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PURCHASING POLICY

City of Joshua, Texas

Effective December 21, 2023

STATEMENT OF GENERAL POLICY

It is the policy of the City of Joshua that all purchasing shall be conducted strictly on the basis of economic and business merit. This policy is intended to promote the best interest of the citizens of the City of Joshua, Texas.

It is important to remember that City purchasing operates in full view of the public. In order to assure an open purchasing process and economy in purchasing, the Joshua City Council has determined that competitive bidding will be used as much as possible in the purchase of goods and services for the City. The Council proudly supports both local businesses and employers who decide to move their operations into the City. That is why Council supports a 'buy local' procurement policy, providing ongoing benefits to families by keeping jobs and profits in the City and the local economy prosperous and competitive. The City of Joshua intends to maintain a cost-effective purchasing system conforming to good management practices. To be successful, the system must be backed by proper attitudes and cooperation of not only every department head and official but also every supervisor and employee of the City of Joshua. The establishment and maintenance of a good purchasing system are possible only through cooperative effort.

The purchasing process is not instantaneous. Time is required to complete the steps required by State law. In order to accomplish timely purchasing of products and services at the least cost to the City of Joshua, all departments must cooperate fully. Prior planning and the timely submission of documentation essential to expedite the purchasing process will assure the process is orderly and lawful.

PURCHASING POLICY GOVERNING

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GOVERNING AUTHORITY

The primary governing authority for the City of Joshua's Purchasing Policy shall be the City's Charter in conjunction with Local Government Code Chapter 252, "PURCHASING AND CONTRACTING AUTHORITY OF MUNICIPALITIES". All procurement activity administered by the City of Joshua shall be governed by the Purchasing Policy, in accordance with applicable state and local legal authority. The Mayor and Council shall from time to time review the Purchasing Policy.

PURPOSE AND SCOPE

The Purchasing Policy applies to the procurement activities in all funds of the City of Joshua. All procurement activities for the City shall be administered by the provisions of this policy, with the express intent to promote open and fair conduct in all aspects of the procurement process.

OBJECTIVES

The Finance Department, in coordination with the City Manager, is responsible for ensuring that City departments comply with federal, state, and local statutes regulating competitive sealed bids, competitive sealed proposals, professional services, high technology purchases, cooperative purchases, and emergency and sole-source purchases. The Finance Department may solicit for competitive procurements as required by law, evaluate bids and proposals, and make recommendations to the City Manager. The City Manager will present staff recommendations to the Mayor and City Council for awarding of contracts as needed.

The Finance Department is a functional support department and should be included in all states of acquisition, through planning, ordering, and receiving. This is to ensure compliance with the State of Texas competitive bid statutes and the City's purchasing policies.

The City of Joshua is committed to providing quality service through effective teamwork and communication with City departments and vendors alike, in order to fulfill the purchasing needs of the City in a professional, responsive, and timely manner in compliance with all City policies and applicable federal, state, and local purchasing laws. Public purchasing has the responsibility to obtain the most value for the tax dollar in a fair, efficient, and equitable manner. To achieve this objective the City seeks to foster as much competition as possible. In doing so, we adopt the goal of fairness by ensuring all who wish to compete for the opportunity to sell to the City of Joshua can do so. Our policy is intended to:

1. Give all suppliers full, fair, prompt, and courteous consideration;
2. Encourage open and fair competition;
3. Solicit supplier suggestions in the determination of clear and adequate specifications and standards;
4. Cooperate with suppliers and consider possible difficulties they may encounter; and
5. Observe strict truthfulness and the highest ethics in all transactions and correspondence.

General Duties of the Finance Department

1. Observe and enforce the policy and procedures outlined in the Purchasing Policy, in accordance with applicable state and local legal authority or as directed by the City Manager or designee;

2. Act as an advisor and assist in the formulation of policies and procedures connected with the purchasing activities of the City;
3. Investigate and analyze research done in the field of purchasing by other governmental agencies and by private industry, in an effort to keep abreast of current developments in the fields of purchasing, price, market conditions, and new products;
4. Coordinate, organize, and assist departments in the specification writing process to ensure that specifications are written concisely and are not written exclusively;
5. Join with other governmental agencies in cooperative purchasing plans when it is in the best interest of the City;
6. Receive, open, and evaluate city-wide competitive solicitations;
7. Act in an advisory role as a member on evaluation committees as recommended by the City Manager or requested by the department head;
8. Prepare and coordinate with user departments staff reports recommending the award of competitive solicitations for City Council approval;
9. Combine purchases of similar items whenever possible and practical, to allow for better pricing and establish a more competitive atmosphere;
10. Conduct regular training sessions for employees involved in the purchasing process.

CODE OF ETHICS

By participating in the procurement process, employees of the City of Joshua agree to:

- Avoid the intent and appearance of unethical or compromising practice in relationships, actions, and communications.
- Demonstrate loyalty to the City of Joshua by diligently following the lawful instructions of the employer, using reasonable care, and only authority granted.
- Refrain from any private business or professional activity that would create a conflict between personal interests and the interest of the City of Joshua.
- Refrain from soliciting or accepting money, loans, credits, or prejudicial discounts, and the acceptance of gifts, entertainment, favors, or services from present or potential suppliers that might influence, or appear to influence purchasing decisions.
- Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether as payment for services or not; and never accept for himself or herself or for family members, favors or benefits under circumstance which might be construed by reasonable persons as influencing the performance of governmental duties.
- Engage in no business with the City of Joshua, directly or indirectly, which is inconsistent with the conscientious performance of governmental duties.
- Handle confidential or proprietary information belonging to employer or suppliers with due care and proper consideration of ethical and legal ramifications and governmental regulations.
- Never use any information gained confidentially in the performance of governmental duties as a means of making private profit.
- Promote positive supplier relationships through courtesy and impartiality in all phases of the purchasing cycle.
- Know and obey the letter and spirit of laws governing the purchasing function and remain alert to the legal ramifications of purchasing decisions.

- Expose corruption and fraud wherever discovered.
- Uphold these principles, ever conscious that public office is a public trust.

COMPETITIVE PURCHASING REQUIREMENTS

Under no circumstances shall split purchasing be used to facilitate sole source or less competitive contract awards, to avoid upper-level approval, or to avoid other applicable bidding requirements or City Council approval.

General Procedures for Purchases

- **Purchasing Cooperative:** Purchasing cooperatives may be used to satisfy the quote/bid requirements. The purchasing cooperative used must be on the City's list of approved purchasing cooperatives. The Finance Department will make available, via its departmental webpage, a current list of approved purchasing cooperatives.
- **Recurring Charges:** Recurring charges may not be placed on an individual's purchasing card. If a recurring charge is set up it must be coordinated through the Finance Department and set up on the Accounts Payable purchasing card.

Procedures for Purchases less than \$3,000

Purchases under \$3,000 may be made either through the Payment Request process or the City's purchasing card (P-card) program.

- **Payment Request Process:** The ordering department selects the vendor, orders and/or picks up the materials, submits a Payment Request Form (PRF) along with an invoice to the Finance Department for payment.
- **P-card Process:** The ordering department selects the vendor, orders and/or picks up the materials, pays via City-issued P-card. Refer to City's P-card program procedure for further explanation of the P-card program.

Procedures for Purchases of \$3,000 to \$50,000

All purchases from \$3,000 to \$50,000 will require approval by the department head and City Manager or designee prior to the Purchase Order being issued.

All purchases from \$3,000 to \$50,000 must be processed in accordance with the following procedure:

- Purchases totaling \$3,000 to \$50,000 must use the Purchase Order process and then the P-card process if there are no credit card processing fees.
- Purchases will require three or more quotes unless the purchase is made from an approved purchasing cooperative.
- Quotes received must be documented properly and included with the Purchase Order request.
- When the ordering department receives the Purchase Order from the Finance Department, the department then places the order and/or picks up the materials.
- After the ordering department receives an invoice, the department must submit the invoice with the Purchase Order to the Finance Department for payment processing.

Historically Underutilized Business - HUB'S

Local Government Code Chapter 252.0215 "COMPETITIVE BIDDING IN RELATION TO HISTORICALLY UNDERUTILIZED BUSINESS", states that a municipality, in making an expenditure of more than \$3,000 but less than \$50,000, shall contact at least two historically underutilized businesses on a rotating basis, based on information provided by the comptroller pursuant to Chapter 2161, Government Code. If the list fails to identify a historically underutilized business in the county in which the municipality is situated, the municipality is exempt from this section.

A "Historically Underutilized Business"...

- is a for-profit entity that has not exceeded the size standards prescribed by 34 TAC §20.23, and has its principal place of business in Texas, and;
- is at least 51% owned by an Asian Pacific American, Black American, Hispanic American, Native American, American woman, and/or Service-Disabled Veteran, who reside in Texas and actively participate in the control, operations, and management of the entity's affairs.

The Finance Department will make available, via its departmental webpage, a current list of Johnson County HUB's.

Purchases of more than \$50,000

Except as otherwise exempted by applicable state law, purchases with a total cost of more than \$50,000 must be processed as competitive solicitations (e.g., sealed bids, request for proposals, and requests for offers.) Local Government Code, Subchapter B, Section 252.021 defines the requirements for competitive bids.

Local Government Code, Section 252.062, states:

- (a) A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements of Section 252.021. An offense under this subsection is a Class B misdemeanor.
- (b) A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly violates Section 252.021, other than by conduct described by Subsection (a). An offense under this subsection is a Class B misdemeanor.
- (c) A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly violates this chapter, other than by conduct described by Subsection (a) or (b). An offense under this subsection is a Class C misdemeanor.

A conviction for any of these offenses may result in immediate removal from office or employment.

Award of Bid/Contract

The City Council shall approve award of contracts based on criteria deemed in the best interest of the City and in accordance with State law.

Local Government Code, Section 252.043, States, in part:

- If the competitive sealed bidding requirement applies to the contract for goods or services, the contract must be awarded to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the municipality.
- Before awarding a contract under this section, a municipality must indicate in the bid specifications and requirements that the contract may be awarded either to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the municipality.

After the City Council approves the award of a contract, a Purchase Order can be requested from the ordering department.

Change Orders

After the award of the contract, if circumstances change which will alter the scope of work, a change order may be issued to the contract that involves an increase or decrease to the scope of work or amount.

A change order is required if, after the contract has been executed, one or more of the following events occur:

- Changes in plans or specifications are necessary;
- It is necessary to increase or decrease the quantity of work of materials, equipment, or supplies to be furnished.
- Material changes in the scope, quantities, or related work may not be made. A material change is defined as substantial revisions.
- The City Manager may approve an aggregate of written change orders to a contract up to an amount that is the lesser of \$50,000 or 25% of the original contract amount. Written change orders of more than \$50,000 per contract or 25% of the original contract amount must be approved by the City Council. However, per Local Government Code 252.048(d), the sum of all approved change orders, regardless of amount, may not exceed 25% of the original, total contract amount. Any change greater than 25% will require a new solicitation.

Preference for Local Businesses Award of Bid/Contract

State law allows the City to provide a preference for local businesses when awarding bids in specifically authorized situations.

1. If two or more bidders have bids that are identical in nature and amount, with one bidder being a resident of the City and the other bidder or bidders being non-residents, the City Council must

select the resident bidder; unless there is a concern regarding the end product or service to be provided.

2. Another provision, geared towards purchases of tangible items, allows the consideration of a bidder's principal place of business when a City awards a contract. The statute states that:

"In purchasing under this title any real property or personal property that is not affixed to real property, if a local government receives one or more bids from a bidder whose principal place of business is in the local government and whose bid is within three percent (3%) of the lowest bid price received by the local government from a bidder who is not a resident of the local government, the local government may enter into a contract with [either]...the lowest bidder; or...the bidder whose principal place of business is in the local government if the governing body of the local government determines, in writing, that the local bidder offers the local government the best combination of the contract price and additional economic development opportunities for the local government created by the contract award, including the employment of residents of the local government and increased tax revenues to the local government."

3. A third provision authorizes cities that are purchasing real property, personal property not affixed to real property, or services (with the exception of certain telecommunications services) to enter into a contract with either: (1) the lowest bidder; or (2) a bidder whose principal place of business is in the City and whose bid is within five percent (5%) of the lowest bid price, if the governing body determines that the local bidder offers the City the best combination of the contract price and additional economic development opportunities, including the employment of residents of the local government and increased tax revenues. This is now limited to contracts for construction services for less than \$100,000.
4. Finally, cities must give a preference to local businesses if there are out-of-state bidders that have bid on the contract and the out-of-state bidder or manufacturer is located in a state that discriminates against out-of-state bidders in its bid awards in favor of local bidders.

Disclosure of Information

Access to bidder-declared trade secrets or confidential information shall be in accordance with the Government Code Chapter 552, the Public Information Act, and applicable City policies implementing this chapter.

Local Government Code Chapter 252.049(b) States:

If provided in a request for proposals, proposals shall be opened in a manner that avoids disclosure of the contents to competing offerors and keeps the proposals secret during negotiations. All proposals are open for public inspection after the contract is awarded, but trade secrets and confidential information in the proposals are not open for public inspection.

Disclosure of Interested Parties

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 to the Government Code. The law states that a governmental entity may not enter into certain contracts with a business entity unless the business entity submits a disclosure of “interested parties” at the time the business entity submits the signed contract to the governmental entity.

The Texas Ethics Commission has generated a Form 1295 which requires the disclosure of each “interested party” (as defined by the Ethics Commission Rules). The law applies to a contract of a governmental entity that either:

- (1) Requires an action or vote by the governing body of the entity before the contract may be signed (unless delegated—see Section 46.1 of the TEC Rules) or
- (2) Has a value of at least \$1 million.

Professional Services

Personal and professional services are exempted from the competitive bidding process and are procured through the use of Request for Qualifications (RFQ) documents. The Finance Department is available to consult with departments regarding the preparation of information; however, the presentation of technical and qualifications aspects of personal and/or professional services included in the RFQ documents is the sole responsibility of the requesting department.

Government Code Chapter 2254.003 States:

- (a) A governmental entity may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award:
 - (1) On the basis of demonstrated competence and qualifications to perform the services; and
 - (2) For a fair and reasonable price.
- (b) The professional fees under the contract may not exceed any maximum provided by law.

Government Code Chapter 2254.002 states “Professional Services” means services:

- (A) Within the scope of the practice, as defined by state law, of:
 - (i) Accounting;
 - (ii) Architecture;
 - (iii) Landscape architecture;
 - (iv) Land surveying;
 - (v) Medicine;
 - (vi) Optometry;

- (vii) Professional engineering;
- (viii) Real estate appraising; or
- (ix) Professional nursing; or

(B) Provided in connection with the professional employment or practice of a person who is licensed or registered as:

- (i) A certified public accountant;
- (ii) An architect;
- (iii) A landscape architect;
- (iv) A land surveyor;
- (v) A physician, including a surgeon;
- (vi) An optometrist;
- (vii) A professional engineer;
- (viii) A state-certified or state-licensed real estate appraiser; or
- (ix) A registered nurse.

Automated Information Systems

All requests for computer equipment, software, telecommunications, and related services or supplies should be submitted to the City Manager or designee for review and technical evaluation. Requests will be reviewed for compatibility with other hardware and software and will be compared to comparable alternatives.

Recommendations and comments will include but not be limited to:

- Additional costs incurred because of the purchase;
- Compatibility considerations;
- Cost-effectiveness of the request; and
- Alternatives that would effectively meet the users' needs.

No purchases for computer-related equipment or supplies are allowed without City Manager or designee approval.

Cooperative Purchases

Cooperative purchasing occurs when two or more governmental entities coordinate some or all purchasing efforts to reduce administrative costs, take advantage of quantity discounts, share specifications, and create a heightened awareness of legal requirements. Cooperative purchasing can occur through interlocal agreements, State contracts, piggybacking, and joint purchases.

The following types of cooperative purchases shall be taken advantage of when deemed to be in the City's best interest:

- Interlocal agreement purchases

- State contract purchases
- Piggybacking
- Joint purchases

Emergency Purchases

Valid emergencies are those that occur as a result of the breakdown of equipment which must be kept in operation to maintain the public's safety or health, or whose breakdown would result in the disruption of City operations. When this situation occurs, the department shall contact the City Manager or designee and conduct the procurement of supplies and services in accordance with applicable State codes.

The Texas Legislature exempted certain items from sealed bidding in the Local Government Code Section 252.022(a), including but not limited to:

- (1) a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality;
- (2) a procurement necessary to preserve or protect the public health or safety of the municipality's residents;
- (3) a procurement necessary because of unforeseen damage to public machinery, equipment, or other property;

Sole Source Purchases

Sole-source purchases are items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies as defined by Local Government Code. When a department has identified a specific item with unique features or characteristics essential and necessary to the requesting department and no alternate products are available, a detailed written justification must be provided to the City Manager in advance for review and approval.

Legal Definition

The Texas Legislature exempted certain items from sealed bidding in the Local Government Code Section 252.022(7), a procurement of items that are available from only one source, including:

- (A) Items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies;
- (B) Films, manuscripts, or books;
- (C) Gas, water, and other utility services;
- (D) Captive replacement parts or components for equipment;

(E) Books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and

(F) Management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits.

Recommendation to City Council

The City Manager or designee will present staff recommendations to the Mayor and City Council for awarding of bids and contracts.

LEGAL REQUIREMENTS

City Attorney Approval Requirements

The City Attorney shall review as requested all documents, contracts, and legal instruments in which the City may have an interest unless otherwise determined by the City Attorney. Equipment, materials, supplies, and service contracts bearing any special terms and conditions, other than administrative provisions, not previously approved by the City Attorney, shall be submitted for such approval and must receive approval prior to issuance.

Written agreements and contracts having been once approved by the City Attorney are considered to have been reviewed by the City Attorney for renewal or re-use purposes, unless substantial changes to the terms and conditions have been made.

Interlocal Cooperation

The Interlocal Cooperation Act, Chapter 791 of Government Code authorizes local governments to enter into cooperative purchasing agreements with other jurisdictions such as independent school districts and counties (Local Government Code 271, Subchapter F). Furthermore, the Local Government Code 271, Subchapter D provides for the extension of state contract prices/bids to participating local governments when the General Services Commissions considers it feasible.

Wherever possible, the City of Joshua shall attempt to make use of these interlocal cooperation provisions to meet State purchasing requirements. The City Manager shall have authority to sign interlocal agreements that do not require any expenditure in excess of \$50,000. Expenditures greater than \$50,000 must have approval of the City Council.

Prompt Payment Act

Chapter 2251 of the Government Code stipulates that the City shall pay all payments owed not later than 30 days after the goods or services are received, or the date that the invoice is received and approved, whichever is later. This act also requires that when payment is not made as required, the City shall automatically add interest to the payment at the rate of one percent per month.

Bonding

Chapter 2253 of the Government Code requires bonds for payment and performance of contracts on certain public works projects and sets the standards for when the bonds are required and the amount of the bond.

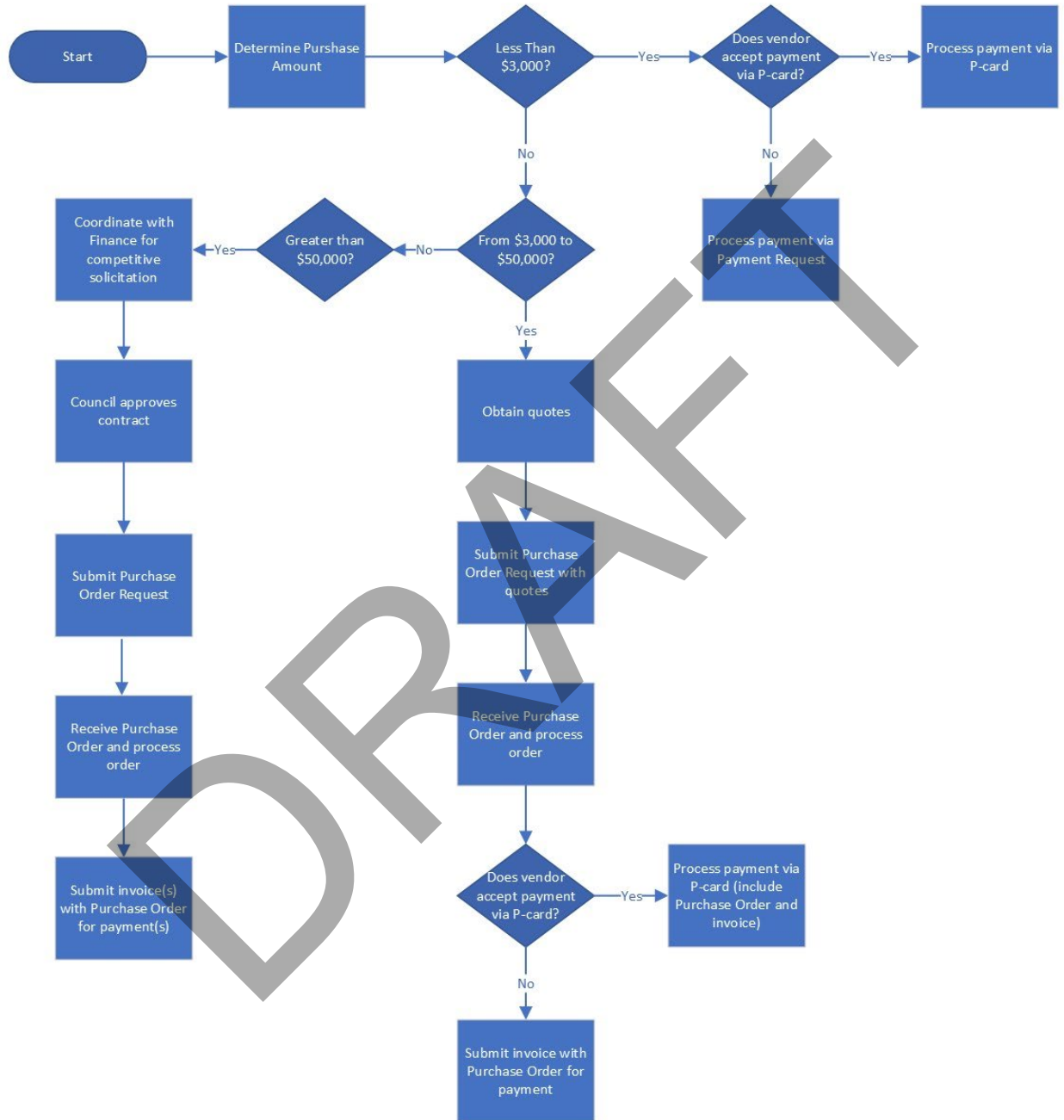
Professional Service Procurement Act

Chapter 2254 of the Government Code states that contracts for the procurement of defined professional services may not be awarded on the basis of bids. Instead, they must be awarded on the basis of demonstrated competence and qualifications, so long as the professional fees are consistent with, and not higher than the published recommended practices and fees of the various professional associations and do not exceed any maximums provided by the law.

Purchasing and Contracting Authority of Municipalities Authority

1. Local Government Code, Chapter 252 has the competitive bidding requirements and the exceptions to competitive bidding. It also provides that certain municipal charter provisions prevail over the statute. It covers areas such as awarding bids, time warrants, changes to plans and specifications, the alternative competitive proposal for goods and services, and criminal penalties for violation of the chapter.
2. Local Government Code, Chapter 271, Subchapter H governs the alternative delivery methods for certain projects. When entering into a contract for the construction of a facility, the City may use alternative methods that provide best value for the City. However, the City must, before advertising, first determine the method that provides best value.

Purchasing Process



Purchasing Policy Acknowledgement

I acknowledge that the Purchasing Policy is available on the Finance Department webpage of the City of Joshua website and understand that I am required to read and abide by the policy. I also understand that it is my responsibility to contact the Finance Department with any questions I may have regarding the policy.

Signature

Print Name

Date

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