

RESOLUTION R-2023-71

A RESOLUTION ADOPTING A PROCUREMENT POLICY FOR THE CITY OF WHEATON

WHEREAS, the City of Wheaton, Illinois (the "City") is an Illinois home rule municipality pursuant to the provisions of Article VII, Section 6, of the Illinois Constitution of 1970, and as such the City may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the Procurement Policy was last formally updated in 2004; and

WHEREAS, the Director of Finance and City Attorney, have performed a comprehensive review and update of the Procurement Policy and presented such to the City Council; and

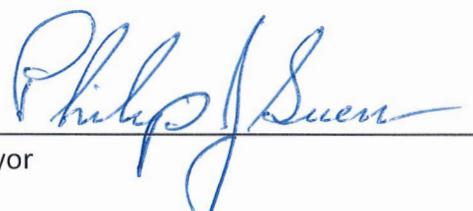
WHEREAS, the City Council has reviewed the updated Procurement Policy and has determined that it is in the best interest of the City and residents to adopt the updated Procurement Policy.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, DuPage County, Illinois, as follows:

Section 1: The Procurement Policy attached to this Resolution as Exhibit A and incorporated in this Resolution by reference ("Procurement Policy") is hereby adopted.

Section 2: The City Manager and Director of Finance are hereby authorized and directed to undertake any and all acts necessary to implement the Procurement Policy.

ADOPTED this 21st day of August 2023.


Philip J. Suer

Mayor

ATTEST:


Andrea Rosedale

City Clerk

Ayes:

Roll Call Vote:

Councilwoman Robbins
Councilman Weller
Councilman Barbier

Councilwoman Bray-Parker
Mayor Suess
Councilman Clousing

Nays: None
Absent: Councilman Brown
Motion Carried Unanimously

**City of Wheaton
Procurement Policy
August 21, 2023**

I. PURPOSE

The purpose of this Procurement Policy ("Policy") is to provide guidance and uniform procedures for the procurement of goods, services and construction, and for the soliciting, processing, awarding and rejecting of bids, proposals, and quotations. It is created to ensure competitive and unbiased selection of qualified and cost-effective vendors.

The City operates a centralized procurement approach, with the City's Procurement Officer being the designated position to oversee the procurement of goods, services, and construction. The Procurement Officer will procure or assist departments in the procurement process.

II. SCOPE; GENERAL PROVISIONS

- (a) Scope. The provisions of this Policy shall apply to purchases of, or contracts for, any goods, services, and construction, with the following exceptions:
- (1) any goods, services, or construction provided by City employees;
 - (2) any collective bargaining agreement or employment contracts;
 - (3) any purchase, sale, or lease of real property;
 - (4) contracts involving City-sponsored grant or incentive programs;
 - (5) development or tax increment financing (TIF) agreements; and
 - (6) special assessments or other procurements controlled by statute.

The provisions contained herein may be altered or waived by the City at any time and shall in no way create or expand any rights in any vendor, or other person or entity nor shall failure to comply with or adhere to these provisions create any liability on the part of the City, its Officers, or employees.

- (b) Separate purchases, contracts and agreements shall not be entered into for the purpose of avoiding any cost limits set forth herein.
- (c) No purchase, contract, or agreement for goods, services, or construction shall be made in violation of the state statutes governing pecuniary interest in public contracts nor in violation of any provisions of the Illinois Criminal Code.
- (d) No personnel shall expend money on behalf of or in any way pledge the credit, or obligate, the City contrary to the provisions of this Policy.
- (e) Unless otherwise provided in this Policy, when procurement of goods, services, or construction involves the expenditure of State or Federal financial assistance or grant funds, the procurement shall be conducted in accordance with any applicable mandatory State and/or Federal laws and regulations.
- (f) Home rule preemption. This Policy and the City's procurement practices and procedures are an exercise of home rule powers conferred upon the City by the Constitution of the State of Illinois. It preempts state law pertaining to the procurement of goods, services and construction, including, but not limited to, the Local Government Professional Services Selection Act (50 ILCS 510/0.01 *et seq.*), the Public Construction Contract Act (30 ILCS 557/1 *et. seq.*), competitive bidding, bidder eligibility, and the requirements and restrictions regarding the substantive content of public contracts except where expressly prohibited by state law.

III. DEFINITIONS

For this Policy, the following terms have the following definitions:

Bid. A written offer from a vendor to furnish goods, services, or construction at a set price in response to, and under terms as designated in, detailed specifications prepared by or on behalf of the City as part of an open, competitive procurement process.

Change order. A written document signed by the City and a vendor, which authorizes a change in the cost of a contract, time of completion, or in work or services.

Competitive procurement process. A solicitation procedure consisting of either (i) a competitive bidding process whereby the City issues a formal public notice soliciting formal written bids; or (ii) a request for proposals process whereby the City Procurement Officer issues a formal public notice requesting vendors to submit formal written proposals with suggested specifications that conform to the City's stated requirements.

Construction. The process of building, altering, repairing, reconstructing, renovating, improving, or demolishing any structure, building, or fixed public works, including, but not limited to, sewers and water mains, or public improvements of any kind to any real property, including, but not limited to, streets, highways, alleys, and sidewalks, but not including the routine operation, routine repair, or routine maintenance of existing structures, buildings, fixed public works, or real property.

Cooperative purchase. Use of an existing procurement process or contract from another public entity or public agency as the justification and documentation to form a City contract directly with a vendor to purchase the same or similar goods, services, or construction.

Cost. The total amount of money to be expended or committed to purchase a good, service, or construction.

Department Director(s). The assistant City Manager, police chief, fire chief, and the directors for the following City departments: human resources, finance, building and code enforcement, engineering, planning and economic development, information technology, communications, public works, and legal.

Goods. Items other than real property or services, including any combination of supplies, equipment, materials, personal property, including any tangible, intangible and intellectual property and rights and licenses related to the item.

Invitation to Bid (ITB): A procurement method used to solicit competitive sealed bid responses.

Joint purchase agreement. An agreement entered into by two or more governmental entities, or agencies, including a private bidding cooperative, in which the parties voluntarily agree to coordinate their purchase of one or more goods, services, or construction by pooling common requirements and conducting one single competitive solicitation process that includes each party's individual purchase requirements.

Lowest, Responsible, Responsive Bidder. In determining the "lowest, responsible, responsive bidder", in addition to price, the following should be considered:

1. The ability, capacity and skill to perform the contract or provide the services or goods required.
2. Whether the bidder can perform the contract or provide the services or goods promptly, or within the time specified, without delay or interference.
3. The character, integrity, reputation, judgment, experience and efficiency.

4. The quality of performance of previous construction, services or goods.
5. The previous and existing compliance with laws and ordinances relating to the services or construction.
6. The sufficiency of the financial resources.
7. The ability to provide future maintenance and service for the use of the subject of the contract.
8. The number and scope of conditions attached to the bid.
9. Whether the bidder has been barred from bidding on the contract under applicable law.
10. Conformity with the bid specifications.

Open market purchase. An open market purchase is the “off-the-shelf” purchase of goods or services that does not involve a competitive procurement process, which is typically utilized for small purchases or frequent retail purchases necessary for day-to-day operations, particularly when convenience and immediate availability are critical.

Professional services. The services of actuaries, architects, attorneys, auditors, construction Managers, engineers, insurance administrators, real estate appraisers, surveyors or other individuals who possess expertise in a certain industry or activity, or possess a high degree of professional, unique, specialized, or technical skill where the ability, fitness, or special knowledge of the individual plays an important part.

Proposal. A written offer from a vendor, to provide a good, service or construction at a set price or prices in response to a request for proposals by or on behalf of the City and which is considered to be an offer to contract and may, in the discretion of the City, be subject to further negotiations, modifications, and rejections until the proposal has been accepted by the City.

Purchase Order: A written document to a vendor formalizing all the terms of a proposed transaction for the purchase of goods or services.

Quotation. A written offer from a vendor to provide goods, services, or construction at a set price under terms as designated in the offer.

Request for Information (RFI): A non-binding procurement practice to gather information from different vendors before formally sourcing products or services.

Request for Proposal (RFP): A document used to solicit proposals from potential vendors/contractors for goods and services.

Request for Qualifications (RFQ): A document that asks potential vendors and contractors to detail their background and experience providing a specific good or service.

Requesting Department. The department(s) purchasing goods, services, or construction, and from whose budget the cost thereof will be charged.

Single source contract. A contract for a good, service, or construction for which two or more vendors can supply the goods, service, or construction required by the City, but the City, without using a competitive procurement process, selects one vendor over the others for reasons of expertise, and/or standardization, quality, compatibility with existing equipment, specifications, availability, uniqueness, past experience with a particular issue, or familiarity with specific City operations.

Sole source contract. A contract for a good, service, or construction with a vendor who is the only vendor in the marketplace who possesses the unique ability or capability to meet the City's solicitation requirements.

Vendor. Any individual or group of individuals, business, union, firm, corporation, trustee, partnership, association, joint venture, committee, or other legal entity wishing to do business with the City or having a contract with the City to furnish goods, services, or construction.

IV. PROCUREMENT PROCEDURES.

The Department Director and/or the City's Procurement Officer have the primary responsibility regarding specific purchasing decisions for the Requesting Department. Goods, services, and construction may be procured using one of the following methods, as appropriate and authorized, and within the approval limits as set forth in Table 1 below:

- A. Open Market Purchase
- B. Written Quotations
- C. Competitive Procurement Process
 - 1. Invitation to Bid
 - 2. Request for Proposal
 - 3. Joint Purchasing Agreements and Cooperative Agreements
- D. Request for Qualifications
- E. Request for Information
- F. Extensions and Renewals

Table 1: APPROVAL LIMITS

Amount of Purchase	Procurement Method	Payment Method	Solicitation Period	Responsibility	Approver
<\$5,000	Open Market Purchase	Petty Cash, P-Card, Purchase Order; or Upon receipt of invoice	N/A	Department Director or Designee	Department Director or Designee
\$5,001- \$10,000	Three (3) written quotes or ITB/RFP	P-Card, Purchase Order (Written agreement required for services); or Upon receipt of invoice	TBD by Requester	Department Director or Designee	Department Director or Designee
\$10,001 - \$35,000	Three (3) written quotes or ITB/RFP	P-Card, Purchase Order (Written agreement required for services); or Upon receipt of invoice	15 calendar days	Department Director or Designee Procurement Officer	City Manager
>\$35,000	Invitation to Bid	Purchase Order, Agreement; or Upon receipt of invoice	15 calendar days	Department Director or Designee Procurement Officer	City Council
	Request for Proposal	Agreement; or Upon receipt of invoice	21 calendar days	Department Director or Designee Procurement Officer	City Council

General: All procurements, except Requests for Proposals or as otherwise directed by the City Council, shall be let to the lowest, responsible, responsive Vendor for amounts in excess of \$5,000, whether it is via quotations or the competitive procurement process.

Purchase Order or Written Agreements: There must be a purchase order or written agreement for the procurement of Professional Services or Construction over \$5,000, whether it is the City's standard agreement, or an agreement proposed by the Vendor. If it is a Vendor agreement, then the City Attorney must review it prior to signature.

Multiyear Agreements:

a. Unless otherwise provided by law, a contract for goods, services, or construction may be entered into for any period of time deemed to be in the best interests of the City, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation. Payment and performance obligations for additional fiscal periods shall be subject to availability and budgeting of funds by the City Council in the succeeding annual budget.

b. When funds are not budgeted in the City Council-approved annual budget or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled without penalty to the City.

Signatures: A Department Director may sign a written agreement for procurement in an amount up to \$10,000.00. The City Manager may sign an agreement for procurement for any amount, including agreements approved by the City Council unless another individual's signature is required.

A. OPEN MARKET PURCHASE

A City employee may make an Open Market Purchase of less than \$5,000.00 for day-to-day purchases.

B. WRITTEN QUOTATIONS

1. General: Written quotations are used to purchase goods and services valued at less than \$35,000.00. The purchase should be made from the lowest qualified quotation (using the standards for the lowest, responsible, responsive bidder). Once written quotations have been secured and the lowest qualified vendor has been identified, subsequent purchases during the same calendar year may be made from the same approved vendor, so long as the price does not change.
2. Written quotations should consist of the following:
 - a. Submitted on vendor's letterhead;
 - b. Have an effective and expiration date (expired quotations cannot be accepted);
 - c. All fees/costs broken down (i.e., work, delivery, set-up, etc.);
 - d. Signed by authorized representative of the vendor (unsigned quotations cannot be accepted);
 - e. A faxed or emailed quotation is acceptable.

C. COMPETITIVE PROCUREMENT PROCESS

1. General. The procurement of goods or services made via an Invitation to Bid or Request for Proposals may be used for any purchase over \$5,000.00, but is required to be used for purchases of \$35,000.00 or more.
2. Preparation of specifications. A Requesting Department, with the assistance of the Procurement Officer, will prepare specifications for the desired purchase. For purchases where the City will receive federal or state grant funds, the City will comply with its Federally-Funded Procurement Policy.
3. Waiver. The City Council may waive the competitive procurement process for procurement of any goods, services, or construction when it determines it would serve the best interests of the City by a vote of five (5) members of the City Council. The City Council expressly reserves the right to make any contract award which, in its sole discretion, best serves the public interest.
4. Invitations to Bid.
 - a. Advertisement. An Invitation to Bid (ITB) will be advertised on the City's website, or other online forum as deemed appropriate. Except for emergency matters, this advertisement will

occur not less than fifteen (15) calendar days prior to the bid opening. ITBs may also be mailed or emailed to prospective bidders.

- b. **Review and Recommendation.** Following the bid opening, the Project Manager will review the bids and shall be responsible for making the appropriate recommendation regarding acceptance or rejection of any bid. The Procurement Officer will review the bid for compliance with the bid specifications and requirements. The factors set forth in Section III shall be used to determine the lowest, responsible, responsive bidder.
5. **Request for Proposals.**
 - a. **Advertisement.** A Request for Proposal (RFP) will be advertised on the City's website, or other online forum as deemed appropriate. Except for emergency matters, this advertisement will occur not less than twenty-one (21) calendar days prior to the due date for proposals. RFPs may also be mailed or emailed to prospective proposers.
 - b. **Review and Recommendation.** Following the due date for proposals, the Project Manager will review the proposals, including evaluating the goods or services, and interviewing vendors as necessary, and shall be responsible for making the appropriate recommendation regarding acceptance or rejection of any proposal. The Procurement Officer will review the proposal for compliance with the RFP requirements. The City may enter into further negotiations with one or more of the proposers to secure the most favorable terms for the City.
6. **Joint Purchasing Agreements and Cooperative Contracts.** In accordance with Illinois Governmental Joint Purchasing Act (30 ILCS 525/0.01 *et seq.*), and the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*), joint purchasing agreements and cooperative contracts with any local, county, state or federal public entity or entities, or any association of public agencies, may be used without the City undertaking a competitive procurement process itself; provided that the mechanism for the joint or cooperative purchase provided an opportunity for vendors of goods, services, and construction to submit competitive bids or proposals for the furnishing of such goods, services, or construction to a public entity or public agency. The Procurement Officer will review the joint purchase agreement or cooperative contract to ensure compliance with a competitive procurement process.
7. **Appeals and Remedies.**
 - a. **Authority.** The Procurement Officer is authorized to resolve any procedural protest regarding the solicitation or award of any bid or proposal under the Procurement Officer's purview. Each ITB or RFP issued by the City shall set forth the required contents of written protests for submission to the City and the City's administrative procedures pertaining to protests.
 - b. **Right to protest.** Any actual or prospective, bidder, proposer, offeror, or vendor ("protesting party") who believes they have been adversely affected in connection with a City-issued solicitation, evaluation of a bid or proposal, or award of a contract may initiate a pre-bid, pre-award, or post-award protest. A protesting party has no right to protest the cancellation of ITBs or RFPs and protests relating to the rejection of all bids or proposals.
 - c. **Timeliness.** A pre-bid protest shall be submitted in writing to the Procurement Officer no later than five (5) business days before the due date for bids or proposals. A pre-award protest shall be submitted in writing to the Procurement Officer no later than five (5) business days after the due date for bids or proposals or notification that the protesting party's status as a bidder or proposer has changed. A post-award protest shall be submitted in writing no later

than three (3) business days after the date the bid award is posted on the City's website or online forum.

- d. **Contents of Protest.** Protests shall be in writing and shall include:
 - i. the name, address, phone number and e-mail address of the protesting party;
 - ii. the appropriate identification of the solicitation;
 - iii. if an award has been initiated, the award document number (if available);
 - iv. justification or grounds for the protest, with specificity of the local, state, and federal law, regulation or procedure that is alleged to be violated;
 - v. precise statement(s) of the relevant facts;
 - vi. identification of the issue to be resolved;
 - vii. the protesting party's argument and supporting documentation;
 - viii. information establishing the timeliness of the protest; and
 - ix. the signature of the protesting party.

Issues not raised by the protesting party in the protest are deemed waived and may not be raised after a final determination has been made. Protests that do not meet the time or content requirements may be rejected by the Procurement Officer. The Procurement Officer is not obligated to postpone contract awards to allow a protesting party time to correct a deficient protest unless otherwise required by federal law or regulation.

- e. **Protest bond.** The protesting party shall, at the time of submitting any protest to the City, furnish at its sole expense a protest bond in the form of a cashier's check payable to the City of Wheaton, in an amount equal to five percent (5%) of the City's estimate of the total contract award amount, or, if the amount of the contract award cannot be reasonably determined at that time, then in the amount of one thousand two hundred and fifty dollars (\$1,250.00). In those circumstances when the contract award cannot be reasonably determined, the City, by the determination of its City Attorney, may require a protest bond in an amount not to exceed ten thousand dollars (\$10,000.00) if one thousand two hundred and fifty dollars (\$1,250.00) is inadequate under the facts presented. If the City increases the required protest bond amount, the protesting party shall have five (5) business days in which to pay the City, in the form of a cashier's check, the difference between the one thousand two hundred and fifty dollars (\$1,250.00) and the new amount of protest bond. The protest bond shall serve as a guarantee of the validity and accuracy of the protest. If the protest is upheld, the bond shall be returned to the protesting party. If the protest is denied, the bond shall be used by the City to recover any administrative costs and damages incurred as a result of the protest and/or resulting delay in the contracting for goods and services which were the subject of the solicitation. Failure to submit a compliant protest bond with the written protest shall be deemed a waiver of the protest and jurisdictional deficiency in the protest that forfeits the right to protest. Failure to pay any additional amount of protest bond required shall be deemed a waiver of the right to maintain a protest.
- f. **Respondent party response.**
 - i. A respondent party is a person who has the right to respond to a protesting party's protest and shall be an actual bidder, proposer, prospective bidder or prospective proposer in the procurement involved whose direct economic interest would be affected by the award of the contract or by the failure to award the contract; and who demonstrates compliance with the bid protest procedures, the terms on the invitation for bids, and the contract documents (if bid) or request for proposals (RFP), as applicable (hereinafter "respondent party").

- ii. After receiving notice of the protest from the City, the respondent party shall have five business (5) days to respond in writing to a protest to provide the Procurement Officer with supplemental information. A respondent party may request, and the Procurement Officer may allow an additional period of time to respond if the protest is complicated and/or the documentation is voluminous. In no event will the additional time exceed 5 business days.
 - iii. The failure of a respondent party to respond to a protest, or to any portion of it, shall not be deemed to be an admission of any allegation in the protest, but shall be deemed to constitute a waiver of the opportunity to respond to such allegation(s), if any, at this stage in the process.
- g. **Stay of Procurement.**
- i. Upon timely receipt of a protest and after examination of the issues surrounding the protest, the Procurement Officer, in consultation with the City Attorney, will determine whether the protest has merit and if the solicitation, evaluation, or award shall be stayed, or if other further action is necessary to protect the interests of the City.
 - ii. If the contract performance has already begun, the Procurement Officer, in consultation with the City Attorney, will determine whether the performance of the contract should be suspended. A contract may not be suspended if the work or supplies are necessary to protect the interests of the City.
- h. **Final Determination.** The Procurement Officer, in consultation with the City Attorney, will provide a written decision to the protesting party as expeditiously as possible, but no later than thirty (30) business days after receiving all relevant information. The Procurement Officer's decision shall become final on the third business day after the date of the Procurement Officer's written decision, unless a timely request for reconsideration is filed with the Procurement Officer as noted below.
- i. **Reconsideration of Protest Decision.** A protesting party or respondent party may request the Procurement Officer's reconsideration if:
- i. Information becomes available that was not previously known, or could have reasonably become known; or
 - ii. The Procurement Officer's decision contains an error of law or regulation.

The request shall be submitted in writing to the Procurement Officer within three (3) business days of the date of issuance of the initial decision. The request shall include a detailed explanation of the basis for reconsideration and state the course of action the protesting party or respondent party desires that the Procurement Officer take. For purposes of this section, deposit in the mail, postage prepaid does not constitute filing or receipt. A request is considered filed when physically received by the Procurement Officer or duly appointed designee.

The Procurement Officer shall refer the request for reconsideration of the protest decision to the City Manager. The City Manager, or his or her designee, may conduct an evidentiary hearing at his or her sole option. The City Manager or designee will conduct a review of the request for reconsideration of the protest decision and will attempt to issue a decision within ten (10) business days after the City's receipt of the request for reconsideration or the date of the hearing, whichever is later. The City Manager or designee's decision shall be final.

After a written decision is issued by the City Manager or his designee, the appropriate actions will take place. If the protest is upheld, the Procurement Officer's actions may include, but are not limited to, any appropriate steps to correct the procurement process, such as: re-solicitation of bids or proposals, revising evaluation of bids or proposals, or termination of the contract. If the protest is denied, the Procurement Officer will lift any imposed suspension and proceed with the procurement process or the contract.

D. REQUEST FOR QUALIFICATIONS

A Requesting Department may use a Request for Qualifications (RFQ) to develop a "short list" of vendors for specific professional services. The list can be valid for a period of up to three (3) years. While the list is valid, the Requesting Department may then send RFPs only to the vendors on the list for certain projects/services.

E. REQUEST FOR INFORMATION

A Request for Information (RFI) is a process used to determine details about a specific good or service when a department does not have sufficient expertise or to obtain detailed technical specifications about the good or service that is sought. This process can be conducted and used as a source to develop a Request for Proposals (RFP) or an Invitation to Bid (ITB). This process can also qualify vendors to participate in the RFP. Use of an RFI is not a competitive process and does not result in a contract award.

F. EXTENSIONS AND RENEWALS

Contract extensions may be allowed for previously approved contracts if the price does not increase. Contract renewals may be allowed for previously approved contracts upon mutual agreement of the parties. Contracts, plus extensions, may not exceed a term of five (5) years, except for certain professional services or single or sole source vendors; provided however, there may be no more than two (2) extensions for a contract. A contract extension or renewal pursuant to an option to extend or renew that was included in a contract awarded by the City Council or by the City Manager shall not require prior City Council approval at the time of extending or renewing such contract and may be awarded and signed by the City Manager.

G. PURCHASES WHICH DO NOT REQUIRE THE COMPETITIVE PROCUREMENT PROCESS.

1. Professional services. The City, as a home rule municipality, is not required to follow and does not follow the Local Government Professional Services Selection Act (50 ILCS 510/1 *et seq.*), unless State or Federal funds are being used.
2. The following purchases and contracts involving amounts of thirty-five thousand dollars (\$35,000.00) or more do not require competitive procurement:
 - a. electronic, telecommunications, or information technology equipment, software or services which may not be adapted to competitive bidding;
 - b. utility services, including, but not limited to, waste disposal, water, light, heat, telephone, and the internet;
 - c. printing and binding services;
 - d. magazines, books, periodicals, and similar articles of an educational or instructional nature;
 - e. where special conditions or circumstances require the use of negotiated contracts;
 - f. where continuity of service or goods is desirable and necessitates continuing a contractual relationship with a current City vendor or necessitates the continued purchase of a specific good whether such purchase is from a current vendor or a new vendor;
 - g. purchase of personal property which must be compatible with the existing equipment or systems owned by the City;

- h. maintenance or servicing of, or provision of repair parts for, equipment, where such contracts are made with the manufacturer or authorized service agent of that equipment, and the provision of parts, maintenance or servicing can best be performed by the manufacturer or authorized service agent or where such contracts are necessary to preserve the warranty for the equipment;
- i. supporting local organization service providers, including but not limited to, the Downtown Wheaton Association. Payments for such services shall be limited to the original City Council approval and/or the City Council-approved budget for such services;
- j. single or sole source contracts.

V. CHANGE ORDERS.

Certain conditions surrounding purchases may change in the course of a procurement, which necessitates a clarification or modification to the existing document to fulfill legal requirements. Change orders must be in writing and signed by the City and the vendor, and are executed under the conditions of the original contract. Change order requests submitted in an attempt to circumvent the bid process are prohibited.

A. CHANGE ORDERS RELATED TO COST.

When the City Council approves a contract via a resolution, the resolution may authorize a contract contingency, in an amount not to exceed 10% of the contract price. A change order that falls within the contingency amount may be approved by the City Manager. In the event the cost of a contract will exceed the original contract price, plus the approved contingency amount, a change order will need to be processed. Any such change order shall be approved by a majority vote of the City Council.

The City Manager may exceed the authority set forth above, if it is deemed in the best interest of the public and the project to approve an exceptional change order; provided that based upon the recommendation of the project manager, not issuing the exceptional change order would risk unacceptable project delay and/or higher costs; and provided further, that the next regularly scheduled City Council meeting is sufficiently far in the future that not issuing the exceptional change order would significantly risk the project's ultimate cost and/or anticipated completion. In the event the City Manager approves an exceptional change order under this reasonable exception provision, he or she shall notify the City Council at the next regularly scheduled City Council meeting and seek ratification of his or her action by resolution of the City Council.

In accordance with the Public Works Contract Change Order Act, if there is a change order for a City public works contract that authorizes or necessitates any increase in the contract price that is 50% or more of the original contract price or that authorizes or necessitates any increase in the price of a subcontract under the contract that is 50% or more of the original subcontract price, then the portion of the contract that is covered by the change order must be resubmitted for bidding in the same manner for which the original contract was bid.

B. CHANGE ORDERS RELATED TO TIME OF COMPLETION.

A change order that extends the time of completion of a project for less than ninety (90) days may be approved by the City Manager. The City Council shall approve a change order for a request for more than ninety (90) days.

C. CHANGE ORDERS RELATED TO SCOPE OF WORK.

No change order shall be requested or approved for a "cardinal change", which is one that materially alters the initial goods or services being purchased. For example, and illustrative purposes only, it would be inappropriate to bid for construction of a closet in a City building, award that bid, and then request a

change order to construct a kitchenette. The City Manager may however approve a change order for something less than a cardinal change.

V. AUTHORITY TO SUSPEND AND DEBAR.

The Procurement Officer is authorized to suspend or debar a person for cause from consideration for award of contracts after reasonable notice to the person involved and reasonable opportunity for that person to be heard. The debarment shall be for a period of not more than three (3) years. The suspension shall be for a period not to exceed three (3) months.

The causes for disbarment or suspension include, but are not limited to:

1. Conviction or commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract;
2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification, or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a City vendor;
3. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
4. Violation of contract provisions, as set forth below, of a character which is regarded by the Procurement Officer to be so serious as to justify suspension or debarment action;
5. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;
6. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms, conditions, or specifications of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the vendor shall not be considered to be a basis for debarment;
7. For violation of ethical standards set forth in applicable local, state, or federal law, including, the commission of any fraud or misrepresentation in connection with a bid, quotation, proposal, or contract with the City;
8. Any other cause the Procurement Officer determines to be so serious and compelling as to affect responsibility as a vendor, including debts owed by a vendor to the City, insolvency, or suspension or debarment by another governmental entity.

The Procurement Officer, in consultation with the City Attorney, shall issue a written decision to debar or suspend and a copy of such decision shall be immediately mailed via the U.S. Postal Service, certified, return receipt requested, or personally delivered to the debarred or suspended person. The decision shall state the reasons for the action taken and inform the affected person involved of its right to administrative review. A decision under this section shall be final and conclusive, unless fraudulent, or the affected person makes an appeal to the City Manager within ten (10) business days after receipt of the decision by certified mail. The City Manager shall have the authority to review the Procurement Officer's decision regarding suspension or debarment and decide, whether, or the extent to which, the debarment or suspension was in accordance with this section, was in the best interest of the City, and was fair. The City Manager's decision shall be final and conclusive.

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