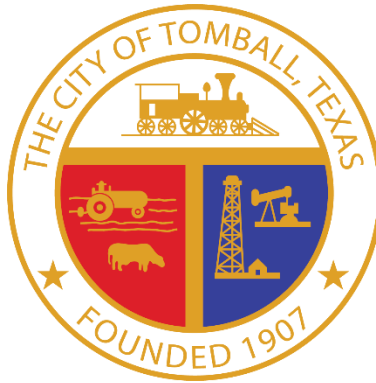


# **City of Tomball Procurement Policy & Manual**

**Finance Department  
501 James St., Tomball, TX 77375**

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Version 1.0

**Procurement Policy & Manual**  
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# **Procurement Policy and Manual**

## **ARTICLE 1: GENERAL INFORMATION**

### **1.1 INTRODUCTION**

The City of Tomball Procurement Policy (this “Policy”) is a guide to all those engaged in procurement at the City of Tomball. Updates to this Policy will be documented in **Table 1.2** below. This Policy is available at [www.tomballtx.gov](http://www.tomballtx.gov). If you are unable to find an answer to your question(s) or need additional information not found in this Policy, please contact the Finance Department.

This Policy provides guidance to facilitate the efficient and proper procurement of goods and services, including professional services and public works construction. This Policy guides employees on industry best practices, education, accountability, ethics, impartiality, professionalism, and transparency by:

- Ensuring compliance with local, state and federal laws applicable to procurement and contracting;
- Providing quality customer service to City departments, suppliers engaging with the City and citizens of the City community;
- Obtaining needed goods and services at the best possible price, of the highest quality and at the right time;
- Serving as stewards of the public trust by spending tax dollars wisely, efficiently, and with integrity;
- Providing all suppliers, including Historically Underutilized Businesses, equal access to the City’s competitive processes for the acquisition of goods and services;
- Protecting the interests of City taxpayers by avoiding any undue influence, political pressures and protecting the integrity of the procurement process.

In order to accomplish the above, the City and its customers must partner together to ensure the appropriate planning of needs, timely submission of information, proper execution of responsibilities, compliance with rules and regulations, and commitment to the highest standards of customer service. City officials, directors and employees of the City will strive to provide equitable and competitive access to the City’s procurement process for all responsible suppliers. Further, procurement will be conducted in a manner that promotes and fosters public confidence in the integrity of the City’s procurement process.

### **1.2 ADOPTION AND SUMMARY OF POLICY CHANGES**

This Policy was adopted by the City of Tomball City Council on October 3, 2022 and made effective on October 3, 2022. This Policy is reviewed annually for compliance with relevant laws and regulations or for needed updates. Amendments to this Policy are noted below.

<b>Table 1.2</b>		
<b>Summary of Policy Changes</b>		
<b>Amendment No.</b>	<b>Effective Date</b>	<b>Summary of Changes</b>
0	10/03/2022	Baseline policy adopted (Version 1.0)

### **1.3 LAWS AND STATUTES GOVERNING PROCUREMENT**

The City of Tomball is a home-rule city, operating pursuant to [Article 11, Section 5 of the Texas Constitution](#), state law, and the [City Charter](#). In determining procurement practices, the City is governed by applicable federal and state law, the [City Charter](#), [City ordinances](#), and industry best practices, supplemented by City Council resolutions and City policies and procedures.

State of Texas regulations most pertinent to this Policy include, but are not limited to, the Texas Local Government Code (“LGC”) and the Texas Government Code (“GC”). A summary of key applicable Texas regulations affecting procurement at the City is included as **Appendix A**. All applicable Texas regulations, regardless of whether specifically listed in **Appendix A** or within this Policy, shall govern and prevail unless specifically displaced by the particular provisions of this Policy or City Charter, ordinance, or resolution. Further, the principles of law and equity, including applicable provisions in the uniform commercial code of this state, the common law of contracts as applied to this state and law relative to agency, fraud, misrepresentation, duress, coercion, and mistake supplement the provisions of this Policy.

### **1.4 FEDERAL AND STATE REQUIREMENTS**

In addition to applicable Texas and local regulations, the City is bound to comply with various applicable federal and state regulations, depending on the funding source. When purchasing with federal or state grant funds, the Finance Department shall be responsible for verifying that the potential supplier is not on an excluded parties list. In no event shall any vendor be discriminated against on the basis of the vendor’s national origin, race, color, religion, disability, sex or familial status.

### **1.5 APPLICABILITY OF THIS POLICY**

This Policy shall apply to the following:

- Every City procurement except those specific procurements found to be exempt as outlined in **Section 1.6**.
  - Note: Certain procurements exempted from competitive bidding requirements may be required to follow additional procedures outlined in this Policy.
- Contracts where there is no expenditure of public monies or where the City is offering something of value to the business community when the City determines source selection and award of a contract.



## 1.6 GENERAL EXEMPTIONS TO THIS POLICY

[LGC 252.022](#) exempts the following from competitive bidding requirements:

- Emergency procurements, including:
  - A procurement made necessary 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.
  - A procurement necessary to preserve or protect the public health or safety of the municipality's residents.
  - A procurement necessary because of unforeseen damage to public machinery, equipment, or other property.
- A procurement for personal, professional (see **Article 8**), or planning services.
- A procurement for work that is performed and paid for by the day as the work progresses.
- A purchase of land or right-of-way.
- A procurement of items that are available from only one source (see **Section 6.11**), including:
  - Items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies.
  - Films, manuscripts, or books.
  - Gas, water, and other utility services.
  - Captive replace parts or components for equipment.
  - Books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials.
- 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;
- A purchase of rare books, papers, or other library materials for a public library.
- Paving drainage, street widening, and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements.
- A payment under a contract by which a developer participates in the construction of a public improvement as provided by [Subchapter C, Chapter 212, Municipal Regulation of Subdivisions and Property Development](#).
- Personal property sold:
  - At an auction by a state licenses auctioneer.
  - At a going out of business sale held in compliance with [Subchapter F, Chapter 17, Business and Commerce Code](#).
  - By a political subdivision of this state, a state agency of this state, or an entity of the federal government.
  - Under an interlocal contract for cooperative purchasing administered by a regional planning commission established under [LGC Chapter 391](#).
- Services performed by blind or severely disabled persons.
- Goods purchased by a municipality for subsequent retail sale by the municipality.
- Electricity.
- Advertising, other than legal notices.
- Bonds or warrants issued under [LGC Chapter 571, Subchapter A](#).

- Expenditures described by [LGC Chapter 252.021\(a\)](#) if the governing body of the municipality finds that a method described by [GC 2269](#) provides a better value for the municipality than the procedures described in [LGC Chapter 252](#).

## **1.7 PRECEDENTS AND INTERPRETATIONS**

In the event of any conflict with or need for interpretation with this Policy:

- If there is any conflict between this Policy and a state or federal law, or a rule adopted under a state or federal law, the stricter of the conflicting provisions prevails.
- The masculine, feminine, and neutral genders shall be interpreted to include the other genders as required. The singular and plural shall be interpreted to include the other numbers as required.
- Headings and titles at the beginning of the various sections of this Policy have been included only to make it easier to locate the subject matter covered by that section or subsection are not to be used in interpreting this Policy.

It is the responsibility of the Finance Director, in consultation with the City Attorney, to interpret this Policy. Any questions regarding the Finance Director's interpretation and/or application of this Policy may be addressed with the City Manager, who shall have final authority to resolve any question about any interpretation and/or application of this Policy, except where appeals to the City Council are allowed pursuant to this Policy.

## **1.8 REQUIREMENTS OF GOOD FAITH**

This Policy requires all parties involved in the negotiation, performance, or administration of City contracts to act in good faith.

## **1.9 CONFIDENTIAL INFORMATION**

Confidential or proprietary information shall be designated as follows:

- If a person believes that a bid, proposal, offer, specification, or protest contains information that should be withheld from public record, a statement advising the City of this fact should accompany the submission and the information shall be so identified in a clear and conspicuous manner, wherever it appears.
- Unless otherwise required by law, confidential or proprietary information will not be released until the contract is considered by Council for approval.
- Notwithstanding the above provisions, in the event records marked as confidential are requested under the [Texas Public Information Act \(GC 552\)](#) the City shall follow the Texas Public Information Act unless a protective order, injunctive relief, or other appropriate order from a court of competent jurisdiction, enjoins the release of the records.
- The City shall not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records marked confidential or proprietary. Nor shall

the City be in any way financially responsible for any costs associated with securing such an order.

- The City will follow [LGC 252.049](#) regarding confidentiality of information in bids or proposals.

## **1.10 DISCLOSURE OF CERTAIN RELATIONSHIPS BETWEEN CITY OFFICIALS AND VENDORS**

Vendors and local government officials must disclose certain relationships between each other to the City ([LGC 171](#) and [LGC 176](#)). The vendor and the official must file disclosure statements (Forms CIQ or CIS) if the vendor who is contracting or has contracted with the City has:

- A familial relationship with the official; and
- An employment or other business relationship with the official or a family member of the official that results in receiving more than \$2,500 of taxable income over a 12-month period; or
- Given the official or family member of the official one or more gifts that have an aggregate value over \$100 in the 12-month period preceding the date the official becomes aware of the contract or potential contract with the City ([LG 176](#)).

The official is not required to file a conflicts disclosure statement in relation to a gift accepted by the official or family member if the gift is a political contribution as defined by [Title 15 of the Texas Election Code](#) or food accepted as guest.

The official and vendor must file the conflicts disclosure statement with the City Secretary no later than 5:00 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing. A person commits a misdemeanor if the person knowingly violates [LGC 176.003](#). Disclosure statements shall be posted and publicly accessible on the City's website.

Vendors are also required to file disclosure statements for certain relationships and may be subject to other City policies which may be more restrictive than state requirements.

Additionally, a local government official must file an affidavit with the City Secretary disclosing any substantial interest of the official or any family member in a business entity prior to any vote or decision or any matter involving the business entity, and must abstain from any participation in the matter requiring the affidavit ([LGC 171](#)).

## **1.11 PURCHASE OF MATERIALS, EQUIPMENT, AND SUPPLIES FOR PERSONAL USE**

Employees of the City of Tomball cannot use the City's business accounts for personal purchases.

### **1.12 PROCUREMENT OF GOODS AND SERVICES FROM CITY EMPLOYEES AND/OR IMMEDIATE FAMILY MEMBERS**

It is the general policy of the City of Tomball to not enter into contracts for purchases for goods, services, professional services, or public works from employees of the City or members of their immediate family (any person related in the first degree of consanguinity or affinity as determined under [GC 573](#)). Exceptions can be reviewed on a case-by-case basis. Disclosure of this information must be made to the Finance Director, who, in conjunction with the City Manager, has authority to grant the exception. This section does not preclude the City from entering into contracts for purchases for goods, services, professional services, or public works from individuals previously employed by the City.

### **1.13 SEVERABILITY**

If any provision of this Policy or the application of a provision to any person or circumstance is held invalid by a court of competent jurisdiction, such holding shall not affect the validity of the remainder of this Policy and the application of its provisions to other persons and circumstances shall not be affected.

## **Procurement Manual**

### **ARTICLE 2: DEFINITIONS**

#### **2.1 Definitions**

Definitions not contained specifically within this Policy shall be defined per GC, LGC, or other applicable Texas statutes. Additional definitions are provided in subsequent Sections as needed.

**Advertisement/Notice/Public Notice** means to make a public announcement of the intention to procure goods, services, professional services, or public works.

**Alternative Delivery Method (ADM)** means a method of procuring construction services other than “traditional” competitive bidding. Methods include competitive sealed proposals, design-build, construction manager-agent, construction manager-at-risk, and job order.

**Amendment/Addendum** means a document used to change the provision of a Solicitation.

**Award** means the act of accepting a bid, proposal, or offer; thereby resulting in a contract between the City and a Supplier/Vendor.

**Best and Final Offer (“BAFO”)** means a negotiation technique in which an opportunity is extended to respondents in the RFP process to review their proposals and provide a best and final offer to the City. A BAFO may be sent to all firms, the top firms, or the highest ranked firm, depending on the procurement.

**Best Value** means a method of evaluating price that includes an evaluation based on the total life cycle cost of the item or service. Best value is the best and lowest overall life cycle cost proposal taking into consideration various factors depending on what is being procured.

**Bid** means an offer to contract with an entity, submitted in response to an Invitation for Bid or informal quote.

**Bid (formal)** means a bid that must be submitted in a sealed envelope and in conformance with a prescribed format, to be received and opened on a specific date and at a specific time.

**Bid (informal)** means an unsealed competitive offer conveyed by letter, telephone, email, or other means and under conditions different from those required for formal bidding.

**Bidder, Lowest Responsible** means the bidder submitting the lowest *initial* price and capable of performing the proposed contract as the “lowest and responsible” bid.

**Bidder, Responsible** means the bidder who has the capability in all respects to perform fully the contract requirements, and the experience, integrity, perseverance, reliability, capacity, facilities, equipment, and credit which will also assure good faith performance.

**Bidder, Responsive** means a bidder who has submitted a bid that fully conforms in all material respects to the Invitation for Bid (“IFB”) and all of its requirements, including all form and substance.

**Bidder, Non-resident** means a person whose principal place of business is NOT in the State of Texas, including a contractor whose ultimate parent company or majority owner does NOT have its principal place of business in the State of Texas.

**Bidder, Resident** means a person whose principal place of business is in the State of Texas, including a contractor whose ultimate parent company or majority owner has its principal place of business in the State of Texas.

**Blanket/Open Purchase Order** means a purchase order issued without unit pricing, limited to a specific amount. An open purchase order is normally used when there is a recurring need for incidental goods, and contains multiple purchases over a period of time.

**Bond, Bid** means a bond submitted with a bid guaranteeing the bidder will proceed with the contract and will replace the bid bond with a contract, performance bond, and/or payment bonds. The bid bond is an instrument used to stop low bidders from underbidding and then withdrawing their bid. A bid bond is not statutorily required but is generally used by the City on public works contracts.

**Bond, Maintenance** means a guarantee that there is no defect in workmanship and/or materials for a specific time period.

**Bond, Payment** means to protect beneficiaries who supply materials or labor to a public works project and have a direct contractual relationship with the contractor. A payment bond is required because materials suppliers and laborers do not enjoy the same lien rights on public projects as they do on private projects. The payment bond requirement essentially replaces the protections afforded by lien rights with protections guaranteed by a surety ([GC 2253](#)).

**Bond, Performance** means to secure the performance and fulfillment of all the undertakings, covenants, terms, conditions, and agreements contained in the contract specifications ([GC 2253](#)).

**Brand Name or Equivalent** means one or more manufacturers’ brand names, with identifying model numbers (or the like), used in a specification to invoke certain quality, performance, and other salient characteristics needed to meet the solicitation requirements.

**Change Order** means a change in plans or specifications after the performance of a contract has initiated, or if it is necessary to increase or decrease the quantity or price of work to be performed or materials, equipment, or supplies to be furnished ([LGC 252.048](#)).

**City** means the City of Tomball, Texas, including all departments, utilities, commissions, and boards comprising the City government.

**City Council** means the City Council of the City of Tomball, Texas.

**City Manager** means the City Manager of the City of Tomball, or the designee of the City Manager, when such designation is necessary and appropriate.

**Commodity** means a tangible item that can be offered for trade.

**Competitive Bidding** means the process that allows available vendors to compete with each other to provide goods or services. ([LGC 252](#); [GC 2269, Subchapter C](#)).

**Competitive Sealed Proposal Process** means the process that allows available vendors to compete with each other to provide goods and services and permits flexibility in product solicitation and negotiation in compliance with [LGC 252](#) or [GC 2269, Subchapter D](#).

**Component Purchases** means a purchase of the component parts of an item that in normal purchasing practices would be made in a single purchase ([LGC 252.062](#)).

**Construction** means the process of utilizing labor and material to build, alter, repair, improve, or demolish any structure, building, or public improvement. Construction does not general apply to routine maintenance, repair, or operation of existing real property.

**Contract** means a legal, binding mutual agreement obligating parties to terms and conditions as outlined. In terms of purchasing, a contract is an agreement in which a buyer and seller agree to specific terms regarding the exchange of goods and services, during a specific time period, at a specific delivery point, for a specific frequency, under specific terms and conditions, at a specific quantity, and/or at a stated price.

**Contract Amendment** means any written alteration in specifications, delivery point, frequency of delivery, period of performance, price, quantity, or other provisions of the contract, accomplished by mutual agreement of the parties to the contract.

**Cooperative Buying Agreement (“Cooperative Contract”, “COOP”, or “Piggyback Agreement”)** means competitively awarded contracts in accordance with Texas statutes, rules, policies, and procedures that have been extended for the use of other government agencies and active cooperative members. A cooperative buying agreement satisfies any state law requiring a local government to competitively source for goods or services. ([GC 791](#); [LGC 252.022\(12\)\(D\)](#)).

**Design-Build Contract** means a project delivery method by which the City contracts with a single entity to provide both the design and construction services for the construction, rehabilitation, alteration, or repair of a facility ([GC 2269, Subchapter G](#)).

**Design Criteria Package** means a set of documents that meets the requirements specified in [Texas Government Code, Chapter 2269, Subchapter G](#). The Design Criteria Package must provide sufficient information to permit a design-build firm to prepare a response to a City request for qualifications and to provide any additional information requested.

**Department** means all City funded departments or divisions, and subdivisions of them, when the purchases are funded even partially with City funds.

**Disaster** means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, extreme heat, other public calamity requiring emergency action, or energy emergency.

**Electronic Signature (“E-Signature”)** means an electronic symbol, text, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

**Emergency Purchase** means a purchase made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the City’s residents or to preserve the property of the City. Such a purchase would be deemed necessary to preserve or protect the public health or safety of the City’s residents and the City’s ability to serve its public would be impaired if purchases are not made immediately.

**Employee** means any City elected official, appointed official, or employee when the purchase is funded even partially with City funds or anyone who acts on behalf of any of them.

**Family** means any person related in the first degree of consanguinity or affinity as determined under [GC 573](#).

**Finance Director** means the Finance Director for the City of Tomball or a designee of the Finance Director. In the event that there is no individual serving as the Finance Director, references to the Finance Director shall mean the Assistant City Manager or a designee of the Assistant City Manager.

**Goods** means any personal property purchased by the City, including equipment, supplies, material, and component or repair parts.

**High Technology Item** means a service, equipment, or good of highly technical nature, including data processing equipment and software; telecommunications, radio, and microwave systems; electronic distributed control systems; and technical services related to those items ([LGC 252.001\(4\)](#) and [252.021\(b\)](#)).

**Historically Underutilized Business (“HUB”)** means a business that is at least 51% owned by an economically disadvantaged group (Asian Pacific American, Black American, Hispanic American, Native American, and/or American woman or veterans who suffered at least 20% service-connected disability), is a for-profit entity that has not exceeded the size standards prescribed by [34 TAC §20.294](#), has its principal place of business in Texas, and has an owner residing in Texas with a proportionate interest that actively participates in the control, operations, and management of the entity’s affairs. See addition information in [GC 2161](#), [34 TAC §20.282](#), and [LGC 252.0215](#).



**Invitation for Bid (“IFB”)** means a solicitation requesting submittal of a bid in response to the required specifications. IFBs are awarded to the lowest responsible bidder meeting the specifications. Price may not be altered or negotiated.

**Invitation for Bid, Best Value (“IFB-BV”)** means a solicitation requesting submittal of a bid in response to the required specifications. An IFB-BV is awarded to the bidder that meets the specifications and provides the best value to the City. Published evaluation criteria are used to determine the best value, which may not be the lowest cost. Price may not be altered or negotiated.

**Invoice** means the document provided by the supplier/vendor requesting payment for goods or services provided.

**Item** means any service, equipment, good, or other tangible or intangible personal property, including insurance and high technology items. This does not include professional services as defined by [GC 2254.002](#).

**Lease** means a contract for the use of real or personal property for a period of time in return for a specified compensation

**Life Cycle Cost** means the total cost associated with buying, owning, and using a physical product or service.

**Local Cooperative Organization** means an organization of governments established to provide local governments’ access to contracts with vendors for the purchase of materials, supplies, services, or equipment.

**Maintenance Services** means routine maintenance, repair, and replacement of existing facilities, structures, or buildings.

**NIGP Commodity/Service Codes** means the standardized national classification codes that identify goods and services.

**Negotiation** means a consensual bargaining process in which multiple parties attempt to reach an agreement on a disputed, or potentially disputed, matter.

**Offer** means a response to a solicitation that, if accepted, would bind the offeror to perform the resulting contract.

**Offeror** means a person or entity who submits a response to an RFP.

**Offeror, Responsible** means an offeror who has the capability in all respects to perform fully the contract requirements, and the experience, integrity, perseverance, reliability, capacity, facilities, equipment, and credit which will also assure good faith performance.

**Offeror, Responsive** means an offeror who has submitted a proposal that fully conforms in all material respects to the RFP and all of its requirements, including form and substance.

**Official** means any elected or appointed official and any person authorized to act on his or her behalf.

**Person** means an individual, corporation, partnership, limited partnership, Limited Liability Company, association, trust, or other legal entity.

**Personal Services** means those services other than professional services that are performed personally by the individual who contracted to perform them. Personal services are be exempt from the competitive bid process.

**Planning Services** means services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or municipal, county, metropolitan, or regional land areas.

**Pre-Bid/Proposal Conference** means a conference conducted by the City for the benefit of those wishing to submit a response for services or supplies required by the City which is held in order to allow vendors to ask questions about the proposed contract and particularly about the contract specifications.

**Preconstruction Services** means advice during the design phase and does not include manager-agent services.

**Procurement Card (“P-Card”)** means a credit card program for authorized purchases made by the City. See Procurement Card Program for additional information.

**Professional Services** means services performed by an individual or group of individuals who possess the education, professional certification, professional license, and/or professional registration required to perform the service. The service is usually based on intellectual qualifications as opposed to craftsmanship, involves a higher level of knowledge and a higher order or learning, skill, and intelligence. For purposes of [GC 2254](#), services within the scope of the practice, as defined by state law of: accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, professional nursing, or services provided with the professional employment or practice of a person who is licensed or registered as a certified public accounting, an architect, a landscape architect, a land surveyor, a physician (including a surgeon), an optometrist, a professional engineer, a state certified or state licensed real estate appraiser, interior designer, or a registered nurse.

**Proposal** means an offer submitted by a supplier in response to an RFP intended to be used as a basis to negotiate a contract.

**Proprietary Information** means information provided in responses to solicitations to which vendor claims ownership or exclusive rights and which may be protected from disclosure under the [Texas Public Information Act, GC 552](#).

**Public Works** means constructing, altering, or repairing a public building or the construction or completion of a public work.

**Purchase** means any kind of acquisition, including by a lease or revenue contract.

**Purchase Order** means a legal contract document for the delivery of goods or services in accordance with the terms of an agreement. A purchase order should include the quantity, price, and delivery instructions. All invoices generated by purchase orders shall be for the amounts stated on the purchase order.

**Qualified Products List** means an approved list of supplies, services, or construction items described by model or catalog numbers (or the like), which prior to competitive solicitation, the requesting City department has determined will meet the applicable specification requirements.

**Receiving Document** means a document provided by the supplier/vendor listing the items shipped and their quantity, often referred to as a packing slip.

**Reciprocal Law (in bid evaluation)** means if a nonresident bidder's home state grants a preference to its resident bidders, an equal penalty is added to the nonresident bidder's proposal when bidding in Texas. The action is opposite; a preference becomes a penalty, but the amount is equal. Texas law prohibits cities from awarding contracts to a non-resident firm unless the amount of such a bid is lower than the lowest bid by a Texas resident by the amount the Texas resident would be required to underbid in the non-resident bidder's state.

**Request for Information ("RFI")** means an information gathering tool used when a purchaser cannot clearly identify product requirements or specifications.

**Request for Proposal ("RFP")** means a solicitation requesting submittal of a proposal in response to the required scope of services that usually includes some form of a cost proposal. An RFP requires published evaluation criteria. Price may be negotiated with firms to ensure the best value for the organization.

**Request for Qualifications ("RFQ")** means a solicitation requesting a statement of qualifications from individuals or firms which demonstrates competence and qualifications for the type of professional services to be performed at fair and reasonable prices.

**Requisition** means a written request for a purchase order to be made.

**Respondent** means a person or entity which submits a response to a solicitation.

**Responsible** – See Bidder, Responsible or Offeror, Responsible.

**Responsive** – See Bidder, Responsive or Offeror, Responsive.

**Retainage** means the part of a public works contract payment withheld by the City to secure performance of the contract.

**Reverse Auction** means a real-time bidding procedure that is conducted at a pre-scheduled time and Internet location in which multiple suppliers, anonymous to each other, submit bids for designated goods and services ([GC 2155.062\(d\)](#); [LGC 252.021\(a\)\(2\)](#); [LGC 271.906](#)).

**Scope of Work (“SOW”)** means a written description of the contractual requirements for materials or services contained within an RFP. The SOW can be compared to specifications within an Invitation for Bid. The SOW should establish a clear understanding of what is needed, encourage competition, satisfy the departmental need, and provide the best value for the citizens.

**Sealed** means packaged in such a way that nothing can be added or removed.

**Separate Purchase** means separating purchases that normally would be made in a single purchase.

**Sequential Purchase** means making purchases over a period of time that normally would be made in a single purchase.

**Service** means intangible products such as banking, cleaning, consultancy, education, insurance, expertise, or transportation.

**Sole Source** means a good or service available from only one source. The procurement is usually protected by patents, copyrights, secret processes, natural monopolies, or captive replacement parts.

**Solicitation** means the process of notifying prospective vendors of an opportunity to provide goods or services to the City. Depending on circumstances, solicitations may be conducted via telephone, fax, email, mail, or in person.

**Specification** means any description of the physical, functional, or performance characteristics, or the nature of a supply, service, or construction item. A specification includes, as appropriate, a requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

**Specification, Brand Name** means a list of products or services by brand name, model, and/or other identifying specifics to limit the bidding to a single preferred product. Since this type of specification discourages competition, it should not be used unless the item is the only one that will satisfy the City’s requirement. This type of specification is typically used for purchasing replacement parts where only the brand name item will work.

**Specification, Combination** means a specification that includes elements of both design and performance. Some features of each are included to allow a vendor to use ingenuity to meet the performance needs of the City and also require certain necessary design characteristics.

**Specification, Design** means a specification that gives a detailed description of a good or service, including such things as details of construction or production, dimensions, chemical composition, physical properties, materials, ingredients, plus all other details needed by the provided to produce an item of minimum acceptability. Design specifications are usually required for construction projects, custom-produced items, and for many services.

**Specification, Performance** means specifications that are used when the goods and/or services are described in terms of required performance. They may include such details as required power, strength of material, test methods and standards of acceptability, and recommended practices.

**Statement of Work** means the statement outlining the specific services a contracted is expected to perform, generally indicating the type, level, and quality of service, as well as the time schedule required.

**Supplier/Vendor** means a seller of commodities and/or services.

## Procurement Manual

### ARTICLE 3: Organization, Authorization, and Responsibilities

#### 3.1 General Expenditure Approval Authority

City contracts, transactions, and expenditures require various levels of approval, dependent upon the total amount of a single transaction/expenditure and a cumulative purchase of goods or services from a particular vendor or in relation to a project.

The general contract/expenditure approval authorities are as follows:

Position	Single Transaction	Cumulative Transactions	Contract Authority
Department Director	May approve single transactions of up to \$5,000 without additional approvals	May approve cumulative transactions of up to \$5,000 with one vendor without additional approvals	No authority to execute contracts/agreements without necessary approvals (See 3.7)
Finance Director	May approve single transactions of up to \$10,000 without additional approvals	May approve cumulative transactions of up to \$10,000 with one vendor without additional approvals	No authority to execute contracts/agreements without necessary approvals (See 3.7)
City Manager	May approve single transactions of up to \$50,000 without additional approvals	May approve cumulative transactions of up to \$50,000 with one vendor without additional approvals	May approve contracts/agreements for service if the total not-to-exceed amount is less than \$50,000
City Council	Approval required for any single transaction of \$50,000 or greater	Approval required for cumulative transactions with one vendor of \$50,000 or greater	Approval required for contracts/agreements if total not-to-exceed amount is \$50,000 or greater

Regardless of the expenditure approval authority, all purchases must follow the appropriate procurement procedures. For example, while a Department Director can approve a single transaction of up to \$5,000, it is required that such expenditure meet any required approvals or procedures required by this Policy or state or federal law prior to such approval.

#### 3.2 Authority of Finance Director

In accordance with the City Charter, and by adoption of this Policy, the City Council delegates procurement authority to the Finance Director and the City Manager, or their respective designees. Except as otherwise precluded by state and local law or this Policy, the Finance Director shall

serve as the procurement and contracting authority of the City. The Finance Director shall have full authority to:

- Adopt operational procedures, consistent with this Policy, governing the procurement and management of all goods, services, professional services and public works, including any action that may be delegated by City Council under GC Chapter 2269;
- Procure or supervise the procurement of all goods, services, professional services and public works utilizing any procurement method or procedure as authorized by law;
- Determine which method of procurement provides the best value to the City;
- Utilize any procurement procedure or method for the construction or installation of any public work that is authorized by law;
- Establish guidelines for the management of all inventories of materials belonging to the City;
- Manage the disposal of materials belonging to the City, including the sale, trade or other method of disposal of surplus materials belonging to the City;
- Prepare, issue, revise, maintain, and monitor the use of specifications and scopes of work for goods, services, professional services and public works required by the City; and
- Delegate procurement authority to designees or to any department or official of the City.

The Finance Director may determine in writing that noncompliance with any provision of this Policy is non-substantial and may allow for correction or may waive minor informalities or irregularities. The basis for the decision shall be included in the determination.

### **3.3 Authority of City Manager**

Except as otherwise precluded by state and local law or this Policy, the City Manager shall have the authority to approve or execute:

- Purchases, contracts, and agreements in an amount not to exceed \$50,000, provided funds are budgeted therefore.
- Applications for Title and Tax Exemption Certificates.
- Cooperative purchasing agreements in an amount not to exceed \$50,000.
- Change orders which involve a decrease or increase of up to 25% or \$50,000, whichever is less, provided the total contract expenditure remains within the budgeted amount.
- Emergency purchases as outlined in this Policy, provided that the expenditures are reported to the City Council in writing within 30 days.

The City Manager is not authorized to approve or execute the following *without Council action*:

- A contract or other legal instrument for the purchase of real property, with the exception of the purchase of easements or right-of-way under \$50,000; any condemnation proceeding must be authorized by resolution of the City Council.
- The City's grant of or other action relating to any license or franchise, or other authorization pursuant to its regulatory powers.
- Any contract, contract amendment, or other legal instrument for which approval authority is separately delegated by the City Charter or another section of this Policy.
- Purchases, contracts, and agreements over \$50,000.

### **3.4 Execution of Documents**

The Mayor shall, when authorized by the Council, sign all official documents such as ordinances, resolutions, conveyances, grant agreements, official plats, contracts and bonds. The Mayor shall retain the authority to execute such documents, however, by this Policy, the City Council grants the City Manager authority to execute any purchases, contracts, and agreements in an amount not to exceed \$50,000, provided funds are budgeted therefore. The Council may also authorize the City Manager to execute purchases, contracts, and agreements in amounts of \$50,000 or greater by formal action ([City of Tomball Charter, Section 6.08](#)).

### **3.5 Responsibilities of City of Tomball Departments**

All City of Tomball departments and employees engaged in the procurement of goods and services must adhere to this Policy and the procedures as outlined and adopted by the City Council. Additional responsibilities of departments are as follows:

- Each department should plan in advance to avoid rush orders and emergency requests.
- Upon approval of the department director, or designee, departments may purchase goods and services of less than \$3,000 directly from a vendor by methods described herein.
- Each department must submit purchase order requisitions as appropriate.
- Departments shall not place orders that exceed \$3,000 without an approved purchase order.
  - Departments do not have the authority to order directly from a vendor without an approved purchase order, nor to negotiate any purchases without the required approvals.
- Department directors may not approve purchases in excess of \$5,000.
- Departments are required to notify the Finance Department of any repetitive cumulative purchases that reach any designated quote or bid threshold.
- Departments are required to allow sufficient lead time for all quoted and solicited actions.
- Anticipated purchases of goods or services over \$50,000 shall be brought to the attention of the Finance Director as soon as the need is identified.
- Each department director shall assume the responsibility of maintaining control of their departmental expenditures, including expenditures on annual contract.
- Departments are encouraged to monitor vendor performance. In the event that a vendor fails to perform in compliance with specifications, departments should notify the Finance Department as soon as possible.
- Departments are responsible for working with the City Attorney to develop service contracts, if applicable. Departments are responsible for obtaining all required contract signatures, and for monitoring their contracts to ensure contracts are renewed or bid prior to expiration dates.
- Pursuant to [GC Chapter 2270](#), departments are responsible for verification on the Texas Comptroller of Public Accounts' website that the vendor:
  - Does not boycott Israel, as defined by [GC 808.001](#); and
  - Will not boycott Israel during the term of the contract.



- This requirement does not apply to sole proprietorships, companies with fewer than ten employees, or contracts that are less than \$100,000.00.
- Pursuant to [GC 2252, Subchapter F](#), departments are responsible for verification that the vendor is not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to a foreign terrorist organization.

### **3.6 Responsibilities of the Finance Department**

In order to facilitate the efficient procurement of goods and services, the Finance Department will:

- Enforce the policy and procedures outlined in this Policy or as directed by the City Manager or designee;
- Investigate and analyze research done in the field of purchasing, in an effort to keep abreast of current developments in the fields of purchasing, price, market conditions, and new products;
- Join with other governmental agencies in cooperative purchasing plans when it is in the best interest of the City;
- Coordinate, organize, and assist departments in the specification writing process to ensure that specifications are written concisely and are not written in an exclusive manner;
- Advertise competitive solicitations to ensure compliance with competitive bidding statutes;
- Combine purchases of similar items whenever possible to allow for better pricing and establish a more competitive atmosphere; and
- Conduct purchasing training for employees who process purchase order requisitions, conduct receiving, approve purchase orders, and/or develop specifications. Additionally, individual training by the Finance Department is available at the request of departments.

### **3.7 Authority to Financially Bind the City**

Unless delegated by the City Council and authorized by the City Manager, no City of Tomball employee is authorized to contractually bind the City. Binding the City may include, but not be limited to, verbal orders for goods and services, signing contractual documents, placing online orders, making verbal or written commitments of any type that financially commit the City. Unauthorized staff who attempt to bind the City of Tomball financially, or violate this Policy, may be subjected to disciplinary action.

## **Procurement Policy**

### **ARTICLE 4: PROCESSES AND INTERNAL CONTROLS**

#### **4.1 The Purchasing Process (In General)**

The following sections outline process and internal controls related to the procurement of goods and services. Specifically, this article includes areas, such as the purchase of vehicles and equipment and technology purchases, where additional approvals may be necessary. An important part of the procurement process is the management of internal controls to ensure purchases are made in accordance with Policy, funds are fully accounted for, and timely payments are made to suppliers. The purchase order process provides the mechanism through which the City can manage the procurement process and ensure purchases are in compliance with this Policy and applicable law.

#### **4.2 Additional Approvals for Purchases of Vehicles and Equipment**

All equipment and vehicle purchases must be processed through the Finance Department. Specifications must be forwarded to the Finance Director, or designee, who will be responsible for soliciting bids and authorizing the purchase of vehicles and equipment as approved by either the City Manager or City Council. Approval of the department director is required and approval by the City Council is required if the purchase exceeds \$50,000.

The process for the purchase of equipment and vehicles is outlined in **(Exhibit H)**.

#### **4.3 Additional Approvals for Technology Purchases**

The purchase of all technology items, including hardware and software, requires the advance approval of the Information Technology Department. Technology items include:

- A service related to the automation of a technical system, including computer software or a computer;
- A telecommunications apparatus or device that serves as a component of a voice, data, or video communications network for transmitting, switching, routing, multiplexing, modulating, amplifying, or receiving signals on the network; and
- Technical services related to such goods and equipment.

#### **4.4 Prepayments and Advance Payments**

Generally, prepayment or advance payments are not authorized for any purchases of supplies, materials, equipment, or services, unless specifically approved in writing by the Finance Director (\$3,000 or below) or City Manager (\$3,001 to \$50,000). Exceptions to this include: training and travel expenses per the City of Tomball Travel Policy.

#### **4.5 Reimbursement of City Officials and Employees**

Upon approval received from the Finance Director, prior to purchase, reimbursements may be processed for certain goods or services, ONLY in instances where sufficient time may not allow approval through the purchase order process. Instances where prior approval were not authorized, may be cause for non-payment of the request.

All reimbursements are processed following the Request for Reimbursement Form (**Exhibit B**), and must include support showing that the Finance Director approved the expenditure prior to purchase.

The Finance Department will review submitted Request for Reimbursement forms and either acknowledge that the request may move forward in processing; or, if discrepancies are found, advise that the form be returned to the requesting division to correct or process through the purchase order process.

This section does not apply to reimbursements of travel expenses per the City of Tomball Travel Policy.

#### **4.6 Purchase Orders and Requisitions**

Purchase orders (PO's) are required for all purchases in excess of \$3,000, unless otherwise exempt as indicated below. Purchase order requisitions must be approved prior to making a purchase. Purchase order requisitions may be submitted for purchases under \$3,000, but are not required. Departments may use a P-card or check request for purchases under \$3,000 so long as the purchase complies with this Policy, the Procurement Card Policy, and other applicable policies or regulations.

Purchase Orders are NOT required for all purchases. Items that do not require a purchase order and may be paid with a P-Card or check request are:

- Catered event fees;
- Election fees;
- Membership or professional association dues and fees;
- Payroll and benefit payments;
- Periodicals;
- Postage;
- Registration fees;
- Regulatory fees;
- Subscriptions;
- Travel expenses;
- Tuition;
- Utilities; and
- Other fees as approved in advance in writing by the Finance Director.

The procedure for purchase order requisitions is included in **(Exhibit C)**.

#### **4.7 Procedures for Processing Payments**

The Finance Department shall be responsible for the processing of all payments for the City of Tomball. Invoices received by noon on Tuesday will have payments processed by Friday. The City will maintain as its goal to make payment on or before the due date. Checks shall be signed with dual signatures by the City Manager and City Secretary. In situations that the City Manager is absent, the Mayor or Pro-Term can sign in lieu of.

#### **4.8 Verification of Compliance**

The Finance Department will verify that the New Vendor Form, W-9 and ACH Payment Authorization, if applicable, is complete and accurate before any payments are processed. If additional information is needed, the Finance Department will contact the individual originating the purchase.

#### **4.9 Funds Verification**

The Finance Director or his/her designee shall:

- Charge all purchase orders, requisitions, contracts, and salary and labor allowances to the appropriate account; and
- Certify the budget contains an ample provision for the obligations and that funds are or will be available to pay each obligation when due.

The amount allocated in the budget may not be used for any other purpose unless an unexpended balance remains in the account after full discharge of the obligation or unless the obligation is canceled in writing by the City Council.

## **Procurement Policy**

### **ARTICLE 5: VENDOR SETUP**

#### **5.1 New Vendors**

The New Vendor Form must be completed for each new vendor added to the City's financial management software. The Form requests important information about the vendor to ensure accurate, timely payment and reporting data. The Vendor must attach a completed W-9 with the Form. Any new vendor invoice submitted for payment that does not have a New Vendor Form will not be processed for payment. The individual originating the purchase will be contacted to obtain additional information. See **Exhibit D** for New Vendor Forms.

#### **5.2 Insurance Certificates**

Contractor shall provide a Certificate of Insurance to the City of Tomball as evidence of the required insurance coverage before work commences.

The City of Tomball will maintain the required insurance coverage until all contract work is accepted by the City. Liability Insurance shall be kept for five (5) years following the City's acceptance of work.

#### **5.3 Tax Exemption**

As a tax-exempt municipal government agency, the City of Tomball does not pay sales tax. Any government official or employee entering into a purchasing transaction is expected to notify vendors of the City's tax exempt status and provide a copy of the tax exemption certificate, should the vendor require such documentation.

## **Procurement Policy**

### **ARTICLE 6: METHODS AND THRESHOLDS FOR SOURCE SELECTION (GOODS AND SERVICES)**

#### **6.1 General Information**

The following sections outline the methods of source selection available to procure goods and services for the City. They also establish when each method may be used, the key requirements of each method, the manner of the award, and the authority to award. Purchase requirements shall not be divided so as to constitute a micro purchase or small purchase under this section.

#### **6.2 Micro Purchases (Under \$3,000)**

A micro purchase is a purchase of goods and services under \$3,000. A micro purchase is an informal purchase and may be solicited through a Request for Quotation (RFQ) process. A minimum of one RFQ is required to process a purchase order. Whenever possible, quotes should be solicited from local service and supply providers. RFQs may be issued to suppliers by departments. A response to a RFQ may be an electronic or a hard copy quote. P-Cards may be used to source micro purchases and shall be done in compliance with the Tomball Procurement Card Manual. Before making a purchase, active contracts should be reviewed to verify desired products or services are available to purchase on contract.

The issuance of sequential purchases, component purchases, or separate purchases to circumvent the formal competitive process is a violation of state law and may be cause for disciplinary action.

#### **6.3 Small Purchases (Between \$3,000 and \$50,000)**

A small purchase is a purchase for goods and services between \$3,000 and \$50,000. A small purchase is an informal purchase and may be solicited through a Request for Quotation (RFQ) process. RFQs may be issued to suppliers by the user department, or the department may work with the Finance Department to issue the RFQ. Unlike micro purchases, small purchases require three quotes whenever practicable. The RFQ and quotes may be in electronic or hard copy format.

The following requirements apply to small purchases:

- The opportunity to quote should be extended to at least two (2) HUBs registered in Harris County.
  - The state maintains a database of HUBs at [www.window.state.tx.us/cmbi/index.html](http://www.window.state.tx.us/cmbi/index.html).
  - If no HUBs are registered in Harris County, the small purchase is exempt from this requirement.
  - A non-response quotation is considered a quotation for this purpose provided the HUB was given a reasonable time (three to five business days) to respond.
  - Exceptions to this guideline may include sole source or emergency purchases.

- Departments are encouraged to consult with the Finance Department for assistance in locating suppliers when they are unable to obtain at least three price quotations.
- All departments should work to promote fair and open competition for every purchase and to secure the best value and the highest quality goods or services at the lowest possible cost.
- Quotations received from suppliers/vendors shall not be divulged to other bidders until after the award has been made.
- Before making a purchase, active contracts should be reviewed to verify desired products or services are not available to purchase on contract.

The issuance of sequential purchases, component purchases, or separate purchases to circumvent the formal competitive process is a violation of state law and may be cause for disciplinary action.

#### **6.4 Authority and Award for Micro and Small Purchases**

Award of micro and small purchases shall be made to the responsible respondent, whose offer is most advantageous to the City and conforms in all material respects to the micro and small purchase requirements. The associated documentation shall be maintained by the department as a public record.

The Finance Director must approve micro and small purchases and will be responsible for issuing a purchase order for the good or service, unless otherwise authorized in this Policy or unless authorization to purchase with a P-Card has been provided by the Finance Department through issuance of a P-Card.

#### **6.5 Formal Sourcing Methods for Goods and Services (Over \$50,000)**

The purchase of goods and services over \$50,000 shall be made through one of the following sourcing methods, unless excepted or determined by the Finance Director to use alternate method:

- Competitive Bidding
  - Invitation for Bid (IFB). or
  - Invitation for Bid-Best Value (IFB-BV)
- Competitive Sealed Proposals
  - Request for Proposals (RFP)

Formal sourcing methods are managed by the Finance Department, with the assistance of the appropriate department(s). Exceptions to the formal sourcing models are listed in **Section 1.6** of this Policy or as authorized by [LGC 252.022](#).

#### **6.6 Competitive Sealed Bids – Invitation for Bid; Lowest Responsible Bidder.**

##### *Application of Method*

Competitive Sealed Bids shall be solicited through an IFB. The IFB shall include specifications, any applicable criteria, and the City's terms and conditions.

### Pre-Qualification

A pre-qualification process may be conducted prior to the issuance of an IFB in order to establish a list of qualified bidders, although it is not required. If a pre-qualification process is used, the City shall only consider bids that are submitted from pre-qualified bidders.

### Public Notice

All IFBs are required to advertise a notice of the date, time, and place at which bids will be publicly opened and read aloud. The legal notice must be published at least once a week for two consecutive weeks in a newspaper published in the municipality.

Notice of the IFB shall also be electronically posted and the IFB shall be made available for public inspection.

The first published notice shall be made before the fourteenth (14<sup>th</sup>) day before the date set for the opening of bids. If the opening date changes, notice shall be made before the fourteenth (14<sup>th</sup>) day before the new opening date. The public notice shall state the place, date, and time of bid opening.

### Bid Opening

Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the IFB.

An attendance sheet will be provided at the bid opening and all attendees will be required to provide their name.

At the time of bid opening, the name of each bidder and the amount of each bid, as well as other relevant information as determined by the Finance Director to be appropriate, shall be recorded. Unless otherwise determined by the Finance Director, this record shall be open to public inspection.

In the event no attendees are present for bid opening, the sealed bids shall be opened by the Finance Department, or designee, and a “bid” or “no bid” may be recorded on the tabulation sheet. The bid may then be given to the appropriate person for recorded. The attendance sheet will indicate that there were no attendees present.

After a notice of intent to award is issued, or in the absence of a notice of intent to award, after final execution of the contract, the bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with this Policy (See Section 1.9).

### Bid Evaluation

Bids shall be evaluated based on the requirements set forth in the IFB, which may include criteria to determine acceptability such as inspection, testing, safety, quality, workmanship, delivery, and suitability for a particular purpose. The IFB shall set forth the criteria to be used. No criteria may be used that is not set forth in the IFB.



### Corrections or Withdrawals Before Bid Opening

Bids may be withdrawn at any time prior to the bid opening. Bids may be modified at any time prior to the due date and time, and mistakes discovered before bid opening may be modified by written notice received by the Finance Department prior to the time set for bid opening.

### Mistakes and Withdrawals After Bid Opening & Cancellation of Awards

A bid that has been opened may not be modified for the purpose of correcting an error in the bid price. Mistakes discovered after bid opening but before bid award may be withdrawn only to the extent that the bidder can show that the mistake is of so great a consequence that to enforce the bid as made would be unconscionable, the mistake relates to a material feature of the bid, and the withdraw does not result in prejudice to the City except for the loss of the bargain. After bid opening but before bid award, modifications to bid provisions (other than pricing) made by mistake may be permitted by the City if not prejudicial to the interest of the City and does not provide an unfair advantage to a bidder.

All decisions to permit the correction or withdrawal of bids, or to cancel awards based on bid mistakes, shall be supported by a written determination made by the Finance Director. Only the City Council may reject any and all bids.

## **6.7 Competitive Sealed Bids – Invitation for Bid-Best Value**

### Application of Method

As an alternative to the IFB defined in Section 6.6, an IFB-BV may be solicited based upon a best value analysis provided that the criteria for analysis was included in the IFB-BV. In determining the best value for the City, the City may consider the following evaluation criteria:

- the purchase price;
- the reputation of the bidder and of the bidder's goods or services;
- the quality of the bidder's goods or services;
- the extent to which the goods or services meet the municipality's needs;
- the bidder's past relationship with the municipality;
- the impact on the ability of the municipality to comply with laws and rules relating to contracting with HUBs and nonprofit organizations employing persons with disabilities;
- the total long-term cost to the municipality to acquire the bidder's goods or services; and
- any relevant criteria specifically listed in the request for bids or proposals.

All other conditions of the IFB process outlined in Section 6.6 shall apply for the IFB-BV.

## **6.8 Award and Approvals for IFB and IFB-BV Procurements**

This section outlines the process for the award and approval of IFB and IFB-BV procurements.

#### Award of Invitation for Bid

Award of an IFB shall be made by appropriate notice to the lowest responsive, responsible bidder whose bid conforms in all material respects to requirements and criteria set forth in the IFB.

#### Award for Invitation for Bid-Best Value

Award of the IFB-BV may be awarded on best value analysis provided that the criteria for analysis was included in the IFB-BV. The contract shall be awarded by appropriate written notice to the responsive, responsible bidder whose bid is determined to be the best value to the City and that conforms in all material respects to requirements and criteria set forth in the IFB-BV.

#### Low Tie Bids

If there are two (2) or more low responsive bids from responsible bidders that are identical in price and other evaluation criteria and that meet all the requirements and criteria set forth in the invitation for bids, award must be made to a resident of the City, otherwise shall be made by the casting of lots.

#### Award Approvals

Awards of IFBs and IFB-BVs shall be routed to the City Manager, or designee, for review. The award of all IFBs and IFB-BVs of \$50,000 or more shall be approved by City Council.

### **6.9 Competitive Sealed Proposals – Request for Proposals**

#### Application of Method

Competitive sealed proposals shall be solicited through an RFP. The RFP shall include a scope of work, applicable evaluation criteria, terms and conditions.

#### Pre-Qualification

A pre-qualification process may be conducted prior to the issuance of an RFP in order to establish a list of qualified offerors. In the event a pre-qualification process is used, the City shall only consider proposals that are submitted from pre-qualified offerors.

#### Public Notice

Notice of RFP shall set forth the date, time, and place upon which the proposals will be due. Legal notice must be published at least once a week for two (2) consecutive weeks in a newspaper published in the municipality.

Notice shall be electronically posted and the RFP shall be available for public inspection.

The first published notice shall be made before the fourteenth (14th) day before the date set for the opening of bids. If the opening date changes, notice shall be made before the fourteenth (14th) days before the new opening date.

#### Receipt of Proposals

Unless otherwise required by law or the RFP, proposals shall not be opened or handled in a manner as to permit disclosure of the contents of any proposal to competing offerors. Proposals shall be

open for public inspection after the contract is awarded, except to the extent that the withholding of information is permitted or required by law such as trade secrets and confidential information. If the offeror designates a portion of its proposal as confidential, it shall isolate and identify in writing the confidential portions in accordance with this Policy.

#### *Correction or Withdrawal of Proposals Before Proposal Opening*

Proposals may be withdrawn at any time prior to the proposal opening. Proposals may be modified at any time prior to the due date and time, and mistakes discovered before proposal opening may be modified by written notice received by the Finance Department prior to the time set for proposal opening.

#### *Revisions, Mistakes and Withdrawals After Proposal Opening & Cancellation of Awards*

The City may permit revisions to proposals after submission and before the award of the contract to obtain the best final offers. A proposal that has been opened may not be modified by the offeror for the purpose of correcting an error in the price. Mistakes discovered after proposal opening but before award may be withdrawn only to the extent that the offeror can show that the mistake is of so great a consequence that to enforce the proposal as made would be unconscionable, the mistake relates to a material feature of the proposal, and the withdraw does not result in prejudice to the City except for the loss of the bargain. After proposal opening but before award, modifications to proposal provisions (other than pricing) made by mistake may be permitted by the City if not prejudicial to the interest of the City and does not provide an unfair advantage to an offeror.

All decisions to permit the withdrawal of a proposal after opening shall be supported by a written determination made by the Finance Director. Only the City Council may reject any and all proposals.

#### *Evaluation Criteria*

The RFP shall state the criteria to be used in the evaluation of the proposals and shall include their relative importance. No other factors or criteria may be used in the evaluation. City Council designates authority to the Finance Department to select evaluation criteria in accordance with GC 2269 Subchapter D or LGC 252.

#### *Evaluation Committee*

A committee may be formed to evaluate each proposal using the criteria as defined within the RFP. The use of a committee is recommended for complex, large expenditures, or when multiple proposals are received. This committee will consist of a diverse group of City staff, and consultants when applicable. Committee members are selected by the using department and/or Finance on the basis of their knowledge of the particular project being developed and/or of their knowledge of the particular field involved. Finance participates, as a non-voting member, to provide oversight, guidance, and assistance as needed.

Finance may remove evaluation team members if a conflict of interest arises. Conflict of Interest disclosure statement (**Exhibit I**) must be documented and detail of such conflict should be provided to the Department Head of the using department, the Assistant City Manager, and the City Manager.

### Discussion with Offerors

Discussions, or negotiations, may be conducted with offerors in accordance with the terms of the RFPs and this Policy, which constitutes regulations adopted by the City Council under GC 2269 and LGC 252.042(b). Offerors shall be accorded fair and equal treatment in conducting discussions and revision of proposals, and there shall be no disclosure of any information derived from proposals submitted by competing offerors. Negotiations may occur as follows:

- Concurrent Negotiations
  - Negotiations may be conducted concurrently with offerors for the purpose of determining source selection and/or contract award.
- Exclusive Negotiations
  - Exclusive negotiations may be conducted with the offeror whose proposal is determined in the source selection process to be most advantageous to the City considering the relative importance of price and other evaluation factors included in the RFP. Exclusive negotiations may be conducted subsequent to concurrent negotiations or may be conducted without requiring previous concurrent negotiations. Exclusive negotiations shall not constitute a contract award nor shall it confer any property rights to the successful offeror. If exclusive negotiations are conducted and an agreement is not reached, the City may enter into exclusive negotiations with the next highest ranked offeror or concurrent negotiations without the need to repeat the formal solicitation process.

## **6.10 Award and Approvals for Requests for Proposals**

### Contract Award

Contract award shall be made to the responsible offeror whose proposal is determined to be the most advantageous to the City taking into consideration the evaluation criteria set forth in the RFP. The contract file shall contain the basis in writing on which the award determination is made.

### Award Approvals

Awards of RFPs shall be routed to the City Manager, or designee, for review. The award of all RFPs of \$50,000 or more shall be approved by City Council.

## **6.11 Sole Source Procurement**

### Application of Method

A sole source procurement is the acquisition of a good, service, professional service or public work in which there is only one source.

The department requesting a sole source procurement shall provide written evidence to support a sole source determination. A sole source written justification form (**Exhibit E**), signed by the department director and the Finance Director, is required, explaining and fully describing the conditions which make the supplier the only source for a given commodity or service. Written documentation may include documentation from the manufacturer of the product or service provider on company letterhead as evidence to the sole source nature of the product or service.

Sole source procurements may include, but are not limited to:

- patents, copyrights, secret processes, or natural monopolies;
- films, manuscripts, or books;
- gas, water, and other utility services;
- captive replacement parts or components for equipment;
- 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
- management services provided by a nonprofit organization to a municipal museum, park, zoo, other facility to which the organization has provided significant financial or other benefits;

#### Negotiation and Award

The Finance Director may require that negotiations are conducted as to price, delivery and terms. The Finance Director may require the submission of cost or pricing data in connection with an award under this Section.

Sole source procurement shall be avoided, except when no available alternative sources exist. The sole source justification form shall be maintained as a public record.

Sole source procurements require the approval of the City Council for purchases over \$50,000.

## **6.12 Emergency Purchases**

#### Application of Method

Notwithstanding any other provisions of this Policy, the City Manager, Assistant City Manager, or Finance Director may make or authorize others to make emergency procurements of goods, services, professional services or public works when a public calamity requires immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality, or to protect public health, welfare, or safety, or necessary because of unforeseen damage to public machinery or property.

The department requesting an emergency procurement shall provide written evidence and justification to support an emergency determination by completing the Emergency Purchase Justification Form (**Exhibit F**). An emergency procurement shall be limited to those goods, services, professional services or public works necessary to satisfy the emergency need.

#### Negotiation and Award

The Finance Director may require that negotiations are conducted as to price, delivery, and terms. The Finance Director may require the submission of cost or pricing data in connection with an award under this Section.

Emergency procurements shall be avoided, except when no reasonable alternative approach exist. A written determination by the department director of the basis for the emergency procurement and for the selection of the particular contractor and signed by the Finance Director and City

Manager or Assistant City Manager, shall be maintained as a public record. The determination and the award shall be made in accordance with internal departmental procedures ensuring that the procurement is fair, honest, and prudent, is a wise exercise of discretion, and is in the public interest.

All emergency purchases over \$50,000 shall be reported in writing to the City Council at the next regular meeting following the emergency purchase.

### **6.13 Competitive Reverse Auction – Invitation to Reverse Auction**

#### *Application of Method*

A Reverse Auction is solicited with an Invitation to Reverse Auction (“ITRA”). The ITRA shall be issued and shall include specifications and any applicable evaluation criteria. Contractual terms and conditions may be included within the solicitation document or incorporated by reference.

#### *Pre-Qualification*

A prequalification process may be conducted prior to the issuance of an ITRA in order to establish a list of qualified bidders. In the event a prequalification process is used, the City shall only consider bids that are submitted from prequalified bidders.

#### *Public Notice*

Notice of the ITRA shall be electronically posted and the ITRA shall be available for public inspection not less than fourteen (14) days prior to the date set forth therein for the close of the auction. A shorter time may be deemed necessary for a particular procurement as determined in writing by the Procurement Director. The public notice shall state the location of the internet website hosting the reverse auction.

#### *Bid Acceptance*

Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Policy.

#### *Bid Evaluation*

Bids shall be evaluated based on the requirements set forth in the ITRA, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. The ITRA shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that is not set forth in the ITRA.

#### *Correction or Withdrawal of Bids Before Auction Closing*

Bids may be withdrawn at any time prior to the auction closing. Bids may be modified at any time prior to the auction closing, and mistakes discovered before auction closing may be modified by written notice received in the Finance Department prior to the time set for auction closing.

#### *Mistakes and Withdrawals After Auction Closing & Cancellation of Awards*

After auction closing, a bid may not be modified for the purpose of correcting an error in the bid price. Mistakes discovered after auction closing may be withdrawn only to the extent that the

bidder can show that the mistake is of so great a consequence that to enforce the bid as made would be unconscionable, the mistake relates to a material feature of the bid, and the withdraw does not result in prejudice to the City except for the loss of the bargain. After auction closing but before bid award, modifications to bid provisions (other than pricing) made by mistake may be permitted by the City if not prejudicial to the interest of the City and does not provide an unfair advantage to a bidder.

All decisions to permit the correction or withdrawal of bids, or to cancel awards based on bid mistakes, shall be supported by a written determination made by the Finance Director.

#### Contract Award

The contract shall be awarded by appropriate notice to the lowest responsible bidder whose bid conforms in all material respects to requirements and criteria set forth in the ITRA.

### **6.14 Cancellation of Solicitations**

#### General

An IFB, IFB-BV, RFP, RFQ, ITRA or other solicitation process defined in this Policy may be cancelled prior to opening or after opening when it is in the best interest of the City.

#### Cancellation of Solicitations Prior to Opening

As used in this Section, "opening" means the date and time set for opening of bids, receipt of statements of qualifications, or receipt of proposals in competitive sealed proposals, or in the case of a reverse auction, means the date and time set for the auction close.

Prior to opening, a solicitation may be cancelled in whole or in part when the Finance Director determines that such action is in the City's best interest for reasons including but not limited to:

- The City no longer requires the materials, services, or construction;
- The City no longer can reasonably expect to fund the procurement;
- Proposed amendments to the solicitation would be of such magnitude that a new solicitation is in the best interest of the City; or
- It is otherwise not advantageous to the City.

When a solicitation is cancelled prior to opening, notice of cancellation shall:

- Identify the solicitation;
- Briefly explain the reason for cancellation; and
- Where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurements of similar materials, services, or construction.

#### Cancellation of Solicitation After Opening but Prior to Award

After opening but prior to award, a solicitation must be formally rejected by City Council if the lowest bid or proposal was more than \$50,000.

### Documentation

The reasons for cancellation shall be made a part of the procurement file and shall be available for public inspection.

## **6.15 Rejection of Individual Bids, Proposals, Statements of Qualifications or Reverse Auction**

A bid may be rejected if:

- The bidder is determined to be not be a responsible bidder pursuant to this Policy;
- The bid is cancelled after opening;
- The bidder is not responsive in accordance with this Policy;
- The proposed price exceeds available funds or is unreasonable; or
- It is otherwise not advantageous to the City.

A proposal, statement of qualifications, or reverse auction bid may be rejected if:

- The person responding to the solicitation is determined to not be responsible pursuant to this Policy (responsibility of bidders, offerors and respondents);
- The proposal, statement of qualifications, or reverse auction bid is cancelled;
- It is not responsive pursuant to this Policy;
- The proposed price exceeds available funds or is unreasonable; or
- It is otherwise not advantageous to the City.

City Council must approve any rejections of bids, proposals or statements of qualifications if the lowest bid or proposal was over \$50,000. The reasons for rejection shall be made a part of the procurement file and shall be available for public inspection.

## **6.16 Responsibility of Bidders, Offerors, and Respondents**

### Findings of Non-Responsibility

If a bidder, offeror, or respondent who otherwise would have been awarded a contract is found not responsible, a written finding of non-responsibility, setting forth the basis of the finding, shall be prepared by the Finance Director. The unreasonable failure of a bidder, offeror, or respondent to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a finding of non-responsibility with respect to such bidder or offeror. The written finding shall be made part of the contract file and be made a public record.

### Right of Non-Disclosure

Confidential information furnished by a bidder, offeror, or respondent in response to an inquiry of responsibility pursuant to this Policy shall not be disclosed by the City outside of the department, using agency, or individuals involved in the evaluation process without prior written consent by the bidder, offeror, or respondent unless required to be disclosed in accordance with GC 552. Confidential information shall be identified and managed in accordance with this Policy. See also [LGC 252.049](#).



### Factors for Determination of Responsibility

Factors to be considered in determining if a prospective contractor is responsible include:

- The proposed contractor's financial, physical, personnel or other resources, including subcontracts;
- The proposed contractor's record of performance and integrity;
- Whether the proposed contractor is qualified legally to contract with the City;
- Whether the proposed contractor supplied all necessary information concerning its responsibility; and
- Safety record of the contractor.

### Safety Record Evaluation

Pursuant to [LGC 252.0435](#), the City Council adopts the following criteria for determining the safety record of a bidder to determine whether a bidder is responsible. The City may consider the safety record of the bidders in determining the responsibility thereof. The City may consider any incidence involving worker safety or safety of the residents of the City, be it related or caused by environmental, mechanical, operational, supervision or any other cause or factor. Specifically, the City may consider:

- Complaints to, or final orders entered by, the Occupational Safety and Health Review Commission (OSHRC), against the bidder for violations of OSHA regulations within the past three (3) years.
- Citations (as defined below) from an Environmental Protection Agency (as defined below) for violations within the past five (5) years.
  - Environmental Protection Agencies include, but are not necessarily limited to, the U.S. Army Corps of Engineers (USACOE), the U.S. Fish and Wildlife Service (USFWS), the Environmental Protection Agency (EPA), the Texas Commission on Environmental Quality (TCEQ), the Texas Natural Resource Conservation Commission (TNRCC) (predecessor to the TCEQ), the Texas Department of Health (TDH), the Texas Parks and Wildlife Department (TPWD), the Structural Pest Control Board (SPCB), agencies of local governments responsible for enforcing environmental protection or worker safety related laws or regulations, and similar regulatory agencies of other states of the United States.
  - Citations include notices of violation, notices of enforcement, suspension/revocations of state or federal licenses or registrations, fines assessed, pending criminal complaints, indictments, or convictions, administrative orders, draft orders, final orders, and judicial final judgments.
- Convictions of a criminal offense within the past ten (10) years, which resulted in bodily harm or death.
- Any other safety related matter deemed by the City Council to be material in determining the responsibility of the bidder and the ability of the bidder to perform the services or goods required by the bid documents in a safe environment, both for the workers and other employees of bidder and the residents of the City, and such determination should not be arbitrary or capricious.

### Responsibility Criteria

The Finance Director may establish specific responsibility criteria for a particular procurement. Any specific responsibility criteria shall be set forth in the solicitation

## **6.17 Bid and Contract Security for Material or Service Contracts**

The Finance Director may require the submission of security to guarantee faithful bid and contract performance. In determining the amount and type of security required for each contract, the Finance Director shall consider the nature of the performance and the need for future protection to the City. The requirement for security must be included in the solicitation. Failure to submit security in the amount and type of security required may result in the rejection of the bid or proposal. See also [GC 2253](#) (payment and performance bonds).

## **6.18 Multi-Term Contracts**

Unless otherwise provided by law, a contract for goods, services, professional services or public works may be entered into for any period of time deemed to be in the best interest of the City, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of monies

## **6.19 Right to Inspect and Right to Audit Records**

The City may, at reasonable times, inspect the part of the plant or place of business of a contractor, consultant or any subcontractor or subconsultant that is related to the performance of any contract awarded or to be awarded by the City. The City may, at reasonable times and places, audit the books and records of any person who submits cost or pricing data as provided in this Policy to the extent that the books and records relate to the cost or pricing data. Any person who is awarded a contract, change order or contract modification for which cost, or pricing data is required shall maintain the books and records that relate to the cost or pricing data for three (3) years from the date of final payment under the contract, unless otherwise specified in the contract. The City is entitled to audit the books and records of a contractor, consultant or any subcontractor or subconsultant under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract. The books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contractor or consultant, and by the subcontractor or subconsultant for a period of three (3) years from the date of final payment under the subcontract, unless otherwise specified in the contract. All contractors, consultants, subcontractors, and subconsultants participating in City contracts are required to cooperate fully and promptly with the City in reviews, investigations and other requests for information that are related to the performance of any contract awarded or to be awarded by the City.

## **6.20 Reporting of Anticompetitive Practices**

If for any reason collusion or other anticompetitive practices are suspected among any bidders, offerors, or respondents, a notice of the relevant facts shall be transmitted to the Finance Director and the City Attorney. This Section does not require a law enforcement agency conducting an investigation into such practices to convey such notice to the Finance Director.

## **6.21 Prospective Vendor Database**

The Finance Department shall maintain a prospective vendor database. Inclusion of the name of a person shall not indicate whether the person is responsible concerning a particular procurement or otherwise capable of successfully performing a City contract. Persons desiring to be included in the prospective vendor database may register with the City electronically. The City may remove a person from the prospective vendor database if it is determined that inclusion is not advantageous to the City. It shall be the vendor's sole responsibility to ensure that vendor registration information is current and active.

## **6.22 Certificate of Interested Parties**

In 2015, the Texas Legislature adopted House Bill 1295, which added GC Section 2252.908. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties (Form 1295) to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.

Potential bidders and offerors interested in doing business with the City must submit a disclosure of interested parties to the City prior to receiving a contract award by the City Council. The business entity must complete the Form 1295 by the Texas Ethics Commission ([www.ethics.state.tx.us](http://www.ethics.state.tx.us)) and file the form with the City and online. The City must notify the Texas Ethics Commission not later than the thirtieth (30<sup>th</sup>) day after the date the contract binds all parties to the contract.

The Texas Ethics Commission has made available FAQs regarding Form 1295 on its website at [www.ethics.state.tx.us/resources/FAQs/FAQ\\_Form1295.php#Q1](http://www.ethics.state.tx.us/resources/FAQs/FAQ_Form1295.php#Q1).

## **6.23 Electronic Signature and Receipt of Bid and Proposals Policy**

The City may elect to utilize e-signatures for certain contracts or transactions, when allowed by law. The use of electronic signatures, in accordance with the policy, are legally binding and equivalent to handwritten signatures. The City may accept electronic bids and proposals for formal solicitations. The City has adopted a policy to ensure the identification, security, and

confidentiality of electronic bids and proposals, and to ensure that all electronic bids or proposals remain effectively unopened until the proper time. This policy does not prohibit the submission of hard copy (paper) bids and proposals.

#### **6.24 Contract Form and Execution**

All contracts entered into under this Policy shall be executed in the name of the City by the City Council and/or City Manager and approved as to form by the City Attorney. Where delegated authority has been provided, contracts may also be entered into by the Finance Director.

#### **6.25 Assignment of Rights and Duties**

The rights and duties of a City contract are not transferable or otherwise assignable without the written consent of the City Council and/or City Manager.

#### **6.26 Contractor Debriefing**

Upon completion of a formal solicitation process, the Finance Department may, upon request, meet with unsuccessful parties in the solicitation process to permit viewing of the contract file and to permit an opportunity for unsuccessful parties to gain a better understanding regarding perceived deficiencies contained within their submitted proposal. The City shall not provide any information considered confidential or additional information on the process beyond information recorded in the contract file.

## **Procurement Policy**

### **ARTICLE 7: SPECIFICATIONS**

#### **7.1 Maximum Practical Competition**

All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the City's needs and shall not be unduly restrictive. To the extent practicable and unless otherwise permitted by this Policy, all specifications shall describe the City's requirements in a manner that does not unnecessarily exclude a good, service, professional service or public work.

Restrictive specifications shall not be used unless such specifications are required and it is not practicable or advantageous to use a less restrictive specification. The department requesting a restrictive specification shall provide written evidence to support the restrictive specification. Past success with the good or performance of the service, or inconvenience of developing specifications do not justify the use of restrictive specifications.

To the extent practicable, the City shall use accepted commercial specifications and shall procure standard commercial materials.

#### **7.2 Specifications Prepared by Non-City Personnel**

The requirements of this Policy regarding the purposes and non-restrictiveness of specifications shall apply to all specifications prepared other than by City personnel, including, but not limited to, those prepared by architects, engineers, designers, and consultants for public contracts, or subcontractors. No person preparing specifications shall receive any direct or indirect benefit from the utilization of such specifications.

#### **7.3 Brand Name or Equal Specification**

A brand name or equal specification may be used to describe the standards of quality, performance, and other salient characteristics needed to meet the requirements of a solicitation, and which invites offers for equivalent products from a manufacturer.

##### Standardization

A specification may be used to identify the acceptable item that meets the City's needs for purchases in this Policy. The department requesting standardized specification shall provide written evidence to support the standardization determination. A written determination by the Finance Director of the basis for the standardization shall be maintained as public record. Past success with a good or performance, traditional purchasing practices, or inconvenience of drawing specifications do not justify the use of a standardization specification.

## **Procurement Policy**

### **ARTICLE 8: PROCUREMENT OF PROFESSIONAL SERVICES**

#### **8.1 General Overview and Applicability**

Providers of professional services are selected and awarded based upon demonstrated competence and qualifications. A contract is awarded on the basis of a fair and reasonable price. Professional fees under the contract should generally be consistent with the recommended practices and fees published by the applicable professional association. Fees may not exceed any maximum provided by law. The determination of an acceptable negotiated fee amount may be made with the assistance of a qualified staff professional that is experienced in these matters.

#### **8.2 Informal Sourcing Method – Informal Request for Qualifications for Professional Services (Excluding Those Professional Services Subject to GC 2254)**

##### *Application of Method*

After consideration of the various anticipated costs, complexity and other relevant issues affecting a project, the department may solicit proposal(s) from qualified professional(s) or professional firms for professional services. This selection may be done through an informal RFQ.

Professional services which are deemed complex or involve complex issues are encouraged to be sourced through a formal RFQ as described in Section 8.3.

##### *Evaluation of Qualifications*

The department may utilize an evaluation committee or may use a qualified individual to evaluate statements of qualifications submitted in response to the informal RFQ. The individual or committee will select the most qualified individual or firm capable of performing the service on the basis of demonstrated competence and qualifications. The department may then enter into negotiations with the selected individual or firm to establish fair and reasonable rates for the professional service.

#### **8.3 Formal Sourcing Method – Request for Qualifications for Professional Services**

##### *Application of Method*

Professional services deemed to be more complex may be solicited through a two-step Request for Qualification (RFQ) process.

Departments are encouraged to seek qualifications for professional services contracts at least every five (5) years to help ensure diversity in the selection of professional services by the City. These contracts shall be for a set time period (a set number of years or annual renewals up to a set number of years) with a maximum not-to-exceed amount.

##### *Pre-Qualification*

A pre-qualification process may be conducted prior to the issuance of an agreement in order to establish a list of qualified professionals. In the event a pre-qualification process is used, the Finance Director may consider qualifications of professionals that are prequalified for specific projects.

#### *Two-Step Request for Qualifications Process*

The City shall follow a two-step RFQ process for awarding Professional Services. The first step involves issuing an RFQ for the professional service. The RFQ shall contain sufficient information to inform potential professional service providers as to the type of project, the scope of services to be performed, the selection criteria to be used and terms and conditions of the subsequent contract. A statement of qualifications shall be submitted in response to the RFQ. The statement of qualifications shall include all information requested in the RFQ and sufficient for the City to determine qualifications of the individual or firm.

Upon evaluating the statement of qualifications, a decision shall be made as to the most highly qualified respondent based upon the published evaluation criteria. The second step of the RFQ process will involve conducting discussions with the most highly qualified respondent to establish fair and reasonable rates for the professional service.

#### *Public Notice*

Notice of RFQs shall set forth the date, time, and place upon which the statement of qualifications will be due. Notice must be published at least once a week for two (2) consecutive weeks in a local newspaper. The first published notice shall be made before the fourteenth (14<sup>th</sup>) day before the date set for the opening of bids. Notice shall be electronically posted and the RFQ shall be available for public inspection. A shorter time may be deemed necessary for a particular procurement as determined in writing by the Finance Director.

#### *Late Proposals*

A response to a RFQ is late if it is received at the location designated in the RFQ after the time and date set for receipt of statements of qualifications. Late statements shall be rejected.

#### *Receipt of Statements*

Statements of qualifications shall not be opened publicly. No statements shall be handled as to permit disclosure of the contents to competing respondents. Statements shall be open for public inspection after a notice of intent to award is issued, or in the absence of a notice of intent to award, after final execution of the contract, except to the extent that the withholding of information is permitted or required by law. If the respondent designates a portion of its statements as confidential, it shall isolate and identify in writing the confidential portions in accordance with this Policy.

#### *Withdrawal of Statements*

Statements may be withdrawn by written notice before or after statement opening and may be permitted where appropriate. All decisions to permit the withdrawal of a statement after opening shall be supported by a written determination made by the Finance Director.

### Evaluation

The RFQ will give the relative importance, or weighting, assigned to each of the criteria to be used in the selection process. The following general criteria may be used, but the RFQ is not necessarily limited to these criteria:

- The provider's experience in successfully performing similar assignments, scope and size, for others.
- The provider's current staff, both size and related experience, is qualified to provide the desired services.
- Whether or not sufficient finances and other resources are available to accomplish the assignment within the time to be allowed by the City, and whether or not the provider will be able to provide continuing service if required by the City.
- How previous clients of the provider for similar projects express satisfaction with the provider's work.
- Whether or not the provider's response, as perceived by the City's staff, is complete and of acceptable quality.

A professional service provider may be selected after the evaluation of the submitted RFQ or it may be necessary to interview several of the firms and further evaluate them on the basis of the interview or a presentation, narrowing the field until one firm is selected for negotiations.

### Evaluation Committee

A committee may be formed to evaluate each statement of qualifications using the criteria as defined within the RFQ. This committee will consist of a diverse group of City staff, and consultants when applicable. Committee members are selected by the using department and Finance on the basis of their knowledge of the particular project being developed and/or of their knowledge of the particular field involved. Finance may participate, as a non-voting member, to provide oversight, guidance and assistance as needed or requested.

Evaluation committee members must sign a non-disclosure and a conflict of interest disclosure. The Finance Director reserves the right to remove any team member for any identified conflicts of interest. Conflicts of interest shall be documented and kept in the City's records.

### Discussion with Offerors

Discussions may be conducted with the respondent determined to be the most highly qualified, to agree upon a fair and reasonable price. Respondents shall be accorded fair and equal treatment in conducting negotiations and there shall be no disclosure of any information derived from proposals submitted by competing respondents. If the City is unable to negotiate a satisfactory contract with the most highly qualified provider of the desired professional services, the City shall formally end negotiations with that provider, select the next most highly qualified provider, and attempt to negotiate a contract with that provider at a fair and reasonable price. The City must continue this process to select and negotiate with providers until a contract is entered into or all respondents are rejected by City Council.



## **8.4 Awards and Approvals**

### **Contract Award**

Contract award of the formal Request for Qualifications shall be made to be the most highly qualified respondent taking into consideration the evaluation criteria set forth in the RFQ. The contract file shall contain the basis on which the award is made.

### **Award Approvals**

Award of informal Request for Qualifications may be made by the City Manager if the total award is less than \$50,000. Awards of Request for Qualifications exceeding \$50,000 require City Council approval.

### **Contract Term**

Contracts for professional services may be awarded for a period of up to five (5) years if non-appropriations clauses are included in the contract or upon project completion. The contract term shall state the maximum not-to-exceed dollar amount.

## **Procurement Policy**

### **ARTICLE 9: PROCUREMENT OF PUBLIC WORKS**

#### **9.1 General Overview and Applicability**

Contracts for a public work shall be solicited through a competitive sealed bid process unless otherwise approved by the Finance Director.

**Public works** means the construction of a facility, which is an improvement to real property and includes buildings, highways, road, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water and wastewater distribution or conveyance facilities, airport runways and taxiways, drainage projects or related types of projects associated with civil engineering construction projects.

The City shall document the basis of its selection and shall make the evaluations public not later than the seventh day after the date the contract is awarded.

#### **9.2 Use of Professional Engineering Services in Public Works Projects**

The City shall utilize an engineer to develop plans, specifications and estimates when the engineered public work could affect the public health, welfare or safety. Construction of engineered plans must be performed under the direct supervision of an engineer.

A professional engineer must be retained for a public works project when:

- The work exceeds \$8,000 and involves electrical or mechanical engineering; or
- The work exceeds \$20,000 and does not involve electrical or mechanical engineering.

#### **9.3 Use of Professional Architect Services in Public Works Projects**

The City shall use an architect to develop plans or specification for any of the following:

- A new building or modification of an existing building intended for occupancy on a 24-hour basis by persons who are receiving custodial care regardless of the number of stories or square footage of the building.
- A new building having construction costs exceeding \$100,000 that is to be:
  - Constructed and owned by the City; and
  - Used for education, assembly, or office occupancy; or
- An alteration or addition having construction costs exceeding \$50,000 that:
  - Is to be made to an existing building that:
    - Is owned by the City; and
    - Is or will be used for education, assembly, or office occupancy; and
  - Requires the removal, relocation, or addition of a wall or partition of the alteration or addition of an exit.

## **9.4 Methods of Source Selection – Public Works**

State law permits the following delivery methods for public works:

- Competitive Bidding – IFB
- Competitive Sealed Proposal – RFP
- Design-Build (DB)
- Construction Manager At-Risk (CMAR)
- Construction Manager-Agent (CMA)
- Job Order Contracting (JOC)

## **9.5 Public Works Under \$50,000 – Request for Quotation**

### Application of Method

After consideration of the various costs, complexity, and other relevant issues affecting a project, the department may solicit quotes from contractors for public works of \$50,000 and less. This selection may be done through an informal Request for Quotation (RFQ). Public works of \$50,000 and less which are deemed complex or involve complex issues are encouraged to be sourced through formal sourcing methods outlined in this Policy.

The department will award to the lowest responsible contractor. The contract file shall contain the basis on which the award is made and supporting documentation.

## **9.6 Public Works Over \$50,000 – Competitive Sealed Bid – IFB**

Design-Bid-Build means a traditional project delivery method in which:

- There is a sequential award of two (2) separate contracts.
- The first contract is for design services. (See Section 6.0 for details)
- The second contract is for construction.
- Design and construction of the project are in sequential phases.
- Finance services, maintenance services and operations services are not included.

### Application of Method

Competitive sealed bids shall be solicited through an IFB. The IFB shall include construction documents, estimated budget, project scope/specifications, construction schedule requirements, and other pertinent information. Contractual terms and conditions shall also be included within the solicitation document or incorporated by reference.

### Pre-Qualification

A pre-qualification process may be conducted prior to the issuance of an IFB in order to establish a list of qualified bidders. In the event a pre-qualification process is used, the Finance Director shall only consider bids that are submitted from prequalified bidders.

### Public Notice

The IFB shall set forth the date, time and place upon which the bids will be due. All IFBs are required to advertise a notice of the date, time, and place at which bids will be publicly opened and read aloud. The legal notice must be published at least once a week for two consecutive weeks in a newspaper published in the municipality. Notice of the IFB shall also be electronically posted and the IFB shall be available for public inspection. Notice shall be made no less than thirty (30) days prior to the date set forth therein for the opening of bids. A shorter time, as allowed by law, may be deemed necessary for a particular procurement as determined by the Finance Director. If the opening date changes, the first notice shall be published before the fourteenth (14<sup>th</sup>) day before the new opening date. The public notice shall state the place, date, and time of bid opening.

### Bid Opening

Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the IFB. The name of each bidder and the amount of each bid, as well as other relevant information as the Finance Director deems appropriate shall be recorded. Unless otherwise determined by the Finance Director, this record shall be open to public inspection. In the event no attendees are present for bid opening, the sealed bids shall be opened by Finance and a "bid" or "no bid" may be recorded on the tabulation sheet. The bid may then be given to the appropriate person for recording. The attendance sheets will indicate that there were no attendees present. Unless otherwise determined by the Finance Director, the bids shall not be opened for public inspection until after a contract is awarded. After a notice of intent to award is issued, or in the absence of a notice of intent to award, after final execution of the contract, the bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with this Policy.

### Bid Evaluation

Bids shall be evaluated based on the requirements set forth in the invitations for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that is not set forth in the IFB. These selection criteria can only be used to determine whether the contractor is a responsible bidder, because the award can only be made to the lowest responsible bidder.

### Correction or Withdrawal of Bids Before Bid Opening

Bids may be withdrawn at any time prior to the bid opening. Bids may be modified at any time prior to the due date and time, and mistakes discovered before bid opening may be modified by written notice received by the Finance Department prior to the time set for bid opening.

### Mistakes and Withdrawals After Bid Opening & Cancellation of Awards

A bid that has been opened may not be modified for the purpose of correcting an error in the bid price. Mistakes discovered after bid opening but before bid award may be withdrawn only to the extent that the bidder can show that the mistake is of so great a consequence that to enforce the bid as made would be unconscionable, the mistake relates to a material feature of the bid, and the withdraw does not result in prejudice to the City except for the loss of the bargain. After bid opening but before bid award, modifications to bid provisions (other than pricing) made by mistake

may be permitted by the City if not prejudicial to the interest of the City and does not provide an unfair advantage to a bidder.

All decisions to permit the correction or withdrawal of bids, or to cancel awards based on bid mistakes, shall be supported by a written determination made by the Finance Director. Only the City Council may reject any and all bids.

#### Contract Award

Contract award shall be made to the lowest responsible bidder. The contract file shall contain the basis on which the award is made.

#### Award Approvals

Awards of IFBs exceeding \$50,000 shall be routed through the appropriate department, reviewing board, commission, or committee as applicable in advance of City Council consideration.

#### Public Record

After the City issues a notice of intent to award, or in the absence of a notice of intent to award upon final contract execution, the evaluations shall be available for public inspection not less than the 7<sup>th</sup> day after contract award for public works utilizing APDM, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with this Policy.

#### Lump Sum or Unit Price Contracts

Lump sum or unit price contracts follow the same method described in this Section, pursuant to LGC 252.047. If the contract is for the construction of public works or for the purchase of materials, equipment, and supplies, the municipality may let the contract on a lump sum basis or unit price basis. If the contract is let on a unit price basis, the information furnished to bidders must specify the approximate quantity needed, based on the best available information, but payment to the contractor must be based on the actual quantity constructed or supplied.

### **9.7 Public Works Over \$50,000 – Competitive Sealed Proposal – RFP**

#### Application of Method

Competitive sealed proposals shall be solicited through an RFP. The RFP shall include construction documents, estimated budget, project scope/specifications, construction schedule requirements, applicable evaluation criteria, and other pertinent information. Contractual terms and conditions shall also be included within the solicitation document or incorporated by reference.

#### Pre-Qualification

A pre-qualification process may be conducted prior to the issuance of an RFP in order to establish a list of qualified offerors. In the event a pre-qualification process is used, the City shall only consider proposals that are submitted from pre-qualified offerors.

### Public Notice

The RFP shall set forth the date, time, and place upon which the proposals will be due. All RFPs are required to advertise a notice of the date, time and place at which proposals will be publicly opened and read aloud. Legal notice must be published at least once a week for two consecutive weeks in a newspaper published in the municipality. Notice shall be electronically posted and the RFP shall be available for public inspection. Notice shall be made no less than thirty (30) days prior to the date set forth therein for the opening of bids. A shorter time, as allowed by law, may be deemed necessary for a particular procurement as determined by the Finance Director. If the opening date changes, the first notice shall be published before the fourteenth (14<sup>th</sup>) day before the new opening date. The public notice shall state the place, date, and time of bid opening.

### Receipt of Proposals

Proposals shall be opened publicly and read aloud the names of the offerors and any monetary proposals made by the offerors. Proposals shall be open for public inspection after the contract is awarded, except to the extent that the withholding of information is permitted or required by law such as trade secrets and confidential information.

### Correction or Withdrawal of Proposals Before Proposal Opening

Proposals may be withdrawn at any time prior to the proposal opening. Proposals may be modified at any time prior to the due date and time, and mistakes discovered before proposal opening may be modified by written notice received by the Finance Department prior to the time set for proposal opening.

### Revisions, Mistakes and Withdrawals After Proposal Opening & Cancellation of Awards

The City may permit revisions to proposals after submission and before the award of the contract to obtain the best final offers. A proposal that has been opened may not be modified by the offeror for the purpose of correcting an error in the price. Mistakes discovered after proposal opening but before award may be withdrawn only to the extent that the offeror can show that the mistake is of so great a consequence that to enforce the proposal as made would be unconscionable, the mistake relates to a material feature of the proposal, and the withdraw does not result in prejudice to the City except for the loss of the bargain. After proposal opening but before award, modifications to proposal provisions (other than pricing) made by mistake may be permitted by the City if not prejudicial to the interest of the City and does not provide an unfair advantage to an offeror. All decisions to permit the withdrawal of a proposal after opening shall be supported by a written determination made by the Finance Director. Only the City Council may reject any and all proposals.

### Evaluation Criteria

The RFP shall state the criteria to be used in the evaluation of the proposals and shall include their relative importance. No other factors or criteria may be used in the evaluation. City Council designates authority to the Finance Department to select evaluation criteria in accordance with GC 2269 and LGC 252.

### Evaluation Committee

Not later than the 45<sup>th</sup> day after the date on which the proposals are opened, the City shall evaluate and rank each proposal submitted in relation to the published selection criteria. A committee may

be formed to evaluate each proposal using the criteria as defined within the RFP. The use of a committee is recommended for complex, large expenditures, or when multiple proposals are received. This committee will consist of a diverse group of City staff, and consultants when applicable. Committee members are selected by the using department and/or Finance on the basis of their knowledge of the particular project being developed and/or of their knowledge of the particular field involved. The Finance Department participates, as a non-voting member, to provide oversight, guidance and assistance as needed. Finance may remove evaluation team members if a conflict of interest arises. Conflicts of interests must be documented and kept with the contract file.

#### Contract Award

Contract award shall be made to the responsible offeror whose proposal is determined in writing to be the best value to the City taking into consideration the weighted evaluation criteria set forth in the RFP. The contract file shall contain the basis on which the award is made.

#### Award Approvals

Awards of RFPs exceeding \$50,000 shall be routed through the appropriate department, reviewing board, commission, or committee as applicable in advance of City Council consideration.

#### Public Record

After the city issues a notice of intent to award, or in the absence of a notice of intent to award upon final contract execution, the proposal evaluation shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with this Policy.

### **9.8 Public Works Over \$50,000 – Alternative Project Delivery Methods (APDMs)**

The Finance Director may authorize the use of the following delivery methods for public works projects:

#### **9.8.1 Design-Build (GC 2269, Subchapter G)**

*Design-build* means a project delivery method in which:

- There is a single contract for design services and construction services.
- Design and construction of the project may be in sequential phases or concurrent phases.

#### **9.8.2 Construction Manager-At-Risk (GC 2269, Subchapter F)**

*Construction-Manager-At-Risk (CMAR)* means a project delivery method in which:

- There is a separate contract for design services and a separate contract for construction services.
- The contract for construction services may be entered into at the same time as the contract for design services or at a later time.

- Design and construction of the project may be in sequential phases or concurrent phases.
- Preconstruction services and other related services may be included.

### **9.8.3 Construction Manager-Agent (GC 2269, Subchapter E.)**

*Construction Manager-Agent* is a delivery method by which the City contracts with a construction manager-agent to provide consultation or administrative services during the design and construction phase and to manage multiple contracts with various construction prime contractors

### **9.8.4 Job Order Contracting (GC 2269, Subchapter I)**

*Job-Order-Contracting* means a project delivery method in which:

- The contract is a requirement contract for indefinite quantities of construction.
- The construction to be performed is specified in job orders issued during the contract.
- (Maintenance services and other related services may be included.
- The project limit shall be set by Council approved not-to-exceed expenditure amount.

Job order contracting cannot be used for civil works projects such as roads, utilities and drainage systems.

## **9.9 Bonding Requirements (GC 2253).**

The bonding requirements of the City of Tomball are intended to protect the contractor, the service provider and the City of Tomball. Unless otherwise stated in state law, or otherwise established in this Policy, the following bonding requirements apply for public works:

- Performance Bonds: For contracts in excess of \$100,000, a 100% performance bond must be executed in the full amount of the contract and which covers the time period for the public work construction and for two additional years beyond the completion date of the construction of the public work. The bond must be executed by a corporate surety, in accordance with the law.
- Payment Bonds: For contracts in excess of \$50,000, a payment bond must be executed in the full amount of the contract, and which covers the time period the project will be allowed for construction. The bond must be executed by a corporate surety, in accordance with the law.
- Bid Bonds: The City reserves the right to require a bid bond for a public works project in an amount to be deemed fair and reasonable.
- Maintenance Bonds: The City reserves the right to require a maintenance bond for projects in an amount to be deemed fair and reasonable.



## **9.10 Prevailing Wage Rates**

The Texas Legislature has given special treatment to public works projects, not necessarily applied to other expenditures or purchases by a municipality. Wages for workers on construction projects shall not be paid at less than the schedule of general prevailing rates of per diem wages as determined by the City Council, which shall be the lesser of wages defined by the United States Department of Labor Davis and Bacon Wage Determination at <http://www.dol.gov/whd/contracts/dbra.htm> and at the Wage Determinations website ([www.wdol.gov](http://www.wdol.gov)) for Harris County, Texas (WD-2509), as amended, or as determined by the City by conducting a survey of the wages received by classes of workers employed on projects of a character similar to the contract work in the City. The prevailing wage rate or a link to the wage rates shall be included in bids for the contract and in the contract itself for public works projects. The prevailing wage rate does not apply to work done directly by a public utility company or for maintenance work.

## **9.11 Insurance Requirements**

The minimum insurance required will be the types and amounts required by the Finance Director and City Manager. The Finance Director, City Manager, City Engineer, Consulting Engineer, or Architect may provide input on a possible increase to the amounts of insurance required for any project. For construction and construction-related projects, all contractors and sub-contractors, including those delivering equipment or materials, performing service on a public works project, shall provide Texas workers' compensation for all employees. All Contractors shall provide proof of coverage satisfactory to the City. Prime Contractors are responsible for seeing that sub-contractors carry the same or higher insurance amounts as those required of the prime contractor. Contractors shall post required signs at job site(s) informing all workers of their right to workers' compensation coverage.

## **9.12 Retainage**

The City requires retainage on all public works contracts exceeding \$100,000. Five percent of the total contract amount shall be held as retainage on public works contracts. The City may elect to require alternative retainage percentages. For retainage percentages in excess of five percent, the City will deposit the retainage into an interest-bearing account and pay the interest earned to the contractor upon completion of the contract.

A release of retention shall only be considered when a project is fully completed and accepted in compliance with the contract and specifications. A project manager shall review and approve a request for release of retention. If applicable, an engineer/architect shall review and approve the request. The project manager shall also provide Finance the consent of the surety for final payment and release of retainage from the bonding company. All lien notices shall be forwarded to the project manager.

Partial release of retainage may occur, at the City's discretion, before the project is completed. This is generally considered for large projects with longer construction periods (GC 2252.031, 2252.032, 2252.033).

## **Procurement Policy**

### **ARTICLE 10: Contract Terms and Conditions**

#### **10.1 General Information**

All City contracts shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Finance Director shall have the authority to establish and modify any such terms and conditions.

Department directors are required to approve contracts for financial and operational obligations and business terms before contract award by Council.

## **Procurement Policy**

### **ARTICLE 11: Contract Modifications (Change Orders)**

#### **11.1 General Information**

A contract modification (and/or change order) occurs when a change to an executed contract is necessary. The modification may involve a change to quantities, specifications, terms or any number of contract requirements.

#### **11.2 Procedures and Authorizations**

Any modification to an awarded contract, regardless of sourcing method, shall be documented, reviewed, and approved through a contract amendment and/or change order.

Contract modifications and/or individual change orders for a **cumulative** total increase over \$50,000 require approval by the City Council. The change order authority limit resets after each City Council approval of a change order.

A contract amendment and/or change order, or the cumulative total of contract modification and/or change orders, cannot increase the original contract price by more than twenty-five percent (25%) except as provided under state law. Modification and/or changes in excess of twenty-five percent (25%) require re-solicitation. Contract modifications and/or change orders reducing a contract or purchase order by more than twenty-five percent (25%) require the consent of the contractor.

If applicable, an engineer/architect shall review and approve a contract amendment and/or change order prior to submitting to the City Council. Upon approval, a contract amendment and/or change order will be reviewed, signed and executed by the Finance Department. A hard copy of the change order will be forwarded to the contractor and a copy retained in the Procurement file.

## **Procurement Policy**

### **ARTICLE 12: COST PRINCIPLES**

#### **12.1 Adoption of Rules**

The Finance Director shall adopt rules setting forth cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs.

#### **12.2 Cost or Pricing Data**

The submission of current cost or pricing data may be required in connection with any award, change order or contract modification

## **Procurement Policy**

### **ARTICLE 13: DISPOSAL OF CITY-OWNED PERSONAL PROPERTY, MATERIALS, AND EQUIPMENT**

#### **13.1 Introduction**

The Finance Director shall establish guidelines for and shall be responsible for the management of:

- The transfer of surplus property and operation of the surplus property program.
- The sale or disposal of surplus, worn, scrap, obsolete, excess, damaged, abandoned, unclaimed, lost and confiscated property by competitive sale or other authorized method.
- The trade-in of surplus property for purchase of new equipment.

The Finance Director shall control and supervise all existing and future City facilities (warehouses) established for the purpose of purchasing, storing, and issuing supplies. The Finance Director shall also be responsible and accountable for all warehouse materials and maintain a perpetual inventory record thereof.

The Finance Director will establish policies and procedures governing the addition or deletion of items carried in inventory, the sale or other disposal of inventory items no longer needed, delivery and other services provided to using agencies, and any policies or procedures required for efficient and effective operation of the inventory system.

The transfer, donation, or sale of City property shall be administered in compliance with state law and this Policy. The Finance Director will operate a surplus property program for the purpose of receiving, storing, transferring, or selling surplus property no longer needed by the City.

#### **13.2 Definitions**

The following terms are related to the management of property:

**Abandoned Property** means personal property which has been left unattended as defined by Texas Property Code 72, Texas Property Code 75, and Texas Transportation Code, Chapter 683.

**Damaged or Destroyed** means personal property that is not operable due to damage or accident and would require excessive repair (cost and/or manpower) to return the asset to serviceable condition.

**Donation** means personal property which has been donated to a charitable organization.

**Excess** means personal property that which is no longer needed (in excess of the department's requirements) but are still serviceable or useable.

**Lost or Stolen** mean personal property that is assigned to or acquired by a department but has been lost or stolen and deemed unrecoverable. Stolen City-owned property shall be properly documented with a police report.

**Obsolete** means personal property that no longer meet department specifications or requirements but is still serviceable or useable.

**Property** means assets with a useful life of more than one (1) year.

**Property Transfer** means the transfer of fixed assets between using agencies or transfer of property to or from the surplus property program.

**Scrap** means personal property that no longer functions, is unserviceable and has no market value, except for the basic material content, which can be recycled through appropriate means. Surplus property means property no longer needed by using agencies for their operations, property in poor or non-working condition, or property that is a by-product (e.g. scrap metal, used tires and oil, etc.).

**Trade-in** means personal property which has been traded, for similar new property, and the transaction has been recorded within the purchase order.

**Unclaimed, Lost and Confiscated Property** means all property used as evidence in the courts and remaining unclaimed after final disposition, property seized by a peace officer as being used unlawfully, and all property coming into the hands of any City officer or employee as lost or unclaimed.

**Worn** means personal property that may still be operable but require excessive maintenance or repair (cost, manpower) to remain in an operable condition.

### **13.3 Methods for Disposal**

Departments and the Finance Director shall determine the most appropriate disposition method for personal property, City-owned materials and equipment that are deemed to be in the best interests of the City. Options for disposal are as follows:

#### **Transfer between City Departments**

Excess or obsolete City-owned personal property that is no longer required by one City department (sending department) can be transferred either to another group within the same department or to another City department in need (receiving department). If the original cost of the equipment is over \$5,000, the department director shall notify the Finance Department, so the fixed assets records will reflect the appropriate change(s).

### Transfer to Another Governmental Entity

Any transfer by the City of City-owned personal property to another governmental entity, except through the auction process, shall be pursuant to an Interlocal Agreement approved by the City Council if in excess of \$500.

### Public Sale, Trade-in, Donation, Destruction or Returned for Credit

If the item is no longer of value to the City, the Finance Director is authorized to sell, trade, donate, scrap or return the item for credit.

The following methods of disposition are available:

- **Public Bid, Sale or Auction**

- A sealed bid, public auction (sale) held on site, at a City facility, or on-line and conducted by an auctioneer licensed by the State of Texas. The guidelines of [LGC 252](#), for competitive bidding, shall be followed. For City-owned personal property items having a value less than \$100, the sale may be made at an advertised location where members of the public may purchase the item.
- Property may be disposed of through the sealed bid process and sold to the highest bidder, unless rejected by the using department and Finance.
- All items are to be sold to the highest bidder unless pricing is determined by the owning department to not be sufficient. In this instance, the City may refuse the bid and hold the item(s) for sale at another time.
- After determining the time and place for a public auction, the Finance Director shall give notice of the auction by advertising in the official newspaper of the City for at least once a week for two consecutive weeks. The date of the first publication must be at least 14 days prior to the date of the auction and the second publication must be no sooner than 7 days prior to the auction or posting on the City website for a period of 10 days prior to the auction.

- **Trade-In**

- Offer the property as a trade-in for new property of the same general type if the Finance Director and owning department consider that action to be in the best interest of the City. If determined necessary to determine “fair market value”, the Procurement Director may employ outside resources to make such determination. In all instances, best value for City owned property will be achieved and properly documented by the Procurement Director and credit shall be applied to the appropriate department.

- **Third Party Appraisals**

- The City may utilize third party consultants to determine authenticity or market value of any commodity. The department responsible for the commodity shall consent to and pay for the third-party appraisal.

- **Donation**

- Dispose of the property by donating it to a civic or charitable organization or another governmental entity, if allowed by law. However, in such case, City Council approval will be necessary if the item has value of more than \$500.

- **Destruction**

- The Procurement Director may order any of the property to be destroyed or otherwise disposed of if the replacement value is less than \$100 and is not



considered in good working order, the City attempts to sell the property and receives no viable offers or it is determined to be scrap material(s).

- Scrap: City owned personal property which has been transferred to Finance and has been found to be damaged, destroyed, or in any other way having no recoverable value will be accumulated and disposed of in accordance with existing scrap metal/refuse contracts or as otherwise directed by the Chief Financial Officer.
- Scrap Bin(s): The Finance Director shall ensure that all scrap with value (metal, wire, etc.) shall be disposed of with existing scrap metal/refuse contracts or as otherwise directed by the City Manager. Finance shall ensure accurate accounting of all scrap proceeds and report all sales proceeds appropriately. All City employees shall ensure the proper disposal of scrap material in the identified location, and City-owned materials shall not be converted for private use or personal use.
- **Returned for Credit**
  - Excess or obsolete City-owned property may be returned, if possible, to the vendor from which the property was originally purchased. Prior to such return, department staff, directors, and officers shall coordinate this action with the Finance Director, to ensure credit has been fully received, documented, and reported to the Finance Department.

### **13.4 Disposal of Abandoned Property**

Disposition of abandoned or unclaimed property seized by a government entity, officers, or employees must be conducted in accordance with this Policy, Tomball local policy, the [Texas Code of Criminal Procedure](#) (Chapters 18, 47 59) and in compliance with [Texas Transportation Code, Chapter 683](#). Equipment deemed appropriate for retention will be in accordance with state law (i.e., confiscated equipment by the Tomball Police Department).

### **13.5 Purchase by Officers and Employees**

An officer or employee of the City, who recommends and/or authorizes the sale of materials and equipment for their department, shall not, directly or indirectly, submit a bid for, purchase or acquire ownership of that department's property. An officer or employee of the City shall not, directly or indirectly, submit a bid, purchase, or acquire ownership of "impounded property".

### **13.6 Disposition of Federal and Grant Funded Assets**

No disposition of federal or grant funded assets will be initiated unless it is allowable in accordance with the guidelines outlined in the *Office of Management and Budget (OMB) Circular A-102 (revised)* and the *Uniform Requirements for Grants and Cooperative Agreements with State and Local Governments*, subject to the specific guidelines of the grantor agency. Additionally, no disposition of federal or grant funded assets will be initiated unless the applicable grant program

administrator and the department director of the grantee department have recommended such disposition.

If proceeds result from the disposition through sale of grant funded property, the Finance Director, working with the department director and applicable grant program administrator, will ensure that proper notifications are provided to and instructions and approvals obtained from the grantor agency concerning how proceeds are to be handled. Depending upon the grantor agency or source involved and the dollar level of the proceeds, funds may or may not need to be returned or credited to the grantor agency or source. In all instances where proceeds have been gained by the City, the Finance Director shall provide a full accounting of such proceeds to the City Manager. Where possible and allowable upon the closing of a grant, the City will seek to transfer the property to another allowable grant in lieu of sale or other disposition method.

### **13.7 Disposition of Items Funded with Bonds**

The disposition of bond funded assets will be communicated to the Finance Department. If proceeds result from the disposition of bond funded assets, the Finance Director, shall provide a full accounting of such proceeds to the City Manager.

### **13.8 Transfer of Ownership of Certain Emergency Vehicles**

In accordance with [Texas Transportation Code 728.021](#), emergency vehicles used to transport sick or injured persons must have vehicle equipment removed, including lights, sirens or devices which only an authorized emergency vehicle may be equipped with, and must remove or obliterate any emblem or marking on the vehicle that identifies the vehicle as an authorized emergency vehicle. This statute doesn't apply if the City is transferring ownership to a person who holds a license as an emergency service provider, who is in the business of buying and selling used vehicles in this state and who specializes in authorized emergency vehicles, or who operates in a foreign country.

## **Procurement Policy**

### **ARTICLE 14: PROTESTS AND APPEALS**

#### **14.1 Introduction**

Protest and appeals will be accepted from prospective bidders, respondents or offerors whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract, or by the failure to award a contract. The Finance Director will consider all protests or appeals filed in a timely manner regarding the award of a contract. If the protest is oral and the matter cannot be otherwise resolved, written confirmation of the protest or appeal will be required.

#### **14.2 Definitions**

**Filed** means delivery to the contract officer or to the Finance Director, whichever is applicable. A time and date of receipt shall be documented in a verifiable manner for purposes of filing.

**Governing Instruments** means those legal documents that establish the existence of an organization and define its powers including articles of incorporation or association, constitution, charter and by-laws.

**Interested Party** means an actual or prospective bidder, respondent, or offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract, or by the failure to award a contract. Whether an economic interest exists will depend upon the circumstances of each case. An interested party does not include a supplier, subconsultant, or subcontractor to an actual or prospective bidder, respondent, or offeror.

**Receipt** means the earlier of actual receipt or the first attempted delivery by certified mail, or by any other means that provides evidence of the attempt, to the persons' last known address.

#### **14.3 Authority of the Finance Director**

The Finance Director shall have the authority to settle and resolve protests.

#### **14.4 Right to Protest**

Any interested party who is aggrieved in connection with a solicitation or award of a contract above the formal threshold may protest to the Finance Director.

#### **14.5 Filing of a Protest**

A protest shall be filed in writing with the Finance Director (letter received by physical mail delivery or by electronic submission) and shall include the following information:

- The name, address, telephone number and email address of the protestant;
- The signature of the protestant or its representative;
- Identification of the solicitation or contract number;
- A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
- The form of relief requested.

Protests will not be considered if not supported by adequate documentation as defined in this Policy or if not received within the parameters as defined in this Policy and any specific solicitation.

#### **14.6 Time for Filing Protests**

Protests based upon alleged improprieties in a solicitation that are apparent before the solicitation due date shall be filed not less than five (5) working days before the solicitation due date. In all other cases, protests shall be filed within five (5) days of notice of intent to award or in the absence of a notice of intent to award, prior to the award date. The Finance Director shall give notice of the protest to the successful contractor if award has been made or, if no award has been made, to all interested parties. Interested parties have the right submit a written response to the protest.

#### **14.7 Stay of Procurement During the Protest or Appeal Process**

In the event of a timely protest, or in the event of timely appeal of the Finance Director's decision, the City shall stay the solicitation or award of the contract unless the Finance Director makes a written determination that there is a reasonable probability that the protest or appeal will be denied and that proceeding further with the solicitation or award of the contract is in the best interests of the City. The stay shall automatically continue throughout the protest or appeal process unless the Finance Director makes a written determination to lift it.

#### **14.8 Confidential Information**

See **Section 1.9**.

#### **14.9 Decision by the Finance Director on a Protest**

The Finance Director shall issue a written decision within ten (10) days after a protest has been filed. The decision shall contain an explanation of the basis of the decision. The Finance Director shall furnish a copy of the decision to the protestant, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The time limit for decisions may be

extended for a reasonable time not to exceed thirty (30) days beyond the original ten (10) day time period. The Finance Director shall notify the protestant in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued. If the Finance Director fails to issue a decision within the time limits set forth in this Section, the protestant may proceed as if an adverse decision had been issued. The decision shall contain a statement regarding the appeals process that is available pursuant to this Policy.

#### **14.10 Remedies for a Protest**

If the Finance Director sustains the protest in whole or part and determines that a solicitation, evaluation process, proposed contract award, or contract award does not comply with this Policy, the Finance Director shall implement an appropriate remedy.

In determining an appropriate remedy, the Finance Director shall consider all the circumstances surrounding the procurement or proposed procurement including, but not limited to:

- The seriousness of the procurement deficiency;
- The degree of prejudice to other interested parties or to the integrity of the procurement process;
- The good faith of the parties;
- The extent of performance;
- Costs to the City;
- The urgency of the procurement; and
- The impact of the relief on the using agency's mission.

An appropriate remedy may include, but is not limited to, one or more of the following:

- Reject all bids, responses or proposals;
- Terminate the contract;
- Reissue the solicitation;
- Issue a new solicitation;
- Award a contract consistent with the procurement codes; or
- Such other relief as is determined necessary to ensure compliance with this Policy.

#### **14.11 Appeals to the City Manager**

Any person may appeal the written decision of the Finance Director to the City Manager within seven (7) days from the date the decision is issued by filing a written appeal with the City Manager. The appellant shall also file a copy of the appeal with the Finance Director.

The appeal shall contain:

- The information set forth in Section 14.10;
- A copy of the decision of the Finance Director;
- The precise factual or legal error in the decision of the Finance Director from which an appeal is taken.

#### **14.12 Notice of Appeal**

The City Manager shall give notice of the appeal to the successful contractor if award has been made or, if no award has been made, to interested parties. Such interested parties shall have the right to request copies of the appeal and to intervene in the proceedings. The City Manager shall, upon request, furnish copies of the appeal to all interested parties.

#### **14.13 Finance Director Report on Appeal**

The City Manager may conduct or hearing or request additional information from the Finance Director or any other person in order to render a decision on the appeal. The City Manager's determination on the request shall be in writing, state the reasons for the determination and, if the extension is granted, set forth a new date for the filing of comments. The City Manager shall notify the Finance Director of any extension.

#### **14.14 Remedies for Appeal of a Protest**

The City Manager may dismiss, affirm or deny the Finance Director's decision in whole or in part based on criteria described in Section 14.10. If the Finance Director's decision is denied in whole or in part and a determination is made that a solicitation, evaluation process, proposed award, or award does not comply with state law or this Policy, the City Manager may direct the Finance Director to make the appropriate remedy described in Section 14.10.

## **Procurement Policy**

### **ARTICLE 15: VENDOR DISQUALIFICATION**

#### **15.1 General Overview and Applicability**

Disqualification is an action taken by the Finance Director under this Article to prohibit a person from participating in City procurements. The purpose of disqualification is to protect the City of Tomball and taxpayers from an inefficient use of City funds.

City departments are responsible for managing their contracts and for identifying and controlling the risks associated with vendor performance.

Vendors may be disqualified from bidding on City contracts under certain circumstances in order to minimize the City's risk of losses. In order to ensure that the City is receiving quality goods, services and construction and in order to ensure that the City is receiving value for public money, vendors may be disqualified from participating in City procurement opportunities for prescribed time periods.

A decision to disqualify a vendor from participating in City procurement opportunities must be supported by evidence, exercised in accordance with the factors set out in this Policy and appropriately approved. A decision to place a vendor on the disqualification list is discretionary; however, such discretion must be exercised consistently and fairly.

#### **15.2 Reasons for Disqualification**

The City may disqualify a vendor for one of the following six categories of reasons:

##### **15.2.1 Litigation**

If a vendor engages in litigation against the City, the City may consider whether or not such litigation should disqualify that vendor from participating in future City procurement opportunities. Note that litigation brought by the City against a vendor is addressed in Subsection 6 (Poor Performance) below.

A vendor who engages in litigation against the City should only be disqualified in connection with litigation proceedings if there are valid commercial or business reasons for doing so. Disqualification should not be exercised to "punish" the vendor for bringing a lawsuit. Litigation against the City in respect of matters unrelated to a procurement process or contracts for the provision of goods, services or construction should not be considered under this Policy.

In evaluating whether a litigious vendor should be disqualified, the City should consider the following qualitative factors in its analysis:

- Is the litigation in relation to a City procurement process or a contract with the City for the provision of goods, services or construction?
- Is there a history of litigious conduct with the vendor and has that history resulted in increased costs to the City?
- What was the outcome of the previous litigation? For example, was it frivolous/vexatious or were damages awarded in favor of the vendor?
- Does the vendor's litigation with the City call into question the vendor's ability to provide work or services to the City under future contracts?

### **15.2.2 Failure to Honor a Bid**

If a vendor submits a bid in response to a City procurement opportunity and that vendor subsequently refuses to honor its bid or the pricing included in that bid, the City may consider disqualifying that vendor from participating in future City procurement opportunities. However, a vendor should not be disqualified if their failure to honor a bid was a legitimate withdraw of that bid. Accordingly, the reason why a vendor did not honor its bid must be analyzed and considered in making a decision to disqualify that vendor.

Factors that the City may consider in such analysis include, but are not limited to:

- If the City and a selected vendor in a negotiated procurement process attempt to negotiate an agreement in good faith and for valid business reasons are unable to come to an agreement, that vendor should not be disqualified.
- If a vendor fails to honor its submitted pricing because of a change in market conditions, the City should consider whether pricing fluctuations are common in the industry.
  - If price increases are common, the City should consider whether the vendor should have factored this into their pricing. For example, could the market conditions have been reasonably predicted within the industry?
  - If the City's acceptance of the bid took significantly longer than anticipated, the City should consider the impact of the delay on the vendor's willingness to honor its submitted pricing.
- If a vendor does not honor its submission because it is too busy on other contracts at the time its bid is accepted, and City's acceptance of the bid was within the time period set out in the bid document, the City should consider disqualifying that vendor because vendors should only submit proposals if they are capable of delivering the goods or services.
- Other reasons for a vendor's failure to honor a submission or pricing should be reviewed contextually and fairly.

### **15.2.3 Failure to Disclose a Conflict of interest**

If a vendor fails to disclose a conflict of interest during a City procurement opportunity or during the performance of a contract with the City and the City subsequently discovers that such a conflict of interest exists, the City may disqualify that vendor from participating in future procurement opportunities after conducting an analysis using the following factors:



- The nature of the conflict of interest, including whether it is perceived or an actual conflict of interest and the materiality of the advantage that such a conflict may have given the vendor.
- Whether the vendor knowingly failed to disclose such a conflict of interest.
- The impact such a failure to disclose the conflict of interest has or may have on the City, including its reputation and the impact on its obligation to conduct a fair competitive procurement process.

#### **15.2.4 Participating in Bidding Practices Prohibited by Statute**

If the City has reason to suspect a vendor or vendors are engaged in bid-rigging, price-fixing, bribery or collusion or other behaviors or practices prohibited by federal or state statutes in connection with a City procurement opportunity, the City should contact the appropriate authorities and provide such assistance as is required and support a subsequent investigation and if applicable, prosecution.

If a vendor is convicted of bid-rigging, price-fixing or collusion in connection with a City procurement or in connection with other public sector procurements, the City shall disqualify that vendor.

#### **15.2.5 Unethical Bidding Practices**

A vendor may engage in unethical bidding practices that do not amount to a criminal or statutory offense, but such practices may still warrant disqualification from bidding on the City procurement opportunities. Examples of such unethical bidding practices include inappropriate offers of gifts to City employees, elected officials, officers, consultants, advisors or other City representatives and misrepresentations in proposals and inappropriate in-process lobbying of or communication with City employees, elected officials, officers, consultants, advisors or other City representatives during a procurement process. The City must conduct a full review of the unethical practice in question and perform a contextual analysis to determine whether the vendor or vendors in question should be disqualified. For example, did the unethical bidding practice compromise the City's ability to run a fair procurement process?

#### **15.2.6 Poor Performance**

If a vendor performs poorly on a contract with the City, the City may consider disqualifying that vendor in the following circumstances:

- The contract was terminated for performance issues prior to expiry;
- There were un-rectified performance issues on a contract that resulted in extra costs and or delays to the City;
- The goods were defective and were not replaced or repaired or required multiple repairs; or
- The City brought litigation proceeding against the vendor in connection with issues related to the contract.

All performance issues in connection with City contracts must be escalated to Finance and brought to the attention of the City Manager. Performance issues must be supported by documentation evidencing the notification to the vendor of performance issues and all escalation of such performance issues.

### **15.3 Disqualification Process**

The Finance Director may disqualify a vendor in writing after notice and hearing to the vendor.

The written decision of disqualification shall also include the length of the disqualification. A vendor may be disqualified for period of up to three (3) years. The length of the disqualification period should be proportional to the reasons for the disqualification and fair and the full three-year disqualification should only be applied in the most serious of disqualifications.

A disqualification can either be a blanket disqualification or a disqualification to provide specific goods, services or construction and the recommendation should clearly set out the scope of the disqualification.

Before the vendor is officially disqualified, the vendor must be notified in writing of the potential disqualification and shall be allowed to provide a written response within ten (10) calendar days of notification, including any supporting documentation necessary to support their case against disqualification.

***The Finance Director's opinion may be appealed to the City Manager as provided in Section 14.***

Procurement shall notify the vendor in question of the disqualification recommendation in writing via certified mail, return receipt requested. The notification letter should contain:

- Full details as to the reasons for the disqualification, including copies of any documents or correspondence to support such a disqualification.
- The length of the recommended disqualification period and scope, if applicable.
- The vendor's right to re-apply for eligibility within the prescribed time period and the process.

A disqualified vendor may apply to be re-eligible to participate in City procurement opportunities upon the completion of half of the original disqualification period. For example, if the original disqualification period was two (2) years, the vendor may apply for review of the disqualification after one (1) year.

In order to apply to be re-eligible, the vendor must submit a written case for re-instatement, including supporting documentation, if necessary, that provides reasons why the original reason for the disqualification would no longer prove a risk for the City. Applications for review of eligibility are to be reviewed by the department director, the Finance Director, and City Manager.

If the department director, the Finance Director, and City Manager are convinced that the reasons for the original disqualification will no longer present risk for the City should it do business again with the vendor in question, then the Finance Director may reinstate that vendor.

Procurement shall maintain an up-to-date and current list of all disqualified vendors. Any vendor having an officer or director that was an officer or director of a vendor on the disqualified list at the time it was disqualified is also considered disqualified. The list should contain the full name of the vendor, the names of the officers or directors of the vendor, the reasons for the disqualification, the file number where the written recommendation for the disqualification is filed, the length of the disqualification period and the date of the expiry of the disqualification period.

Review of the disqualification list against a list of vendors and their officers or directors should be conducted for each procurement to ensure the disqualified vendors are not allowed to continue in the process.

## **Procurement Manual**

### **ARTICLE 16: INTERLOCAL CONTRACTS PROCUREMENT**

#### **16.1 General Information**

An interlocal contract is a contract between governmental agencies for services. All purchases from interlocal contracts require approval by City Council.

## **Procurement Policy**

### **ARTICLE 17: COOPERATIVE BUYING AGREEMENTS**

#### **17.1 General Information and Applicability**

The City may purchase goods and services through cooperative contracts. Agreements entered into pursuant to this Policy shall be limited to the areas of procurement of materials, services, professional services, construction or construction services, warehousing or materials management.

#### **17.2 When Agreement is Required and/or Authorized**

The City is not authorized to participate in cooperative buying agreement unless a cooperative agreement described in GC 791 or LGC 271 is executed between the parties or the parties are members of a cooperative purchasing group or authority that permits cooperative use amongst its membership. All cooperative agreements entered into pursuant to this Policy shall be approved by the City Council.

The City may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any materials, services, professional services, construction or construction services with one or more government agencies in accordance with an agreement entered into between the participants. Parties under a cooperative purchasing agreement may:

- Sponsor, conduct or administer a cooperative agreement for the procurement or disposal of any materials, services, or construction.
- Cooperatively use materials or services.
- Commonly use or share warehousing facilities, capital equipment and other facilities.
- Provide personnel, except that the requesting eligible procurement unit may pay the public procurement unit providing the personnel the direct and indirect cost of providing the personnel, in accordance with the agreement.
- On request, make available to other eligible public procurement units informational, technical or other services that may assist in improving the efficiency or economy of procurement. The public procurement unit furnishing the informational or technical services has the right to request reimbursement for the reasonable and necessary costs of providing such services.

#### **17.3 Approval to Purchase from Cooperative Contract**

If the purchase is \$50,000 or less, the City Manager may approve the expenditure. If the purchase is in excess of \$50,000, City Council approval is required.

The City must have an interlocal agreement in place with the cooperative agency before a purchase can be made. Additional documentation may be required to ensure that the cooperative contract provides the best value to the City.

A list of approved cooperative purchasing programs is included in **Appendix C**.

#### **17.4 Prohibitions**

If a member of the governing body or an appointed board or commission of a municipality or county belongs to a cooperative association, the municipality or county may purchase equipment or supplies from the association only if no member of the governing body, board, or commission will receive a pecuniary benefit from the purchase, other than as reflected in an increase in dividends distributed generally to members of the association.

**Procurement Policy**  
**ARTICLE 18: NON-DISCRIMINATION**

**18.1 Policy Statements**

No City contractor or vendor shall engage in any discriminatory employment practice.

No person shall, on the grounds of race, sex, age, disability, creed, color, national origin, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from contracts with the City.

No City contractor or vendor, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the Americans with Disabilities Act (ADA).

## **Procurement Policy**

### **ARTICLE 19: PREFERENCES**

#### **19.1 General Overview**

The City of Tomball has the right to implement any procurement practices which gives preference during consideration of a bid over other Bidders/Proposers.

#### **19.2 Environmentally Preferable Purchasing (EPP)**

The City may establish EPP policies to promote the purchase of environmentally preferable products throughout City departments, by incorporating environmental considerations into public purchasing to the extent it available, practical, and reasonably permitted by the Texas purchasing laws or any future policies directed by City Council.

#### **19.3 Criterial for Local Preference Purchases**

In compliance with LGC 271.905 and 271.9051, the City reserves the right to apply a local preference during consideration of a bid from a bidder whose principal place of business is in the City.

This Policy applies to the purchase of real property and personal property that is not affixed to real property or services (including construction services) through a competitive bid. This shall include IFBs awarded based upon lowest responsive, responsible bid, or awarded based upon best value.

##### **19.3.1 Lowest Responsible Bids**

A five percent (5%) price differential will apply to construction bids less than \$100,000 and all other bids, including services, less than \$500,000. This excludes telecommunication and information services. A three percent (3%) price differential will apply to bids, excluding construction and services, greater than \$500,000. The chart below is a summary of the criteria for Lowest Responsible Bids.

<b>LGC 271.9051</b>	<b>LGC 271.905</b>
<b>5% Price Differential</b>	<b>3% Price Differential</b>
Construction bids between \$50,000 and \$100,000	All other bids, excludes construction and services, greater than \$500,000
All other bids, including services, between \$50,000 and \$500,000	



### **19.3.2 Best Value Bids**

Price is only one of a number of determining factors that are weighted for evaluation purposes. As a result, an additional weighted factor will be added to all such bids for bidders meeting local preference criteria. The appropriate weight, either 5% or 3%, will be consistent with the criteria outlined in the chart above.

### **19.3.3 Local Bidder Preference Consideration Application**

A new and complete application must be submitted with each competitive bid by the due date, including a Tax Certification from the Harris County Tax Assessor/Collector per Resolution R2012-012.

This Policy does not apply to purchases obtained through an RFQ, RFP, bids involving federal funds, Cooperative Programs or Interlocal Agreements.

## **19.4 Reciprocal Law**

GC 2252.002 relates in part to bids by nonresident bidders for any type of contract awarded by a municipality, such as general construction, improvements, supplies, services, a public work project or for purchase of supplies, materials, or equipment.

GC 2252.002 states, “A government entity may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the greater of the following: (1) the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident’s principal place of business is located, or (2) the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which a majority of the manufacturing relating to the contract will be performed.”

The City reviews the applicability of this statute for all expenditures over \$50,000.

## **Procurement Policy**

### **ARTICLE 20: ETHICS AND COMPLIANCE**

#### **20.1 General Information**

All City officials and employees acting on the behalf of the City of Tomball must observe the highest standard of ethics throughout the procurement process. Staff and other personnel, shall never use their authority for personal gain, and they must seek to uphold and enhance the standing of the City of Tomball.

#### **20.2 Ethical Requirements Relating to Municipal Procurement**

##### **20.2.1 State Laws**

City officials and employees must comply with various state laws with respect to purchasing. The following is intended to provide a summary and the general requirements of the laws.

##### *Chapter 171, Texas Local Government Code*

Chapter 171 of the Texas Local Government Code regulates a local public official's conflicts of interest. The law defines "local public official" as an elected official, such as a Council Member, or an appointed city official (paid or unpaid) who exercises responsibilities that are more than advisory in nature.

The law prohibits a local public official from shall not voteing or participateing in any matter involving a business entity or real property in which the official, or the officials family, has a substantial interest if an action on the matter will result in a special economic effect on the business that is distinguishable from the effect on the public or, in the case of a substantial interest in real property, it is reasonably foreseeable that the action will have a special economic effect on the value of the property, distinguishable from its effect on the public.

A local public official who has such interest is required to file, before a vote or decision on any matter involving the business entity or real property, an affidavit with City Secretary, stating the nature and extent of the interest.

A local public official is required to abstain from participating in the matter.

A local public official who is required to file an affidavit is not required to abstain from participating in the matter if a majority of the members of the governing body have a substantial interest and file affidavits of similar interests on the same official matter.

##### *Chapter 176, Texas Local Government Code*

A Council Member, City Manager, Department Director, administrator, or any other person who is exercises any discretion in the selection of a vendor shall file a FORM CIS if the

person, or the person's family, has an employment or business relationship with a vendor who conducts business with the City.

An officer is required to file a conflicts disclosure statement ("statement") if a vendor enters into a contract with the City, or if the City is considering entering into a contract with the vendor, and the officer or officer's family member has an employment or other business relationship with the vendor that results in the officer or officer's family member receiving taxable income that exceeds \$2,500.00 in the preceding twelve months.

An officer is required to file a statement if the officer or officer's family member accepts a gift(s) from a vendor with an aggregate value of more than \$250.00 in the preceding twelve months. An officer is not required to file a statement in relation to a gift, regardless of amount, that is accepted by an officer or officer's family member if the gift is given by a family member of the person accepting the gift, is a political contribution, or is food, lodging, transportation, or entertainment accepted as a guest.

An officer or vendor who knowingly fails to file a statement or a disclosure when required to do so commits a Class C misdemeanor.

Chapter 252, Texas Local Government Code – Sequential and Component Purchases

Separate, sequential, or component purchases to avoid placing any purchase in a lower cost bracket in order to avoid approval levels or the competitive bid process are prohibited. A Department shall manage and plan in such ways that all purchases are made in sufficient quantities to meet needs. "Separate Purchases" mean purchases made separately of items that in normal purchasing practices would be bought in one purchase. "Component Purchases" means purchases of the component parts of an item that in normal purchasing practices would be bought in one purchase. "Sequential Purchases" means purchases of items made over a period that in normal purchasing practices would be bought in one purchase. (See §§252.001, 252.062, TX. Local Gov't Code).

Chapter 252, Texas Local Government Code – Penalties and Remedies

If a person fails to comply with the competitive bidding or competitive proposal procedures required by Chapter 252, Texas Local Government Code, that person may be convicted of a Class B misdemeanor. A Class B misdemeanor may be punished by a fine of up to \$2,000.00, confinement in jail for up to 180 days, or both the fine and confinement.

An individual is automatically removed from his or her position if that person is finally convicted of failing to comply with the competitive bidding or competitive proposal procedures required by Chapter 252. Once removed from office, such a person may not hold any public office in this state for four years after the date of final conviction. Also, for four years after the date of final conviction, the convicted person may not be employed by the city where the person was serving when the offense occurred and may not receive any compensation through a contract with the city.

State law specifies that if a city enters into a contract without complying with the competitive bidding or competitive proposal requirements of Chapter 252, the contract is void. (See §252.061, TX. Local Gov't Code)

### **20.2.2 Local Rules**

The City demands the highest ethical standards of conduct from its employees and from vendors or contractors dealing with the City. City employees engaged in purchasing must comply with the following ethical standards.

#### *Gratuities*

Certain kinds of conduct such as offering gifts, gratuities, or discounts to City employees to influence their decisions in the purchasing process are expressly prohibited.

The City may reject a bid or cancel a contract without liability if it is determined by the City that gratuities were offered or given by a vendor or contractor, or an agent or representative of the vendor or contractor, to any officer or employee of the City with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such a contract.

In the event a contract is cancelled by the City pursuant to this provision, the City will be entitled, in addition to any other rights and remedies, to recover and withhold the amount of the cost incurred by the vendor or contractor in providing such gratuities.

#### *Confidential Information*

It is a violation of City policy for any employee to use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any person. Any use of such information shall be grounds for discipline, up to and including dismissal.

#### *Purchases for personal, private use*

No employee may use the purchasing power of the City to make purchases for personal, private use. Employees should not have private purchases sent or delivered to the City, City facilities, or City buildings.

#### *Travel, meals, and other expenses paid by vendor or contractor.*

Travel costs to a vendor's or contractor's site shall be paid by the vendor or contractor only if the bid or proposal solicitation specifically stated that such visits would be at the vendor's or contractor's sole expense. The City will pay all other travel costs. Employees must fully document the visits and related expenses.

## **20.3 Required Forms from All Vendors**

All vendors wishing to do business with the City of Tomball will be required to complete the forms found on **(Exhibit D)** in this document.

These forms are for the permanent record of the city and will be kept for the purpose of conforming to the afore mentioned statutory requirements stated in this section, the generally accepted accounting/auditing rules or requirements, and any requirements that federally funded programs may mandate of which the City may be participating with.

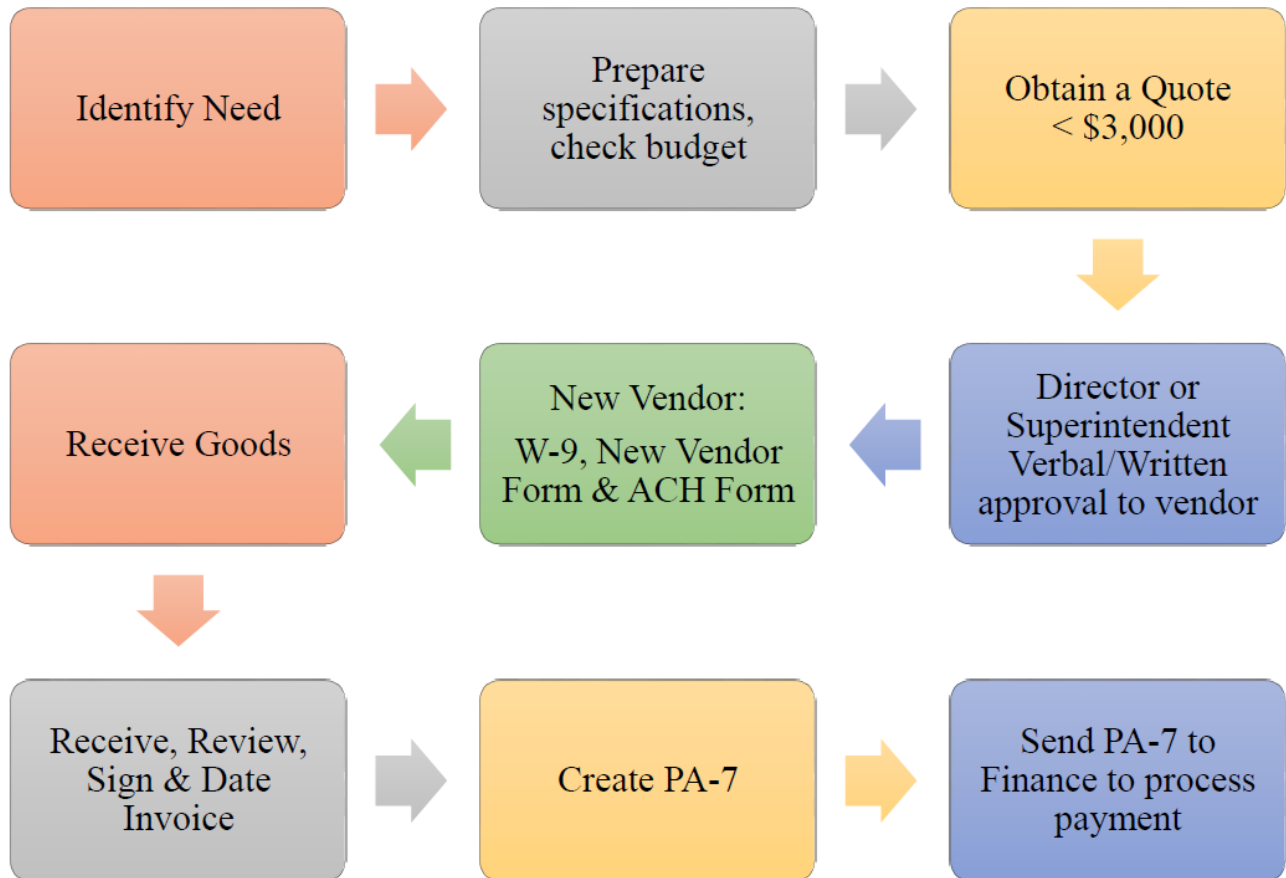
Failure to provide completed and signed forms may cause the vendor to not be accepted as a registered vendor with the City of Tomball.

Additionally, Departments are encouraged to do business with companies who adhere to the federal and state labor laws and regulations including:

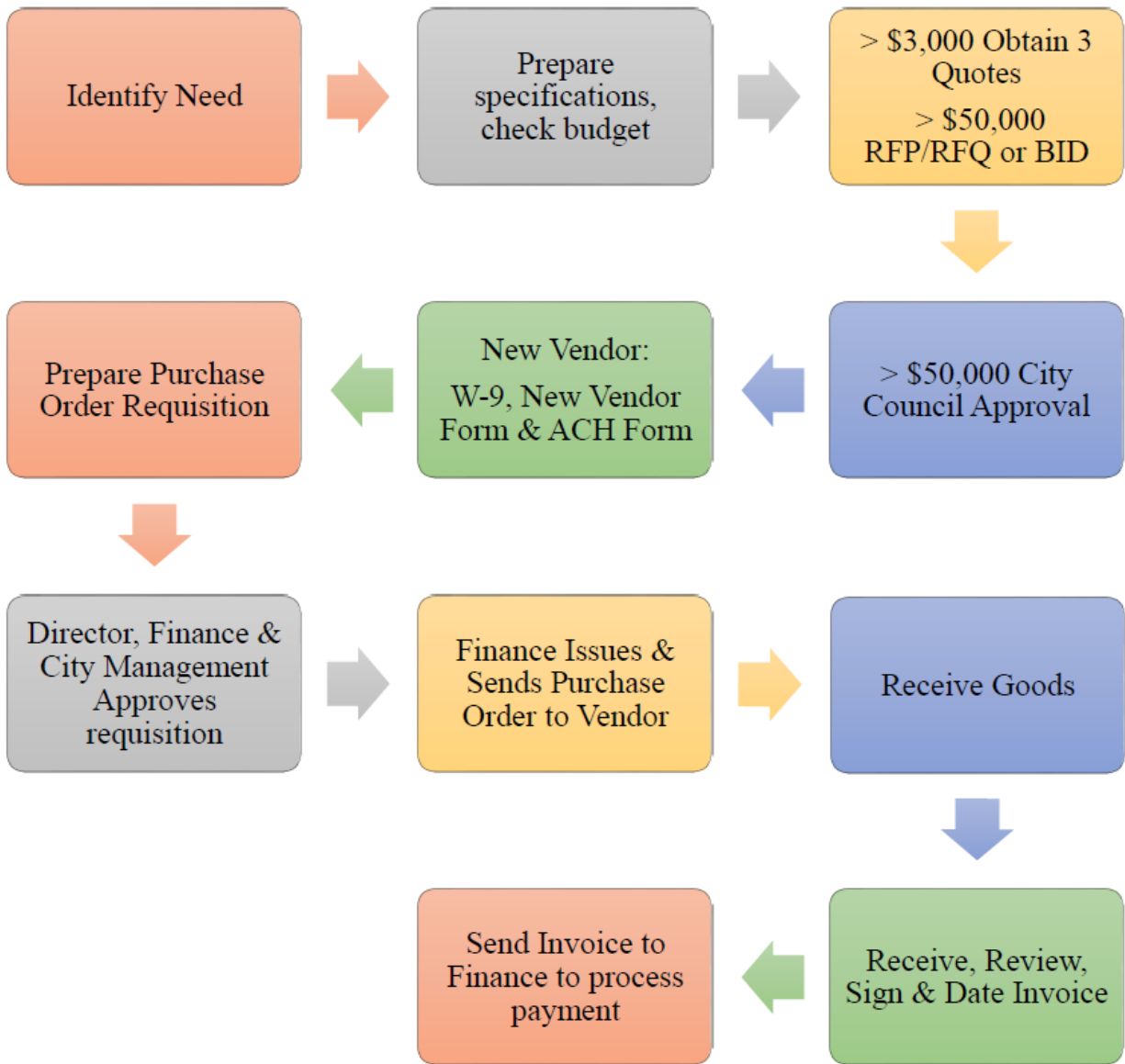
- The Fair Labor Standards Act through limiting child labor, requiring payment for overtime work, and establishing a minimum wage.
- The Occupational Health and Safety Act which requires safe working practices and procedures in all projects.
- Any state or federal law, including executive orders, prohibiting discrimination or harassment in the work place.

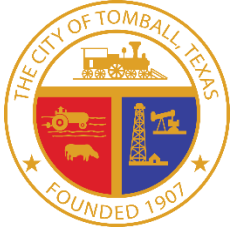
## Exhibit A

### PURCHASES < \$3,000



## PURCHASES > \$3,000





# Exhibit B

## City of Tomball

### Request for Reimbursement

Upon approval received from the Finance Director, prior to purchase, reimbursements may be processed for certain goods or services, ONLY in instances where sufficient time may not allow approval through the purchase order process. Instances where prior approval were not authorized, may be cause for non-payment of the request.

The Purchasing Agent will review submitted Request for Reimbursement and either acknowledge that the request may move forward in processing; or, if discrepancies are found, advise that the form be returned to the requesting division to correct or process through the purchase order process.

Employee Name: \_\_\_\_\_

Department: \_\_\_\_\_

#### Request for Reimbursement:

Suppliers Name:
Good or Service:
Amount:

Justification for this Reimbursement

--

Do you have a PCard?      YES      NO

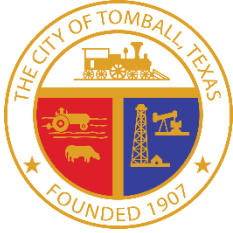
Do you need a PCard for future transactions?      YES      NO

Requester: \_\_\_\_\_ Date: \_\_\_\_\_

Department Head: \_\_\_\_\_ Date: \_\_\_\_\_

Finance Director: \_\_\_\_\_ Date: \_\_\_\_\_





# Exhibit C

## City of Tomball

### Purchase Order Requisition Process

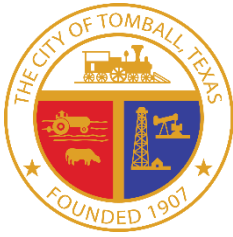
Purchase orders (PO's) are **required** for all purchases in excess of \$3,000, unless otherwise exempt as indicated in the exemptions section below. Purchase order requisitions must be approved prior to making a purchase. Purchase order requisitions may be submitted for purchases under \$3,000, but are not required. Departments may use a procurement card or check requests for purchases under \$3,000 so long as the purchase complies with this Policy, the Procurement Card Policy, and other applicable policies or regulations.

Items that **do not require** a purchase order and may be paid with a procurement card or check request are:

- Catered event fees; Election fees; Membership or professional association dues and fees; Registration fees; Regulatory fees;
  - Periodicals;
  - Postage;
  - Subscriptions;
  - Travel expenses;
  - Tuition;
  - Utilities; and
  - Other fees as approved in writing by the Finance Director.
1. Purchases more than \$3,000 but less than \$50,000 require 3 written Competitive Quotations with 2 Historically Underutilized Businesses (HUB) Quotations
  2. All Purchases more than \$50,000, either individually or in aggregate, approved during the budget process still require an RFP, RFQ or BID and go before City Council for approval
  3. New Vendor – Must fill out a New Vendor Packet
  4. Each department will generate their own Purchase Order Requisition Including the following:
    - Vendor
    - Vendor Email
    - Department
    - Account number
    - Shipping Address
    - Detailed Description must include contract # with CO-OP
    - Price
    - Shipping

All supporting documents must be attached to the Purchase Order Requisition

- Competitive Quotations with 2 HUB Quotations, RFP, RFQ or BID documentation
  - A copy of the agenda item data sheet reflecting council's approval
  - Sole Source Letter and Sole Source Justification Form
5. Finance Department shall verify that all required documentation is provided and issue a Purchase Order after all appropriate levels of authorization have been completed.
  6. The department receiving such product and/or service shall notate invoice with their signature and forward to the Finance Department for payment.



# Exhibit D

## City of Tomball New Vendor Form

### Vendor Information

Legal Name:
Alias/DBA:
Email:
Phone Number:

### Primary Business Address Information

Street Address:		
City:	State:	Zip Code:

### Remittance Address Information

*(Skip if identical to Business Address)*

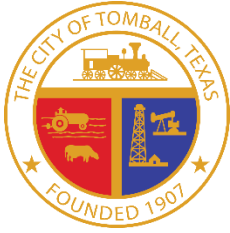
Street Address:		
City:	State:	Zip Code:

### IRS 1099 Address Information

*(Skip if identical to Business Address)*

Street Address:		
City:	State:	Zip Code:

- You must attach a completed W-9 form with this submission.
- To receive ACH payments, please complete the ACH Payment Authorization and provide the required documentation.
- Email this form with requested documentation to: [apayable@tomballtx.gov](mailto:apayable@tomballtx.gov)



# Exhibit E

## City of Tomball

### Sole Source Justification Form

*For Internal Use Only*

A sole source procurement is the acquisition of a good, service, professional service or public work in which there is only one source. Sole source procurement shall be avoided, except when no available alternative sources exist. Sole source procurements require the approval of the City Council for purchases over \$50,000.

*An Original Sole Source Letter from the Vendor **MUST** be attached with the Sole Source Justification Form.*

Department: \_\_\_\_\_ Date: \_\_\_\_\_

#### Proposed Source:

Suppliers Name:
Contact Name:
Email:
Phone Number:

Justification for this Sole Source:

--

Efforts made to find other Sources:

--

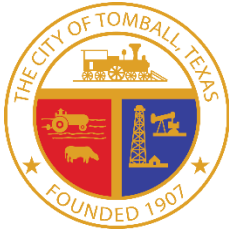
Proposed Source: Describe the good or service including details of model number or software version and what/where the service will be performed. Provide Scope of Work if applicable:

--

Prepared By: \_\_\_\_\_ Date: \_\_\_\_\_

Department Head: \_\_\_\_\_ Date: \_\_\_\_\_

Finance Director: \_\_\_\_\_ Date: \_\_\_\_\_



# Exhibit F

## City of Tomball Emergency Purchase Justification Form

*For Internal Use Only*

Emergency purchase when a public calamity requires immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality, or to protect public health, welfare, or safety, or necessary because of unforeseen damage to public machinery or property.

Emergency procurements shall be avoided, except when no reasonable alternative approach exist. Emergency purchases require ratification of the purchase by City Council for expenditures exceeding \$50,000.

Department: \_\_\_\_\_ Date of Purchase: \_\_\_\_\_

Nature, cause of the emergency: Explain what emergency or cause situation to exist.

Financial/Operation Damage: Explain the damage that would occur if this purchase was not made immediately.

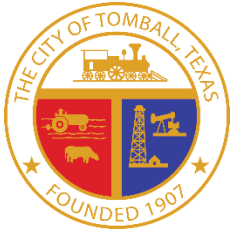
Reason purchase was not anticipated: Explain why the need was not anticipated, and occurred through normal procedures.

Requested By \_\_\_\_\_ Date \_\_\_\_\_

Department Head \_\_\_\_\_ Date \_\_\_\_\_

Finance Director \_\_\_\_\_ Date \_\_\_\_\_

City Management \_\_\_\_\_ Date \_\_\_\_\_



# Exhibit G

## City of Tomball

### Exemption from Competitive Bidding Form

This form is used to request exemption from the City of Tomball and Federal requirements for competition in purchasing. The requirement for competition starts at any purchase of \$3,000.00 or more. Exemptions from Competitive Bid procurements require the approval of the City Council for purchases over \$50,000.

Department	
Department Requestor	
Description of Product/Service	
Total Cost of the Purchase or for the Entire term of the Contract	
Supplier or Contractor Name:	

**\* NOTE: Supplier's Quotation, Scope of Work, or Detailed Specifications must be attached.**

**Define why there is an exemption from Competitive Bidding:**

--

Prepared By: \_\_\_\_\_ Date: \_\_\_\_\_

Department Head: \_\_\_\_\_ Date: \_\_\_\_\_

Finance Director: \_\_\_\_\_ Date: \_\_\_\_\_

City Management \_\_\_\_\_ Date: \_\_\_\_\_

# Exhibit H

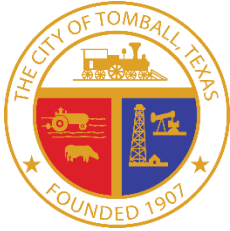
## PROCEDURE FOR PURCHASING EQUIPMENT AND VEHICLES

All equipment and vehicle purchases must be processed through Finance. Specifications must be forwarded to the Finance Director, or designee, who will be responsible for soliciting bids and authorizing the purchase of vehicles and equipment as approved by either the City Manager or City Council. Approval of the department director is required and approval by the City Council is required if the purchase exceeds \$50,000.

1. Identify fleet that needs to be replaced

REPLACEMENT SCHEDULE	
Patrol Vehicles	4 Years or 100,000
Small Field Equipment (Mowers, gators, golf carts and small handheld equipment) < \$20,000	4-6 Years
Administrative Vehicles / Non - Diesel Vehicles	7 Year or 100,000
Diesel Vehicles	10 Years 150,000
Heavy Equipment/ Trailers	15 - 20 Years
Fire Apparatuses	20 Years

2. Identify new fleet to be purchased
3. Generate Specs
4. Obtain three competitive quotations, cooperative contract or BID
5. Verify Funds have been budgeted
6. Finance department will need to review documentation, when approved a unit number will be assigned to each vehicle and equipment.
7. Agenda Data sheet must be created and entered into MuniCode by the Finance department.
8. All Purchases more than \$50,000, either individually or in aggregate, approved during the budget process must still go before City Council for approval
9. Each department will generate their own Purchase Order Requisition Including the following:
  - Vendor Name and Contact Information
  - Department
  - Account Number
  - Shipping Address
  - Detailed Description including Make, Model, Unit Number & Contract #
  - Price
  - Shipping, if applicableAll supporting documents must be attached to the Purchase Order Requisition
  - Specs
  - Competitive Quotations, RFP, RFQ or BID documentation
  - A copy of the agenda item data sheet reflecting council's approval
10. Finance Department shall verify that all required documentation is provided and issue a Purchase Order after all appropriate levels of authorization have been completed.
11. When fleet is received the department shall notate invoice with their signature and forward to the Finance Department for payment.
  - All documentation and manuals (Invoice dated with received date, Certificate of Origin, Vehicle Inspection Report, odometer statement, title application from dealer, etc.)



# Exhibit I

## City of Tomball

### Conflict of Interest Disclosure Form

A local government official or Employee must disclose certain relationships with vendors to the City. The official or Employee must file a disclosure statement if the vendor who is contracting or has contracted with the City has:

- A familial relationship with the official;
- An employment of other business relationship with the official or a family member of the official that results in receiving more than \$2,500 of taxable income over a 12-month period; or
- Given the official or family member of the official one or more gifts that have an aggregate value over \$100 in the 12-month period preceding the date the official becomes aware of the contract or potential contract with the City.

Official/Employee Name: \_\_\_\_\_ Date: \_\_\_\_\_  
Position/Title: \_\_\_\_\_ Employee Number: \_\_\_\_\_

I hereby declare that I do not have any relatives or close personal relationships with any vendors who is contracting or has contracted with the City of Tomball.

I hereby declare that I currently have relatives or close personal relationships with a vendor whose name and details are listed below:

Vendor Name	Individual Name	Relationship

Description of Contract(s) or Purchase(s):

------------------------------------------

Official/Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

City Management Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## Appendix A

### Laws and Statutes Governing Procurement

Federal Regulations	
Code of Federal Regulations	<a href="#">Title 2, Subtitle A, Chapter II, Part 200</a>
State Regulations	
Government Code	<a href="#">Chapter 552. Public Information</a> <a href="#">Chapter 573. Degrees of Relationship; Nepotism Prohibitions</a> <a href="#">Chapter 791. Interlocal Cooperation Contracts</a> <a href="#">Chapter 2155. Purchasing: General Rules and Procedures</a> <a href="#">Chapter 2251. Payment for Goods and Services</a> <a href="#">Chapter 2252. Contracts with Governmental Entity</a> <a href="#">Chapter 2253. Public Work Performance and Payment Bonds</a> <a href="#">Chapter 2254. Professional and Consulting Services</a> <a href="#">Chapter 2256. Public Funds Investment Act</a> <a href="#">Chapter 2257. Collateral for Public Funds</a> <a href="#">Chapter 2258. Prevailing Wage Rates</a> <a href="#">Chapter 2259. Self-Insurance by Governmental Units</a> <a href="#">Chapter 2267. Public and Private Facilities and Infrastructure</a> <a href="#">Chapter 2269. Contracting and Delivery Procedures for Construction Projects</a>
Local Government Code	<a href="#">Chapter 105. Depositories for Municipal Funds</a> <a href="#">Chapter 171. Regulation of Conflicts of Interest of Officers of Municipalities, Counties, and Certain Other Local Governments</a> <a href="#">Chapter 176. Disclosure of Certain Relationships with Local Government Officers; Providing Public Access to Certain Information</a> <a href="#">Chapter 252. Purchasing and Contracting Authority of Municipalities</a> <a href="#">Chapter 271. Purchasing and Contracting Authority of Municipalities, Counties, and Certain Other Local Governments</a> <a href="#">Chapter 272. Sale or Lease of Property by Municipalities, Counties, and Certain Other Local Governments</a> <a href="#">Chapter 273. Acquisition of Property for Public Purposes by Municipalities, Counties, and Other Local Governments</a> <a href="#">Chapter 304. Energy Aggregation Measures for Local Governments</a>
Transportation Code	<a href="#">Chapter 728. Sale or Transfer of Motor Vehicles and Master Keys</a>
Health & Safety Code	<a href="#">Chapter 386. Texas Emissions Reduction Plan</a>
Occupations Code	<a href="#">Chapter 1001. Texas Board of Professional Engineers and Land Surveyors</a>
Labor Code	<a href="#">Chapter 406. Workers' Compensation Insurance Coverage</a>



**Appendix B**  
**City of Tomball**  
**City Charter & Code of Ordinances**  
**Sections Relating to Procurement**

**Tomball City Charter**

**Article VI, Section 6.07 – Conflict of Interest in City Contracts**

No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or shall be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies, or services except as provided by State law. Any violation of this Section shall constitute malfeasance in office, and any officer or employee guilty thereof shall be subject to removal from his office or position. Any violation of this Section, with the knowledge, expressed or implied, of the person or corporation contracting with the Council may invalidate the contract involved.

**Article VI, Section 6.08 – Mayor and Mayor Pro-Tem**

The Mayor shall be the official head of the City government. The Mayor shall be the Chairman and shall preside at all meetings of the Council. The Mayor shall see that all ordinances, bylaws and resolutions of the Council are faithfully obeyed and enforced. The Mayor shall, when authorized by the Council, sign all official documents such as ordinances, resolutions, conveyances, grant agreements, official plats, contracts and bonds. The Mayor shall appoint special committees as he deems advisable, subject to approval by Council, or as instructed by the Council. The Mayor shall perform such other duties consistent with this Charter or as may be imposed upon him by Council.

The Council, at its first meeting after the election of Councilmen, shall elect one of its members Mayor Pro-Tem, and he shall perform all the duties of the Mayor in the absence or disability of the Mayor. The Mayor Pro-Tem shall retain his voting privileges when acting in the absence of the Mayor.

**Article VII, Section 7.01 – City Manager**

*A. Appointment and Qualifications.* The Council shall appoint an administrative and executive officer of the City who shall be responsible to the Council for the administration of all the affairs of the City. He shall be chosen by the Council solely on the basis of his executive and administrative training, experience and ability. No member of the Council shall, during the time for which he is elected and for one year thereafter, be appointed City Manager.

*B. Term and Salary.*

(1) The City Manager shall be appointed for a term not to exceed two years by a majority vote of the entire Council. The appointment shall be secured through an explicit contractual agreement which shall protect the rights of both the Council and the City Manager.

(2) The City Manager shall receive compensation as may be fixed by the Council.

*C. Duties of the City Manager.* The City Manager shall:

(1) Be responsible to the Council for the efficient and economical administration of the City government. He shall have the authority, with the approval of the Council, to appoint and remove all department heads. He shall have the authority to appoint and remove all

other employees in the administrative service of the City. He may authorize the head of a department to appoint and remove subordinates in his respective department. Except for the purpose of inquiry, the Council and its members shall deal with the administrative service solely through the City Manager.

(2) Prepare the budget annually and submit it to the Council and be responsible for its administration after adoption.

(3) Prepare and submit to the Council, as of the end of the fiscal year, a complete report on the finances and administrative activities of the City for the preceding year.

(4) Keep the Council advised of the financial condition and future needs of the City and make such recommendations as may seem desirable.

(5) Perform such duties as may be prescribed by this Charter or may be required of him by the Council, not inconsistent with this Charter.

(6) Prepare a written report to the Council, first in 2019, and thereafter at intervals not exceeding five years, as to the need for revision of the city Charter, with special attention given to conflicts, if any, between the Charter and state law and recommending such amendments to the Charter as may seem necessary for legal, administrative, or other reasons.

#### **Article VII, Section 7.02 – Assistant City Manager**

The City Manager, with the approval of the Council, may appoint an Assistant City Manager. Such Assistant City Manager shall have all of the powers and duties as delineated by his job description, and in the event of the absence or disability of the City Manager, he shall fill all the duties of the City Manager.

#### **Article VII, Section 7.05 – Finance Director**

There shall be a Finance Director for the City. The City Manager, with the approval of the Council, shall appoint a Finance Director and such assistants as the Council shall deem advisable. The Finance Director shall perform the duties delegated to him by the City Manager and those which may be imposed upon him by the laws of the State of Texas.

#### **Article VIII, Section 8.16 – Purchase Procedure**

All purchases made and contracts executed by the City shall be pursuant to the laws established by the State of Texas.

#### **Article VIII, Section 8.17 – Disbursement of Funds**

All checks, vouchers or warrants for the withdrawal of money from the City Depository shall be signed by the City Manager and countersigned by the City Secretary or the Finance Director. In the absence of the City Manager, the Mayor, or the Mayor Pro-Tem in the absence of the Mayor, may sign.

## **Code of Ordinances**

### **Chapter 2 Administration, Article II City Council, Division 1 Generally, Section 2-20 – Conflicts of Interest**

No member of the city council shall be the surety of any person having any contract, work or business with the city, for the performance of which security may be required, nor be security on the official bond of any officer of the city.

### **Chapter 2 Administration, Article II City Council, Division 2 Mayor, Section 2-57 – Sign Various Instruments**

The mayor shall officially sign all warrants upon the city treasury, and all notes, bonds, contracts and obligations in writing entered into by the city. It shall be his duty to see that all contracts with the city are faithfully performed by the contractors.

### **Chapter 2 Administration, Article III Officers and Employees, Division 5 Code of Ethics, Section 2-210 Declaration of Policy**

(a) It is hereby determined by the city council of the city, that the proper operation of government requires that public officers and employees be independent and impartial; that the government's decisions and policies be made within the proper channels of the governmental structure; that a public office not be used for personal gain; and that the public have confidence in the integrity of its government and its governmental officials.

(b) The purpose of this Code is to enumerate existing state laws which regulate the conduct and activities of city officers and employees, and to promulgate such additional minimum standards as are deemed necessary and appropriate to ensure the faithful and impartial administration of the city's government.

### **Chapter 2 Administration, Article III Officers and Employees, Division 5 Code of Ethics, Section 2-211 Definitions**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*City employee* means any person employed by the city, including those individuals employed on a part-time basis.

*City officer* means the mayor, members of the city council, the city manager, city secretary, municipal court judge and clerk, alternate judges, and substitute judges, and each member and alternate member of all of the city boards, commissions and committees.

*City official* means a city officer or city employee.

### **Chapter 2 Administration, Article III Officers and Employees, Division 5 Code of Ethics, Section 2-212 Ethical Principles**

The following code of ethics for all city officers and employees is adopted. To further the objectives of this code of ethics, certain ethical principles shall govern the conduct of every officer or employee, who shall:

- (1) Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and confidence of the citizens of the city;

- (2) Recognize that the chief function of local government at all times is to serve the best interests of all of the people;
- (3) Be dedicated to public service by being cooperative and constructive, and by making the best and most efficient use of available resources;
- (4) Refrain from any activity or action that may hinder one's ability to be objective and impartial on any matter coming before the council or the city. Do not seek or accept gifts or special favors; believe that personal gain by use of confidential information or by misuse of public funds or time is dishonest;
- (5) Recognize that public and political policy decisions, based on established values, are ultimately the responsibility of the city and city council; and
- (6) Conduct business in open, duly noticed meetings in order to be directly accountable to the citizens of the city. It is recognized that certain exceptions are made by the state for executive sessions; however, any action as a result of that type of meeting will be handled later in open session.

## **Chapter 2 Administration, Article III Officers and Employees, Division 5 Code of Ethics, Section 2-213 Standards of Conduct**

In order to more fully effectuate the policy declared in this code of ethics, to ensure that all city officials act and conduct themselves both inside and outside the city's service so as to give no occasion for distrust of their integrity, and to avoid even the appearance of impropriety by any city official, the following standards of conduct are adopted.

- (1) *Grant of special consideration.* No city official shall grant any special consideration, treatment or advantage to any citizen, individual, business organization or group beyond that which is normally available to every other citizen, individual, business organization or group. This shall not prevent special considerations authorized and granted by the city council for the purpose of creating incentives necessary to secure or retain employees.
- (2) *Appearances on behalf of private interests.* No city official shall represent or appear on behalf of private interests of others before any agency of the city, or any city board, commission, committee or city council concerning any case, project or matter over which the official exercises discretionary authority, nor shall a city official represent any private interest of others in any action or proceeding involving the city, nor voluntarily participate on behalf of others in any litigation to which the city is a party.
- (3) *Appearances by past officials.* No city official, holding a position which involves decision-making, advisory or supervisory responsibility, shall, within 12 months following the end of service with the city, represent or appear on behalf of private interests of others before the city or any agency thereof concerning any case, project, or matter over which the official has exercised discretionary authority.
- (4) *Securing special privileges.* No city official shall use his official position to secure special privilege or exemption for himself or others.
- (5) *Gifts.* No city official shall accept or solicit any gift or favor that could reasonably tend to influence that individual in the discharge of official duties or that the official knows or should know has been offered with the intent to influence or reward official conduct.
- (6) *Disclosure or use of confidential information.* No city official shall disclose any confidential information gained by reason of his office or employment with the city, concerning any property, operation, policy or affair of the city, or use such confidential

information to advance any personal interest, financial or otherwise, of such official or others.

(7) *Incompatible outside activities.* No city official shall engage in any outside activity which will conflict with, or be incompatible with, the city office or employment.

(8) *Incompatible employment.* No city official shall accept outside employment which is incompatible with the full and proper discharge of his duties and responsibilities with the city, or which might impair his independent judgment in the performance of his public duty.

(9) *Use of city property for personal use.* No city official shall use city supplies, equipment, vehicles or facilities for any purpose other than the conduct of official city business, unless otherwise specifically provided for by law, ordinance or city policy.

## **Chapter 2 Administration, Article III Officers and Employees, Division 5 Code of Ethics, Section 2-214 State Laws Governing Conduct**

### **(a) *Conflicts of interest.***

(1) Pursuant to V.T.C.A., Local Government Code, ch. 171, a local public official having a substantial interest in a business entity or piece of real property must file, before any vote or decision is made on any matter affecting the business entity or real property, an affidavit stating the nature and extent of the interest. The official must file the affidavit with the city secretary, and is required to abstain from any further participation in the matter if:

- a. The proposed action would have a special economic effect on the business entity that is distinguishable from the effect on the public; or
- b. It is reasonably foreseeable that the action would have a special economic effect on the value of the real property which is distinguishable from its effect on the public. An exception to the abstention rule is provided in cases where a majority of members of the entity are likewise required to and do file affidavits.

(2) A substantial interest in a business entity exists when the official:

- a. Owns ten percent or more of the voting stock or shares of the business entity;
- b. Owns ten percent or more or \$5,000.00 or more of the fair market value of the business entity; or
- c. Has received from the business entity funds which exceed ten percent of the official's gross income for the prior year.

(3) A substantial interest in real property exists when the official has an equitable or legal interest in such property which has a fair market value of \$2,500.00 or more.

(4) A local public official means a member of the city council or other official of the city, paid or unpaid, who exercises responsibilities which are more than advisory only. A business entity means any entity recognized by law.

(5) It is an offense for a local public official to act as a surety for a business entity that is contracting with the city, or to act a surety on any official bond required of an officer of the city. State Law reference— Similar provisions V.T.C.A., Local Government Code § 171.003.

(6) A local public official is considered to have a substantial interest if a person related to the official in the first degree by consanguinity or affinity has a substantial interest. State Law reference— Similar provisions, V.T.C.A., Local Government Code § 171.002(c).

(7) The provisions of V.T.C.A., Local Government Code, ch. 171, are in addition to any other municipal charter provisions or municipal ordinances defining and prohibiting conflicts of interest.

(b) *Bribery.* It is unlawful for a city official to accept or agree to accept:

- (1) Any benefit as consideration for a decision, opinion, recommendation, vote or other exercise of discretion as a public servant;
- (2) Any benefit as consideration for a decision, vote, recommendation or other exercise of official discretion in a judicial or administrative proceeding; or
- (3) Any benefit as consideration for a violation of a duty imposed by law on a public servant. State Law reference— Similar provisions, V.T.C.A., Penal Code § 36.02.

(c) *Gifts to public servants.*

(1) It is unlawful for a city official to solicit, accept or agree to accept any benefit from a person the official knows is subject to regulation, inspection or investigation by the official or the city. State Law reference— Similar provisions, V.T.C.A., Penal Code § 36.08(a).

(2) In the event of litigation involving the city, it is unlawful for any city official to solicit, accept or agree to accept any benefit from a person against whom the official knows litigation is pending or contemplated by the official or the city. State Law reference— Similar provisions, V.T.C.A., Penal Code § 36.08(c).

(3) It is unlawful for a city official who exercises discretion in connection with contracts, purchases, payments, claims or other pecuniary transactions of government to solicit, accept or agree to accept any benefit from a person the official knows is interested in or likely to become interested in any contract, purchase, payment, claim or transaction involving the exercise of his discretion. State Law reference— Similar provisions, V.T.C.A., Penal Code § 36.08(d).

(4) It is unlawful for a city official who has judicial or administrative authority, is employed by or in a tribunal having judicial or administrative authority, or who participates in the enforcement of the tribunal's decision, to solicit, accept or agree to accept any benefit from a person the official knows is interested in or likely to become interested in any matter before the official or tribunal. State Law reference— Similar provisions, V.T.C.A., Penal Code § 36.08(e).

(5) Exceptions to gifts to public servants. The provisions of V.T.C.A., Penal Code § 36.08, described in subsections (c)(1) thru (4) of this section, do not apply to:

- a. Fees prescribed by law to be received by the public official or any other benefit to which the official is lawfully entitled and for which the official has given legitimate consideration;
- b. Gifts or other benefits conferred on account of kinship or personal, professional, or business relationships independent of the official's status with the city;
- c. Certain honorariums in consideration of legitimate services;
- d. Benefits consisting of food, lodging, transportation or entertainment accepted as a guest and reported as required by law; or
- e. Benefits for which statements must be filed pursuant to V.T.C.A., Election Code §§ 251.011 and 251.012, if the benefit and source of any benefit exceeding

\$50.00 is reported and the benefit is used solely to defray expenses which accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the city. State Law reference— Similar provisions, V.T.C.A., Penal Code § 36.10.

(d) *Tampering with governmental records.* It is unlawful for any person to knowingly make a false entry in, or false alteration of, a governmental record, or to make, present, or use any record, document, or thing with knowledge of its falsity with the intent that it be taken as a genuine governmental record, or to intentionally destroy, conceal, remove or otherwise impair the verity, legibility or availability of a governmental record. State Law reference— Similar provisions, V.T.C.A., Penal Code, § 37.10.

(e) *Impersonating public servant.* It is unlawful for any person to impersonate a city official with intent to induce another to submit to his pretended official authority or to rely on his pretended official acts. State Law reference— Similar provisions, V.T.C.A., Penal Code § 37.11.

(f) *Misuse of official information.* It is unlawful for a city official, in reliance on information to which he has access as a result of his office and which has not been made public, to acquire or aid another in acquiring a pecuniary interest in any property, transaction or enterprise that may be affected by the information or to speculate or aid another in speculating on the basis of the information. State Law reference— Similar provisions, V.T.C.A., Penal Code § 39.03.

(g) *Disrupting meeting or procession.* It is unlawful for any person, with intent to prevent or disrupt a lawful meeting, to obstruct or interfere with the meeting by physical action or verbal utterance. State Law reference— Similar provisions, V.T.C.A., Penal Code § 42.05.

(h) *Official oppression.* It is unlawful for a city official to intentionally subject another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment or lien that he knows is unlawful, to intentionally deny or impede another in the exercise or enjoyment of any right, privilege, power or immunity, knowing his conduct is unlawful, or to intentionally subject another to sexual harassment. State Law reference— Similar provisions, V.T.C.A., Penal Code § 39.02.

(i) *Official misconduct.* It is unlawful for a city official, with intent to obtain a benefit or with intent to harm another, to intentionally or knowingly violate a law relating to his office or employment or to misapply any thing of value belonging to the government that has come into his custody or possession by virtue of his office or employment. State Law reference— Similar provisions, V.T.C.A., Penal Code § 39.01.

(j) *Nepotism.* The following provisions shall apply:

(1) It is unlawful for any city official to appoint, or vote for the appointment, to any office, employment or duty, of any person related within the second degree by affinity or within the third degree by consanguinity to the person so appointing or so voting, or to any other member of a board or governing body to which the person so voting or appointing may be a member, when the salary, fees or compensation of such appointee is to be paid out of public funds. An exception is provided for persons who have been

continuously employed in such office, employment or duty for the following periods prior to the election or appointment, as applicable, of the officer or member related to such employee in the prohibited degree:

- a. At least 30 days, if the officer or member is appointed; or
- b. At least six months, if the officer or member is elected.

(2) When a person is allowed to continue in an office, position or duty because of an exception above, the officer who is related to such person in the prohibited degree shall not participate in the deliberation or voting upon the appointment, reappointment, employment, confirmation, reemployment, change in status, compensation or dismissal of such person, if such action applies only to such person and is not taken with respect to a bona fide class or category of employees. Charter reference— Similar provisions, [§ 6.05](#). State Law reference— Similar provisions, V.T.C.A., Government Code § 573.041.

(k) *Disclosure of interest in property*. It is unlawful for a city official, or a person elected, appointed or employed as a city official but for which office such person has not yet qualified, to fail to make public disclosure of any legal or equitable interest he may have in property which is acquired with public funds, provided such official has actual notice of the acquisition or intended acquisition. The public disclosure required is the filing of an affidavit with the county clerks of all counties in which the property is located and wherein the official resides at least ten days prior to the acquisition. Charter reference— Conflict of interest in city contracts, [§ 6.07](#). State Law reference— Similar provisions, V.T.C.A., Government Code § 553.02.

## **Chapter 2 Administration, Article III Officers and Employees, Division 5 Code of Ethics, Section 2-215 Violations**

(a) Any person violating any standard contained in [section 2-213](#) shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not to exceed \$500.00. Each day of violation shall constitute a separate offense.

(b) Penalties for violations of conduct described in [section 2-214](#) are as set forth in the applicable statutory provision.



## **Appendix C**

### **Approved Purchasing Cooperatives**

Buyboard National Purchasing Cooperative

1Government Procurement Alliance (1GPA)

Texas Department of Information Resources (DIR)

Sourcewell ID #124317

Houston- Galveston Area Council Cooperative Purchasing Program (H-GAC)

National Purchasing Partners- Government Division (NPPGov)

- Member # 5708546 Market Street
- Member # 5708547 Rudel Drive

Texas Smart Buy – M1012

OMNIA Partners Cooperative Purchasing Program

U.S. General Services Administration (GSA)

TIPS -USA