

**RESOLUTION R2022 - 41**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOUTH JORDAN, UTAH, ADOPTING CITY-WIDE POLICY 210-01 PURCHASING.**

**WHEREAS**, Utah Code Annotated §10-7-86 allows the City Council to adopt any or all of the provisions of the Utah Procurement Code; and

**WHEREAS**, the South Jordan City Council has adopted an ordinance, codified in the South Jordan Municipal Code §3.04.020, which requires all City procurements be conducted in accordance with the rules and regulations adopted by the City Council; and

**WHEREAS**, the City Council previously adopted procurement rules and regulations by resolution in the form of a Purchasing Policy, the last revision of which was adopted in 2016 via Resolution R2016-20; and

**WHEREAS**, City staff recommends updating the City's Purchasing policy to align with recent updates to Utah Code, and to revise and clarify provisions of the policy so it is easier to use; and

**WHEREAS**, the South Jordan City Council finds it in the best interest of the City to adopt the proposed City Wide Policy 210-01 Purchasing, in place of the previously adopted version of this policy.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SOUTH JORDAN, UTAH:**

**SECTION 1. Adoption of City-wide Policy 210-01.** The City of South Jordan City-wide Policy 210-01 Purchasing, attached, is hereby adopted.

**SECTION 2. Effective Date.** This Resolution shall become effective immediately upon passage.

[SIGNATURE PAGE FOLLOWS]

APPROVED BY THE CITY COUNCIL OF THE CITY OF SOUTH JORDAN, UTAH,  
 ON THIS 15 DAY OF November, 2022 BY THE FOLLOWING VOTE:

	YES	NO	ABSTAIN	ABSENT
Patrick Harris	<u>X</u>	___	___	___
Bradley Marlor	___	___	___	<u>X</u>
Donald Shelton	<u>X</u>	___	___	___
Tamara Zander	<u>X</u>	___	___	___
Jason McGuire	<u>X</u>	___	___	___

Mayor: *Dawn R. Ramsey*  
 Dawn R. Ramsey

Attest: *Asma Crawford*  
 City Recorder

Approved as to form:

*Rae W. Locke*  
 Office of the City Attorney



**CITY OF SOUTH JORDAN  
CITY-WIDE POLICY 210-01  
Purchasing**

**TABLE OF CONTENTS**

**1. PURPOSE**

**2. RESPONSIBILITY**

**3. DEFINITIONS**

**4. OVERSIGHT**

- 4.1. Purchasing Committee
- 4.2. Purchasing Officer
- 4.3. Purchasing Coordinator
- 4.4. Department Director
- 4.5. Project Manager

**5. PROCUREMENT GUIDELINES**

- 5.1. Monetary Limits
- 5.2. Duration of Bid
- 5.3. Competitive Sealed Bidding and Proposals
- 5.4. Bidding Guidelines

**6. COMPETITIVE PURCHASING PROCESSES**

- 6.1. Request for Information (RFI)
- 6.2. Informal Quote
- 6.3. Request for Quote (RFQ)
- 6.4. Invitation for Bid (IFB)
- 6.5. Request for Proposal (RFP)
- 6.6. Request for Statement of Qualifications (RFSQ)

**7. NON-COMPETITIVE PURCHASING PROCESSES**

- 7.1. Gift or Bequest
- 7.2. Federal or State Funds
- 7.3. State Contract
- 7.4. Utah Intergovernmental Contracts
- 7.5. Utah Intergovernmental Agency
- 7.6. Purchasing Cooperatives
- 7.7. Professional Services

- 7.8. Insufficient Response
- 7.9. Engineering and Architectural
- 7.10. Emergency
- 7.11. Declared Emergency
- 7.12. Sole Source
- 7.13. City Council Determinations
- 7.14. Special Opportunity
- 7.15. Compatibility, Parts, and Training
- 7.16. Miscellaneous

**8. ADDITIONAL GUIDELINES**

- 8.1. Construction Project Awards
- 8.2. Performance and Bid Bonds
- 8.3. Purchase Orders
- 8.4. Contracts
- 8.5. Vendor Performance/Evaluation
- 8.6. Payment
- 8.7. Disclosure of Information
- 8.8. Right to Inspect Place of Business or Financial Records
- 8.9. Cost-Plus-Percentage-of-Cost Contract Normally Prohibited
- 8.10. Failure to Follow Policy
- 8.11. Period Time for Contracts
- 8.12. Extension of Existing Contracts
- 8.13. Records
- 8.14. Collusion
- 8.15. Kickbacks and Gratuities

**9. PROTESTS AND APPEALS**

- 9.1. Written Protest
- 9.2. Appeal of Written Protest
- 9.3. Appeal to Utah District Court
- 9.4. Remedies

## 1. PURPOSE

This Policy establishes operational policies for the City's purchasing process which assure the community that goods and services required to support the operation of City government are procured in a manner consistent with provisions of the City's Code, State Code and Administrative Rules, and Federal laws where applicable. The City is committed to fairness and equal opportunity with integrity and openness that results in the best value for the City. The statements contained in this policy represent the basic intentions and goals of the City. Nothing in this statement shall create rights or interests in third parties, impose obligations upon, or create causes of action against the City, its officers, agents, or employees. Failure to follow the procedures set forth herein may be remedied by a City Council determination, as defined by this policy, unless otherwise provided by law.

## 2. RESPONSIBILITY

Department Directors, the Purchasing Officer, Finance, and the Office of the City Manager are responsible for compliance with this policy.

## 3. DEFINITIONS

- 3.1. **Addendum or Amendment** - any written modification or revision to any bid document or contract document.
- 3.2. **Bid** - unless otherwise specified, represents all forms of solicitation including, but not limited to, Request for Quote (RFQ), Invitation for Bid (IFB), Request for Proposal (RFP), and Request for Statement of Qualifications (RFSQ).
- 3.3. **Competitive Sealed Bidding** - a process in which vendors are invited to submit formal sealed bids to provide a designated product or to complete a designated project in accordance with specifications provided by the City.
- 3.4. **Commodity** - goods or services.
- 3.5. **Contract** - all types of City agreements, regardless of what they may be called, for the purchase or disposal of real or personal property or services.
- 3.6. **Cooperative Procurements** - the combining of requirements for two or more purchasing units outside the City, in order to obtain the benefits of volume purchases and/or reduction in administrative efforts and costs.
- 3.7. **Emergency Purchase** – a purchase that must be made quickly that would not be practical to go through the procurement process. Failure to anticipate a need or situation created by improper planning or negligence is not to be considered an emergency.

- 3.8. **Declared Emergency** - emergency or disaster situation where the need for response exceeds all capabilities. A condition that requires emergency assistance to save lives and/or to protect property, public health and safety, and to reduce the threat and effects of a disaster. A Declaration of Emergency is necessary to access specified extraordinary powers considered necessary to prevent, respond to or alleviate the effects of the Emergency or Disaster.
- 3.9. **Good** - a tangible product that is not money or real estate. The term “**Good**” shall be interchangeable with the terms “**Supply,**” “**Merchandise,**” “**Product,**” “**Material,**” “**Item,**” “**Personal Property,**” etc., for the purpose of this policy.
- 3.10. **Immaterial Error** - an irregularity or abnormality that is a matter of form that does not affect substance, or an inconsequential variation from a requirement of a solicitation that has no, little, or trivial effect on the procurement process and that is not prejudicial to other vendors.
- 3.11. **Informal Quote** – A process in which requests for a quote are sent directly to vendors to obtain pricing by any authorized buyer for the City.
- 3.12. **Insufficient Response** –
- 3.12.1. Where one (1) or less response is received to any Invitation for Bid (IFB), Request for Proposal (RFP), or Request for Statement of Qualifications (RFSQ).
  - 3.12.2. Where two (2) or less quotes are received in response to a Request for Quotes.
- 3.13. **Invitation for Bid (IFB)** - a solicitation process where bids are solicited from potential vendors. The term “**Invitation for Bid**” shall be interchangeable with the term “**Request for Bid**” for the purpose of this policy.
- 3.14. **Professional Services** - means labor, effort, or work that requires an elevated degree of specialized knowledge and discretion, including but not limited to labor, effort, or work in the field of:
- 3.14.1. Accounting;
  - 3.14.2. Architecture;
  - 3.14.3. Artistic endeavors;
  - 3.14.4. Construction design and management;
  - 3.14.5. Engineering;
  - 3.14.6. Financial services;
  - 3.14.7. Information technology;
  - 3.14.8. Insurance;
  - 3.14.9. Law;
  - 3.14.10. Lobbying;
  - 3.14.11. Medicine;

3.14.12. Mental Health Services

3.14.13. Underwriting.

- 3.15. **Project Manager (PM)** - the City employee, designated by a Department Director, who is in charge of managing a specific purchase.
- 3.16. **Protestor** – One who has standing to file a protest to challenge the award or proposed award of a contract for the procurement of goods and services.
- 3.17. **Purchasing** - the process of buying, procuring, renting, leasing, or otherwise acquiring any commodity. The term “**Purchasing**” shall be interchangeable with the term “**Procurement**” for the purpose of this policy. It also includes all functions that pertain to the obtaining of any commodity, including:
- 3.17.1. Description of requirements;
  - 3.17.2. Selection and solicitation of bids, proposals, qualifications, or quotes;
  - 3.17.3. Preparation and award of contract; and
  - 3.17.4. All phases of contract administration.
- 3.18. **Purchasing Coordinator** - an authorized employee of the City who facilitates the City’s purchasing functions.
- 3.19. **Purchasing Committee** - a committee appointed to perform the duties as specified in this Policy.
- 3.20. **Purchasing Officer** - the Chief Financial Officer (CFO) of the City who oversees the City’s purchasing functions and ensures purchases align with this policy.
- 3.21. **Purchasing Tools** - the City’s preferred methods of advertising and hosting solicitations.
- 3.22. **Related Party** - any party, whether an individual, corporation, partnership, association, limited liability company, or any other form of business association or other entity whatsoever related to any vendor by blood, marriage, ownership, or contract within the first degree of consanguinity, through which the party has a relationship of ownership, or other interest with the vendor, so that the party will actually, or by effect, receive or control a portion of the benefit or profit.
- 3.23. **Request for Information (RFI)** - a solicitation process where written information, comments, or suggestions are requested from potential vendors. An RFI is not a bid process resulting in a purchase or contract.
- 3.24. **Request for Proposal (RFP)** - a solicitation process where proposals are solicited from potential vendors.

- 3.25. **Request for Quote** - a solicitation process where signed quotes are obtained from potential vendors.
- 3.26. **Request for Statement of Qualifications (RFSQ)** - a solicitation process where qualifications are solicited from potential vendors.
- 3.27. **Responsible Bidder** - a vendor who has the capability in all respects to fully perform the agreement requirements and is determined to have the experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance. The term “**Responsible Bidder**” shall be interchangeable with the term “**Responsible Vendor**” for the purpose of this policy.
- 3.28. **Responsive Bidder** - a vendor who has submitted a bid which conforms in all material respects, including exceptions, to the requirements set forth in the RFQ, IFB, RFP, or RFSQ.
- 3.29. **Separation of Cost Method** - process of evaluating RFPs where cost is evaluated separately from the rest of the criteria established in the RFP.
- 3.30. **Sole Source Procurement** - a situation where a service, product, or requirement is available only from a single vendor. Examples of circumstances which may necessitate sole source purchase include:
- 3.30.1. The City needs a supply or service of a unique or specialized nature and only one known vendor is available to meet the need.
  - 3.30.2. Specific parts, accessories, equipment, materials, services, proprietary commodities, or other commodities are necessary to meet the City’s needs and there are no comparable commodities available.
- 3.31. **Service** – any effort, labor, or work performed that is beneficial to the City. It includes Professional Services but does not include labor, effort, or work provided under an employment agreement.
- 3.32. **Specification** - any description of the physical or functional characteristics or nature of a commodity. It may include, but is not limited to, a description of any requirement for inspecting, testing, or preparing a commodity for delivery.
- 3.33. **Standing** - to have suffered an injury or harm or to be about to suffer imminent injury or harm, if:
- 3.33.1. The cause of injury or harm is:
    - 3.33.1.1. An infringement of the protestor’s own right and not the right of another person who is not a party to the purchase; and
    - 3.33.1.2. Reasonably connected to the City’s conduct; and

- 3.33.1.3. The sole reason the protestor is not considered, or is no longer considered, for an award of a contract for the purchase that is the subject of the protest; AND
- 3.33.2. The protestor has the legal authority to file the protest on behalf of the actual or prospective bidder or prospective contractor involved in the procurement that is the subject of the protest.
- 3.34. **Substantial Savings** – savings of considerable size or amount of value and/or time.
- 3.35. **Vendor** - any person or entity who does business with the City or is seeking to enter into a contract with the City, other than as an employee or volunteer, whether by purchasing, selling, constructing, or providing services or commodities. This includes a bidder, offeror, or approved vendor. The term “Vendor” shall be interchangeable with the terms, “Bidder,” “Provider,” “Contractor,” “Consultant,” etc., for the purpose of this policy.

#### 4. OVERSIGHT AND DUTIES

##### 4.1. Purchasing Committee

- 4.1.1. **Authority:** The purpose of the Purchasing Committee is to provide guidance and oversight over the purchasing policy and processes. The Purchasing Committee will have specific authority in the following instances:
  - 4.1.1.1. Review and recommend any proposed changes to the current policy to the City Manager. These recommendations will be required to be approved by the City Council before taking effect.
  - 4.1.1.2. Review written protests and issue written determinations.
  - 4.1.1.3. Review internal disputes when Department Directors disagree with either the Purchasing Coordinator or the Purchasing Officer’s interpretation of this Purchasing Policy. Departments may appeal the decision by sending written documentation to the Purchasing Coordinator describing the specific dispute, clarification sought, and any support. The written documentation will be forwarded to the Purchasing Committee along with an explanation from the Purchasing Coordinator.
  - 4.1.1.4. Approve contracts exceeding five (5) years in any sequence of renewal options. The approval must be in writing.
  - 4.1.1.5. Perform other specific duties or authority as described elsewhere in this policy.
- 4.1.2. **Duties:** The Purchasing Committee will be a standing committee that will determine the processes for performing the duties established in this policy.

4.1.3. **Composition:** The Purchasing Committee shall comprise three (3) members. Additional members shall be appointed by the City Manager on a permanent or as-needed basis. Membership shall include one member from the following Departments:

4.1.3.1. One (1) member from the Office of the City Attorney, appointed by the City Attorney.

4.1.3.2. One (1) member from the Office of the City Manager, appointed by the City Manager.

4.1.3.3. One (1) member from the Finance Department, appointed by the Chief Financial Officer/Budget Officer.

4.1.4. **Replacement:** If the appointed member is no longer available to serve on the committee, the responsibility to serve falls on the City Attorney, City Manager, and CFO/Budget Officer respectively, until a replacement is appointed.

4.2. **Purchasing Officer** - The role of the Purchasing Officer is to oversee the City's procurement system.

4.2.1. Identify and remediate any issues of non-compliance with the Department Directors.

4.2.2. Select and approve purchasing tools.

4.2.3. Resolve dispute between the Purchasing Coordinator and the Department Directors.

4.3. **Purchasing Coordinator** - The role of the Purchasing Coordinator is to facilitate processes within the City's procurement system.

4.3.1. Coordinates purchasing processes with Departments.

4.3.2. Clarifies, explains, applies, and ensures compliance with City policies and ordinances.

4.3.3. Reports potentially non-compliant purchases to the Purchasing Officer.

4.4. **Department Director** - The role of the Department Director is to oversee the department's procurement.

4.4.1. Determines the method of purchasing is consistent with City policies and ordinances prior to the purchase being made.

4.4.2. Ensures purchases are made in a fiscally responsible manner.

4.4.3. Investigates non-compliant purchases within the Department. Determines disciplinary action for failure to follow this policy according to the guidelines established in the City's Employee Handbook.

4.5. **Project Manager** - The role of the Project Manager is to procure commodities following the City's procurement policy and procedures.

- 4.5.1. Work with the Department Director or designee and Purchasing Coordinator to determine the method of purchasing consistent with this policy prior to the purchase.
- 4.5.2. Oversee the content needed to prepare City documents such as RFQs, IFBs, RFQs, RFSQs, or RFIs.

## 5. PROCUREMENT GUIDELINES

### 5.1. Monetary Limits

- 5.1.1. This policy establishes the following monetary limits and methods of competitive purchasing. Except as otherwise allowed by this policy in *Section 7. Non-Competitive Purchasing Processes*, the City shall conform to the following limits:
  - 5.1.1.1. Small Purchases between \$0 and \$5,000.00 - may be made with the Department Director's approval, with or without competitive sealed bids, proposals, or quotes. However, it is recommended that Departments take reasonable steps to assure fair pricing.
  - 5.1.1.2. Purchases between \$5,000 and \$49,999.99 - shall be made only after:
    - 5.1.1.2.1. Soliciting at least two (2) Requests for Quotes,
    - 5.1.1.2.2. Completing the competitive sealed bidding process, or
    - 5.1.1.2.3. Completing a non-competitive purchasing process as allowed under this policy.
  - 5.1.1.3. Purchases of or exceeding \$50,000.00 - shall be made only after completing an IFB or other competitive sealed bidding process.
- 5.1.2. Subdividing contracts, purchases, or professional services for the purpose of evading the requirements for Request for Quotes or competitive sealed bidding is prohibited.
  - 5.1.2.1. Recurring purchases that exceed a cumulative \$50,000.00 in a twelve (12) month fiscal period shall be made only after completing the competitive Request for Quote process or sealed bidding process.
    - 5.1.1.1. It is recommended Departments take steps to anticipate and track recurring miscellaneous purchases to ensure policy compliance.

### 5.2. Duration of Bid

- 5.2.1. The bid period for IFBs, RFPs, and RFSQs shall be no less than five (5) business days, unless otherwise required by State or Federal law. Bid periods should take into account the overall size and complexity of the project, the project schedule, and the current bidding climate.
- 5.2.2. The question and answer period shall not close less than 24 hours prior to the bidding deadline.

- 5.2.3 If an addendum is released, the bid shall not close within 48 hours or two business days of the addendum being released and may require an extension of the bidding deadline.

### 5.3 Competitive Sealed Bidding and Proposals

- 5.3.1 Any purchase may go through the competitive sealed bidding method, but purchases of \$50,000.00 or more are required to go through the competitive sealed bidding process unless it's a non-competitive purchase.
- 5.3.2 Contracts or agreements made for purchases of goods or services or other commodities exceeding \$50,000.00 shall only be made after soliciting bids or proposals from potential vendors in fair and open competition, using the City's preferred purchasing tools.
- 5.3.3 Bids and proposals shall be received in a sealed manner and not opened until the time established in the formal solicitation. This is done electronically if the City's preferred purchasing tool allows.

### 5.4 Bidding Guidelines

- 5.4.1 The following additional bidding guidelines apply to all RFQs, IFBs, RFPs, and RFSQs released by the City:
  - 5.4.1.1 **Receipt of Bids** - Bids, proposals, and quotations shall not be accepted or received after the time set in the bid documents.
  - 5.4.1.2 **Withdrawal of Bids** - Bids or proposals may be revised, modified, or withdrawn by the potential vendor at any time prior to opening. Any such revision, modification, or withdrawal shall be in writing and given to the Purchasing Coordinator or follow the process allowed by the City's preferred purchasing tool. After the bids are opened, they shall be irrevocable for the period specified in the bid documents. Correction or withdrawal of erroneous bids after opening, or cancellation of awards or contracts based on such bid mistakes, shall not be permitted except as authorized elsewhere in this policy or as stated in the bid documents.
  - 5.4.1.3 **Relief Due to Computation Error** - Any potential vendor who seeks to withdraw or modify a bid because of computational error shall notify the Purchasing Coordinator no later than 24 hours following the bid closing, unless specified otherwise in the bid documents. The potential vendor shall provide worksheets and other information as appropriate or required by the City to substantiate the claim of inadvertent error. Failure to do so may bar such relief. The decision(s) to permit corrections or withdrawals of bids after the bid has been opened will be made by the Department Director, upon consultation with the Purchasing Coordinator.

5.4.1.4 **Immaterial Errors** - The Department Director, in consultation with the Purchasing Coordinator, may allow a vendor to correct an immaterial error in response to a solicitation process but may not allow a vendor to do any of the following after the bid has closed:

5.4.1.4.1 Correct any deficiency, inaccuracy, or mistake in a solicitation response that is not an immaterial error;

5.4.1.4.2 Correct incomplete submission of documents required in the solicitation;

5.4.1.4.3 Correct a failure to submit a timely solicitation response;

5.4.1.4.4 Substitute or alter a required form or other document specified in the solicitation;

5.4.1.4.5 Remedy a cause for a vendor being considered to be not responsible or a solicitation response not responsive; or

5.4.1.4.6 Correct a defect or inadequacy resulting in a determination that a vendor's solicitation response does not meet the mandatory minimum requirements or evaluation criteria.

Immaterial errors may be corrected by a vendor if responses are received within the timeline specified by the Department Director. Written documentation supporting the reason to allow the correction will be sent by the Department Director to the Purchasing Coordinator and placed in the purchasing file.

5.4.1.5 **Tie Bids/Proposals/Quotes** - In the event two or more bids, proposals, or quotes are equal in evaluation criteria or price, and are submitted by responsive and responsible vendors, the Department Director, after consultation with Project Manager and the Purchasing Coordinator, may negotiate with the bidders and obtain the best bid possible.

5.4.1.6 **Clarifying Information** – After a bid has closed, the Purchasing Coordinator or Department Director may at any time make a written or verbal request to a vendor to clarify information contained in a responsive solicitation response. Vendors shall respond in writing or verbally within the time frame established by the Purchasing Coordinator or Department Director. A vendor's response to a request for clarification under this policy:

- 5.4.1.6.1 May only explain, illustrate, or interpret the contents of the vendor's original solicitation response;
- 5.4.1.6.2 May not be used to address criteria or specifications not contained in the vendor's original solicitations response; and
- 5.4.1.6.3 May not be used to correct a deficiency, inaccuracy, or mistake in a solicitation's response that is not an immaterial error as identified elsewhere in this policy.

Any information requested and received must be made part of the purchasing file.

- 5.4.1.7 **Non-Disclosure and Conflict of Interest Requirement** - All participants involved in the selection and awarding process of any RFP or RFSQ must sign a Non-Disclosure and Conflict of Interest Agreement specific to the RFP or RFSQ. This form is in addition to any general non-disclosure agreements and conflict of interest disclosures required by the City.
- 5.4.1.8 **Non-Responsive Bids** - The Department Director, in consultation with the Purchasing Coordinator, may reject any bid or proposal which is materially non-responsive to the requirements set forth in the bid documents. The rejection reason shall be made part of the purchasing file.
- 5.4.1.9 **Cancellation and Rejection of Bids** - An RFQ, IFB, RFP, or RFSQ may be canceled at any time or may be rejected in whole or in part as specified in the solicitation if it is in the best interest of the City. Any cancellations or rejections can be made at the reasonable discretion of the Department Director responsible for the purchase, upon consultation with the Purchasing Coordinator. The cancellation reason shall be made part of the purchasing file.

Any RFQ, IFB, RFP, or RFSQ, may be cancelled prior to the award at the City's discretion. If the City decides after cancellation to re-solicit a bid, the re-solicitation shall not be for the purpose of directing the award to a particular vendor.

- 5.4.1.10 **Right to Disqualify** - The City reserves the right to disqualify any vendor or subcontractor as stated in this policy. The City also reserves the right to review and consider all subcontractors individually when hired by a general contractor and consider their qualifications as outlined in this policy. The City reserves the right to deny any or all bids with or without cause. All disqualifications will be

approved by Department Director, upon consultation with the Purchasing Coordinator.

- 5.4.1.11 **Determination of a Non-Responsible Vendor** - Written determination of a non-responsible vendor shall be made in accordance with this section. The unreasonable failure of a vendor to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to the vendor's bid or offer.

After reasonable notice to the person(s) involved, the Department Director or project manager, in consultation with the Office of the City Attorney and the Purchasing Coordinator, may disqualify a vendor from consideration for the award of a contract. The determination of non-responsibility shall be made in writing to the Purchasing Coordinator and will be made part of the purchasing file.

- 5.4.1.12 **Confidential Information** – If a contractor or vendor believes any information in a proposal or bid should be held confidential for business reasons, the contractor or vendor must submit a written claim of business confidentiality for that particular information with reasons supporting the claim. Otherwise, all information submitted in a proposal becomes public information and may be requested in accordance with the Government Records Access and Management Act (GRAMA).

- 5.4.1.13 **Ineligibility** - In addition to all other remedies permitted by law, the Department Director, in consultation with the Purchasing Coordinator may declare a potential vendor ineligible to bid on City purchases and public service contracts for a period not to exceed three (3) years in circumstances identified in this Section.

In such circumstances, the Department Director must submit written support for the determination of ineligibility to the Purchasing Coordinator. The City shall take all reasonable steps to declare a potential vendor ineligible before a bid/proposal is submitted but may declare a potential vendor ineligible after a bid has been submitted. A potential vendor can be declared ineligible for any of the following grounds:

- 5.4.1.13.1 Two or more claims of computational errors in bid submissions within a two (2) year period;
- 5.4.1.13.2 An unjustified refusal to provide or execute contract documents;
- 5.4.1.13.3 Unsatisfactory performance of a contract;

- 5.4.1.13.4 Unjustified refusal to perform or complete contract work or warranty performance;
- 5.4.1.13.5 Unjustified failure to honor or observe contractual obligations or legal requirements pertaining to the contract;
- 5.4.1.13.6 Conviction under state or federal statutes for fraud or bribery;
- 5.4.1.13.7 Theft, falsification, or destruction of records;
- 5.4.1.13.8 Receiving stolen property or any other similar crimes;
- 5.4.1.13.9 Offense indicating a lack of business integrity which would directly affect the reliability and credibility of the performance of such a vendor with future contracts with the City;
- 5.4.1.13.10 Not a responsible bidder or vendor.

**6. COMPETITIVE PURCHASING PROCESSES**

**6.1. Request for Information (RFI)**

**6.1.1** A Request for Information is a solicitation method which can be used to obtain information, comments, or suggestions from potential bidders or vendors before issuing an Invitation for Bid (IFB), Request for Proposal (RFP), or Request for Statement of Qualifications (RFSQ). An RFI can be useful in order to prepare to issue an IFB, RFP, or RFSQ for an unfamiliar or complex purchase or in other instances as identified in this section. Each RFI will be released through the City’s preferred purchasing tool for any specified period of time determined reasonable to gather the requested information.

**6.1.2.** An RFI is NOT a purchasing process and may not be used to:

- 6.1.2.1.** Solicit cost, pricing, or rate information;
- 6.1.2.2.** Negotiate fees;
- 6.1.2.3.** Make a purchase; or
- 6.1.2.4.** Enter into a contract.

**6.1.3.** A response to an RFI is not an offer and may not be accepted to form a binding contract.

**6.1.4.** An RFI may seek a wide range of information including but not limited to:

- 6.1.4.1.** Availability of a purchasing commodity;
- 6.1.4.2.** Delivery schedules;
- 6.1.4.3.** Industry standards and practices;
- 6.1.4.4.** Product specifications;
- 6.1.4.5.** Training;
- 6.1.4.6.** New technologies;
- 6.1.4.7.** Capabilities of potential vendors of a purchasing commodity; and

**6.1.4.8.** Alternate solutions.

**6.1.5.** The City may use the information obtained through the RFI process in other bid processes required by this policy. The information may not be used as an alternative to following this policy.

## **6.2. Informal Quote**

6.2.1. Any purchase between \$0 and \$9,999.99 may be made utilizing the Informal Quote process. Informal Quotes are not required but encouraged to ensure competitive pricing is received by the City. Requests for Informal Quotes should be sent to three vendors via phone call, email, fax, or any other method to obtain pricing by any authorized buyer for the City. Documentation is not required by the Purchasing Coordinator, but the department should keep records as needed to support the purchase, including Department Head approval of the purchase.

## **6.3. Request for Quote (RFQ)**

6.3.1. Any purchase between \$10,000.00 and \$49,999.99 shall be made utilizing this Request for Quote process, other competitive bidding option, or non-competitive process as allowed under this policy. A Request for Quote must comply with the following policies and procedures:

6.3.1.1. A Request for Quote must be sent to a minimum of three (3) vendors with the request that the vendor send a written quote with pricing by the time frame identified in the solicitation.

6.3.1.2. A minimum of three (3) quotes are required to be received by the established time frame or the purchase must go through the competitive sealed bidding process, or other process allowed for elsewhere in this policy.

6.3.1.3. A public notice for a Request for Quote is not required.

6.3.1.4. All Requests for Quotes will be solicited by the Purchasing Coordinator via email to the vendor or submission through the City's preferred purchasing tool.

6.3.1.5. Selection and awarding will be based on the vendor with the lowest cost, who is responsive to requirements in the Request for Quote documents without material exception, and who is responsible and capable of providing the commodities or services to be purchased.

- 6.3.1.6. All documentation for Requests for Quotes must be submitted to the Purchasing Coordinator prior to awarding the quote.
- 6.3.1.7. The received quote(s) shall be signed by an individual who has the authority to bind the company (vendor) to pricing submitted.
- 6.3.1.8. Quote documentation will be attached to a Purchase Order or Contract.

#### **6.4. Invitation for Bid (IFB) or Request for Bid (RFB)**

- 6.4.1. Invitation for Bid (IFB) may be used when lowest price is the primary factor for awarding a bid. Each IFB shall be commenced by the Purchasing Coordinator or designee, and must include specifications and all contractual terms and conditions applicable to the purchase. An IFB shall be submitted through the City's preferred purchasing tool. A minimum of two responses is required.
- 6.4.2. Specifications should seek to promote the overall economy and best use for the purposes intended, encourage competition, and shall not be unduly restrictive.
- 6.4.3. Evaluation Process is limited to cost, determination of responsiveness and compliance with the specifications and conditions specified in the bid documents, and the responsibility of the potential vendor.
  - 6.4.3.1. Negotiations are not permitted.
  - 6.4.3.2. This method does not permit comparison of the relative specifications of competing potential vendors, but only comparison to the specifications contained in the bid documents, unless explicitly stated in the IFB.
- 6.4.4. Awards - shall be made to the potential vendor offering the lowest cost who is responsive to the requirements of the bid documents, without material exception, and who is responsible and capable of providing the commodity or commodities to be purchased.

#### **6.5. Request For Proposal (RFP)**

- 6.5.1. A Request for Proposal can be used whenever detailed specifications cannot be determined, whenever several possible methods may satisfy the City's requirements, or whenever the nature of the requirements is such that subjective evaluation of criteria other than cost is necessary, or when the Purchasing Coordinator and Department Director determine it is in the best interest of the City. An RFP shall be submitted through the City's preferred purchasing tool.

- 6.5.2. Specifications - This method can be utilized when definite specifications cannot be determined in advance, when a scope of work is required which makes comparison of competing proposals relative to each other appropriate, or when it is in the interest of the City to have a vendor design a public improvement. Specifications shall seek to promote the overall economy and best use for the purposes intended, encourage competition, and shall not be unduly restrictive.
- 6.5.3. Objective and subjective criteria may be used in the evaluation of competing proposals. Within the RFP it shall state the relative importance of cost and other evaluation factors (experience, qualifications, references, etc.), including the quantitative basis (weight of each factor) for evaluation.
- 6.5.4. Separation of Cost Requirement - Any Request for Proposal where the contract or purchase is reasonably expected to cost \$50,000.00 or more is required to be evaluated on basis of cost separately. Cost is to be evaluated separately by an independent person (separate) from the Selection Committee or after the Selection Committee has evaluated all other criteria.
  - 6.5.4.1. The Purchasing Coordinator will evaluate cost by using a pre-determined cost formula. The weight assigned to cost must be clearly specified in the RFP.
  - 6.5.4.2. Each member of the Selection Committee and the Purchasing Coordinator should take all reasonable steps to restrict any information relating to cost, or the scoring of the cost of a proposal until after the Selection Committee submits its final recommended scores and all other criteria to the Purchasing Coordinator.
- 6.5.5. Evaluation Process - Determination of responsiveness and compliance with the specifications and conditions specified in the bid documents and of the responsibility of the potential vendor.
  - 6.5.5.1. All RFP evaluations/awards shall be made by a selection committee comprising no less than four (4) members selected by the project manager.
  - 6.5.5.2. No criteria may be used in an RFP evaluation that was not set forth in the RFP.
  - 6.5.5.3. Discussions are permitted with responsive and responsible vendors who submitted proposals determined to have a reasonable chance of being selected, in order to clarify and assure full understanding of and conformance to the solicitation requirements.
  - 6.5.5.4. Revisions and modifications are permitted at the request of the City with responsive and responsible vendors who submitted proposals.

6.5.5.5. Information taken from proposals received may be disclosed consistent with City policy and applicable laws.

6.5.6. Awards shall be made to the highest scoring responsive and responsible vendor based on the criteria established in the RFP documents.

6.5.6.1. A recommendation memo and all documentation must be sent to the Purchasing Coordinator prior to award and placed in the purchasing file.

#### **6.6. Request for Statement of Qualifications (RFSQ)**

6.6.1. A Request for Statement of Qualifications is used when deemed appropriate by the City. Potential vendors may be pre-qualified for particular types of supplies, services, and construction. An RFSQ shall be submitted through the City's preferred purchasing tool. Qualified vendors will receive notice and opportunity to submit competitive pricing to the City when the City requires the goods or services the vendor is qualified for. Non-qualified vendors will not be considered.

#### **6.6.2. Specifications:**

6.6.2.1. RFSQs shall not include any items regarding cost, pricing, or hourly rates.

6.6.2.2. RFSQs shall include the following:

6.6.2.2.1. Factors related to the particular types of supplies, services, and construction deemed necessary;

6.6.2.2.2. Time frame of the pre-qualification, specific expiration date of the pre-qualification, and any options for renewal;

6.6.2.2.3. Specific requirements or qualifications that a potential vendor must possess to be considered qualified;

6.6.2.2.4. Any limitation to the number of potential vendors the City may pre-qualify; and

6.6.2.2.5. Information regarding the selection process.

6.6.3. Evaluation Process – Determination of responsiveness and compliance with the specifications and conditions specified in the bid documents, and of the responsibility of the potential vendor.

6.6.3.1. All evaluations/awards will be made by a selection committee of no less than four (4) individuals selected by the project manager.

6.6.3.2. No qualification or criteria may be used in the evaluation process that is not identified in the RFSQ.

6.6.4. Selection - The selection process will be based on a vendor's responsiveness to the qualifications set forth in the RFSQ. Vendors will be determined to be qualified vendors or will be placed on an approved vendor list as specified in the RFSQ.

6.6.4.1. A recommendation memo from the selection committee and all documentation must be sent to the Purchasing Coordinator prior to award and placed in the purchasing file.

6.6.5. Selection Process

6.6.5.1. RFSQs may be followed by an IFB or RFP released to qualified vendors through the City's preferred purchasing tool unless otherwise stated below.

6.6.5.2. Approved Vendor Lists: If explicitly stated in the RFSQ the City may decide to establish a fair and equitable system that allows for equal opportunity among qualified vendors if in the best interest of the City. Examples include but are not limited to:

6.6.5.2.1. Request for Quotes;

6.6.5.2.2. A random selection, or as otherwise designed and designated in the RFSQ;

6.6.5.2.3. A random selection from the pool of pre-qualified contractors for emergency purchases.

6.6.5.3. An RFSQ and selection of qualified vendors does not constitute an exclusive agreement that would prevent the City from submitting an IFB or RFP to any and all potential vendors if in the City's best interest.

6.6.5.4. Except as noted above, all other bid guidelines and processes set forth in this policy apply to the prequalification process.

6.6.5.5. Vendors shall either be continually allowed to qualify for an approved vendor list or a new RFSQ will occur at least every 18 months.

## 7. **NON-COMPETITIVE PURCHASING PROCESSES**

The competitive purchasing requirements of this policy need not be followed in the following circumstances:

**7.1. Gift or Bequest** - In complying with the terms and conditions of any gift or bequest to the City, if such action is approved by the City Manager in writing and is otherwise consistent with law, the Department may procure without competitive bids.

7.1.1. The Department must attach copy of City Manager's approval to the requisition or contract.

**7.2. Federal or State Funds** - In cases where federal or state funds/grants are being used and federal or state purchasing laws or procedures govern the types of goods or services being procured, the City shall follow the applicable federal or state purchasing law or procedures in lieu of the procedures set forth in this policy.

7.2.1. The federal or state fund/grant documentation and proof of compliance (quotations, ads, language, Davis-Bacon, minority- or women-owned businesses, etc.) must be included with the requisition or contract.

**7.3. State Contract** - The Department Director may procure without competitive bids any supplies or services which are the subject of contracts with the State, as set forth in Utah Statute.

7.3.1. The State contract number and information for the purchase shall be included in the requisition and sent to the Purchasing Coordinator prior to the purchase.

7.3.2. The Department Director must make sure that the purchase complies with all aspects and terms stated within the State contract, as failing to follow the instructions will void the use of the State contract.

7.3.3. In the event that a State contracted vendor is unable to fulfill the contract in a reasonable time frame, the Department Director may purchase from another potential vendor willing to honor all aspects of the State contract. All of the following provisions must be followed before the City can purchase using a State Contract:

7.3.3.1. Written documentation must be obtained and sent to the City Purchasing Coordinator from the State Purchasing Coordinator over the contract confirming the delay and any suggestions made for purchasing through the existing contract or another existing contract;

7.3.3.2. Written documentation must be obtained and sent to the City Purchasing Coordinator from the potential vendor willing to honor and accept all conditions of the state contract signed by an individual authorized to bind the company to the agreement;

7.3.3.3. If a vendor offers a commodity at a price less than a vendor with a state contract, the purchase can be made without going through the competitive bidding process. The

Project Manager shall provide the purchasing coordinator with a copy of the state contracted price along with the invoice from the vendor offering a lower price.

**7.3.3.4.** The Department Director purchasing under a State contract will also provide a memo and documentation detailing the event and why the purchase is needed to the Purchasing Coordinator.

**7.4. Utah Intergovernmental Contracts** – The Department Director may procure, without competitive bids or proposals, supplies, and services which are the subject of vendor contracts with other government agencies located in the state of Utah. The valid contract between the vendor and the government agency must contain a clause that specifically allows use by other government agencies.

**7.4.1.** The Department Director shall submit a copy of the bid documents and contract from the local agency to the Purchasing Coordinator, along with a memo and documentation supporting why normal competitive bidding requirements should be bypassed.

**7.4.2.** The bid document, contract, memo, and other relevant documentation must be attached to the requisition.

**7.5. Utah Intergovernmental Agency** - The Department Director may procure goods and services without competitive bids, when goods and services may be provided directly by other governmental agencies located in the state of Utah.

**7.5.1.** The Purchasing Department must submit a copy of the intergovernmental agency quote or agreement to the Purchasing Coordinator.

**7.6. Purchasing Cooperatives** - The City may join with federal, state, or local governments, or with special districts, school districts, and other such similar agencies in purchasing goods and services as a cooperative as long as the cooperative meets or exceeds City purchasing policy.

**7.6.1.** Entering into a purchasing cooperative must be pre-approved by the City Manager.

**7.6.2.** All purchases must be approved by the Department Director.

**7.6.3.** A copy of the cooperative contract shall be submitted with the other documentation to the Purchasing Coordinator.

**7.7. Professional Services** - Contracts for professional services reasonably expected to cost less than \$50,000 per project may be awarded at the discretion of the Department Director. In such cases, written documentation shall be provided to the Purchasing Coordinator.

- 7.8. Insufficient Response** - In an instance where there are insufficient responses to an IFB, RFP, or RFSQ, the Department Director may elect to re-release the IFB, RFP, or RFSQ or bypass the competitive bidding process. If the Department Director elects to bypass the competitive bidding process set out in this policy. Written documentation shall be provided to the Purchasing Coordinator.
- 7.9. Engineering and Architectural** - The City may procure engineering and architectural services through a modified, quality-based selection method consistent with the Utah Administrative Code Rules.
- 7.9.1.** The Department Director will oversee the purchase.
- 7.9.2.** The Department Director shall submit a written document to the Purchasing Coordinator prior to the bid solicitation that includes the following:
- 7.9.2.1.** The process for selection and scoring, including the quantitative basis (weight of each factor) for evaluation;
- 7.9.2.2.** Shall not include any items regarding cost, pricing, or hourly rates.
- 7.9.3.** Prior to the award, the Department Director shall submit a recommendation memo and all documentation to the Purchasing Coordinator to be placed in the purchasing file.
- 7.9.3.1.** The memo must certify the Department followed the Utah Administrative Code-
- 7.10. Emergency** - Notwithstanding other provisions of this policy, purchases may be made in emergencies by the Department Director in instances where the purchase could not reasonably have been made pursuant to this policy, provided that purchases shall be made with as much competition as practical under the circumstance.
- 7.10.1.** Within two (2) business days after the purchase, the Department Director shall provide a signed written statement to the Purchasing Coordinator setting out in reasonable detail the purchase, price, cause, and basis for the emergency. The Purchasing Coordinator will review the statement for compliance and document it in the file.
- 7.10.2.** A copy of the statement shall be included in the purchasing file.
- 7.10.3.** Failure to anticipate a need or situation(s) created by improper planning or negligence is not to be considered an emergency unless such failure creates an imminent risk to public health and/or safety.

**7.11. Declared Emergency** - Under a declared local “state of emergency”, the Mayor may exercise emergency powers and functions by suspending the City-Wide Purchasing Policy, including waiving compliance with any time-consuming procedures regarding the acquisition of goods and services, as long as deemed necessary and in the best interest of the City, to provide emergency-related response initiatives and activities. The initial term of any contract resulting from an emergency procurement may be for no longer than thirty days.

**7.12. Sole Source** - In the event a Department Director determines commodities or services meet the definition of a sole source procurement listed in this policy, the Department Director shall submit written notification to the Purchasing Coordinator with documentation supporting the determination. This documentation shall include all research and steps taken to verify that the purchase meets the definition of sole source procurement.

**7.12.1.** To establish sole source, the Department Director may take the following steps:

**7.12.1.1.** A notice containing the nature of the purchase may be posted for a minimum of three (3) business days using the City’s preferred purchasing tools stating that the City intends to award a contract without competition. The notice invites any companies who believe they can provide the goods and services to contact the Purchasing Coordinator within the specified time frame stated in the notice.

**7.12.1.1.1.** If there are no companies that respond to the notice within the given time frame, the purchase may be deemed as sole source.

**7.12.1.1.2.** If a company can demonstrate they can provide the goods or services, the City will then follow the competitive bidding guidelines established in this policy.

**7.13. City Council Determinations** - The City Council may, by resolution, authorize any purchase without complying with the provisions of this policy.

**7.13.1.** Documentation of the City Council’s decision shall be placed in the purchasing file and must be attached to the requisition or contract.

**7.14. Special Opportunity** - Where substantial and quantifiable savings will be realized in the purchase of commodities, or non-professional or professional services, a Department Director may bypass competitive bidding or the Request for Quote requirements set out in this policy by following the procedures outlined below, provided other applicable provisions of this section are met before the purchase is made. Coupons, promotional codes, or discount programs cannot be used to recognize substantial savings.

**7.14.1.** The Department Director shall, in his or her reasonable discretion, obtain offers from competing sources in a manner most likely to meet the purpose of this section; and

**7.14.2.** The Department Director shall disclose the proposed purchase in a signed written memorandum to the Purchasing Coordinator setting out in reasonable detail the reason the purchase is recommended, the reason normal purchasing procedures are not recommended, the efforts made to obtain competitive offers, and the proposed savings; and

**7.14.3.** A copy of the signed memorandum shall be sent to the Purchasing Coordinator and will be made part of the purchasing file.

**7.15. Compatibility, Parts, Training** - A Department Director may procure without competitive bids equipment and supplies which, by reason of the training of City personnel who service such equipment, or which is an addition to or for the repair or maintenance of equipment owned by the City which may be more efficiently added to, repaired or maintained by a certain brand, person, or firm. In such cases the Department Director shall submit written documentation to the Purchasing Coordinator

**7.16. Utility Services and Impact Fees** - A department may procure without competitive bids the usage of any utility or the work by utility companies to install their services, such as water, electricity, gas, sewer, cable, and telephone, except when alternative supplies or services are available. Impact fees are also exempt from the bidding process.

**7.17. Miscellaneous** - Procurements that by their nature are not adapted to award by the competitive bid process may be procured without competitive bid, as identified below in this section. In such cases, the Department Director should submit written documentation to the Purchasing Coordinator. Listed below are specific qualified purchases that are allowed because competitive processes are impractical and not in the best interest of the City:

**7.17.1.** Legal services or lobbying, including, but not limited to, legal counsel, expert witnesses, hearing officers, special counsel, etc.;

**7.17.2.** Insurance;

**7.17.3.** The publication of legal notices, ordinances, resolutions, and other legal advertising;

**7.17.4.** Water or irrigation shares;

**7.17.5.** The private placement of bonds, tax anticipation notes, or other instruments of indebtedness, including credit ratings. Financial advisors are excluded from this exception;

- 7.17.6. The purchase of non-software subscriptions, magazines, books, trade journals, reference works, periodicals, examination or testing materials, and similar articles of an educational, informational, or instructional nature that are relevant to the duties of City employees;
- 7.17.7. Goods, materials, supplies, and services utilized by the City Recorder or the City for purposes of performing duties in regards to elections;
- 7.17.8. Goods and services purchased for authorized resale;
- 7.17.9. Engaging the services of Recreational Program Instructors resulting in recreational program agreements, provided that the Department adopts and follows an approved policy and procedure by which Recreational Program Instructors are selected;
- 7.17.10. Memberships, certifications, trainings, or any costs associated with accreditations required or relevant to the duties of City employees which are in the best interest of the City;
- 7.17.11. Drug testing, employee physicals, and fitness-for-duty evaluations;
- 7.17.12. Realtors, acquisition agents, appraisers, or title work for City purposes;
- 7.17.13. Musical performers, promoters, agents, entertainers, staging, lighting, and sound services, and license holders for City events;
- 7.17.14. Acquisition of art and artistic services, including but not limited to paintings, sculptures, photographs, photography services, floats, video productions, and artistic performances. For the purposes of this policy, architectural services are not classified as art.
- 7.17.15. Advertising in various forms, including social media platforms, radio, billboards, print media, digital media, job boards, media websites, recruitment agencies, etc.
- 7.17.16. Security – security services meant to protect city infrastructure and data/information.
- 7.17.17. Purchase of specialized animals.

## 8. **ADDITIONAL GUIDELINES**

- 8.1. **Construction Project Awards** - In the event that the lowest responsive and responsible bid for a construction project exceeds available funds as certified by the Chief Financial Officer/Budget Officer, and the bid does not exceed such funds by more than ten percent (10%), the Department Director is authorized in situations where time or economic considerations preclude solicitation of work of a reduced scope, to permit the negotiation and adjustment of the bid price, and changes

in the bid requirements, with the lowest responsive and responsible bidder in order to bring the bid within the amount of available funds.

- 8.2. Performance and Bid Bonds** - Performance and bid bonds may be required to protect the best interests of the City. The nature, form and amount of such bonds shall be determined by the project manager, along with the Purchasing Coordinator, and shall be described in the IFB, RFP or RFSQ.
- 8.3. Purchase Orders (PO)** - A purchase order is required for all purchases of or greater than \$10,000.00. Departments will submit a requisition through the City's financial software *before* making the purchase. Once approved, the requisition will be converted to a PO that can be used to initiate a purchase with a vendor, as long as it has gone through the proper process as required in this policy.
- 8.4. Contracts** - In any situation where a contract is required or is in the best interest of the City (rather than a Purchase Order), Departments must follow the procedures established by the Office of the City Attorney for entering into, negotiating, and approving contracts. All relevant bid documents must be supplied to the Office of the City Attorney for review prior to any agreement.
  - 8.4.1. Approval of Contract Form** - No contract shall be entered into unless and until approved as to form by the Office of the City Attorney. The Office of the City Attorney may establish procedures by which specified contracts may be pre-approved as to form.
- 8.5. Vendor Performance/Evaluation** – The Project Manager shall document unsatisfactory performance by the vendor with a post project evaluation and send a copy of the documentation to the Purchasing Coordinator to be filed with the vendor records.
- 8.6. Payment** - Vendors that performed work for the City must submit an invoice to the City upon completion, unless prepayment options have been agreed upon by contract. Payment to these vendors will follow the processes established by the Finance Department for payment of invoices.
- 8.7. Disclosure of Information** - Unauthorized disclosure of information pertaining to any bid, purchase, contract, or other any other agreement of is prohibited, except as allowed under the Utah Governmental Records Access Management Act (GRAMA). Such disclosures by public officers or employees shall be considered cause for disciplinary action consistent with the City's policies and procedures and may result in corrective remedies as indicated in the Remedies section of this policy.
- 8.8. Right to Inspect Place of Business or Financial Records** - The City may, at reasonable times, inspect the part of the plant or place of business or financial records of a contractor, or any subcontractor that is related to the performance of any contract as stated in the contract, or if stated in the solicitation.

- 8.9. Cost-Plus-Percentage-of-Cost Contract Normally Prohibited** - Subject to the limitations of this section or other applicable laws, any type of contract that will promote the best interests of the City may be used. Normally, a cost-plus-percentage-of-cost contract is prohibited, except where a determination is made in writing by the Department Director, and approved by the City Manager, that such a contract is likely to be less costly to the City than any other type, or that it is impracticable to obtain the commodities or construction required except under such a contract.
- 8.10. Failure to Follow Policy** - Failure to follow any provisions of this policy shall neither render a purchase invalid, nor give a potential vendor a claim or right against the City. Disciplinary action for failure to follow this policy shall follow the guidelines established in the City's Employee Handbook.
- 8.11. Period of Time for Contracts** - Unless otherwise provided by law, a contract for supplies or services that through any combination of renewals exceeds five (5) years, will need to be approved by the Purchasing Committee based on the best interests of the City; provided that the term of the contract and conditions of renewal or expansion, if any, are included in the solicitation, and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds. This doesn't apply to design or construction of a facility, road, or public transportation project or to the financing of equipment. Purchases of software and financial services by the City are exempted from the five year contract limitation due to the significant investment of time and resources required for these purchases.
- 8.12. Extension of Contracts** – A procurement official may extend an existing contract without engaging in a standard procurement process for a period of time not to exceed 120 days, if:
- 8.12.1.** An extension of the contract is necessary to:
    - 8.12.1.1.** Avoid a lapse in a critical government service; or
    - 8.12.1.2.** To mitigate a circumstance that is likely to have a negative impact on public health, safety, welfare, or property; and
  - 8.12.2.** The procurement unit is engaged in a standard procurement process for a procurement item that is the subject of the contract being extended; and
  - 8.12.3.** The standard procurement process is delayed due to an unintentional error.
- 8.13. Records** - Procurement records shall be maintained in accordance with the State of Utah's Municipal Retention Schedule for purchasing records by the Department making the purchase. All

contracts and required documents must be submitted to the City Recorder prior to execution of the contract.

**8.14. Collusion** - Any agreement or collusion among potential vendors is deemed to be contrary to the best interest of the City. Any agreement to bid a fixed price or other similar actions among prospective vendors shall render the response of such vendors void.

**8.15. Kickbacks and Gratuities** - Individuals, or family members of an individual, are prohibited from seeking or receiving gratuities or kickbacks as compensation for preferential treatment as defined in City policy, City code, and State code (63G-6a-2404, 67-16-5 through 67-16-6).

## **9. PROTESTS AND APPEALS**

**9.1. Written Protest** - Any person who has standing and is aggrieved in connection with a purchase or an award of a contract may protest the purchase by filing a written statement with the City Recorder, which will be forwarded to the Purchasing Committee.

**9.1.1. Filing a Written Statement** - The written statement shall contain the following information:

**9.1.1.1.** The protesting party's name, mailing address or e-mail address, daytime telephone number, the signature of the protesting party or the attorney for the protesting party, and the date the protest is signed; and

**9.1.1.2.** A concise statement of the facts and evidence:

**9.1.1.2.1.** Leading the protestor to claim that the protestor has been aggrieved in connection with a purchase and providing grounds for the protestor's protest; and

**9.1.1.2.2.** Supporting the protestor's claim of standing.

**9.1.2. Deadline for Filing**

**9.1.2.1.** A protest relating to an open RFQ, IFB, RFP, or RFSQ, shall be filed with the City Recorder before the closing date for the RFQ, IFB, RFP, or RFSQ.

**9.1.2.2.** If the bid has closed, a protest shall be filed with the City Recorder within five (5) business days (by the end of the City's business day) after the person filing the protest knew or should have known the facts.

**9.1.2.2.1.** It is the responsibility of the person filing the protest to prove that they did not know and should not have known the facts which would give rise to a protest prior to the closing date.

**9.1.3.** Suspension of the Purchase - The City may proceed with the protested purchase; however, the Purchasing Committee may suspend the purchase process for so long as the Purchasing Committee determines appropriate.

**9.1.4.** Review of the Written Protest - The Purchasing Committee will review the written protest and may request any of the following:

**9.1.4.1.** Assistance of another individual in reviewing the matter, which may include finding facts, analyzing the protest, and making recommendations; and

**9.1.4.2.** Additional information from the protesting party or from other City staff to make a determination. The protesting party shall provide all information reasonably needed to decide the protest except information which is protected from disclosure by law, or which could reasonably be expected to result in unfair, competitive injury to the protestor in spite of the protections for the protestor provided by law, including the Utah Governmental Records Access Management Act (GRAMA).

**9.1.4.3.** Written Determination - the Purchasing Committee will issue a written determination to the protesting party within fifteen (15) days of the date the Committee receives the protest from the City Recorder. The Purchasing Committee shall email their written decision to the Recorder, who will forward it to the protesting party and the Purchasing Coordinator.

**9.1.4.4.** If the Purchasing Committee fails to issue a decision within fifteen (15) days after the receipt of the protest, said failure shall be considered the equivalent of a defacto denial.

**9.2. Appeal of Written Protest** - The protesting party may appeal the written decision of the Purchasing Committee by filing a written appeal with the City Recorder that will be sent to the City Manager. At the time of the appeal, the protesting party must pay the required security deposit or post a bond to start the appeal process.

**9.2.1.** The Notice of Appeal shall contain the following information:

**9.2.1.1.** The petitioner's name, mailing address, e-mail address, daytime telephone number, the signature of the petitioner or of the attorney for the petitioner, date; and

**9.2.1.2.** A concise statement of the facts and evidence sufficient to permit review:

- 9.2.1.2.1. Of the petitioner’s claim that the petitioner has been aggrieved in connection with a purchase and providing grounds for the petitioner’s protest; and
      - 9.2.1.2.2. Supporting the petitioner’s claim of standing.
- 9.2.2. Deadline for Filing - The appeal and bond or security deposit must be completed within five (5) days of receipt of the Purchasing Committee’s decision or de facto denial.
- 9.2.3. Security Deposit or Bond Requirements – If a security deposit or bond is required:
  - 9.2.3.1. Payment and Returning of Bond/Security Deposit - the City shall retain the security deposit or bond until the appeal of the protest decision is final. If a security deposit is given, after any appeal of the protest decision becomes final, return of the security deposit will be given to the person or entity that paid the security deposit. If a bond is given, the City will retain the bond until the appeal of the protest decision becomes final. A security deposit that is paid, or a bond that is posted, under this section shall forfeit to the general fund if:
    - 9.2.3.1.1. The person who paid the security deposit or posted the bond fails to ultimately prevail on the appeal; and
    - 9.2.3.1.2. The City Manager or designee, after advice from the Office of the City Attorney, finds that the protest or appeal is frivolous or that its primary purpose is to harass or cause delay.
  - 9.2.3.2. Amount - The amount of a security deposit or bond required when filing a written appeal will be as follows:
    - 9.2.3.2.1. 100% of the total contract value up to \$20,000;
    - 9.2.3.2.2. \$20,000 if the total contract value is \$20,000 or more but less than \$500,000;
    - 9.2.3.2.3. \$25,000 if the total contract value is \$500,000 or more but less than \$1,000,000;
    - 9.2.3.2.4. \$50,000, if the total contract value is \$1,000,000 or more but less than \$2,000,000;
    - 9.2.3.2.5. \$95,000, if the total contract value is \$2,000,000 or more but less than \$4,000,000;
    - 9.2.3.2.6. \$180,000, if the total contract value is \$4,000,000 or more but less than \$8,000,000;
    - 9.2.3.2.7. \$320,000, if the total contract value is \$8,000,000 or more but less than \$16,000,000; and

**9.2.3.2.8.** \$600,000, if the total contract value is \$16,000,000 or more but less than \$32,000,000.

**9.2.3.2.9.** In the event that an estimated contract value cannot be determined the security deposit or bond required will be \$20,000.

**9.2.3.3.** Estimating Contract Value - For appeals relating to an IFB, RFP, or RFSQ the estimated total contract value shall be based on one of the following methods to be determined by the City in a reasonable manner:

**9.2.3.3.1.** The bid/proposed cost submitted by the protesting party for the entire term of the contract, excluding any renewal periods;

**9.2.3.3.2.** The total budget of the purchase commodity over the entire term of the contract, excluding any renewal period, or

**9.2.3.3.3.** If the contract is being reissued, the historical usage and amount spent on the contract over the life of the contract that is being reissued.

**9.2.4.** Hearing - The City Manager or designee shall review and schedule a hearing no later than five (5) days after receiving a notice of appeal. Unless otherwise agreed to by the City and the petitioner, the hearing shall be held no sooner than five (5) business days and no later than thirty (30) business days from the date of the filing of the appeal. At the hearing, the appellant and the City's representative(s) shall be allowed to testify, present evidence, and comment on the issues. The rules of evidence do not apply to this hearing. The City Manager may allow other interested persons to testify, comment, or provide evidence on the issues.

**9.2.5.** Written Determination - No later than fifteen (15) business days after the hearing, the City Manager shall issue a signed order either granting the petition in whole or in part, or upholding the determination of the Purchasing Committee in whole or in part. If the City Manager fails to issue a decision within fifteen (15) business days after the hearing, said failure shall be considered the equivalent of a defacto denial.

**9.3. Appeal to Utah District Court** - Any final action or order may be appealed by either the potential vendor or the City to the Utah District Court by filing with the court a notice of appeal.

**9.4. Remedies** - If the Purchasing Committee determines that a solicitation or award is in violation of federal, state, local law, or this policy, the following remedies shall apply:

**9.4.1.** Prior To Bid Closing Date – If prior to a bid or proposal closing date the Purchasing Committee determines that a solicitation is in violation of federal, state, local law, or this policy, the solicitation or proposal shall be canceled.

- 9.4.2.** Prior to Award – If after a bid or proposal closing date the Purchasing Committee determines that a solicitation or a proposed award of an agreement is in violation of federal, state, or local law, or this policy, the solicitation or proposed award shall be cancelled.
- 9.4.3.** After Award - If after an award of a bid or proposal, the Purchasing Committee determines that a solicitation or award of an agreement was in violation of applicable laws or this policy, then:
- 9.4.3.1.** If the person awarded the agreement has not acted fraudulently or in bad faith:
- 9.4.3.1.1.** The agreement may be ratified and affirmed, provided it is determined that doing so is in the best interests of the City; or
- 9.4.3.1.2.** The agreement may be terminated and the person awarded the agreement shall be compensated for the actual costs reasonably incurred under the agreement, plus a reasonable profit, prior to the termination;
- 9.4.3.2.** If the person awarded the agreement has acted fraudulently or in bad faith, the agreement may be declared null and void or voidable, if such action is in the best interests of the City.