent (5%) of the total bid or proposal. Such bond must be payable to the City and executed by a corporate surety licensed to do business in Texas. The bond must be conditioned such that if the bidder is awarded the contract and then fails either to execute the contract timely or to provide any required bonds timely, or to do both, then in that event the surety will be obligated to pay the City an amount equal to the difference between the bid of the bidder on whom the bond was written and the bid of the bidder who is finally awarded the contract and who executes the contract, up to the full sum of the bond.

- B. Performance Bond. If the contract exceeds \$50,000 the bidder to whom the contract is awarded must provide a performance bond signed by both the surety and bidder, in an amount equal to one hundred percent (100%) or the total bid. Such bond must be payable to the City and executed by a corporate surety licensed to do business in Texas. The bond must be conditioned upon the faithful performance of work in accordance with the plans, specifications and contract documents. The bonds must also comply with any other special requirements contained in the bid documents.
  - C. Other Bonds. The bidder to whom any contract is awarded must provide such other bonds as required by law or by the terms specified in the bid documents.
  - D. Letter of Credit, Cashier's or Certified Check in-lieu-of Bond. Bidders submitting bids shall have the option of furnishing to the City, with any such bid, a cashier's check or certified check or a Federal Deposit Insurance Corporation (FDIC) guaranteed letter of credit, in lieu of the bid bond on the same terms and conditions as the bond. Bidders submitting bids for non-public works projects exceeding \$50,000 shall have the option of furnishing the City, with any such bid, a cashier's or certified check or an FDIC guaranteed letter of credit, in lieu of the performance bond on the same terms and conditions as the bond. Bidders submitting bids for public works projects exceeding \$50,000 shall have the option of furnishing to the City, with any such bid, a cashier's or certified check in lieu of the performance bond on the same terms and conditions as the bond. If the contract requires an expenditure of less than \$100,000, the bond is not required if the contract provides that no payment is due to the contractor until the work is completed and accepted by the City.
- 12) Cancellation of IFB/RFP's. An IFB/RFP or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is for good cause and in the interest of the City. Each solicitation issued by the City shall state that the solicitation may be cancelled and that any bid or proposal may be rejected in whole or part for good cause when in the best interests of the City. Notice of cancellation shall be sent to all vendors solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurements of similar items.

## **SECTION 8. PROCUREMENT OF PROFESSIONAL SERVICES.**

- a) Contracts for personal or professional services, as defined herein, shall comply with the provisions of this policy, and in accordance with the Professional Services Procurement Act, Article 664-4 (V.A.C.S.). The following guidelines shall apply to procurement of, or contract for defined professional services:

- 1) Professional services may not be awarded on the basis of competitive bids; and
  - 2) Professional services must be awarded on the basis of demonstrated competence and qualifications (provided the professional fees are consistent with and not higher than the published recommended practices and fees of various professional associations, and do not exceed any maximums provided by state law).
- b) Although contracts for professional services may not be awarded on the basis of competitive bids, the City Council must authorize any professional service contract which will exceed \$50,000 on the basis of the above criteria.
- c) Professional services rendered to the City which do not exceed \$50,000 in any fiscal year must be approved for payment by the Department Head of the user department and the Chief Financial Officer, , as provided herein.
- d) Purchase Approval Authority:
- 1) Expenditures of City funds must be approved by the designated official regardless of the payment method, e.g., check request, purchase order, procurement card, et., and regardless of the competitive process or other procedure used to select a vendor or service.
  - 2) The Fulshear City delegated the City Manager the authority to make expenditures for budgeted items and emergency expenditures not exceeding \$50,000.00 without further approval of the City Council. In making purchases under this authority, the City manager is authorized to establish purchasing procedures and policies that allow for approval of purchases by city personnel in amounts designated by such procedures and policies. Accordingly, the City Manager or designee is authorized to make purchases as follows:
  - 3)

**General purchase approval authority level delegations:**

<b><u>Amount (life of contract)</u></b>	<b><u>Expenditure Approval Authority</u></b>
\$100.00 to \$25,000.00	Department Head or Director or other designated individuals
\$25,000.01 to \$50,000.00	City Manager or Assistant City Manager
\$50,000.01 or greater	City Council

For amounts up to \$50,000.00, this purchase approval authority includes approving requisitions and purchase orders as well as authorization to execute agreements and contracts related to the purchases as provided in Section d( ) below. These purchases may include personal and professional services, but does not include any agreements (regardless of expenditure amount) with another governmental entity or which relates to title or possession of real property.

- 4) All agreements and contracts shall be reviewed by the City Attorney’s Office prior to execution (unless formatted under prior city attorney approved contract template). Agreements and contracts shall include any document presented to the City for signature that includes terms and conditions for the transaction.

- a) Where acceptance of the vendor's offer includes any terms and conditions from the vendor, those terms and conditions must be reviewed by the City Attorney's Office prior to a purchase order being issued or any acceptance of the vendor's offer.
- 5) The Department obtaining the contract is responsible for obtaining a fully executed copy of the agreement or contract and filing such with the City Secretary's Office.

**SECTION 9. TYPES OF CONTRACTS/AWARDS APPROVED BY CITY COUNCIL**

- a) Single-Term/Defined Unit(s) Contracts/Awards. Contracts or awards made by action of the City Council for procurement of specified item(s) or service(s), and having a defined number of units. For example, these types of contracts or awards may be used for the procurement of vehicles or engineering services, where there is both a specified per unit amount and maximum dollar amount ("amount not to exceed") included in the contract/award.
- b) Single-Term/Undefined Unit(s) Contracts/Awards. Contracts or awards may be action of City Council for the procurement of specific item(s) or service(s), not having a defined number of units. For example, these types of contracts or awards may be used for procurement of petroleum products, where the cost per unit (quart or gallon) is defined, but an exact number of units to be purchased is not specified in the contract/award. These contracts/awards are typically for a twelve (12) month period, and as a result, competitive bidding is required each year. In addition, purchases made from the use of interlocal agreements are included in this type of contract/award. NOTE: A Purchase Authorization Form is required from the user department for each single-term/undefined unit(s) purchases, in accordance with this policy.
- c) Multi-Term Contracts.
  - 1) Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be the best interest of the City, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payments and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore.
  - 2) Prior to the utilization of a multi-term contract, it shall be determined in writing:
    - A. That estimated requirements cover the period of the contract and are reasonably firm and continuing; and
    - B. That such a contract will serve the best interest of the City by encouraging effective competition or otherwise promoting economies in City procurement.
  - 3) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor/vendor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract or award. The cost of cancellation may be paid from any appropriations available for such purposes.

**SECTION 10. BID SPECIFICATIONS PROCEDURES.**

- a) Defined. A specification is defined as a concise description of an article or service an entity seeks to buy, and the requirements to be satisfied by the vendor in order to be considered for the award. It may include requirements for testing, inspection or preparing an item for delivery, or preparing (installing) it for use. It is the total description of the purchase.
- b) Purpose. The purpose of any specification is to provide procurement personnel with guides to purchasing, and to provide vendors with a firm criteria of minimum product or service acceptability.
- c) Characteristics of Specifications.
  - 1) It sets the minimum acceptability of the item or service. The term minimum acceptability is key, since the vendor must know the minimum standard of what to provide. Too high a standard means tax dollars will be wasted; too low, and products, materials or services will not achieve the end user requirements.
  - 2) It should promote competitive bidding. The maximum number of responsible vendors should be able to bid to the specification. Restrictive specifications act to decrease competition.
  - 3) It should contain provisions for reasonable tests/inspections for acceptability of the product/service. The method and interval of testing/inspecting must be indicated in the specification. Tests should refer to nationally recognized practices and standards, whenever possible.
  - 4) It should provide for an equitable award to the lowest responsible bidder. The City obtains goods or services of a quality to perform the desired function, and the vendor is able to service and provide the necessary requirements of the City at an equitable/agreed upon price.
- d) Bid specifications are to be prepared by the user department. The Finance Department may assist the user department in preparing specifications, if necessary. In addition, bid specifications may be obtained from the following organizations.
  - 1) other local governments (cities or counties);
  - 2) the State government;
  - 3) the Federal government;
  - 4) trade associations and vendors; Note: if using vendor specifications, remove any “vendor bias,” i.e., specifications which fit only one brand name;
  - 5) other public or private standards and associations; and
  - 6) professional associations for procurement managers.
- e) Types of Specifications.

- 1) Design Specifications. Design specifications are those which are composed of detailed descriptions of an item or service, including such things as details of construction or production, dimensions, chemical composition, physical properties, materials, ingredients and all other needed details for the provider to be able to produce an item of minimum acceptability. Design specifications are usually required for construction projects and custom produced items for many services.
  - 2) Performance Specifications. Performance specifications are those where the item or service is described in terms of required performance. It may include such details as required power, strength of material, test methods, and standards of acceptability, and recommended practices.
  - 3) Combination Specifications. Combination specifications contain elements of both design and performance projects. Some features of each are included to allow a vendor to use ingenuity to meet the performance needs of the City and also to require certain design characteristics deemed necessary.
  - 4) Brand-Name Specifications. Brand-name specifications list a certain item of service by brand name, model and such to limit the bidding to a single product. Since this type of specification discourages competition, it should not be used unless the item is the only one which will satisfy the City's requirements. This type of specification is useful for purchasing replacement parts where only the brand-name item will work.
  - 5) Brand-Name or Equal Specifications. Brand-name or equal specifications are similar to the brand-name specification, except it will accept equal quality products. This specification is used to identify the acceptable characteristics of the item desired by reference to a specific brand item which is acceptable. Other brands of equal quality are thus also acceptable.
  - 6) Qualified/Approved Products List Specifications. This specification is based on a list of products, identified by a manufacturer's name, and model numbers, which are the only items which will be acceptable. These are used when quality is a critical factor, and testing so lengthy or expensive that the City desires to purchase only proven products. The list is prepared by testing products, either in the lab or in daily use.
  - 7) Standard Specifications. A single specification which is developed using the characteristics and needs for items of similar end use. These specifications are intended to be used for most purchases or the item(s) included in the specification. These are used on a recurring basis, as in annual contracts. Standardized specifications will usually be more complete and detailed than one-time specifications.
- f) Preparation of Specifications. The City shall endeavor to use standard formats for all specifications in order to insure uniform preparation, and to promote ease of understanding and interpretation by the users of the specifications. Specifications shall be prepared so that bidders are not disadvantaged due to minor technicalities placed in the specifications.
- g) Standardization of Specifications. Standardization is the action taken by the City to regularize its purchases so that it will be able to buy the largest number of a particular type of item needed by the City, rather than small numbers of similar items designed to do the same job bought at random at different times. It involves a conscious effort to develop a standard specification to list the performance requirements of the City for a particular use, and then purchase from that

specification only. Standardization also enables the City to receive the best value for resources expended. The City may establish a standard quality and quantity for needed items, while taking advantage of economies of scale (larger purchases for lower cost), fewer items to service, and increased purchasing efficiency. Many routinely needed items can be purchased on annual contracts at a substantial savings to the City.

- h) Interpretation/Amendment of Specifications. Bidders are responsible for fully completing all bids in accordance with bidding instructions, and interpreting the bidding instructions and specifications. The City shall not be required to honor any bid made in which the bidder subsequently claims that the instructions or specifications were not clear or were misleading. Bidders are responsible for contacting the appropriate user department, Department Head, or individual(s) named in the IFB/RFP in order to clarify any questions regarding the bid instructions or specifications. Bidders are encouraged to submit comments regarding bid specifications to the City. Subject to the approval of any revised specifications, the City will provide amendments to the original bid invitation to all prospective bidders.

## **SECTION 11. BID TABULATION AND AWARD**

- a) The basis for awarding bids or proposals shall consist of reliable evaluations of the bids or proposals in order to make effective decisions. The Department Head of the user department or Chief Financial Officer shall evaluate the bid or proposal by performing the following:
  - 1) tabulate and verify the bid or proposal as to mathematical accuracy;
  - 2) determine that the bid item or proposal meets or exceeds the minimum specifications in the bid or proposal; if the bid does not meet or exceed specifications, determine that deviations from specifications have been documented by the bidder;
  - 3) determine that the bid or proposal is signed by an authorized agent of the bidder.
- b) Recommendation of Bid or Proposal. The Chief Financial Officer or Department Head of the user department shall recommend the most advantageous bid to City Council for action. The recommendation should include, at a minimum, the following information:
  - 1) That the bidder has submitted a responsive bid or proposal, meeting or exceeding the specifications;
  - 2) Provide information about whether the bidder has a record of being a responsible bidder or vendor;
  - 3) Provide information as to the safety record of the bidder; and
  - 4) The method of evaluating the bid or proposal (if applicable), such as:
    - A. life cycle and total cost;
    - B. energy efficiency, economy and performance;
    - C. warranties or guarantees;

- D. price and performance factors; and
  - E. evaluation of discounts (if any).
- 5) Upon recommendation of the bid or proposal to the City Council, the City Council shall either accept the recommendation of the Chief Financial Officer or the Department Head of the user department, award the bid or proposal to the next most qualified bidder, or reject all bids.
  - 6) In the event that more than one bid is equal in price and all other evaluation factors, bids shall be awarded on the basis of a coin toss.

**SECTION 12. PURCHASING ETHICS AND CONFLICTS OF INTEREST.**

- a) City of Fulshear employees or volunteers.
  - 1) 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. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the City's procurement activities.
  - 2) Use of a City of Fulshear vendor by an employee of the City for the purpose of purchasing personal merchandise for any of the following reasons, may be grounds for employee disciplinary actions:
    - A. to avoid payment of sales and other applicable taxes; or
    - B. to receive a favorable pricing arrangement.
  - 3) The following action by employees of the City shall also be prohibited and may be grounds for employee disciplinary actions:
    - A. any attempt to realize a personal gain through public employment with the City by any conduct inconsistent with the proper discharge of the employee's duties;
    - B. any attempt to influence any employee of the City to breach these policies and procedures; and
    - C. participating directly or indirectly in any procurement when the employee knows that:
      1. the employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
      2. a business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement;

3. any other person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement; or
  4. any attempt to knowingly use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any person.
- 4) Use of City employees as vendors shall be prohibited.
- 5) Gifts, Gratuities, Trial Merchandise.
- A. Gifts, gratuities, promotional items, or vendor-provided meals provided to any City employee for favorable consideration of a purchase or bid award, except for gifts of a nominal value of \$25, shall be prohibited under this policy. Acceptance of such gifts shall not bind the City in any way to purchase any merchandise from the vendor or bidder supplying the gift.
  - B. Merchandise provided by a vendor on a trial basis shall not bind the City to any type of purchase agreement or contract. Such merchandise may subsequently either be returned to the vendor, or accepted by a user department of the City. In such case of acceptance of trial merchandise, the procedures of this policy shall apply to such purchase.
- b) Conflicts of Interest. The Local Government Code, Section 171, defines and regulates the conflicts of interest regarding local government officials. Its purpose is to establish the procedures for local government officials to carry on activities in the event there is some commercial interest in the entities that conduct business with the City.

1) Definitions.

- A. A "local government official" means a member of the governing body or another elected or appointed officer, paid or unpaid, of any district, county, municipality, precinct, central appraisal district, transit authority or district, or other local government who exercises responsibilities beyond those which are merely advisory in nature. For the purpose of this policy, a local government official includes all City officials, either elected or appointed, but not ordinary employees. To be affected, the local official must have a "sovereign authority largely independent of others."
- B. A "business entity" includes all commonly accepted business entities, such as a corporation, partnership, sole proprietorship, trust or any other entity recognized by law.

2) Applicability.

- A. A "substantial interest in a business entity" occurs if an official has:
  1. ten (10) percent or greater ownership of the voting stock or shares of the business entity or owns ten (10) percent or more or \$5,000 or more of the fair market value of the entity; or

2. ten (10) percent of the official's gross income from the business entity.
- B. An official has a substantial interest in real property if the interest (equitable or legal) exceeds a fair market value of \$2,500 or more.
  - C. An official is considered to have a substantial interest if a person related to the official in the first degree of consanguinity (blood) or affinity (marriage) has a substantial interest under this section.
  - D. If an official has a substantial interest in a business entity or in real property, the official must file an affidavit stating the nature and extent of the interest before any vote involving the business or real property. The affidavit must be filed with the City Secretary, and the official must abstain from any further participation in the matter if:
    1. for a business entity, the vote will have a special economic effect on the business different from the general effect on the public; or
    2. for real property, it is reasonable to believe that the vote will benefit the value of the property over any benefit to the general public.

### **SECTION 13. BID PROTESTS AND APPEALS**

- a) Any actual or prospective bidder who is aggrieved in connection with the solicitation or award of a bid may protest to the City Manager. A protest with respect to an IFB/RFP shall be submitted in writing prior to the opening of bids or the closing date of proposals, unless the aggrieved person did not know and should not have known the facts giving rise to such protest prior to bid opening or the closing date for proposals. The protest shall be submitted within seven (7) calendar days after such aggrieved person knows or should have known of the facts giving rise thereto.
- b) In the event of a timely protest, as provided above, the City shall not proceed further with the solicitation or award of the contract until all administrative and judicial remedies have been exhausted, or until the City Council makes a determination on the record that the award of a contract without delay is necessary to protect substantial interest of the City.
- c) In addition to any other relief, when a protest is sustained and the protesting bidder should have been awarded the contract under the solicitation but is not, then the protesting bidder shall be entitled to the reasonable cost incurred in connection with the solicitation, including bid preparation costs other than attorney's fees.

### **SECTION 14. BID LISTS.**

An official bid or vendor list is not maintained by the City. Each user department shall be responsible for maintaining bid or vendor lists.

### **SECTION 15. RECEIPT AND INSPECTION OF MERCHANDISE.**

- a) Inspection of merchandise received shall be the responsibility of the user department. Damaged merchandise shall be returned to the vendor by the user department immediately, along with any description of the damages. The City shall not be responsible for payment for damaged

merchandise received. In addition, the City shall not be responsible for payment of merchandise or goods which have not been ordered in accordance with this policy, or have not been accepted for delivery by the Department Head of the user department. Such goods or merchandise shall be immediately returned to the vendor by the user department.

- b) Shipping of merchandise shall be designated FOB destination (Fulshear). FOB destination means that the vendor (seller), not the City (buyer) must bring action against the carrier for any damage of loss during shipping. The title to the merchandise remains with the seller until the merchandise is delivered to the buyer's destination. Although the seller is responsible for payment of shipping charges, the freight cost is usually reimbursed by the buyer when the seller processes the invoices for the merchandise delivered.

#### **SECTION 16. PAYMENT PROCESSING.**

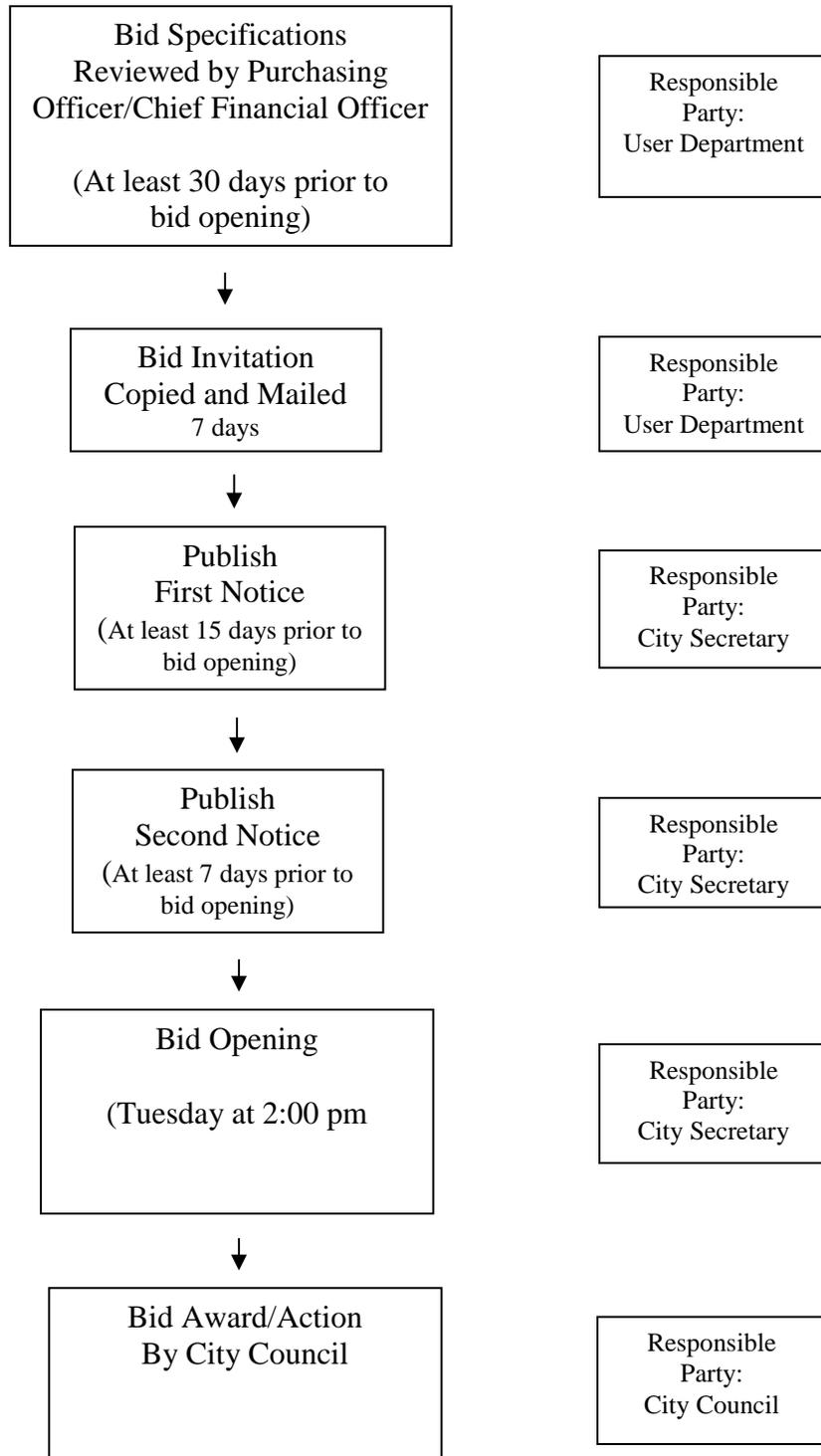
- a) Payments for purchases shall be made to the vendor only **after the proper approval process**, as provided in this policy, and only in compliance with these procedures and policies. User departments shall approve all documents prior to payment, subsequent to the approval of all purchase requests. All payments to vendors shall be centrally processed through the Finance Department.
- b) Payments shall be made in accordance with the prices and rates specified in the bid or purchase order. No payment shall be made which exceeds the approved amount, unless proper authorization has been received in advance. The City Manager and Chief Financial Officer shall approve any departures from amounts authorized through the purchasing process. Any cumulative change orders to formally bid contracts increasing those contracts in an amount exceeding 10% of the contract or \$50,000, whichever is the lower, shall be approved by City Council. Any cumulative change order less than 10% of the contract or \$50,000, whichever is lower, shall be approved by the Chief Financial Officer.
- c) Vendor invoices and statements shall be mailed directly to the Finance Department. The Finance Department shall be responsible for identifying all individual payment authorizations, and matching those authorizations with the vendor and statement. User departments shall promptly forward all necessary payment authorizations to the Finance Department in order to avoid any unnecessary delays in processing payments to vendors.
- d) Vendor payments are generally processed weekly by the Accounts Payable Office in order to take advantage of vendor discounts, and also for cash management purposes.
- e) The Prompt Payment Act (V.A.C.S., Art. 601f) provides that payments to vendors shall be made within thirty (30) days, or interest shall become due and payable to the vendor. All user departments shall process all necessary payment authorizations in order to prevent an unnecessary accrual of interest under this provision. Any interest charges accruing to the City as a result of this provision shall be charged against the budget of the user department.
- f) The City is exempt from all applicable State sales taxes (State Tax Code, Section 151.309), and certain federal taxes, except for taxes specifically designated by State and Federal statutes or regulations. All vendors shall be notified of the City's exempt status. The City does not maintain a tax exempt number for the State of Texas; however, the City may provide an exemption certificate to any vendor requesting a tax exempt number. The exemption certificate shall substitute for a tax exempt number.

**SECTION 17. LOCAL GOVERNMENT COOPERATIVE PURCHASING.**

- a) Whenever it is determined to be advantageous to the City, cooperative purchasing with other local governmental agencies may be used. Such cooperative agreements shall be approved by all governing bodies for each local agency participating in any local purchasing pool. Agreements shall clearly define the responsibilities of each entity as to the items to be purchased and the quantity discounts to be realized through such cooperating efforts, and payment terms and conditions.
- b) Such cooperative purchasing agreements shall be governed by the following Texas Statutes:
  - 1) Interlocal Cooperation Act (V.T.C.S. Article 4413(32c)). This act allows local governments to contract with and between entities in order to provide governmental functions and services, and to join together in contracting with others to provide goods and services.
  - 2) Local Government Code Chapter 271, Subchapter D, 271.081 – 271.083 – State Cooperation in Local Purchasing Programs. This provision allows a local government to purchase goods on the State of Texas purchasing contracts, and allows the State to solicit bids on the local government’s behalf, when considered feasible by the State Purchasing and General Services Commission. The Commission is also required to provide information and technical assistance to local governments about the purchasing program.

**City of Fulshear, Texas**

**Flow Chart for Bidding Procedures**



Total Bid Process: 30 – 32 days

Purchasing Procedures  
October 2018



A-2

## VERBAL QUOTATION FORM

This form shall be used for obtaining verbal quotations for purchases under a threshold of \$5,000 in accordance with the City's Purchasing Policy.

Department: \_\_\_\_\_ Date of Quotation: \_\_\_\_\_

Description of Supply/Material/Service: \_\_\_\_\_

Quotation is valid for: \_\_\_\_\_ Days

Quotation One:

Vendor: \_\_\_\_\_

Amount: \_\_\_\_\_

Quotation Two:

Vendor: \_\_\_\_\_

Amount: \_\_\_\_\_

Quotation Three:

Vendor: \_\_\_\_\_

Amount: \_\_\_\_\_

Dept. Head: \_\_\_\_\_

Finance: \_\_\_\_\_

City Administrator: \_\_\_\_\_



# Purchase Order

PO # [XXXXXXXX-X]

CITY OF FULSHEAR  
 PO BOX 279  
 FULSHEAR, TX 77441  
 281-346-1796  
 Fax 281-346-2556

Vendor [Name]  
 [Company Name]  
 [Street Address]  
 [City, ST ZIP Code]  
 [Phone]

Ship To [Name]  
 CITY OF FULSHEAR  
 30603 FM 1093 ROAD  
 FULSHEAR, TX 77441  
 281-346-1796

<i>Date</i>	<i>Department</i>	<i>Expense Code</i>

<i>Qty</i>	<i>Item #</i>	<i>Description</i>	<i>Unit Price</i>	<i>Line Total</i>

	<b>Subtotal</b>	
	<b>Shipping/Other</b>	
	<b>Total</b>	

\_\_\_\_\_  
 Department Head

\_\_\_\_\_  
 Finance

1. Please send two copies of your invoice.
2. Enter this order in accordance with the prices, terms, delivery method, and specifications listed above.
3. Please notify us immediately if you are unable to ship as specified.
4. Send all correspondence to:  
 CITY OF FULSHEAR  
 FINANCE DEPT.  
 PO BOX 279  
 FULSHEAR, TX 77441  
 281-346-1796

\_\_\_\_\_  
 City Manager



## VENDOR DATA SHEET

COMPANY NAME: \_\_\_\_\_

REMITTANCE ADDRESS: \_\_\_\_\_

\_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

PHONE: \_\_\_\_\_

EMAIL: \_\_\_\_\_

PLEASE COMPLETE ABOVE INFORMATION AND RETURN TO:

CITY OF FULSHEAR  
FINANCE DEPT.  
PO BOX 279  
FULSHEAR, TX 77441  
EMAIL: ACCOUNTING@FULSHEARTEXAS.GOV

### **ATTENTION VENDOR:**

**ALL DATA SHEETS SHOULD BE ACCOMPANIED WITH A COMPLETED IRS W-9 FOR PAYMENT PROCESSING.**