



CITY OF TEXAS CITY
PURCHASING POLICIES AND PROCEDURES
MANUAL

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SECTION I
INTRODUCTION

INTRODUCTION

A. PURPOSE

This manual is intended to serve as a guide for all City of Texas City employees responsible for acquiring goods and services on behalf of the City of Texas City. Appointed officials and/or department heads delegate staff members to coordinate purchasing transactions. These policies are set forth to ensure compliance according to the City Charter, Code, and all statutes in effect for the State of Texas, as stated in the Texas Local Government Code - Chapter 252.

All governments in Texas must comply with State purchasing requirements. These laws were enacted to address past abuses and are primarily good business practices. The City of Texas City's purchasing philosophy is to provide departments with the tools and supplies to do their job with minimal delay and unnecessary bureaucracy. At the same time, ensure purchases are made following the state law.

This manual reflects the official administrative regulations for purchasing and payments in the City of Texas City. The employees involved in the expenditure and accounting of public monies must be fully aware of their responsibilities and limitations.

While this manual does not encompass every detail of all regulations, practices, and statutes governing purchasing and payment, it does provide the basic principles of sound procurement practices. Reference to this manual will aid City personnel in discharging their duties involving controlling and managing the City's assets while maintaining compliance with laws and regulations.

B. PURCHASING DEPARTMENT RESPONSIBILITIES

1. Administers Purchasing Manual for purchasing or contracting City supplies, equipment, services, and construction. Observe and enforce the policies as outlined herein and all related regulations.
2. Prepare and legally advertise all invitations to bid and hold pre-bid conferences and openings. Encourage competition and endeavor to obtain full and open participation in the bidding processes by all responsible vendors. Maintain confidentiality of all information used in the bidding process.
3. Maintain knowledge of current developments in purchasing, prices, market conditions, and new products. Secure for the City the benefits of research done in

purchasing by other governmental agencies and private businesses. Maintain knowledge of changes and updates about Purchasing in the Local Government Code.

4. Process department requisitions and purchase orders in a timely and efficient manner.
 5. Obtain bids, process all purchase orders for computers and technology-related items, and process state contract purchases, including State Requisitions.
 6. Assist departments in purchasing materials and services when requested.
 7. Cooperate with departments to develop specifications that identify the quantity and quality required, providing a basis for proper bid evaluation.
 8. Maintain all City maintenance, lease, rental, and copier agreements and prepare the Purchase orders.
 9. Maintain active computerized vendor files and specification files in such a manner as to maximize purchasing effectiveness.
 10. Maintain an active file of Insurance Certificates received for Vendors and Contractors.
 11. Promote standardization whenever possible in all areas of purchasing, such as general specifications, quality standards, performance standards, and equipment and supplies should be included in this format.
 12. Utilize all legitimate techniques such as volume, cooperative purchasing, buying, and annual contracts to keep costs as low as possible.
 13. Maintain relations with vendors.
 14. Monitor Supplier/Vendor performance and the conduct of ongoing supplier relations.
- C. **Departmental Responsibilities**
1. Comprehend, apply, and follow the Purchasing Manual.
 2. Prepare Purchase Requisitions in a timely and efficient manner.

3. Develop specifications and determine the quality of supplies, equipment, services, quantity, and the delivery date required.
4. Review sealed bids and proposals and recommend awarding contracts with assistance and input from Purchasing. Each Department Head shall prepare the documents and recommend the award of contracts or may defer this to Purchasing.
5. Each Department shall receive and inspect items delivered, report any shipments that fail to meet the purchase order, and notify Purchasing of all discrepancies and items that need to be returned.
6. The purchasing process is not instantaneous. Time is required to complete the steps stated in this manual. To accomplish timely purchasing of products and services at the least cost to the City of Texas City, all departments must cooperate fully.

D. **Code of Ethics**

Public employment is a public trust. It is the policy of the City of Texas City to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the City of Texas City. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service.

Public employees must discharge their duties impartially to ensure fair, competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the City of Texas City procurement organization.

To achieve the purpose of this Article, it is essential that those doing business with the City of Texas City also observe the ethical standards prescribed here.

1. It shall be a breach of ethics to attempt to realize personal gain through public employment with the City of Texas City by any conduct inconsistent with the proper discharge of the employee's duties.
2. It shall be a breach of ethics to attempt to influence any public employee of the City of Texas City to breach the standards of ethical conduct outlined in this code.
3. It shall be a breach of ethics for any employee of the City of Texas City to participate directly or indirectly in a procurement when the employee knows that:

- a.) The employee or any member of the employee's immediate family has a financial interest in the procurement.
 - b.) A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
 - c.) Any other person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
4. Gratuities - It shall be a breach of ethics to offer, give or agree to give any employee or former employee of the City of Texas City, or for any employee or former employee of the City of Texas City, to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter about any program requirement or a contract or subcontract, or to any solicitation or proposal therefor pending before this government.
5. Kickbacks - It shall be a breach of ethics for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor for any contract for the City of Texas City, or any person associated therewith, as an inducement for the award of a subcontractor or order.
6. Contract Clause - The prohibition against gratuities and kickbacks prescribed above shall be conspicuously outlined in every contract and solicitation.
7. It shall be a breach of ethics for any employee or former employee of the City of Texas City to knowingly use confidential information for actual or anticipated personal gain or any person's actual or anticipated gain.

E. Conflict of Interest

In addition to the Code of Ethics, there is a Conflict-of-Interest Ordinance adopted by the City Commission in December 1995 prohibiting the use of Public Office for private gain.

ORDINANCE 95-25

AN ORDINANCE PROHIBITING THE USE OF PUBLIC OFFICE FOR PRIVATE GAIN; PROVIDING FOR PENALTIES FOR VIOLATION THEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE READING OF THIS ORDINANCE ON THREE SEPARATE OCCASIONS; AND PROVIDING THAT IT SHOULD BECOME EFFECTIVE UPON FINAL ADOPTION AND PUBLICATION BY CAPTION ONLY IN THE LOCAL NEWSPAPER.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF TEXAS CITY, TEXAS:

Section 1. Title of this Ordinance. This ordinance shall be known as the City of Texas City Conflicts of Interest Ordinance.

Section 2. No public official or employee shall engage in or accept private employment or render services for private interests when such employment or service is, directly or indirectly, in conflict with the proper discharge of that person's official duties; or which may affect or impair the official's independence of judgment or action in the performance of official duties.

Section 3. No public official or employee shall represent, directly or indirectly, any private person or interest: (1) before any City department, agency, commission, or board, except in matters of purely public or civic concern and then only without compensation or remuneration; or (2) In any action or proceeding against the interest of the City or in any litigation in which the City or any City department, agency, commission, or board is a party, but nothing herein shall limit the authority of the City Attorney and his staff, or (3) In any action or proceeding in the Municipal Court which was instituted by a public official or an employee in the course of that person's official duties, but nothing herein shall limit the authority of the City Attorney and his staff.

Section 4. No public official shall use confidential information obtained during the proper discharge of his/her official duties to advance the financial or other private interest of himself/herself or others.

Section 5. No public official or employee shall accept any gift, favor, service, or other thing of value, in excess of \$50.00 and which would reasonably be calculated to improperly influence him/her in the discharge of his/her official duties, and which would not be given or offered to him/her were he/she not a public official or an employee of the City of Texas City. No public official or employee shall grant in the discharge of his/her official duties any improper favor, service, or thing of value.

Section 6. A breach of an employee of any of the sections contained in this ordinance may result in the immediate reprimand, suspension and/or termination of the employee. Any breach of any of the sections contained in this ordinance by a public official shall

result in the matter being reviewed by the entire Commission and appropriate action taken by a majority vote of the Commission.

Section 7. If any section of this ordinance is held invalid or unconstitutional by any court of competent jurisdiction or by an administrative agency, such decision shall not affect the validity of the remaining portion of this ordinance.

Section 8. This ordinance shall be read on three separate days and become effective upon its final reading, passage and adoption and publication in the local newspaper.

PASSED AND FINALLY ADOPTED ON THIRD READING, this 20th day of December 1995.

F. **Circumvention of Purchasing**

To avoid the competitive bidding statutes, it is unlawful to knowingly or intentionally authorize separate, sequential, or component purchases.

Separate purchases mean purchases made separately of items that, in standard purchasing practices, would be purchased in one purchase.

Sequential purchases mean purchases made over a period of time of items that, in standard purchasing practices, would be purchased in one purchase.

Component purchases mean parts of an item that, in standard purchasing practices, would be purchased in one purchase.

G. **Enforcement/Penalties – For Violations of State Law**

a.) A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements of Texas Local Government Code Subsection 252.021. An offense under this Subsection is a Class B misdemeanor.

b.) A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly violates Section 252.021 other than by conduct described by Subsection (a.) An offense under this Subsection is a Class B misdemeanor.

c.) A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly violates this chapter other than by conduct described by Subsection (a) or (b). An offense under this Subsection is a Class C misdemeanor.

d.) The final conviction of a municipal officer or employee for an offense under Section 252.062 (a) or (b) results in the immediate removal from office or employment of that person.

H. **Purchasing Violations**

The City of Texas City employees must follow the Purchasing Manual as outlined. Substantiated, intentional, or knowing violations of the Purchasing Manual by an employee may be cause for disciplinary action, up to and including termination of employment as determined by the Department Head or the Mayor.

SECTION II
LEGAL REQUIREMENT

LIST OF APPLICABLE REGULATIONS

Chapter 252 of the Local Government Code primarily covers City purchasing laws. Since the law is so fragmented, the listing of sections and the general content of each Act include but are not limited to, the following sections.

<u>Publication</u>	<u>Section</u>	<u>Description</u>
Local Government Code	252.0215	Historically Underutilized Business
Government Code	2251	Prompt Payment Act
Government Code	2252.002	Bids by Non-Resident Bidders
Government Code	2254	Professional Services Procurement Sub Chapter A- Act
Government Code	791	Inter-local Cooperation Act
Government Code	2258.001	Constructing of Public Works Wage Rates
Government Code	2253	Bond for Labor & Materials Performance Bonds
Local Government Code		
	Chapter 140	Miscellaneous Financial Provisions
	Chapter 171	Conflicts of Interest
	Chapter 252	Purchasing and Contract Authority
	Chapter 253	Sale or Lease of Property
	Chapter 271	Purchasing and Contracting Authority
	Subchapter A	Public Property Finance
	Subchapter B	Competitive Bidding – Certain Public Works Contracts
	Subchapter C	Certificate of Obligation Act
	Subchapter D	State Cooperation in Local Purchasing Programs
	Subchapter Z	Miscellaneous Provisions

<u>Publication</u>	<u>Section</u>	<u>Description</u>
Human Resource Code	122	Purchase of Products and Services of Blind and Severely Disabled
Code of Criminal Procedures	18.17	Disposition of Abandoned and Unclaimed Property
Texas Tax Code 151	.309 .310 .311	Exempts tangible personal property incorporated into realty of City from sales and use tax.

House Bill 1295 (Certificate of Interested Parties) This form will be filed with the Texas Ethics Commission by a business entity contracting with a governmental or State agency.

2CFR Part 200 Procurement procedures that may apply to federal award recipients when using federal funds for the entire life cycle of the federal award, including the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Grants. FEMA

Contract Review

The City Attorney reviews all pertinent documents, contracts, and legal instruments. Purchasing will use standard forms approved by the City Attorney.

SECTION III
VENDOR CONTACT AND INFORMATION

VENDOR CONTACT AND APPLICATION

A. Vendor Relations

The responsibility for establishing and maintaining relationships between the City and its vendors lies with the Purchasing Department. The intent is to minimize City departments from being burdened by visits from uninvited vendors and their representatives. Therefore, vendor relationships should be established and maintained by Purchasing to the extent feasible. This should not be construed as barring vendor contact by department personnel at their discretion.

Representatives of vendors shall be received by the Purchasing Department only by appointment to discuss products with the Purchasing staff. Vendor applications may be obtained during office hours, and catalogs/supplies may be left for review. Any helpful information received from interviews, catalogs, and brochures may be forwarded to departments by Purchasing.

B. Vendor List

Purchasing shall establish a Vendor List of bidders desiring to receive invitations to bid. The City does not pre-qualify vendors.

C. Vendor Performance

The Purchasing Department shall monitor Supplier/Vendor performance and the conduct of ongoing supplier relations, including:

- a.) The management of technical interchange activities
- b.) Audits of vendor costs.
- c.) Accounting for equipment and materials owned by them and located on the vendor's premises.
- d.) Feedback on vendor performance.
- e.) The resolution of delivery, product, quality, and service problems.
- f.) The handling of any claims against the vendor for failure to perform.

D. **Vendor Removal Process and Documentation**

Vendors may be rejected or removed for the following reasons:

1. Conviction of a criminal offense in connection with obtaining a public or private contract or subcontract or in the performance of such contract or subcontract.
2. Conviction under State or Federal statutes of embezzlement, records, or receiving stolen property.
3. Conviction under State or Federal anti-trust statutes arising out of submission of bids or proposals.
4. Failure without good cause to perform in accordance with the terms or conditions of any contract.
5. Removal by another government entity for cause.
6. Violation of the City's Code of Ethics or Conflict of Interest.
7. The vendor is delinquent in sales or ad-valorem tax.
8. Submission of a valid complaint documented by a user Department.

The Purchasing Department, in conjunction with the Department Head, shall determine whether to suspend a vendor for one year or remove a vendor from the City's vendor list. The Mayor's office shall be notified immediately of the removal of a vendor.

The Purchasing Department shall notify the vendor of the City's intent to remove or reject the vendor and the reasons for the removal. The proposed vendor may state in writing why removal is not warranted. Purchasing has 14 days to review and contact others before determining whether the vendor shall be removed. Written requests for appeals by the vendor shall be made to the Director of Finance. The decision of the Director of Finance is final.

SECTION IV
PROCUREMENT POLICIES AND PROCEDURES

PROCUREMENT POLICIES & PROCEDURES

For all purchases, rentals, or leases of goods, services, or construction, the following Purchase Requisition process will be observed regardless of the fund or funds from which the expenditure is being paid, including all related corporations.

A purchase order is required for every purchase made with City funds, regardless of the dollar amount. However, there are exceptions: direct pay, reimbursement, etc. The total purchase includes shipping, fees, and any other charges associated with the purchase. The information will be entered into the system through the requisition process.

A. Authorized List of Purchasers

A list from each Department of those individuals who are authorized to make purchases and who will enter requisitions will be provided to the Purchasing Department. It is recommended that there are a few designees per Department authorized to make purchases. Before designating an individual as an authorized purchaser, each person will be required to attend training(s) and be well-versed in the policies and procedures of purchasing. Only personnel on the list will be authorized to make purchases for the City.

Authorized purchasers cannot make purchases using their funds and request reimbursement without prior approval from the Purchasing Department or the department head due to tracking and sales tax.

Individuals authorized to enter requisitions shall keep their user I.D. and password information confidential and may not give this information to anyone or allow another person to use this information.

B. Approval of Expenditures

Each department budget is assigned to a department head and approved by the City Commission.

The department head will approve requisitions charged to the budget(s) assigned to them.

A department head may appoint alternate(s) to approve requisitions in the department head's absence, subject to prior approval by the Mayor or Finance Director.

Individuals authorized to approve requisitions shall keep their user I.D. and password information confidential and may not give this information to anyone or allow another person to use this information.

C. Purchases of \$0.01 - \$2,999.99

Competitive quotes are not required, although all departments are encouraged to compare prices and should always strive to obtain the best value.

1. A requisition needs to be submitted before making a purchase. If a purchase is made before submitting a Requisition, the items should be entered by 10:00 a.m. of the morning following the acquisition. The requisition must include the person entering the requisition, the requestor, the vendor, a detailed description of each item, the number of units, the appropriate general ledger account number, delivery/shipment location, shipping/delivery charges, delivery terms, the due date, and the unit price for each line item. Contact your department head to complete a budget transfer if funds are unavailable.
2. The requisition shall be reviewed by the department head whose budget is being charged for approval and to verify the general ledger account number.
3. When making a purchase, the purchaser must advise the Supplier that the City is tax-exempt before the transaction.
4. Purchasing will convert the requisition to a purchase order; this encumbers the funds.
5. Upon receipt of goods or services, the department designee shall verify the goods received with the packing slip and perform the receiving process in the system. Only enter the exact amount of what has been received.
6. All invoices are to be sent directly to Accounts Payable from the vendor. When an authorized purchaser picks up an item at a store and receives an invoice, the purchaser shall write the requisition or purchase order number on the invoice and send it to Accounts Payable.

Purchase orders will be printed for every purchase made and distributed to the departments by the Purchasing department.

7. Accounts payable will pay the invoice for all goods or services processed as received.

D. Bids/Quotes for purchases of \$3,000.00 – 49,999.99

- a) A procurement the Department will handle: the City requires the authorized purchaser to contact three vendors for competitive quotes for each line item and scan each quote into the system when entering the requisition.
- b) If the Department wants Purchasing to handle the procurement: Email or fax a detailed description of the item(s), quantity, and account number to the Purchasing office. Purchasing will contact three vendors for quotes and enter the requisition and quotes in the system.
- c) Contact at least two HUBS' (Historically Underutilized Businesses) on a rotating basis.

COMPETITIVE BIDDING CONCERNING HISTORICALLY UNDERUTILIZED BUSINESS. A municipality making an expenditure of more than \$3000 but less than \$50,000 shall contact at least two historically underutilized businesses on a rotating basis, based on information provided by the comptroller according to Chapter 2161 Government Code. If the list fails to identify a historically underutilized business in the county where the municipality is situated, the municipality is exempt from this section.

The Texas Comptroller of Public Accounts website allows you to search for HUB Vendors at <https://mycpa.cpa.state.tx.us>.

- d) Written quotes must be obtained and forwarded to Purchasing with the requisition number documented or electronically attached to the requisition in the purchasing software system.
 - e) For purchases where quotes are not solicited, enter one of the following descriptions in place of the quotes in the appropriate field on the requisition:
 - Contracts enter the Bid number.
 - Emergency - enter a description of the emergency.
 - Inter-local Agreement
 - Professional, Personal, and Planning Services
 - Sole Source
 - State Contract purchase
1. The requisition must include the person entering the requisition, the requestor, the vendor and a detailed description of each item, number of units, appropriate general ledger account number, delivery/shipment location, shipping/delivery charges, delivery

terms, the due date, and the unit price for each line item. Contact your department head to complete a budget transfer if funds are unavailable.

2. The requisition shall be reviewed by the department head whose budget is being charged for approval and to verify the general ledger account number.
3. For purchases of \$3,000 or more, the purchase requisition must be approved by the Purchasing Coordinator and the Director of Finance before making the purchase.
4. Upon approval(s), the Purchasing Department will convert requisitions entered and approved by 4:00 p.m. to a purchase order and encumber the funds. The purchase orders will be printed each morning in the Purchasing Department and distributed to the appropriate departments.
5. The authorized purchaser can then proceed with the order. The actual purchase order should be given to the Supplier, or at a minimum; the P.O. number needs to be given so all invoices and documentation relating to the purchase will reflect the purchase order number. The purchaser advises the Supplier that the City is tax-exempt before the transaction.
6. Upon receipt of goods or services, the department designee shall verify the goods received with the packing slip and perform the receiving process on the system. Only enter precisely what has been received.
7. Accounts payable will pay the invoice for all goods or services processed as received.

E. Purchases of \$50,000.00 or more

All purchases, rentals, or leases of goods, services, or construction anticipated to be \$50,000.00 or more require bids or proposals as outlined in Section V, Formal Sealed Bids and Proposals.

F. Emergencies

The definition of an Emergency purchase is a purchase that is required immediately to remedy a situation that endangers public safety, public health, or a public calamity or unforeseen damages to public property.

For example: An emergency requires the immediate purchase of items or services during non-business hours, such as weekends or holidays. In that case, the Department may make

such a purchase not following the policies and procedures outlined in this document. However, during the next business day, the Department must enter the requisition to obtain a purchase order number for the emergency purchase. Lack of planning does NOT constitute an emergency.

1. The Department Head shall contact the Director of Finance and the Mayor.
2. The department designee shall enter a purchase requisition with the pertinent information and an adequate explanation of the emergency. The Department Head should contact Purchasing to process the Purchase Order.
3. Bidding requirements are waived in emergencies.

G. Purchases that are to be handled by the Purchasing Department

1. **Technology-Related Items** - Departments must email the Director of Information Technology for all computer equipment, software, technology-related items, and service purchases. All requests must include a detailed description of the item(s), quantity, and account number. The Purchasing department will not process any request without prior written authorization from the Information Technology (I.T.) Director.

The request will be reviewed by the Information Technology (I.T.) Director for comments and technical evaluation. I.T. will prepare comments and alternatives if necessary. The IT Director will verify compliance with the computer equipment standard policies and procedures and prepare the technical specifications.

2. **Lease and Maintenance Agreements** - The City may execute, perform, and make payments under a contract with any person for the purchase or other acquisition of any personal property or financing thereof in accordance with Section 271.005 of the Texas State Statutes.

The contract may be in the form of a lease, a lease with an option or options to purchase, an installment purchase, or any other form considered appropriate by the City. The debt may be payable from a pledge of all or any part of the revenue, funds, or taxes available to the governing body. In entering into the contract, a municipality must comply with the requirement Chapter 252 pertaining to competitive bidding and competitive proposal requirements.

To determine the applicable bidding standards, Purchasing shall add the sum of all payments over the total contract period and issue the purchase order for all lease and maintenance agreements.

3. **State Contract Purchases** - All items to be purchased on the state contract through the Texas Facility Commission will be requested by completing a purchase requisition and obtaining department head Approval.

The Purchasing Department will complete all state forms and the State Purchase Requisition and place the orders for state contract purchases. In some instances, the Department will place the order, and Purchasing will follow up with confirming paperwork if the State allows.

H. Federal Procurement Policy

Adding to the Standard Terms and Conditions that accompany every contract and purchase order the following: City of Texas City agreements made under a Federal Award as defined in the CFR will adhere to the provisions described in **2 CFR § 200.318-327** Appendix II.

§ 200.318 General Procurement Standards.

- (a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§ 200.317 through 200.327.
- (b) (b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- (c)
 - (1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

- (2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
- (d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- (e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.
- (f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- (g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
- (h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also § 200.214.
- (i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- (j)
- (1) The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:

- (i) The actual cost of materials; and
- (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction

§ 200.319 Competition.

(a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and § 200.320.

(b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;

(6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

(f) Noncompetitive procurements can only be awarded in accordance with § 200.320(c).

§ 200.320 Methods of procurement to be followed.

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

(a) Informal procurement methods. When the value of the procurement for property or services under a Federal award does not exceed the simplified acquisition threshold (SAT), as defined in § 200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The nonfederal entity may use informal procurement methods to expedite the

completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

(1) Micro-purchases —

(i) Distribution. The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of micro-purchase in § 200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.

(ii) Micro-purchase awards. Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.

(iii) Micro-purchase thresholds. The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.

(iv) Non-Federal entity increase to the micro-purchase threshold up to \$50,000. Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with § 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

- (A) A qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;
- (B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,
- (C) For public institutions, a higher threshold consistent with State law.

(v) Non-Federal entity increase to the micro-purchase threshold over \$50,000. Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

(2) Small purchases —

(i) Small purchase procedures. The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

(ii) Simplified acquisition thresholds. The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(b) Formal procurement methods. When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with § 200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) Sealed bids. A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

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

(A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

- (B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
 - (C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
 - (D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
 - (E) Any or all bids may be rejected if there is a sound documented reason.
- (2) Proposals. A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:
- i. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;
 - ii. The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;
 - iii. Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and
 - iv. The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.
- (3) Noncompetitive procurement. There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:
- (1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);
 - (2) The item is available only from a single source;

- (3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
- (4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or
- (5) After solicitation of a number of sources, competition is determined inadequate.

§200.321 Contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms.

- (a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (b) Affirmative steps must include:
 - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

§200.322 Domestic preferences for procurements

- (a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- (b) For purposes of this section:
 - (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

- (c) Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.

§ 200.323 Procurement of recovered materials

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§ 200.324 Contract cost and price

- (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.
- (b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.
- (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§200.325 Federal awarding agency or pass-through entity review

- (a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or passthrough entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
- (b) The non-Federal entity must make available upon request, for the Federal awarding agency or passthrough entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

- (1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
 - (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
 - (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
 - (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
 - (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
- (c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.
- (1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;
 - (2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§200.326 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder is equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a

contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

§200.327 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to this part.

I. Types of Contracts or Purchases

The purchase requisition process outlined will be followed by an authorized purchaser or the Purchasing Department for the following types of purchases.

1. **Annual Contract Purchases** - Annual Contracts will be utilized for materials, supplies, or services regularly needed for City operation and will be competitively bid by the Purchasing Department.

Purchasing will provide each Department with the contract information as annual contracts are bid and awarded. Copies must be made in the Department and distributed to the authorized purchasers.

2. **Cooperative Purchasing Agreements** - The Inter-local Cooperation Act, Government Code Section 791, allows local governments to contract with and between each other to provide governmental functions and services and to join together in contracting with others to provide goods and services.

Local Government Code Chapter 271 allows local governments to purchase goods on the State's purchasing contracts and allows the State to solicit bids on the local government's behalf.

The City presently has inter-local contracts with Purchasing Cooperatives. These may be used to purchase goods and services for the City. The City can also join another entity with an Interlocal agreement to purchase goods or services at a more advantageous price or with better contract terms. If you would like to use a cooperative contract, please contact Purchasing for a list of current programs available and how to purchase using this process.

3. **Insurance Broker** - The City may select an insurance broker on a fee basis as the City's broker of record to obtain insurance proposals and coverages for all the City's liabilities, provided the broker of record may not be remunerated by any other source. This should

bar the broker from any commissions or insurance purchased by the City or from placement fees from any insurance company insuring the City.

4. **Professional, Personal, and Planning Services** - Professional services are exempted from the competitive bidding process and are procured through Request for Qualification (RFQ) documents. The Purchasing department is available to consult with departments regarding the preparation of information; however, the presentation of technical and qualifications aspects of personal and professional services included in the RFQ documents is the sole responsibility of the requesting Department.

Texas Government Code, Chapter 2254, Subchapter A, Professional Services, states that contracts to procure defined professional services may not be awarded based on competitive bids. Instead, they must be awarded on the basis:

1. Of demonstrated competence and qualifications to perform the services;
2. For a fair and reasonable price;
3. Fees are allowed;
4. Must be consistent with and not higher than the recommended practices and fees published by the applicable professional associations; and
5. It may not exceed any maximum provided by law.

Those services should not be selected and awarded based on competitive bids. However, they shall be awarded based on demonstrated competence and qualifications for the services performed.

Contracts shall be awarded for those asking fair, reasonable prices, as long as the fees are not higher than published recommended practices and fees of the various associations and do not exceed the maximum provided by the State Law (Government Code Chapter 2254, Professional Services Procurement Act).

Professional Services under Government Code Chapter 2254 are defined as those "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, or professional nursing, or provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant, 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, or a registered nurse."

The City shall use a two-step selection process. First, the entity shall select an individual or firm capable of performing the service based on demonstrated competence and qualifications. The City shall then enter into negotiations on the contract at a fair and reasonable price.

If the City cannot negotiate a satisfactory contract with the most highly qualified individual or firm, it shall formally end negotiations and proceed with the following most highly qualified until an agreement has been made. An agreement that violates this Act is void as against public policy.

Homeland Security Funds – Prior to procuring or entering into a contract(s) for any goods/services utilizing Homeland Security funds, the Purchasing Coordinator for the City must check the debarment status of the vendor using the EPLS system (<https://www.SAM.Gov>) and document that verification has been done. This policy applies to the procurement of all goods or services regardless of the cost or quantity.

The Purchasing Coordinator will search the EPLS system for the vendor. If the vendor is found to be debarred, that vendor may not be used for procurements utilizing Homeland Security Funds. If the vendor is not debarred, print the screen page, and retain it with the procurement documentation. A copy of the screen print indicating the vendor is not debarred at the time of purchase must be included with the supporting documentation submitted to the Texas Homeland Security State Administrative Agency requesting reimbursement or advance.

Records of vendors verified should be retained for audit purposes (maintain a copy of the screen print verification from the EPLS website) throughout the record retention period for the particular grant.

I. Contract Cost and Price

1. The non-Federal entity must perform a cost or price analysis concerning every procurement action in excess of the Simplified Acquisition Threshold, including contract modifications. The method and degree of analysis are dependent on the facts surrounding the particular procurement situation. However, as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.
2. The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed, the risk borne by the Contractor, the Contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
3. Cost or prices based on estimated costs for contracts under the Federal award are allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its cost principles that comply with the Federal cost principles.
4. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

J. Purchase Orders Not Required

Purchase Orders are not required for the following:

1. Travel or education reimbursement vouchers
2. telephone, utility, and garbage bills
3. Commission Salaries
4. Expense and travel report/mileage reimbursement
5. Petty Cash Vouchers
6. Withholding and FICA taxes and retirement
7. Election Salaries

K. Cancellation of a Purchase Order

The Purchasing Department, in conjunction with the department head, will review all outstanding purchase orders at least quarterly and may cancel merchandise that has not shipped within a 90-day period, subject to the Director of Finance's approval. Except for Capital Improvement Projects and other Capital items, as determined by the Finance Director, purchase orders over 90 days old may not be carried into the next fiscal year.

When a department wishes to cancel an order and a purchase order has been issued, an authorized purchaser shall send a copy of the purchase order to the Purchasing Department with an explanation so the purchase order can be canceled.

L. Open Records Policy

The release of bids is subject to the Public Information Act. Trade secrets and confidential information are not open for public inspection in competitive sealed bids. All proposals are available for public inspection after the contract is awarded, but trade secrets and confidential information are not available for public inspection. All requests for information about purchasing contracts, bids, and proposals must be in writing and directed to the City Attorney's office.

M. Prompt Payment

Section 2251 of the Government Code, commonly known as the Prompt Payment Act, sets out required deadlines for payment of a government's obligations to its vendors, requirements for vendor's payments to their subcontractors, and penalties for failure to comply with the Act and exceptions to the Act.

Unless the City provides otherwise on the purchase order or contracts, the Act requires political subdivisions to pay all payments owed not later than 30 days after the goods or services are received or the date the invoice is received, whichever is later. Interest automatically accrues at one percent (1%) per month. The Act also requires vendors to follow the same rules for payments to their subcontractors. Subcontractors must pay their suppliers, material men, and service members within ten days of receipt of their payment.

When the City believes an error is received from a vendor, it has until the 21st day after receipt to notify the vendor of the dispute. If resolved in favor of the City, the vendor must submit a new invoice, and the City has 30 days to pay. If the dispute is resolved in favor of the vendor, interest is due from the original date of the invoice. Notice shall be sent to the vendor by the Administration following discussions with the Department.

N. Sales Tax Exemption

Tangible personal property incorporated into the realty of the City under the Texas Tax Code 151.309 Or 51.310 is exempt from sales and use tax. This includes materials used in a lump sum and separated contracts.

In addition, tangible personal property that is necessary to the performance of a contract for the City is exempt if the property is completely consumed at the job sites. Tangible personal property is completely consumed if, after being used once for its intended purpose, it is used up or destroyed. Machinery and equipment are not exempted. The Contractor owes tax on the purchase, lease, or rental of machinery, equipment, repair or replacement parts, and accessories for the machine or equipment.

Taxable services purchased for use in performing the contract will be exempt from tax if the service is performed at the job site and the service is either expressly required under the Agreement or is integral to the performance of the contract.

The contractors issue sales and use tax-exempt certifications and Texas resale certificate forms directly to the suppliers.

SECTION V
FORMAL SEALED BIDS AND PROPOSALS

FORMAL SEALED BIDS AND PROPOSALS

The following process will be observed for those bids or proposals anticipated to be \$50,000.00 or greater, regardless of the fund or funds from which the expenditure is being paid, including all related corporations.

Competitive Sealed Bid: is used for procurement of goods or services, construction, repair, or renovation of a structure, road, highway, or other improvement or addition and is referred to as a BID.

Competitive Sealed Proposal: is used to procure high-technology products or other services. The specification is written using performance standards rather than the description of the good or service. Proposals may incorporate entirely different hardware or services to accomplish the same performance. Under Section 252.042 of the Local Government Code, requests for procurement of high technology must solicit quotations and specify the relative importance of price and other valuation factors. Referred to as an RFP- Request for Proposals.

A. Starting the Bid or Proposal Process

1. All projects, items to be purchased, the services desired, or the scope of work to be performed, subject to bid or proposal, must be submitted and approved by the department head and Mayor.
2. The department head must provide an appropriate general ledger account number that the Director of Finance has approved. Finance will prepare any required budget transfer or budget amendment.
3. Once approved by the department head and Mayor, the Specification, Scope of Work, or Scope of Service, requirements, Drawings, and other documents to be included in the bid package are forwarded to Purchasing.

A Specification or Scope of Work is no more than an accurate description of the material or equipment to be purchased or the work to be performed. All specifications shall be clear and definite and permit competitive bidding except for items that may be noncompetitive due to patent rights.

The Public Works Department or Transportation and Planning Department is responsible for contracting for public improvements, including construction work, repair or renovation of a structure, or other improvements to real property. Public Works or Transportation and Planning will prepare the technical specifications and may complete the bid specifications with input from the appropriate departments.

4. Once the department head and Mayor approve, the detailed description of the bid request, the number of units, the appropriate general ledger account number, and

delivery/shipment location must be sent to purchasing. Contact your department head to complete a budget transfer if funds are unavailable.

5. Purchasing will:
 - a. Assign a bid number, prepare the bid package, and handle the sealed bid process.
 - b. Reserve the Conference Room for the bid opening.
 - c. Prepare the bid package forms and bid folder consisting of the Bid Register for all bids received, the Pre-Bid Sign-In Sheet, the Bid Opening Sign-In Sheet, and the Bid Tabulation to document the opening.
6. Purchasing will advertise the Notice to Bidders; the date of the first publication is at least 14 days before the date set for opening said bids. (21 days is preferred to allow more time for bidders to respond.)

In the case of public improvements, the City must mail a notice containing the information required to any organization that:

- a. Requests in advance that notices for bids be sent to it.
- b. Agrees in writing to pay the actual cost of mailing the notice; and
- c. Certifies that it circulates notices for bids to the construction trade in general.

The City shall mail a notice required on or before the date the first newspaper advertisement is published.

B. Bid or Proposal Documents

7. Notice to Bidders (Invitation to Bid) Requirements include:
 - An identification number, Bid Number. Vendors must refer to this number when making inquiries and purchasing staff must be able to trace all transactions to this number.
 - A description of the items to be purchased or the scope of work or services to be performed.
 - States the address or location where a bid package may be obtained or examined.

- States the closing date and hour for submitting bids and proposals and the Purchasing office address where the bids are to be submitted.
 - States the time and place that bids will be opened.
8. **General Standard Terms/Conditions** – All conditions of doing business with the City remain constant for contracts and purchases unless specifically deleted or applicable.
9. **Instructions to Bidders, including, but not limited to:**
- A date, time, and place of where the bids are due and will be opened.
 - Bid Guarantee requirements, if applicable.
 - Performance and Payment Bond requirements, if applicable.
 - The factors to be used to evaluate the proposals and weights attached to each factor. Evaluation factors may include price, experience, ability to respond promptly, past recommendations, safety record, financial soundness, etc.
 - Contact personnel for information.
 - Bidder's Qualifications to bid.
 - Insurance Requirements.
10. **Special Conditions** - Terms and conditions specific to this bid, including the time to complete the project or delivery time and liquidated damages, if any.
11. **Specification or Scope of Work** - A detailed description of the item(s) to be purchased, the services desired, or the scope of work to be performed.
12. **Bid Form** - The offer: prices should be provided by the unit and total cost or by a lump sum.

C. **Receiving Bids or Proposals**

1. All bids and proposals will be received by the Purchasing Department and placed in a locked file until the date set for the opening. No responsibility will be attached to an officer for the premature opening of a proposal not properly addressed and identified.
2. Faxes or emails will not be accepted for sealed bids or proposals.

D. Opening Bids or Proposals

1. Purchasing will conduct the bid and proposal openings which will take place in the City Hall Conference Room, City Hall Council Room, or Public Works Conference Room.
2. All bids received will be publicly opened, read aloud, and documented at the bid opening.
3. All proposals will be opened but not read aloud. The contents of any proposal will not be disclosed to be available to competing offerors during the negotiation process. RFPs are public records only after the contract is awarded.
4. A bid that is opened may not be changed to correct an error in the bid price. The bidder may, however, withdraw a bid within 24 hours after the bid opening due to a material mistake in the bid.

E. Tabulating and Selecting

1. Bids - Purchasing will verify the bid totals. A Bid Tabulation will be prepared by the Department of Purchasing and attached to the recommendation.
2. Proposals - the price and other evaluation factors will be ranked and evaluated, and a tabulation of the results will be prepared and attached to the recommendation.
3. Discussions per the terms of the request for proposal may be conducted with offerors who submit proposals and are determined to be reasonably qualified for the contract award. Offerors shall be treated fairly and equally for discussing and reviewing proposals. Revisions may be permitted after submission and before the award to obtain the best final offers.
4. For procuring professional, personal, or planning services, the City shall use a two step selection process. First, the City shall select an individual or firm capable of performing the service based on their demonstrated competence and qualifications. The City shall then enter into negotiations on the contract at a fair and reasonable price. If the City is unable to negotiate a satisfactory contract with the most highly qualified individual or firm, it shall formally end negotiations and proceed with the next most highly qualified until an agreement is made.

In determining who the low bid is, the governmental entity may consider the safety record of the bidder if:

- a. The City Commission adopted a written definition and criteria for accurately determining the safety record of the bidder; and

- b. Has given notice to prospective bidders in the bid documents; and
- c. The determinations are not arbitrary and capricious.

F. Disqualifying Bidders

Bidders may be disqualified, and their Bid or Proposal not considered, among other reasons, for any of the following specific reasons:

1. Received after the date or time stated for the bid opening.
2. Unbalanced value of any items.
3. Reason for believing collusion exists among the Bidders.
4. They are interested in any litigation against the City.
5. Being in arrears on any existing contract or defaulting on a previous contract.
6. Lack of competency revealed by a financial statement, experience, equipment, questionnaires, etc.
7. Uncompleted work, which in the judgment of the City, will prevent or hinder the prompt completion of additional work if awarded.
8. Failure to correctly complete the bid form.
9. Failure to submit bid security.
10. Failure to acknowledge receipt of an Addendum.

G. Bid Protest

1. Protestors may file a protest at any phase of solicitation or award. The objection should be addressed to the Director of Finance, state the reasons for the protest, and include exhibits or other evidence substantiating their claim.
2. The protest should be before the award by City Commission. The City will delay the award until the next commission meeting until the Director of Finance has met with the Department head and Purchasing Department to discuss the protest. The decision of the Director of Finance is final.

H. Awarding / Rejecting of Bids or Proposals

The City's corporations, including but not limited to the Texas City Economic Development Corporation, Texas City Foreign Trade Zone Corporation, Public Facilities Corporation, Texas City Industrial Development Corporation, Texas City Cultural Arts Foundation, Texas City Historically Preservation Corporation, and any others that may be formed in the future, will have the fiscal year budget approved by the City Commission. Once the City Commission adopts a corporation's fiscal year budget, expenditures included in the budget will be approved by the Corporation's Board of Directors. They will not require subsequent approval by the City Commission. The City Commission shall, however, receive a copy of the awarded or rejected bid(s).

All formal bids or proposals, except as provided hereinabove, are presented to, and require approval and award by the City Commission, which may make an award or reject any or all bids or proposals.

All formal bids or proposals that are over-budget; do not meet specifications; or fall under any or all issues listed in item F - Disqualifying Bidders - Section V, Page 5 must go before City Commission for their approval to reject all bids received. The department head/project administrator must get prior approval from the Mayor to re-bid before the Commission considers the rejection of the preceding bid. Any re-bid is subject to the approval or rejection of all previous bids by the City Commission.

1. If the competitive bidding requirements apply to the contract for goods or services, the contract must be awarded to the lowest responsible bidder or the bidder who provides the municipality's goods or services at the best value.
2. For proposals, the contract is awarded to the responsible offeror whose proposal is determined to be the lowest evaluated offer, considering the relative importance of the criteria stated in the Request for Proposals.
3. For professional services, the contract is awarded to the individual or firm asking for fair, reasonable prices, as long as the fees are not higher than published recommended practices and fees of the various associations and do not exceed the maximum provided by the State Law.
4. For public work/improvements, the contract may not be awarded to a bidder who is not the lowest unless:
 - a. Before the award is made, each low bidder is given notice by certified mail of the proposed award, and

- b. Each low bidder can appear before the City Commission and present evidence concerning the bidder's responsibility.

I. **Contracts and Purchase Orders**

1. Upon approval by the City Commission, Purchasing, or in some instances, the City Attorney's office or a consultant shall prepare the contract documents. Purchasing will send the contracts to the Supplier or Contractor to execute.
2. Upon receipt of signed contracts, bonds, insurance, and other documents requested in the bid, the contracts will be routed internally for the necessary signatures.
3. Purchasing will enter the purchase information in the system to encumber the funds.
4. Upon complete execution of the contracts, the purchase order and contracts will be distributed. The authorized purchaser can order goods or issue a written "Notice to Proceed" for a project. All invoices are to be sent directly to Accounts Payable from the vendor.
5. The successful bidder may not assign their rights and duties under an award without the written consent of the Mayor. Such consent shall not relieve the assignor of liability in the event of default by their assignee.

J. **Certificate of Insurance and Bonds**

1. The Purchasing Department shall collect the Certificates of Insurance, Performance Bonds, and Payment Bonds.
2. A master file of all insurance certificates will be maintained in the Purchasing Department.
3. Suitable and sufficient Performance and Payment Bonds must be in the total amount of the contract and executed per Chapter 2253, Government Code, with a surety company authorized to do business in this State.
4. The original bond(s) will be attached and filed with the City's contract.

K. **Non-Construction Change Orders**

All change orders will be routed through the Purchasing Department to ensure appropriate funds are available, verify the new contract amount, and revise the Purchase Order in the system.

Change Orders for purchases of materials, equipment, and supplies, **not construction** contracts, as per Section 252.048 of the Local Government Code:

1. If changes in plans or specifications are necessary after the performance of the contract has begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the governing body of the municipality may approve change orders making the changes.
2. The total contract price may not be increased because of the changes unless additional money for increased costs is appropriated from available funds or is provided for by the authorization of the issuance of time warrants.
3. If a change order involves a decrease or an increase of \$50,000 or less, the governing body may grant general authority to an administrative official of the municipality to approve the change order. (Finance Director or the Mayor)
4. The original contract price may not be increased under this section by more than 25 percent. Without the Contractor's consent, the initial contract price may not be decreased under this section by more than 25 percent.

L. **Construction Change Orders**

Change Orders for a construction contract as per section 271.060 of the Local Government Code. After the performance of a construction contract begins, the governing body may approve change orders if necessary to:

1. Make changes in plans or specifications; or
2. Decrease or increase the quantity of work to be performed or materials, equipment, or supplies to be furnished.
 - a. A change order may not increase the total cost of a contract unless a provision has been made to pay the added cost by appropriating current funds or bond funds for

that purpose, by the authorization of the issuance of certificates, or by a combination of those procedures.

- b. A contract with an original price of \$1 million or more may not be increased by more than 25 percent. If a change order for a contract with an original contract price of less than \$1 million increases the contract amount to \$1 million or more, subsequent change orders may not increase the revised contract amount by more than 25 percent.
- c. A governing body may grant authority to an official or employee responsible for purchasing or administering a contract to approve a change order that involves an increase or decrease of \$50,000 or less.

M. Default on a Delivery

- 1. The City reserves the right to demand bond or liquidated damages to guarantee delivery by the date indicated. If the order is given and the Supplier fails to furnish the materials by the guaranteed date, the City reserves the right to cancel the order without liability. All prices are to be F.O.B. Texas City, Texas, all freight prepaid.
- 2. In case of default of the successful bidder, the City of Texas City may procure the articles from other sources and hold the bidder responsible for any excess cost.

N. Receipt of Goods / Service or Project Completion

- 1. Upon receipt of goods or services or the completion of a project, the department designee shall verify the goods or services received and perform the receiving process on the system. Only entering precisely what has been received.
- 2. Accounts Payable will pay the invoice for all goods or services processed as received.

O. Annual Contracts

Material supplies or services regularly needed for city operation will be bid by the Purchasing Department throughout the year and awarded to the lowest and best bidder on a unit-cost basis. The following are the conditions of an annual contract:

- 1. In most instances, the length of the Agreement shall be for one (1) full year. The Purchasing Department may extend the contract for additional years if both parties are in Agreement and the unit rates are minimally changed or unchanged.

2. As per 252.047 Texas Local Government Code, the approximate quantities shall be provided in the bid documents. The City reserves the right to increase or decrease these quantities during the contract period.
3. The City reserves the right to cancel this Agreement upon thirty (30) days written notice with good cause.
4. Orders will be placed on an as-needed, when-needed basis.
5. The City reserves the right to require samples on any item before the bid award.
6. Purchasing will forward contract information to the departments. All City departments are required to use the annual contracts that are on file.

P. Recycled Materials

The City of Texas City supports a recycling program. Recycled materials are acceptable and will be considered for award. The City desires to use recycled products when a comparable material/product is available. If your company distributes products made of recycled materials, please submit an alternate bid for the items requested. All recycled products should meet the minimum standards established in the bid specifications provided. State any exceptions, costs, warranties, and percentage of recycled materials used to manufacture the material/product. The City will determine the acceptability of the materials/product bid as an alternate.

Q. Bidding Exemptions

The competitive bidding or proposal requirements do not apply and include the following:

1. Items purchased in case of public calamity, to relieve the citizens' needs, or to preserve City property.
2. Items purchased to protect the public health or safety of residents of the City.
3. Items that are necessary because of unforeseen damage to public property.
4. Procurement for personal, professional, or planning services.
5. Work that is performed and paid for by the day as the work progresses.
6. Purchase of land or a right-of-way.

7. Items available from only one source, such as:
 - a Patented, copyrighted, natural monopoly;
 - b Films, manuscripts, or books;
 - c Electric, gas, or other utilities;
 - d Captive replacement parts or components for equipment;
 - e Books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the material
 - f Management services provided by a non-profit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits.
8. Purchase of rare books, papers, and other library materials for a public library.
9. 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 the property that will benefit from the improvements.
10. A public improvement project, already in progress, authorized by the voters of the City, for which funds are deficient for completing the project following the plans and purposes approved by the voters.
11. A payment under a contract by which a developer participates in constructing a public improvement as provided by Subchapter C, Chapter 212.
12. Personal property sold at a public auction by a licensed auctioneer or sold at a going-out-of-business sale or sold by another political subdivision of the State, a State agency or Federal government, or under an inter-local contract for cooperative purchasing administered by a regional planning commission established under Chapter 391.
13. Services performed by blind or severely disabled persons.
14. Goods purchased by the City for subsequent retail sale by the City.

SECTION VI
CITY'S PUBLIC AUCTION

(SECTION RESERVED FOR EXPANSION)

SECTION VII

INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS

Whenever the City contracts with an outside party (Contractor, consultant, vendor, or concessionaire) for goods or services, the bid or request for proposal that is released to the public should include an indemnity clause (hold harmless clause), along with a contractual agreement, to be executed upon award of the contract, that transfers the risk of the project from the City to the Contractor. Because the Contractor may or may not have the financial resources to handle the risks transferred in the contract, the City requires that the Contractor purchase and maintain insurance for financial security.

Most contracts are tailored for individual projects and programs; therefore, every contact document should address certain insurance elements required. One of the most critical elements is the actual insurance coverage which includes the coverage types and limits that depend on the nature of the project/program. A summary of the various types of policies and the coverages they provide is illustrated in Exhibit 1 and is discussed in greater detail in the remainder of this section.

Although not all of the coverages are required for every project (and limits will vary by exposure), understanding the coverages provided by these policies is essential to ensure that all of the City's potential liabilities and vulnerabilities from the project are adequately protected.

EXCEPTIONS TO INSURANCE REQUIREMENTS

Periodically, the City will need to contract for small projects that attract only the smaller Contractor who typically does not carry any insurance except automobile and truck coverage (as required by State law). To complete these projects, Commercial General Liability Insurance may be waived, providing the project meets the following criteria:

1. The cost (including maintenance projects) is less than \$5,000.
2. The work performed will not be in public areas or will be performed after closing hours. Contractors hired for electrical or other hazardous projects must always be insured. Projects on or adjacent to public streets may or may not be insured at the discretion of the Department Head.
3. Commercial general liability insurance coverage will always be required if the work is under a City employee's direction or supervision.

4. **For Auto/Truck Liability Insurance**, if the Contractor's vehicles are used in the execution of these small projects, then auto and truck liability insurance must always be required (this is required by state law). The City may accept the State's minimum limits and waive the additional insured requirement. The Contractor must provide the City with proof of insurance before beginning work.

WORKERS COMPENSATION INSURANCE

BUILDING AND CONSTRUCTION PROJECTS

By State law, contractors and subcontractors hired for building and construction projects must always provide workers' compensation (w/c) insurance for their employees regardless of the project's cost. The Texas Labor Code defines building or construction as:

- a. Erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance.
- b. Remodeling, extending, repairing, or demolishing a structure; or
- c. Otherwise improving real property or an appurtenance to real property through similar activities.

EXCEPTION TO WORKERS' COMPENSATION INSURANCE

Sole Proprietor or Partnership

- a. W/C insurance is not required if the Contractor has no employees or subcontractors.

INDEPENDENT CONTRACTOR AGREEMENT

The Contractor must sign the City's one-page indemnity agreement/affirmation of independent contractor relationship form whenever insurance coverages are waived.

PROOF OF INSURANCE

Before commencing work, the Contractor must provide proof of insurance for those coverages required by the City.

INSURANCE REQUIREMENTS OF CONTRACTS

POLICY

PURPOSE OF COVERAGE

Commercial General Liability

Bodily Injury and property damage liability to third parties arising out of business premises or operations.

Comprehensive Auto Liability

Bodily injury and property damage liability to third parties arising from vehicles.

Worker's Compensation and Employer's Liability

Employees injured on the job.

Builder's Risk Insurance

Property Insurance (fire, theft, wind, "all-risk," etc. during construction.

Installation Floater

Property insurance for equipment installed at a City facility and stored on-site or at remote locations.

Owner & Contractor Protective Liability

Bodily injury and property damage to third parties arising from a specific project. The City is named insured.

Umbrella Liability

Excess liability coverage follows the form of the primary liability policies.

Excess Liability

Excess liability coverage for specific areas.

Professional Liability
(Errors & Omissions)

Bodily injury and property damage to third parties arising from the rendering or failure to render proper professional services.

Medical Malpractice Liability

Bodily injury & property damage arising from the rendering or failure.

Commercial General Liability (CGL) Insurance

The Contractor purchases the commercial general liability (CGL) policy to protect against third-party bodily injury and property damage liability claims arising from the premises and operations of the Contractor and their products and completed operations.

If properly structured, the CGL will also cover bodily injury and property damage liability of others the Contractor assumes in a contract; liability arising from specific personal and advertising injuries (such as libel, slander, and false arrest); certain medical payments; and fire legal liability. Exhibit 2 provides an overview of the various coverage provisions of the CGL and their purpose.

By naming the City of Texas City as an additional insured on this policy, the same protection is extended to the City for any covered loss arising from the actions of the Contractor or subcontractors. This protection is critical for the City should the City be named as a defendant in a legal action arising from the Contractor's negligence on a City project.

This policy's coverage can be triggered in two ways, depending on the type of CGL policy purchased by the Contractor:

- **Occurrence Trigger:**
When the loss occurs, the policy in force responds to the loss regardless of when the loss is presented; the project could be completed, and the policy expired some time ago, yet coverage would still be available. This is the Preferred CGL Policy for the City's protection.
- **Claims-Made Trigger:**
Policy coverage is triggered when the claim is presented to the insurer. The policy currently in effect at the time will respond to the loss. Due to certain time restrictions on claim reporting or if the Contractor no longer has a CGL, there may be no coverage. The Contractor and City could be held directly responsible for any claim settlement.

COMMERCIAL GENERAL LIABILITY (CGL)

Policy Overview

COVERAGE

PURPOSE OF COVERAGE

CGL Insuring Agreement

Bodily injury and property damage liability arising out of premises (on-site) or operations of the insured Contractor.

Fire Legal Liability

Fire damage liability to City owned premises arising from a tenant's operations.

Personal Injury Liability

False arrest, malicious prosecution, libel, slander, defamation of character.

Medical Payments

Medical expenses incurred by the general public while on the covered premises, regardless of proven fault.

Explosion, Collapse, and Underground Hazards

Property damage liability for blasting, excavating, land grading, tunneling, etc.

Liquor Liability

Bodily injury and property damage liability arising from selling, distributing, serving, or furnishing alcoholic beverages.

Contractual Liability

Liability is assumed in a contract.

SPECIFIC CGL COVERAGES FOR CITY CONTRACTS

Contractual Liability

Contractual liability coverage is designed to protect contractors, business firms, and others when they accept the liability of others through a contract. The Contractor transfers this assumed liability to the insurance company. Since the City's contracts transfer certain liabilities to the contracting parties, contractual liability coverage sufficient to cover those transferred liabilities is mandatory.

Medical Payments

Medical payment coverage covers medical expenses incurred by members of the general public or patrons while on the covered premises, regardless of fault.

For example, assume a contractor is doing renovation work at the City's library. A library patron trips over a cord and has minor injuries. The Contractor's medical payments coverage will respond to the medical expenses incurred, even if the patron wandered into a restricted construction area (the Contractor, their employees, tenants, subcontractors, and anyone eligible for workers' compensation are excluded from medical payments coverage). Insurance companies have found that the injured party is less likely to bring legal action against the Contractor and City by covering these expenses.

Explosion, Collapse, and Underground Hazards (XCU)

Explosion, Collapse, and underground hazards often are excluded explicitly by the endorsement of the CGL policy. This precludes coverage for property damage liability arising from blasting, excavating, grading or land, pipeline construction, tunneling, welding, or cutting. Because of the nature and scope of the City's construction projects, this coverage is often specifically required.

OTHER TYPES OF INSURANCE POLICIES

Comprehensive Automobile Liability Insurance

The ownership or operation of an automobile or truck (a land motor vehicle, trailer, or semi-trailer designed for public road use) exposes the Contractor (and the City) to potentially significant financial losses. The Contractor can be held legally liable to others for bodily injury and property damage from automobiles. Whenever a City contract involves the use of automobiles within the scope of performing the contract, the Contractor must maintain an auto liability policy throughout the duration of the contract.

The policy must include coverage for the following:

- Owned/leased automobiles (the Contractor owns or leases).
- Non-owned automobiles (autos that are not owned, leased, hired, or borrowed by the Contractor; includes autos owned by Contractor's employees); and
- Hired automobiles (autos the contractor hires, rents, or borrows, but not from an employee).

Workers' Compensation and Employer's Liability Insurance

If an employee of the Contractor suffers a job-related injury (including death) due to an accident or occupational disease, the Contractor will be required by state statute to make benefit payments to that employee and their family.

Workers' compensation insurance provides coverage that complies with state law requirements. Under Texas law, employers with at least one employee are eligible for workers' compensation coverage. There is no policy limit for benefits payable under workers' compensation insurance as the level of benefits is statutorily prescribed.

Situations may arise where a work-related injury suffered by the Contractor's employee is not covered under workers' compensation law. A common lawsuit might be brought against the Contractor in such a case. Workers' compensation coverage does not cover this type of suit and is also excluded under the Contractor's commercial general liability insurance.

The employer's liability is included as additional coverage in the workers' compensation policy to avoid this coverage gap. Employers' liability limits are typically \$100,000 per employee for occupational disease, a \$500,000 policy limit for disease: and \$100,000 for any other loss occurrence.

NOTE: Section 406.906 of the Texas Labor Code requires that in a building or Construction contract entered by the City, the City shall require the Contractor to certify in writing that the Contractor provides workers' compensation insurance coverage for all employees of the Contractor employed on the City's project. A subcontractor on the project must provide such

a certificate to the general Contractor relating to the coverage of the subcontractor's employees. The general Contractor shall provide the certificate of a subcontractor to the City.

In this section, "building or construction" includes:

- Erecting or preparing to erect structures, including buildings, bridges, roadways, public utility facilities, or related appurtenances.
- Remodeling, extending, repairing, or demolishing a structure; or
- Otherwise, improving real property or appurtenances to real property through similar activities.

Builder's Risk Insurance

During construction, there is an exposure to direct property loss (fire, windstorm, theft, etc.) of equipment and materials at the construction location and to work already in place. Builder's risk insurance, purchased by the Contractor, is designed to cover this property, which the City has an interest in but has not yet accepted.

The City requires that, in all construction contracts, the builder's risk coverage be written on an "all-risk" basis with a limit equal to 100% of the project value.

Installation Floater Policy

The installation floater policy is similar to the builder's risk coverage. However, if the installation of valuable equipment does not involve a construction project, an installation floater may be required to protect the City's interest in the property to be installed. An installation floater covers equipment items before installation at a permanent site.

The policy provides coverage for property to be installed while:

- At the installation site.
- Temporarily in storage at other locations; and
- In transit.

Owners and Contractors Protective Liability

The Contractor purchases owners' and contractors' protective liability (OCP) insurance for a specific project on behalf of the City of Texas City. The OCP policy affords protection to the City for liability arising from the contractor's or subcontractor's negligence on a City project. The coverage afforded by an OCP policy is nearly identical to the coverage provided by the commercial general liability (CGL) policy that names the City of Texas City as an additional insured. However, the CGL policy covers! Operations of the Contractor, subject to the policy's limits of liability; the OCP affords specific policy limits for the particular City project it covers.

The project's size and the Contractor's size are often the determining factors in when an OCP policy will be required.

Umbrella Liability Insurance

An umbrella liability policy is essential for protecting the City because of its high liability limits. An umbrella policy is generally designed to fulfill three basic functions:

- Extend the limits of the primary (underlying, CGL, business auto, employer's, etc.) liability policies.
- Replace primary coverage once the primary aggregate limits of liability have been exhausted through claims; and
- Afford broader coverage (in some areas) than primary policies provide, subject to a retention (deductible) amount.

For example, if the City's contract required \$1 million liability limits for the CGL and auto coverages, and \$100,000 employer's liability coverage, plus a \$5 million umbrella policy, total limits available to the Contractor (and protection for the City) would be \$6 million general liability \$6 million auto liability, and \$5.1 million employer's liability.

When is an umbrella policy required?

An umbrella policy will be required on City projects where high liability exposures exist. Unfortunately, there is no standard policy, so the specifications must be carefully worded to ensure proper coverage.

Excess Liability Insurance

An excess liability policy provides specific coverage above a specified amount up to a specified amount. Excess liability coverage is never broader than the primary coverage. It applies excess of what is covered by and defined in the primary policies. However, in many cases, the excess coverage will be narrower than that provided in the primary policies. A straight "excess" policy is distinguished from an "umbrella" policy in that the umbrella policy generally affords broad blanket excess liability coverage that follows the form of the primary policies and may apply in certain areas not covered by underlying policies.

On the other hand, an excess policy may be structured to apply to general liability but not auto liability. Or the excess policy may apply to auto liability and certain general liability exposures.

When is an excess policy required?

An excess policy may be required on City projects where high liability exposures exist. It may be cheaper to purchase than an umbrella policy, but the coverage requirement must be carefully worded to ensure proper protection for the Contractor and the City.

Professional Liability (Errors & Omissions) Insurance

Professional Liability coverage, often called errors and omissions, responds to bodily injury or property damage arising from the Contractor's failure to render proper professional services.

Various types of professional liability coverage may be required, depending on the nature of the contract. Types of professional liability insurance that may be necessary include architects/engineers, surveyors, consultants, physicians, nurses, counselors, collectors, fiduciaries, data processors, lawyers, insurance agents, accountants, and laboratories.

Medical Malpractice Liability Insurance

This insurance is similar to professional liability insurance for engineers, architects, and others but is designed specifically for medical professionals. Medical malpractice insurance provides coverage for liability arising out of the rendering or failure to render proper medical services.

Depending on the nature of the contract, the City may require the following:

- Physicians' professional liability, Nurses' professional liability.

INDEMNIFICATION

The Contractor agrees to defend, indemnify, and hold the City of Texas City and all of its officers, agents, employees, and elected officials whole and harmless against any and all claims for damages, costs, and expenses of persons or property that may arise out of, or be occasioned by, or from any negligent act, or omission of Contractor, or any agent, servant, or employee of Contractor in the execution of performance of this contract, without regard to whether such persons are under the direction of City agents or employees.

The Contractor further agrees that it shall at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, agents, employees, subcontractors, licensees, invitees, and other persons, as well as their property, while in the vicinity where the work is being done. It is expressly understood and agreed that City shall not be liable or responsible for the negligence or other fault of the Contractor, its officers, agents, employees, subcontractors, licensees, invitees, or other persons associated with the Contractor.

The Contractor agrees to defend, indemnify, and hold the City and all of its officers, agents, employees, and elected officials whole and harmless from all claims growing out of any demands of subcontractors, laborers, workers, mechanics, material men, and furnishers of supplies, equipment, financing, or any other goods or services, tangible or intangible. When the City so desires, the Contractor shall furnish satisfactory evidence that all obligations described here have been paid, discharged, or waived.

INDEPENDENT CONTRACTOR

The Contractor acknowledges that the Contractor is an independent contractor of the City and is not an employee, agent, official, or other representative of the City. The Contractor shall not represent, either expressly or through implication, that the Contractor is an employee, agent, official, or representative of the City. Income taxes, self-employment taxes, social security taxes, and the like are the sole responsibility of the Contractor.

WORKERS' COMPENSATION INSURANCE FOR BUILDING and CONSTRUCTION PROJECTS

The Contractor agrees to provide workers' compensation insurance for all of the Contractor's employees performing work on this project and contractually require each person with whom it contracts to provide workers' compensation coverage as defined in the Texas Workers' Compensation Act, Rule 28.

I have read, understand, and agree to the terms of these provisions.

Company Name _____ Company Official _____

Signature _____

Title _____ Date _____