

A RESOLUTION
OF THE CITY COUNCIL
OF THE CITY OF CHERRY HILLS VILLAGE
AMENDING AND RESTATING THE CITY'S PURCHASING POLICY

WHEREAS, the City of Cherry Hills Village ("City") is a home rule municipality organized in accordance with Article XX of the Colorado Constitution; and

WHEREAS, the City Council of the City is authorized under the City of Cherry Hills Village Home Rule Charter ("Charter") and pursuant to its general municipal powers to adopt policies and procedures in furtherance of its municipal functions and authority; and

WHEREAS, the City Council has the general powers granted to it by the Charter and C.R.S. § 31-15-302 relating to the finances of the City; and

WHEREAS, per Section 2-3-40(b)(12) of the City's Municipal Code, as amended by Council Bill 5, Series 2024, adopted by City Council on September 03, 2024, the City Manager has the authority to act as a purchasing agent for the City and to sign contracts binding the City for goods and services in conformance with a purchasing policy adopted by resolution of City Council; and

WHEREAS, the City Council desires to effectuate the City Manager's purchasing and contract signing authority through the adoption of a purchasing policy that includes reasonable limits and adequate checks and balances on the authority delegated to the City Manager; and

WHEREAS, the City's current purchasing policy was adopted in 1980 and amended by Resolution 17, Series 2015, and City Council now desires to amend and restate the City's purchasing policy to effectuate the City Manager's purchasing and contract signing authority; and

WHEREAS, the City Council finds that the purchasing policy attached to this Resolution as **Attachment A** (the "Purchasing Policy") provides adequate administrative purchasing procedures that incorporate a level of flexibility in the procurement process that promotes efficiency in City operations while also setting reasonable spending limits and oversight provisions to ensure the City's funds are spent prudently; and

WHEREAS, the City Council desires to adopt the Purchasing Policy.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE:

Section 1. City Council hereby adopts the Purchasing Policy in the form attached hereto as Exhibit A. The City Clerk is directed to document the Purchasing Policy in the City's policy log that is maintained by the City Clerk upon the effective date of this Resolution.

Section 2. Effective Date. This Resolution shall be effective immediately on the effective date of Council Bill 5, Series 2024.

Introduced, passed and adopted at the
regular meeting of City Council this 11th day
of December, 2024, by a vote of 6 yes 0 no.

(SEAL)

Kathleen Brown
Kathleen Brown, Mayor

ATTEST:

Laura Gillespie
Laura Gillespie, City Clerk

APPROVED AS TO FORM:

Kathie B. Guckenberger
Kathie B. Guckenberger, City Attorney

ATTACHMENT A
TO CITY COUNCIL RESOLUTION 18, SERIES 2024
[PURCHASING POLICY]

City of Cherry Hills Village
Policies and Procedures
Adopted by City Council 1980
Amended by Resolution 17, Series 2015
Amended and Restated by Resolution 18, Series 2024

PURCHASING POLICY

It is the policy of the City Council for the City of Cherry Hills Village (“City”) to ensure adequate and uniform control of the City’s purchasing activities. Principles and policies incorporated in this Purchasing Policy (“Policy”) for the City are in accordance with Generally Accepted Accounting Principles (“GAAP”) and applicable Colorado law.

All parties involved in the negotiation, performance, or administration of Procurement and Contracts for the City shall act in good faith. All Procurements must be made for the purpose of meeting the City’s current budget goals. All purchases shall be made in accordance with this Policy. Any agreements made contrary to this Policy shall not be binding on the City.

I. Authority

The City Council of the City of Cherry Hills Village is authorized under the City’s Home Rule Charter (“Charter”), Municipal Code, and general municipal powers to adopt policies and procedures in furtherance of the City’s municipal functions and authority.

II. Purpose

Provide a prudent system and standard of integrity when purchasing City goods and services, while maximizing the purchasing value of public funds.

III. Scope

This Policy applies to the procurement of all City goods and services except as stated otherwise in this Policy. The policies and procedures set forth in this Policy shall apply to purchases made by City employees acting as purchasing agents for the City.

Notwithstanding the foregoing, the following expenditures are not limited by this Policy: public utility services (water, gas, electricity, sewer, phone, internet), ongoing principal and interest payments for Council-approved debt, goods or services provided by other governmental agencies, motor vehicle fuels, and investment instruments as governed by the City Council Investment Policy.

Further, this Policy does not impact, replace, or supersede any other policy of the City that controls the procurement of or payment for capital facilities or public works, including: (1) the provisions of the City Capital Improvement Program Policy referenced in Sec. 4-1-50(c) of the Municipal

Code; and (2) the public works bidding and contracting procedures set forth in Article III of Chapter 4 of the Municipal Code.

If a procurement is related to an intergovernmental agreement or involves the expenditure of federal or state funds, the procurement shall be conducted in accordance with any applicable requirement of the intergovernmental agreement or federal and state laws and regulations including, as an example and not as a limitation, the federal regulations controlling procurement standards and procedures in 2 CFR 200.318 – 200.327. See **Appendix A**.

IV. Definitions

For purposes of this Policy, the following terms have the meanings set forth below unless the context indicates otherwise:

Appropriated/ion – means a specific amount of money authorized by the City Council for purchasing identified Goods and Services.

Authorized Signer – an Authorizer and the Authorizer’s Designee. The City will maintain a list of current Authorized Signers, as designated and approved by the City Manager.

Authorizer – the Council or City Manager or the person delegated authority by the City Manager and this Policy to approve an Expenditure within the limits set by this Policy.

Award – awarding a Contract to the most responsible and responsive Bid.

Bid (Competitive bid or bidding) – means and includes any process or system requiring the submission of an offer, bid, proposal, statement of qualification or other information specified by the City to permit a comparative evaluation of goods or services offered to the City. A bid may or may not be in the form of an IFB or RFQ (See Table 2 of this document).

Bidnet Direct – the City’s governmental purchasing portal for Bid Solicitations.

Business – all activities engaged in or caused to be engaged in with the object of gain, benefit or advantage, direct or indirect.

Capital Asset – any piece of equipment or vehicle that costs more than five thousand dollars (\$5,000.00) and has a useful life greater than one (1) year. Items such as police vehicles, public works vehicles, parks and recreation equipment, major technology hardware or software are examples of Capital Assets. This term does not include Public Facility or Public Works.

Change Order – see Contract Modification.

City Manager - the person appointed by City Council to serve as City Manager pursuant to Chapter 2, Article III of the Municipal Code.

Contract – includes all forms of written contracts, regardless of what the contract may be called, for the procurement, purchase, or disposal of Goods and Services. The term does not include

intergovernmental agreements, contracts or agreements to encumber or convey real property by the City or another governmental body, and contracts for Public Works.

Contract Modification – a written modification to a Contract’s scope of work, Specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any Contract accomplished by mutual action of the parties to the Contract.

Contractor – a person that is party to a Contract or that is responding to a Solicitation to provide Goods and Services to the City. The term is interchangeable with ‘Supplier’ and ‘Vendor.’

Cooperative Purchases – procurement conducted by, or on behalf of, more than one (1) governmental body.

Director – a City employee with explicit responsibilities and authority as the ‘head’ of a City department. This term is limited to the following: Director of Finance & Administration; Police Chief; Community Development Director; and the Director of Public Works.

Designee – a person who is authorized to represent or act on behalf of another person as evidenced in writing by the person being represented by or directing the actions of the Designee.

Emergency – an existing or immediately impending dangerous situation or condition that necessitates immediate action to stop or prevent damage to property or to protect public safety, health, and welfare.

Expenditures – the actual spending of Appropriated financial resources.

Goods – includes Non-Capital Goods and Capital Asset.

Invitation for Bid (IFB) – all documents, including those attached or incorporated by reference, utilized for soliciting bids by the City.

Invoice - an itemized statement issued to the City by a Vendor, specifying the price of Goods and Services; a bill.

Non-Capital Goods – tangible and intangible products purchased for ownership and use, including, but not limited to, materials for maintenance, Supplies, gasoline, and software licenses. The term does not include Capital Asset, Public Facility, or Services.

Person – a natural person, joint venture, public or private corporation, firm, partnership, association, organization, government, club, company, business, trust, or the manager, lessee, agent, servant, officer, or employee of any of them.

Procurement – the process through which the City acquires Goods and Services for its own use.

Professional Services – includes Services that require a high degree of professional skill, including, but not limited to: architecture, engineering, legal, accounting, hiring screening

process (drug testing, psychological testing and assessment, etc.), specialized equipment repair and maintenance, etc.

Public Facility – includes, but is not limited to, a City structure, building, street, sidewalk, curb and gutter, park, recreational facility, waterway, bridge, and utility line used by the public or by the City in the performance of municipal functions.

Public Work(s) – any construction activity directed, undertaken, or otherwise carried out by the City designed to serve some purpose of public necessity, use, convenience, health, safety or welfare, such as, but not limited to, the grading of public land or the construction of a building, structure, facility, street, trail or other public real property improvement. The term does not include the maintenance, minor repair, or operation of a Capital Asset or Public Facility. “Construction activity,” as used in this definition, means the designing, building, altering, making major repairs and improvements to, remodeling, replacing, or demolishing any land, structure, building, or other physical improvement to real property.

Purchase Order (PO) – an instrument that authorizes a Vendor to provide Goods to the City at a set price in a single delivery or multiple deliveries over a set period of time, and that does not contain legal terms and conditions other than requiring payment for the Goods to be provided by the Vendor.

Quote – a written offer for sale of Goods or Services that includes a description of the Goods and Services, costs and total cost, and the sales terms and conditions (e.g., offer expiration date; applicable discount prices/rates; date of delivery or completion of service).

Request for Information (RFI) – this method may be used as a preliminary step to issue an RFP; the RFI is issued using Bidnet in an attempt to pre-qualify prospective Suppliers.

Request for Proposals (RFP) – a process used to acquire supplies and services that involves the review of written competitive sealed proposals and the use of negotiation with the most qualified bidder(s). This process may also include the use of the RFI method. RFPs must be in the City’s pre-approved standard form or in an alternative format that is approved by the City Attorney’s Office.

Request for Qualifications (RFQ) – a process used to determine the best and most appropriate suppliers for a specialized Good or Service. RFQs must be sealed and in the City’s pre-approved standard form or in an alternative format that is approved by the City Attorney’s Office.

Services – intangible products that are purchased for use but not ownership (e.g., software subscription services); the furnishing of labor, time, or effort by a Contractor involving the delivery of an end product, or the maintenance and repair of a Good or other product. This term includes Professional Services, but not all Services are Professional Services.

Solicitation – the process of notifying prospective Contractors to receive Bids for Contractors to provide Goods or Services to the City. The process may consist of, but is not limited to,

advertising on Bidnet Direct, IFB, RFQ, RFI, and RFP (See Section VII for Exemptions to the Solicitation process).

Specification – the description of the physical or functional characteristics, or the nature of a Good or Service. It may include a description of any requirement for inspection, testing, or preparing a Good or Service item for delivery.

State-Contracted Purchases – contracted pricing already bid by the State of Colorado Purchasing Office.

Supplier – see Contractor.

Supplies – tangible property that is typically used or consumed within one year. Examples include: pens, paper, staples, fertilizer, chemicals, repair parts, etc.

Unanticipated Expenditures – the spending of the City's financial resources: (1) in an amount that exceeds the estimated budgeted amount; (2) on an unforeseen cost that is required for an unbudgeted expense; or (3) on Emergency purchases.

Vendor – see Contractor.

V. General Provisions/Restrictions

- a. This Policy does not apply to the procurement of Public Works. Purchases and contracting procedures for Public Works are governed by Article III of Chapter 4 of the Municipal Code.
- b. No personal purchases may be made using the City's funds, credit, or name.
- c. Only City employees with valid City identification and the requisite authorization may make purchases utilizing City funds.
- d. Purchases must be charged to the proper budget account, regardless of budget availability in that particular line item.
- e. Alcohol may not be purchased with City funds, except in specific, pre-authorized situations for City-sponsored events or within the City's Police Department for official purposes (e.g., liquor investigations, DUI training, undercover operations, etc.).
- f. State and local Colorado sales tax should not be paid on any purchase made by or on behalf of the City. The City's tax-exempt number should be given to the Supplier before Colorado purchases are completed.
- g. All Bid (IFB, RFP, and RFQ) for purchases authorized by a Director shall be maintained by that Director's department.

- h. Unless restricted by law or this Policy, a Contract for Supplies or Services may be entered into for a period of time, as long as the total amount of the expenditure authorized in the Contract does not exceed the limits set forth in Section VI of this Policy. Payment and performance obligations for successive fiscal years shall be subject to Appropriation.
- i. Expenditures shall not be divided between multiple Contracts for the sole purpose of evading or attempting to evade the requirements or limits in this Policy.
- j. No member of the City Council shall have any direct financial interest in any Contract with the City.
- k. Expenditures involving funds received through a federal grant must follow the procedures and guidelines set forth in **Appendix A** attached hereto.

VI. Spending and Signature Authority

a. Budgeted Expenditures

These expenditures are specifically presented to the City Council and adopted in the annual budget. As expenditures may fluctuate during the time period of budget adoption and when the expenditure is made, budgeted expenditures are also considered 'budgeted' if the actual expenditure does not exceed the estimated budgeted expenditure amount by more than 10%.

Authorization: Directors and the City Manager may authorize Expenditures if budgeted (specifically adopted in the annual budget) and appropriated, and in accordance with the Tables 1 and 2 below and any other limitation or restriction in this Policy, the Municipal Code, and the Charter. Notwithstanding the foregoing, no member of City staff may authorize Expenditures exceeding appropriated amounts unless specifically allowed by this Policy, the Municipal Code, or authorized by City Council.

Contract Signature Authority: The City Manager is authorized to execute Contracts for Goods and Services. The City Manager may delegate signing authority to an Authorized Signer in accordance with the tables below and any other limitation or restriction in this Policy, the Municipal Code, and the Charter. The City Manager shall provide City Council with a copy of each executed Contract and Purchase Order in a monthly report, regardless of whether it was budgeted or unanticipated.

Personal liability and disciplinary action may result if any City employee signs a Contract or Purchase Order without authorization or makes an unauthorized purchase.

TABLE 1: Non-Capital Goods; Services; Professional Services*

Limit	Quote or Bids Required	Authorizer	Authorized Signer
Up to \$5,000	Director's best judgment	Director	Contract = Director PO = Director's Designee
\$5,001 to \$20,000	2 or more quotes	Director	Contract = Director PO = Director's Designee
\$20,001 to \$50,000	3 or more quotes	Director	Director
\$50,001 to \$100,000	Bids (IFB or RFP)	City Manager	City Manager
\$100,001 and above	Bids (IFB or RFP)	City Council	City Manager

*Professional Services are exempt from bids/quotes per Section VII.

TABLE 2: Capital Asset Purchases

Limit	Quote or Bids Required	Authorizer	Authorized Signer
Up to \$50,000	3 or more quotes	Director	Director
\$50,001 to \$100,000	3 or more quotes	City Manager	Director
\$100,001 to \$300,000	Bids (IFB or RFP)	City Manager	City Manager
\$300,001 and above	Bids (IFB or RFP)	City Council	City Manager

b. Unanticipated Expenditures

Unanticipated Expenditures arise when the Expenditure amount exceeds the estimated budgeted expenditure amount by over 10% or when an unforeseen expenditure is requested for an expense not specifically approved in the City budget. Unanticipated Expenditures may arise out of, but are not necessarily limited to, an Emergency.

NOTE: This Policy does not supersede Article III of Chapter 4 of the Municipal Code, including the emergency provisions in Sec. 4-3-40 of the Municipal Code which controls emergency contracting for Public Works. All Unanticipated Expenditures related to Public Works remain subject to Article III, Chapter 4 of the Municipal Code.

1. Non-Emergency Unanticipated Expenditures

The City Manager is authorized to execute Contracts or Purchase Orders for non-emergency Unanticipated Expenditures costing \$25,000 or less, and the City Manager may delegate signing authority to an Authorized Signer in accordance with this Policy, the Municipal Code, and the Charter. Unanticipated Expenditures not related to an

Emergency and over \$25,000 must be pre-approved by the City Council by Resolution or Ordinance.

2. Emergency Unanticipated Expenditures

Unanticipated Expenditures related to an Emergency as defined in this Policy, may require immediate purchase of non-appropriated supplies or services to avoid the loss of life, property, or detriment to the community. In response to an Emergency, the City Manager and the City Manager's Designee are authorized to expend City funds without competitive bidding process. The City Manager and Designee shall obtain verbal approval from the Mayor, or in the Mayor's absence, the Mayor Pro-Tern prior to initiating non-appropriated emergency purchases or services in excess of One Hundred Thousand Dollars (\$100,000). Immediately following the emergency purchase, a written report shall be made by the City Manager's office stating the nature of the emergency and the amount and type of expenditure(s). This report shall be distributed to the Mayor and City Council within seven (7) days of the emergency.

VII. Exemptions to Quote or Bid Requirements

In addition to any exemptions permitted in the Municipal Code, the following Expenditures are exempt from Solicitation requirements with the pre-approval of the City Manager or the City Manager's Designee:

- a. Cooperative Purchases and State-Contracted Purchases – A copy of the contract summary must be attached to the purchase order or Invoice.
- b. Sole Source Purchases – purchases by the City in the open market for which there is only one source practicably or reasonably available, due to:
 - i. sole technology;
 - ii. functional superiority;
 - iii. specialized or unique equipment, products or Services;
 - iv. required consistency for technical requirements; or
 - v. it is in the City's best interest to shorten the delivery date because time is a major factor.
- c. Professional Services.
- d. Emergency purchases.
- e. Competition is determined inadequate by the City Manager after completing one Solicitation.
- f. Fine art.

VIII. Managing Contracts

- a. The City's Contract forms that are pre-approved by the City Attorney's Office shall be used unless otherwise approved by the City Attorney's Office.
- b. The department receiving Goods or Services will administer the Contract and oversee Vendor performance.
- c. Contract Modifications must be in writing and are subject to the limits and restrictions in this Policy. Verbal Contract Modifications are only acceptable during an Emergency if authorized by the City Manager. Emergency verbal Contract Modifications must be memorialized as a written amendment to the Contract as soon as practical. The procedures for authorization and signature authority set forth in Section VI of this Policy are controlling.

IX. Invitation for Bid (IFB); Request for Proposal (RFP); and Request for Qualifications (RFQ)

The IFB/RFP processes shall include Solicitation of Bids using the City's Bidnet Direct platform. The IFB/RFP shall include a pre-determined list of evaluation factors to use as consideration for making an Award. An IFB/RFP does not bind the City to accept a Bid when, in the City's sole discretion, the City determines not to do so. The City may also allow, at the City's sole discretion, a Contractor responding to an IFB/RFP to amend or supplement the Contractor's Bid.

The RFQ process is discretionary and includes the pre-qualification of Contractors when it is considered impractical to initially prepare a purchase description to support an Award based on price, prior to the issuance of Solicitation documents.

The City reserves the right to undertake its own investigation to evaluate a Contractor. An Award shall be determined by evaluation factors such as the most qualified Supplier, experience, product quality, and price. The City has the sole discretion to accept or reject any or all Bids, to waive any information or irregularities in said Bids, or to abandon the IFB/RFP and Bid. The City may enter into negotiations with any one or more Contractors and may negotiate changes in the scope of work or services to be provided.

APPENDIX A

Procurement Policies and Procedures for Federally Funded Programs

Reference: Code of Federal Regulations (CFR), Title II, Sections 200.318

through 200.327

Citation: 2 CFR 200.318 – 200.327

1. Purpose of procurement standards. These standards establish procedures for City of Cherry Hills Village (“City”) procurement of supplies and other expendable property, equipment, and services utilizing federal funds. All departments and operations of the City expending federal grant monies shall adhere to these standards, as follows, as they may be amended or supplemented over time. **THE STANDARDS, PROCEDURES AND ALL THRESHOLD AMOUNTS IN THIS APPENDIX A ARE DEEMED AUTOMATICALLY AMENDED AND UPDATED TO CONFORM TO CURRENT FEDERAL REQUIREMENTS. IF THE FEDERAL GOVERNMENT REGULATIONS THAT GOVERN PROCUREMENT POLICIES AND PROCEDURES FOR FEDERALLY FUNDED PROGRAMS OR FOR PROCUREMENTS MADE WITH FEDERAL FUNDS ARE AMENDED OR SUPPLEMENTED AFTER THE DATE THE CITY’S PURCHASING POLICY IS ADOPTED, CITY STAFF IS RESPONSIBLE FOR CONFIRMING THE CURRENT FEDERAL REQUIREMENTS.**

2. Code of conduct. No employee, officer, or agent shall participate in the selection, award, or administration of a contract or purchase order if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the entity selected for an award. The officers, employees, and agents of the City shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to sub agreements. Members of the City Council shall comply with all relevant fiduciary duties, including those governing conflicts of interest, when they vote upon matters related to procurement contracts in which they have a direct or indirect financial or personal interest. Officers, employees, directors, and agents of the City shall be subject to disciplinary actions for violations of these standards. This code of conduct supplements the City’s Official Code of Ethics (“Ethics Code”). The City’s Ethics Code controls if there is a conflict between this code of conduct and the Ethics Code.

3. Competition. Procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The City shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft Specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the City, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be

evaluated by the City. All bids or offers may be rejected when it is in the City's interest to do so. In all procurement, the City shall avoid practices that are restrictive of competition. These include but are not limited to:

- (a) Placing unreasonable requirements on firms in order for them to qualify to do business
- (b) Requiring unnecessary experience and excessive bonding;
- (c) Noncompetitive pricing practices between firms or between affiliated companies;
- (d) Noncompetitive awards to consultants that are on retainer contracts;
- (e) Organizational conflicts of interest;
- (f) Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement; and
- (g) Any arbitrary action in the procurement process.

4. Methods of Procurement to be followed.

- (a) Procurement by Micro-purchases. Micro-purchase is the acquisition of supplies or services under \$10,000. To the extent practicable, the City must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotes if the City considers the price to be reasonable.
- (b) Procurement by Small Purchase Procedures. Small purchase procedures are relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than \$250,000 (as of October 1, 2020). If small purchase procedures are used, price or rate quotes must be obtained from an adequate number of qualified sources.
- (c) Procurement by Sealed Bids (formal advertising). Bids are publicly solicited, and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.
 - (1) In order for sealed bidding to be feasible, the following conditions should be present:
 - (i) A complete, adequate, and realistic Specification or purchase description is available;
 - (ii) Two or more responsible bidders are willing and able to compete effectively for the business; and
 - (iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

- (i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for state, local and tribal governments, the invitation for bids must be publicly advertised;
- (ii) The invitation for bids, which will include any Specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- (iv) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
- (v) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- (v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by Competitive Proposals. Competitive proposals are normally conducted with more than one source submitting an offer, and either a fixed price or cost- reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- (1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical.
- (2) Proposals must be solicited from an adequate number of qualified sources;
- (3) The City agency must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
- (4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- (5) The City must use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be

used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(e) Procurement by Noncompetitive Proposals. Procurement by non-competitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- (1) The item is available only from a single source;
- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the City; or
- (4) After solicitation of a number of sources, competition is determined inadequate.

5. Procurement procedures.

(a) All procurement by the City shall comply, at a minimum, with the requirements of subsections (i), (ii), and (iii) below:

- (i) the City avoids purchasing unnecessary items.
- (ii) Where appropriate, an analysis is made of lease versus purchase alternatives to determine which would be the most economical and practical procurement.
- (iii) Solicitations for goods and services provide for all of the following.
 - (A) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.
 - (B) Requirements which must be fulfilled and all other factors to be used in evaluating proposal submitted in response to solicitations.
 - (C) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.
 - (D) When relevant, the specific features of "brand name or equal" descriptions that are to be included in responses submitted to solicitation.

- (E) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.
- (F) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) All necessary affirmative steps shall be made by the City to utilize small businesses, minority-owned firms, women's business enterprises, and labor surplus area firms, whenever possible. The City shall take all of the following steps to further this goal.

- (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (iii) Dividing total requirements, when economically feasible, into smaller tasks or any quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
- (iv) Establishing delivery schedules, where the requirements permit, which encourage participation by small and minority businesses, and women's business enterprises;
- (v) Using the services and assistance, as appropriate, of such organizations as the Small Business Development Agency of the Department of Commerce; and
- (vii) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (i) through (v) of this section.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the City but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a- percentage-of- cost" or "percentage of construction cost" methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.

(e) Debarment and Suspension - No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal

Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

- (f) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.
- (g) Debarment and Suspension - No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-procurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees. Contractors with multiple year contracts will be checked against the GSA list at each renewal time.
- (h) To foster greater economy and efficiency, and in accordance with efforts to promote cost- effective use of shared services across the Federal Government, the City is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
- (i) The City is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- (j) The City is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
- (k) The City must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the City must not preclude potential bidders from qualifying during the solicitation period.

6. Procurement of Facilities or Land Special Requirements. There are no proposals expected for this activity. If such an activity is proposed in the future this section will be updated prior to any such procurement.

7. Cost and price analysis. Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action in excess of the Simplified Acquisition Threshold (48 CFR Subpart 2.1) as Adjusted and currently at

\$250,000. Price analysis may be accomplished in various ways, including the comparison of price quotes submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

8. Procurement records - Procurement records and files for purchases in excess of the Micro purchase threshold as fixed at 48 CFR Subpart 2.1 (currently \$10,000) shall include the following at a minimum: (a) basis for contractor selection, (b) justification for lack of competition when competitive bids or offers are not obtained, and (c) basis for award cost or price.

9. Contract administration. A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and Specifications of the contract and to ensure adequate and timely follow up of all purchases. The City shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and Specifications of the contract.

10. Contract provisions. The City shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

- (a) Contracts more than the Simplified Acquisition Threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms and provide for such remedial actions as may be appropriate.
- (b) All contracts in excess of the Simplified Acquisition Threshold shall contain suitable provisions for termination by the City, including the manner by which termination shall be affected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
- (c) For contracts dealing with construction or facility improvements the City shall comply with all requirements imposed by its funding sources (and the government regulations applicable to those funding sources) with regard to construction bid guarantees, performance bonds, and payment bonds.
- (d) All negotiated contracts (except those for less than the Simplified Acquisition Threshold) awarded by the City shall include a provision to the effect that the City shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.
- (e) All contracts, including small purchases, awarded by the City and their contractors where the source of the funds, directly or indirectly, is the federal government, shall contain the following procurement provisions as applicable.
 - (i) Equal Employment Opportunity - All contracts, when funded in whole or part by monies derived from the Federal government (either directly or indirectly), shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment

Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

- (ii) Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c) - All contracts in excess of \$2000 for construction or repair, when funded in whole or part by monies derived from the Federal government (either directly or indirectly) shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or sub recipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.
- (iii) Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7) - **When required by Federal program legislation**, all construction contracts awarded by the recipients and sub recipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.
- (iv) 'Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) - All contracts in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers, when funded in whole or part by monies derived from the Federal government (either directly or indirectly), shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5).
- (v) 'Rights to Inventions Made Under a Contract or Agreement - Contracts or agreements for the performance of experimental, developmental, or research work, when funded in whole or part by monies derived from the Federal government (either directly or indirectly), shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government

Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

- (vi) Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended - Contracts and sub grants of amounts in excess of \$100,000, when funded in whole or part by monies derived from the Federal government (either directly or indirectly), shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (vii) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contacts for an amount above \$100,000, when funded in whole or part by monies derived from the Federal government (either directly or indirectly), shall include a certification by the contracting parties that they have not and will not use Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. and to further require disclosure of any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.
- (viii) Third party contracting requirements (FTA Circular 4220.1F) - This circular sets forth the requirements a grantee (CITY) must adhere to in the solicitation, award and administration of its third-party contracts. Provisions of this circular will be added to all operating contracts utilizing formula funds for operating assistance. formula funds for operating assistance.