

HILDALE CITY PROCUREMENT POLICY

Adopted on _____, 2021

ARTICLE I GENERAL PROVISIONS

A) **Scope and General Provisions.**

- 1) This Hildale City Procurement Policy (the “Policy”) is established pursuant to Sections 10-6-122 and 63G-6a-107.7 of the Utah Code, as amended, and shall apply to every purchase or encumbrance thereof from the general or special funds of Hildale City (the “City”), except the acquisition or disposal of real property or an interest in real property.
- 2) If any provision of this Policy conflicts with the Utah Procurement Code, found at Title 63G, Chapter 6a of the Utah Code (the “Code”), the provisions of the Code shall govern.
- 3) The purpose of this Policy is to ensure that goods and services are procured in a manner that ensures fair and equitable treatment while also ensuring that the City receives the best possible goods or services at the lowest possible price.
- 4) No purchase shall be made and no encumbrance shall be incurred unless sufficient appropriated funds are available within the approved budget, except in cases of emergency as provided by law.
- 5) The City reserves the right to cancel any invitation for bids, request for proposals, or other solicitations, in whole or in part, for any reason in its sole discretion. No vendor shall have any right or claim, legal or equitable, against the City for any expense or cost incurred by them in the preparation or submission of a response to a solicitation, or for the loss of profits.
- 6) The City reserves the right to waive minor or slight irregularities in a solicitation response or to amend, modify or waive any provision in a solicitation if the Procurement Official determines that doing so is in the best interest of the City.
- 7) This Policy shall not prevent the City from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.
- 8) When a procurement involves the expenditure of federal assistance funds, the City shall comply with applicable federal law and regulations.

B) **Definitions.** The following definitions together with those found in the Code at Section 63G-6a-103 shall apply to the interpretation of this Policy.

- 1) "Construction project" means a project for the construction, renovation, alteration, improvement, or repair of a public facility on real property, including all services, labor, supplies, and materials for the project, and does not include services and supplies for the routine, day-to-day operation, repair, or maintenance of an existing public facility

- 2) "Contract" means any agreement by the City for procurement of goods and/or services.
- 3) "Invitation for Bids" means a document used to solicit bids for a procurement, and includes all documents attached or incorporated by reference thereto.
- 4) "Procurement" means buying, purchasing, renting, leasing, leasing with an option to purchase, or otherwise acquiring any goods, services, or construction.
- 5) "Procurement Official" means the person duly appointed by the City Council pursuant to Article II of this Policy.
- 6) "Professional Services" means labor, effort, or work that requires specialized knowledge, expertise, and discretion, including in the field of:
 - (a) accounting;
 - (b) administrative law judge service;
 - (c) architecture;
 - (d) construction design and management;
 - (e) engineering;
 - (f) financial services;
 - (g) information technology;
 - (h) the law;
 - (i) medicine;
 - (j) psychiatry; or
 - (k) underwriting.
- 7) "Request for proposals" means a document used to solicit proposals for a procurement, and includes all documents attached or incorporated by reference thereto.
- 8) "Standard procurement process" means:
 - (a) the invitation for bids process;
 - (b) the request for proposals process; or
 - (c) the small purchase process.
- 9) "Vendor" means a person who is seeking to enter into a contract with the City to provide a procurement item.

ARTICLE II
THE PROCUREMENT OFFICIAL

A) The City Manager is hereby appointed and designated as the City's Procurement Official. The Procurement Official shall be authorized and responsible to manage and supervise procurements, review contracts, coordinate contract compliance, conduct contract audits, approve change orders, resolve contract disputes in coordination with the City Attorney, and to make written determinations for the City, subject to the limitations imposed by this Policy. Any of the aforementioned duties and authorities and all others set forth under this Policy may be delegated by the Procurement Official to another City employee as appropriate.

B) Notwithstanding the authority granted the Procurement Official under this article, and subject to the exceptions set forth in article III herein, the Procurement Official shall seek authorization from the City Council prior to undertaking any standard procurement process for goods or services costing \$5,000 or more, and prior to approving any change order that will increase the cost of a contract previously approved by the Council by more than 10%. When the lowest or best bid, proposal or quote received in response to a solicitation unexpectedly exceeds the \$5,000 threshold provided for in this section, the Procurement Official shall to the extent practicable seek authorization from the City Council prior to awarding the contract, or if doing so would not be practicable then the Procurement Official shall notify the Council promptly after awarding the contract and shall condition the award upon receiving Council ratification thereafter.

C) The Procurement Official is authorized to sign all written contracts on behalf of the City, except that contracts approved by the City Council under section B of this article shall be signed by the Mayor.

ARTICLE III
EXCEPTIONS TO PURCHASING PROCEDURES

A) In appropriate circumstances, the Procurement Official may elect to procure a good or service without conducting a standard procurement process under this Policy. Before or, if necessary, promptly after undertaking such a procurement, the Procurement Official shall document the circumstances and any steps taken to ensure the procurement is made with as much competition as reasonably practicable under the circumstances in writing. Such circumstances will generally include:

- 1) When purchasing through the cooperative purchasing contracts administered by the State Division of Purchasing and General Services pursuant to Utah Code 63G-6a-2105, or other governmental entity which has applied its purchasing and procurement policies.
- 2) When after conducting a good faith review of available sources, the Procurement Official determines that no other sources are reasonably available, or that a competitive solicitation would be unlikely to produce other acceptable offers.
- 3) When necessary to avoid a lapse in a critical government service, to mitigate a circumstance that is likely to have a negative impact on public health, safety, welfare, or property, including a natural disaster, or to protect the legal interests of a public entity.

- 4) When purchasing at a public auction, closeout sale, bankruptcy sale or similar sale, if the Procurement Official determines that doing the cost is reasonably likely to be significantly below the market cost in the community.

ARTICLE IV INVITATION FOR BIDS PROCEDURES

- A) The invitation for bid process shall be used for all procurements except as otherwise provided under this Policy.
- B) When soliciting a procurement through an invitation for bids, the invitation for bids shall reasonably describe the goods and/or services being procured, any terms and conditions that will be required, the requirements for submitting a bid, and the time and place of the bid opening. Public notice of the procurement shall be given at least 14 calendar days prior to the advertised date of the opening of the bids.
- C) Bidders shall be permitted to correct bids at any time prior to bid opening, if to correct an immaterial error in a manner that does not prejudice the City or other bidders.
- D) Bids shall be opened publicly at the time and place advertised in the presence of one or more witnesses. The amount of each bid and any other relevant information, together with the name of each bidder, shall be tabulated. The bid tabulation and each bid shall be open to public inspection.
- E) The contract shall be awarded to the lowest responsible bidder whose bid meets the requirements set forth in the invitation for bids. Bids shall not be altered in any way after bid opening except as authorized in this Policy. Tie bids shall be resolved in any fair manner appointed in writing by the Procurement Official.
- F) Bidders shall be permitted to change bids after bid opening, before or after award, provided the changes shall not be prejudicial to the interest of the City or inconsistent with fair competition, and any such changes and the reasons therefor shall be documented in writing.

ARTICLE V REQUEST FOR PROPOSALS PROCEDURES

- A) The request for proposals process should be used when there may be a need for price and service negotiations, when the skill and expertise of the respondent needs to be evaluated, when costs are secondary to the product or service sought and when subjective elements as quality, warranty, experience, etc. are more important than awarding to the lowest cost vendor who meets minimum requirements.
- B) When soliciting a procurement through a request for proposals, the request for proposals shall reasonably describe the goods and/or services being procured, on what basis proposals will be evaluated, any terms and conditions that will be required, the requirements for submitting a proposal, and the date when proposals will be opened. Public notice of the request for proposals shall be given at least 14 calendar days prior to the advertised date of the opening of the proposals.
- C) Proposals shall be opened on the appointed date outside outside the presence of the respondents or any other third parties, so as to avoid disclosure of their contents.

D) An evaluation committee consisting of at least three members shall evaluate proposals received in accordance with the process described in the request for proposals. Unless expressly permitted in writing by the Procurement Official, the evaluation committee shall not have access to any information relating to the cost of a proposal prior to submitting its recommendation to the Procurement Official. A summary of the proposals and their relative scores shall be prepared and shall be open for public inspection after contract award.

E) The contract shall be awarded to the respondent whose proposal is determined by the Procurement Official in writing by to be the most advantageous to the City, taking into consideration the evaluation factors set forth in the request for proposals including cost, if applicable.

ARTICLE VI SMALL PURCHASE PROCEDURES

A) The small purchase process may be used when the cost for the goods and/or services is known or reasonably anticipated to be at or below the following thresholds:

- 1) For any procurement other than for professional services or construction projects, \$5,000 in a single procurement, up to an aggregate limit of \$50,000 from a single vendor in a fiscal year. Purchases shall not be artificially divided so as to constitute a small purchase under this section.
- 2) For professional services, including design professional services, up to \$50,000 from a single provider in a fiscal year.
- 3) For construction projects, up to \$50,000 from a single contractor in a fiscal year.

B) Procurements costing no more than \$5,000 in a single transaction may be awarded on the basis of quality and cost without conducting an invitation for bids or any other standard procurement process. For construction projects, the Procurement Official shall ensure that all building code approvals, licensing requirements, permitting and other construction related requirements are met.

C) Procurements for professional services costing more than \$5,000 and no more than \$50,000 in a fiscal year may be awarded by direct negotiation after reviewing the qualifications of a minimum of three professional service providers or consultants.

D) Procurements for construction projects costing more than \$5,000 and no more than \$50,000 in a fiscal year may be awarded after obtaining a minimum of two competitive quotes that include minimum specifications, to the contractor with the lowest quote that meets the specifications. The Procurement Official shall document in writing that all applicable building code approvals, licensing requirements, permitting and other construction related requirements are met.

E) Nothing in this article shall be interpreted to preclude the Procurement Official from conducting a procurement by any other standard procurement process, as the Procurement Official may deem appropriate.

F) In the event that a previously awarded procurement becomes reasonably certain to exceed the applicable annual threshold established under section A of this article, no further expenditures or encumbrances shall be incurred from that vendor until after an invitation for bid or other standard

procurement process has been conducted, subject to the exceptions set forth in article III herein, unless authorized by the City Council after finding just cause to exceed the threshold.

**ARTICLE VII
PURCHASE ORDERS**

- A) Any purchase of goods greater than \$250 in a single transaction shall require purchase order approval prior to incurring the expense.
- B) Prior to submitting a purchase order for approval, the department head or their designee shall review the applicable budget to ensure that budgeted funds are available for the expenditure. Purchase orders shall be fully completed, leaving the P.O. number blank, and submitted to the Accounting Department.
- C) The City Recorder or their designee shall approve the purchase order after reviewing it to verify completeness and accuracy and that budgeted funds are available for the expenditure. After approval, the Accounting Department shall notify departmental staff and provide a P.O. number.

**ARTICLE VIII
APPEALS**

- A) Any procurement decision, including the contents of a solicitation and whether to award a contract, may be appealed to the Procurement Official. Any appeal shall be submitted in writing by the date of the bid opening or proposal deadline if applicable, or seven calendar days after the aggrieved person knows or should know the facts giving rise to the appeal, whichever is later, and shall include the appellant's mailing and email addresses and a concise statement of the facts and evidence.
- B) The Procurement Official may hold a hearing on the appeal if necessary to resolve genuine issues of material fact or law. The Procurement Official shall promptly issue a written decision regarding the appeal, if not settled by mutual agreement. The decision shall state the reasons for the action taken and inform the appellant of the right to further appeal to the City Council or to the Utah Court of Appeals pursuant to Title 63G, Chapter 6a, Part 18 of the Utah Code.
- C) Any decision of the Procurement Official on an appeal may be appealed to the City Council. Any appeal shall be submitted in writing within seven calendar days after the appellant receives the Procurement Official's decision. The City Council shall be the final appeal authority.

**ARTICLE IX
ETHICS IN PUBLIC CONTRACTING**

- A) No person involved in making procurement decisions shall:
 - 1) have a personal interest in any business entity or venture which will create a substantial conflict between their private interests and their public duties;
 - 2) receive any compensation or gift from any vendor; or

3) have any other conflict of interest prohibited by law.

B) All persons involved in making procurement decisions are responsible for reviewing and complying with the Utah Public Officers' and Employees' Ethics Act.