AMENDMENT OF SOLICITATION

1. AMENDMENT	2. EFFECTIVE DATE	3. REQUISITION NO./ P.O. NO. N/A	
A005	**May 16, 2016**		

4. ISSUED BY	Purchasing & Strategic Sourcing Division City of El Paso City 1 300 N. Campbell, 1st Floor El Paso, Texas 79901-1153

5A. AMENDMENT OF SOLICITATION NO. **2016-833R**	5B. BID DUE DATE:
POLICY AND PROCUREMENT MANUAL	**MAY 18, 2016**

6. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in item 7. The hour and date specified for receipt of offers ☒ NOT EXTENDED

All amendments <u>must</u> be acknowledged on the "SOLICITATION OF OFFERS". Failure to do so may be cause for rejection of offer.

7. DESCRIPTION OF AMENDMENT

A. Attached is the City of El Paso Purchasing Manual

EXCEPT AS PROVIDED HEREIN, ALL TERMS AND CONDITIONS OF THE DOCUMENTS, AS HERETOFORE CHANGED, REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.

CITY OF EL PASO
BRUCE D. COLLINS, CPPO
PURCHASING DIRECTOR

BY_____/s/_____
Deniese Baisley
Asst. Purchasing Director

City of El Paso

Purchasing Manual

January 2010

Prepared by:
Financial Services Department
Purchasing Division

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GENERAL

1.0 Purpose of the Manual

The purpose of this manual is to detail the purchasing process and to establish uniform procedures for the procurement of goods and services which are consistent with the policies of the City of El Paso and Federal, State, and local laws. This manual is designed to provide guidance to city employees and departments in requisitioning purchases and will be used to acquaint vendors and suppliers with the City's policies and procedures.

The procedures and guidelines are not intended to restrict the effectiveness of the individuals involved in the procurement, but to provide a foundation for effective, consistent and satisfactory results which in turn will facilitate positive, professional relationships between the City and vendors who wish to do business with the City.

The policies, procedures and practices contained in this manual should not be read to conflict with the City Charter, State law, City ordinances, or other applicable laws or ordinances. If there is any conflict, State law, the City Charter and City ordinances supersedes the provisions of this manual.

This manual is strictly a policy and procedures document to be used as an administrative guide for City staff, other governmental entities, and vendors to promote an efficient and effective procurement process within the bounds of Federal, State, and local laws. No part of this document creates or is intended to create a private right of legal action for any vendor, consultant, or any other person or entity, or makes or is intended to make any vendor, consultant, or any other person or entity a third-party beneficiary.

The policies and procedures contained in this manual apply to all procurements of supplies, materials, services, professional services and construction services required by the City of El Paso.

2.0 Mission, Goals, and Objectives

2.1 Mission Statements

The Financial Services Department's mission statement is:

"We provide financial stability by managing the City's resources with diligence and integrity. This enables City Government to function effectively and make informed decisions on behalf of its citizens and customers. We commit to outstanding customer service and continuous improvement through teamwork, innovation, and technology."

2.1.1 Purchasing Division and Mission Statement

The Purchasing Division is a key subdivision of the Financial Services Department. The Purchasing Manager reports to the Chief Financial Officer who oversees the Financial Services Department. Its mission statement is as follows:

> *"To improve the effectiveness of the procurement process; maximize purchasing value of available funds; and assist all departments through specification review, vendor development and timeliness of purchases, while adhering to all applicable laws, statutes and ordinances."*

2.2 Goals

Following are the primary goals for the Purchasing Division:

- Select and employ personnel that are proficient in procurement activities and promote development through training, professional organizations and educational opportunities.
- Through competition, acquire the best possible price considering quality, quantity, safety, delivery, service, and other factors.
- Conduct a Procurement Program that will achieve maximum benefit and minimize the cost.
- Improve service to the City through communication with Departments on purchasing matters and vendor relations.
- Cooperate with all departments and assist wherever possible in effective improvements that will lower the cost of purchasing items or services.
- Promote standardization of supplies and equipment specifications of all types, wherever practicable.
- Provide support and assistance, wherever practicable, to all governmental entities in El Paso County to reduce costs and improve service.
- Avoid any practice which will detract from the good reputation of the City of El Paso.
- Provide increased confidence regarding Purchasing Division procurement practices to the City Manager, Mayor and Council, and the public by exhibiting the highest level of professionalism and ethical conduct.

2.3 Objectives

Following are the primary objectives for the Purchasing Division:

- Purchase the proper goods or services to suit the City's need.
- Get the best possible price for the good or service.
- Have the goods or services available where and when it is needed.

- Assure a continuing supply of needed goods and services.
- Insure that responsible bidders are given a fair opportunity to compete for the government's business.
- Not restrict competition by utilizing exclusionary or discriminatory specifications.

3.0 Responsibilities

The following details the responsibilities of the Purchasing Manager, the Purchasing Division, City Department Heads, and City staff in general regarding the procurement process at the City of El Paso. The Purchasing Division, in its role as the centralized purchasing authority for the City of El Paso, will make every effort to conserve public funds and ensure procurement decisions take place in a fair, open, competitive, and ethical manner, with the provisions of applicable Texas Statutes and City codes and ordinances.

3.1 Responsibility of the Purchasing Manager

- Develops and implements procedures which assure compliance with Municipal Code, Ordinances, Resolutions and relevant provisions of Texas Statutes and U.S. government regulations.
- Serves as Purchasing Agent for the City of El Paso

3.2 Responsibility of the Purchasing Division

The Purchasing Division is responsible for ensuring that all City departments are informed of purchasing policies and procedures, allow for the consolidation of major purchases, and facilitate procurement for all City departments.

- Prepare, advertise, and issue invitation for bids and requests for proposals, and insure that the selection process is in compliance with City policies and procedures.
- Evaluate bids and make recommendations for an award to the El Paso City Council.
- Issue purchase orders and contracts for materials, supplies and equipment, services, and professional and construction services.
- Maintain a centralized contract’s file and retrieval system for all City of El Paso Contracts
- Maintain a vendor file.
- Supplies, equipment and services are of a quality and quantity to meet the requesting department’s needs for the entire contract period.
- Encourage fairness and full and open competition on all purchases.

- Respond to the needs of City Departments and other entities as inter-local agreements allow.
- Ensure that responsible bidders are given a fair opportunity to compete for the City's business.

3.3 Responsibility of Department Heads

- Where appropriate, review specifications and other documentation associated with City solicitations.
- Provide Purchasing Division contact information for staff appropriate to the particular solicitation.
- Ensure Department staff is in compliance with Purchasing Division procedures and is adequately trained in such procedures.

3.4 Responsibility of City staff

It is responsibility of each employee involved in the procurement process to understand and follow the policies upon which these procedures are based and the meaning and intent of the procedures themselves.

- Generate draft specifications for annual contracts for materials, supplies, equipment and contractual services in professional and construction services for the area of responsibility for which they are assigned.
- Specifications and other data forwarded to Purchasing Division for inclusion in City bids or proposals, or other solicitations reflect the needed quality and quantity of services or supplies proposed to be provided for the term of the contract.
- City staff for a User Department that is assigned to a particular contract should monitor vendor performance to ensure needed goods and services are received in an efficient cost effective manner are of sufficient quality to accomplish the purpose of the contract and are in compliance with all contract provisions including paying for goods/services at contracted amounts. Vendors that perform poorly should have their performance documented through the vendor performance database located on the Purchasing website.
- City staff should notify Department Head and/or Purchasing staff of any problems or issues in order to address these items promptly.

4.0 Compliance

It is the policy of the City of El Paso to conduct all contracting and procurement activities in accordance with applicable federal, state and local laws. Staff responsible for any aspect of procurement or contracting shall comply with the rules described in the aforementioned laws and aspire to the highest ethical standards and business practices.

Contract administration is the responsibility of the City department managing the contract. Once awarded the contract administration phase of each contract begins. The most important activity during the administration phase of the contract is verification and documentation of vendor or contractor performance to ensure contract deliverables are of the best quality and value to the City and in accordance with the contract terms. Good contract monitoring provisions serve as the foundation of the administrative process.

Contract monitoring by the User Department with general assistance from the Purchasing Division will help ensure that the City and contractor are in compliance with contract terms and conditions. Effective monitoring of a contract can result in early identification of issues to improve contract performance, thereby ensuring the contract delivers its expected output on time and within budget.

Generally, issues with contracts involve delivery terms, scheduling, price/cost, and quality. Resolving problems with contracts should initially be resolved by mutual agreement at the department level in an effort to avoid disputes being escalated by either the User Department or the vendor.

If there are any questions or concerns relative to either the policies or procedures, or the ability of the employee to comply with the requirements of the procedures, then it is responsibility of the employee to bring such matters of concern either to the attention of their immediate supervisor or the Purchasing Office for assistance. The Legal Department should also be contacted as necessary.

5.0 Organizational Structure

The chart on the following page depicts the overall organizational structure of the Purchasing Division. Please contact the Purchasing Division for the most updated list.

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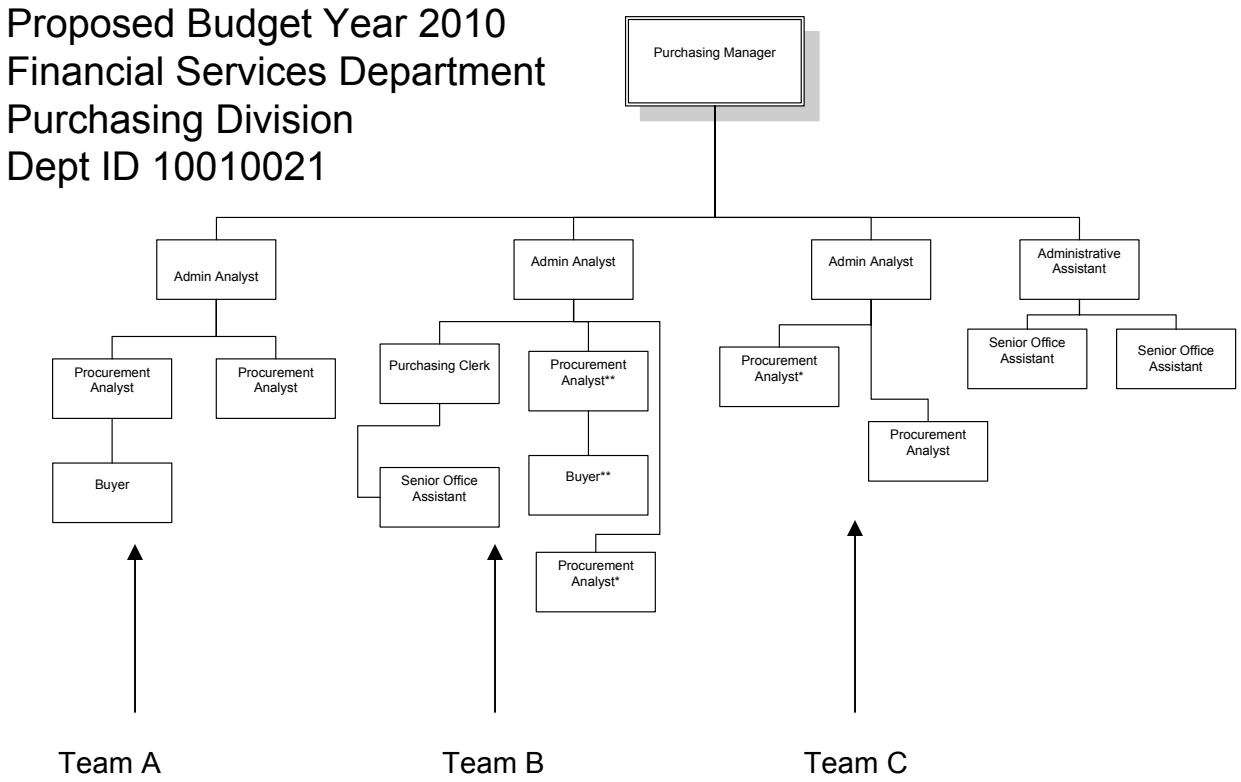
Organization Chart:



*Fund
**Fun

Created: 6/1/2008
Updated: 2/5/2010

As noted in the Organization Chart on page 10, the Purchasing Division is organized in three Teams that handle respective department's needs. The following depicts departmental assignments:

Team A	Team B	Team C
Departments		
• General Services • Health • Community Development • Environmental Services • Streets • International Bridges • Library • City Manager's Office • Mayor and Council • City Attorney	• El Paso Airport • Sun Metro • Economic Development • MCAD • Tax • Zoo • MPO	• Development Services • Information Services • Human Resources • Municipal Clerk • Financial Services • OMB/Insurance Benefits • Fire • Police • Parks and Recreation
Other Assignments by Team		
• Peoplesoft Trainings • Bid Template Administrator • Future Development	• City-wide copier services • Special Assignments (Sustainability TF)	• Construction Bidding - Assistance for Engineering • Purchasing Training • Purchasing Presentations

PURCHASING PROCESS

6.0 Initial Steps

Following are the initial steps to follow when wanting to purchase a good and/or service:

1. User Department identifies the goods or services that are needed to meet the Department's needs.
2. If the purchase is deemed to be an exception to the standard purchasing cycle (e.g. emergency purchases), a different set of procedures is followed.
3. User Department determines dollar amount of estimated expenditures which will determine whether the purchasing process will be an informal or formal one.
4. User Department enters a Requisition.
5. User Department in consultation with the assigned Purchasing Analyst selects desired method of purchasing based on the dollar amount, level of urgency, and amount of flexibility desired.
6. User Department contacts the Purchasing Analyst in charge of that department to get confirmation of method of purchasing and to initiate purchasing process.
7. User Department provides detailed and accurate specifications to the assigned Purchasing Analyst. The solicitation runs its natural course, the majority of the bidding process is overseen by the Analyst, and an award is ultimately made.
8. Upon award, a Purchase Order is issued by Purchasing and delivery of goods and/or services is initiated by the vendor upon receipt.
9. Certain aspects of contract maintenance such as authorizing price escalations, ensuring insurance is updated, issuing cure letters for vendor non-compliance, etc. is the responsibility of the Purchasing Division. Other contract maintenance items such as routine or periodic management of the service components of the bid, including price verification, remain with the User Department.

The dollar amount will determine whether the purchasing process will be an informal or formal one. There are standard thresholds based on purchasing law that must be complied with although there is some discretion as to the exact method of purchasing that can be used once it is known whether the bid will be informal or formal. Final determination of the appropriate procurement method will be made by the Purchasing Division on a case-by-case basis before beginning work.

NOTE: User Departments are never authorized to incur services or to purchase goods without the appropriate authorization (i.e. a Purchase Order issued by the Purchasing Division).

7.0 Purchasing Thresholds

7.1 Overview

The City of El Paso has established purchasing policies and procedures in order to fully comply with State Purchasing and Contracting Authority of Municipalities ("Purchasing Act"). Please make note of the procedures for each level of expenditure and be advised that all City departments must strictly follow all procurement policies and procedures. For example, requirements may not be "split" to decrease the amount of each purchase so as not to exceed a purchasing threshold. The purchasing thresholds represent limits for the total purchase amount of similar goods and services by all City departments in a fiscal year. Splitting or sequencing purchases to circumvent the Purchasing Act is a violation of State Law and Council policy. Chapter 252.001 of the Local Government Code defines Separate Purchases and Sequential Purchases as follows:

- "Separate purchases" means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.
- "Sequential purchases" means purchases of items made over a period of time that in normal purchasing practices would be purchased in one purchase.

Purchases over $50,000.00 must be formally solicited and a contract awarded by the City Council. Cooperative Purchasing Programs (currently TXDOT, TXMAS, TPASS, DIR, U.S. Communities, HGAC, TCPN, TASB, Buyboard, Houston County Department of Education (HCDE), Tarrant County and Region 19) may be used to purchase goods and services for any expenditure level with Council approval (several have certain dollar thresholds already approved). Sole source and emergency procurements are handled on an individual basis after consultation with Purchasing and with the City Attorney's office. All agreements that require a signature must go before City Council for approval except as provided through Ordinance No. 16015, in which case the City Manager is authorized to enter into contracts.

The City encourages the use of Cooperative Procurement Programs in order to expedite the process since these programs comply with the State legal purchasing regulations. Cooperative Procurement Programs are available for purchases of all dollar amounts. Specific guidelines must be followed when pursuing a procurement program purchase, which are detailed in Purchasing Programs: Cooperatives and Interlocals.

7.2 Purchases under $3,000

Item(s) under $3,000 are considered ***small purchases*** and are not required to be entered as requisitions. These items can be ordered, received, invoiced and paid

according to the City's Accounts Payable Manual under the oversight of the Financial Services Department's Fiscal Operations Division. In summary, no quotes from potential vendors are required; they may be obtained by the User Department if desired, however, and it is recommended that User Departments do so as part of regular due diligence to ensure Departments maximize City dollars.

Departments are encouraged to also utilize Procurement Cards (P-Card) for items under $3,000. A Direct PO may also be entered for these purchases if the vendor does not accept the P-Card. Departments are encouraged to use HUB (Historically Underutilized Businesses) suppliers for this level of purchase. Please consult the ***Accounts Payable Manual*** for further details on payments for this level of purchase.

Purchases under $100 may be paid with petty cash. However, these purchases should be rare in occurrence since the P-Card program is available. These type of purchases are handled under the policies of the Financial Services – Treasury Division. A separate ***Petty Cash Manual*** has been developed to guide users.

NOTE: There shall not be any POs that will require a check to be cut or non-encumbered vouchers issued for an amount less than $250.

7.3 Purchases between $3,000 - $49,999.99

Section 252.0214 of the local government code requires that for purchases over $3,000 and less than $50,000 at least 2 Historically Underutilized Businesses (HUBs) must be contacted. If no HUBs exist for the commodity being purchased, then this requirement does not apply. A HUB listing for vendors in El Paso County can be found at the Texas Comptroller of Public Accounts, Texas Procurement and Support Services (TPASS), State of Texas website address, http://www.window.state.tx.us/procurement/prog/hub/. Purchasing will confirm that purchases over $3,000 comply with the HUB requirements before issuing a Purchase Order. Purchasing will be utilizing the state published HUB listing to seek potential suppliers. There are three main methods of purchase at this level of dollar amount: Quotes, Purchasing Programs and Informal Bid.

7.3.1 Quotes

A minimum of three (3) quotes shall be obtained by the User Department or Purchasing Division. If one of the three quotes is a "no bid" then at least one other vendor must be contacted to ensure that due diligence has been performed throughout the process. Please note that depending on the complexity of the purchase, the Purchasing Division office may elect to initiate an informal bid. In this instance, the department shall provide all the information necessary for informal bid preparation. All back-up information regarding bids shall be sent electronically. This includes, but is not limited to, bid specifications, recommendation, memos and vendor information. These "spot" purchases are ideal for bidding by small

business owners. Quote information must be entered on the requisition "Header Comment" screen and copies of quotes must be submitted for review by the Purchasing Division. Please be advised that the Purchasing Act designates that at least two State of Texas Historically Underutilized Businesses (HUBs) Certified vendors must be contacted as part of the quotation process for any purchase under $50,000. Sole sources can also be used and are exempt from the HUB requirement.

7.3.2 Cooperative Purchasing Programs

Cooperative Purchasing Programs are the fastest way to procure an item between $3,000 and $49,999.99 due to various factors. In general, there are certain key assumptions related to these Programs as follows:

- The Programs can be used to expedite the procurement process.
- Council has authorized the use of the Cooperative Purchasing Program through resolutions adopted at City Council meeting
- They are helpful when time is of the essence, meaning the User Department requires the goods or services in 120 days or less (coincides with submission of requisition to date of award by Council)
- Provides a way to procure goods/equipment through a formal bid process that complies with state procurement laws.
- The goods or services available through the Cooperative Programs have already been competitively bid and therefore are considered the lowest price available at the time.
- Price reasonableness is assumed since the Cooperative Programs have already been bid out and presumably they are the lowest bidders.

7.3.3 Informal Bid

An informal bid is a bid invitation accompanied by detailed requirements, specifications (such as items and quantities) and notification to submit bid responses by a specified time. This unsealed bid method does not requiring a public opening at a specific date and time. The following steps are required: 1) The User Department provides to the Purchasing Division all the information necessary for informal bid preparation. 2) All back up information regarding bids shall be sent electronically. This includes, but is not limited to, bid specifications, bid requirements, vendor information. 3) When the bids are obtained in conjunction with the bid due date, the Purchasing Division will submit all vendor bids and bid tabulation to the User Department for recommendation. 4) The standard criterion for award of an informal bid is low cost. If the lowest cost bid is not recommended then the User Department shall submit additional

justification to Purchasing. 5) The Department will notify Purchasing of its recommendation via letter, memo or email, and thereafter Purchasing will issue a Purchase Order in compliance with the bid details (i.e. Payments Terms, Options, etc).

7.4 Purchases over $50,000

Purchases for goods and services over $50,000 are required by state law to be competitively solicited through a formal process unless there is an exception**. At a minimum, formal solicitations should be advertised for at least 15 days from the first day of advertisement of a bid. More complicated solicitations take longer for vendors to respond and therefore may require a longer duration.**

There are two main methods that can be used to purchase goods and services at this level of dollar amount: Formal Solicitation and Purchasing Programs.

7.4.1 Formal Solicitation

A formal solicitation must be used for any purchase over $50,000. The process is guided by state law (Section 252 of the Local Government Code) and takes more time and work than the procedures for purchases under $50,000. A formal solicitation can be completed in one of several formats, although there are some limitations as to which format can be used for certain types of purchases. The five types of formal solicitations are Low Bid, Best Value, Request for Proposals (RFP), Request for Qualifications (RFQ) and Competitive Sealed Proposal (CSP) (construction only).

Each of the formal solicitation types has slightly different requirements but all of them contain some common, critical elements: Contract Term, Amount to be Purchased, Bid Form Pricing (except RFQ), Prompt Payment Discount, Option to Extend, and Specifications. Generally speaking, <u>the User Department is responsible for accuracy in specifications</u>. Each vendor is responsible for submitting complete paperwork (including several affidavits and forms). The Purchasing Department is responsible for ensuring the process is as smooth as possible and that it adheres to state purchasing law. Due to the complexity involved with formal solicitations it usually takes three months from submission of specifications to an award by Council. More complex bids should be let out for bid for longer than the minimum 15 days and there may be other factors to consider that may increase or decrease the usual timeframe.

7.4.2 Cooperative Purchasing Programs

In general, there are certain key assumptions related to the use of Cooperative Purchasing Programs when procuring items greater than $50,000, as follows:

- The Programs can be used to expedite the procurement process.
- Council has authorized the use of the Cooperative Purchasing Program through resolutions adopted at City Council meeting
- They are helpful when time is of the essence, meaning the User Department requires the goods or services in 120 days or less (coincides with submission of requisition to date of award by Council)
- Provides a way to procure goods/equipment through a formal bid process that complies with state procurement laws.
- The goods or services available through the Cooperative Programs have already been competitively bid and therefore are considered the lowest price available at the time.
- Price reasonableness is assumed since the Cooperative Programs have already been bid out and presumably they are the lowest bidders. With respect to items over $50,000, price reasonableness should be determined by the Department and should be included in a Department Cooperative Purchase Memo submitted to Purchasing for presentation to Council. Departments should address how they determined price reasonableness by detailing its rationale which may include the following:
    - assumption of lowest price on the Program
    - prior purchases
    - prior formal bids
    - past experience with similar situations
    - knowledge of department
    - market prices and indicators (indexes, financial rates, etc.)

8.0 Requisitions

8.1 Overview

The most common document used to identify a procurement need is a purchase requisition. The entry of a requisition in PeopleSoft is **REQUIRED** before work on a solicitation can commence. Once a requisition has been entered and approved, the Purchasing Division can assist a Department in the most

expeditious, economical and practical way to purchase a particular good or service.

Requisitions are only accepted electronically and all system requirements must be met. Purchasing will only "work on" requisitions that have passed budget checking and that are approved and posted. Contact Purchasing if system training on Requisitions is needed. Contact the Financial and Benefits Systems Administrator concerning authorizations to use the system.

Entering requisitions is the sole responsibility of the User Department. Purchasing should not alter a Requisition's information in any way as that is the responsibility of the User Department alone. Purchasing Analysts are authorized to make appropriate changes to Purchase Orders only.

8.2 Preparing the Requisition

The requisition originates in the User Department. Preparation must be done far enough in advance of the date when the good/services are physically needed so as to allow purchasing and the vendor sufficient time to do their jobs properly, including:

- Advertising for bids or RFPs, if necessary.
- Obtaining bids or price quotations or proposals.
- Processing bids, placing purchase orders of concluding contracts.
- Approval by City Council (or Mass Transit Board) if required.
- Allowing delivery of goods or services.

8.3 Routing the Requisition

After preparing the requisition, it will be routed through the following process:

- Budget check requisitions - ensures funds are available and pre-encumbers funds.
- Additional authorization - for any further authorization required by local ordinance, state law or grant procedures.
- Departmental Approval - for the approval by the authorizing person. Only approved requisitions will be processed by Purchasing.
- Purchasing - once approved, the requisition is electronically forwarded to Purchasing, where it is processed in accordance with proper procedures.

8.4 Processing the Requisition

When the requisition is received in Purchasing, it must be verified for accuracy. Purchasing will do the following:

- Check the requisition for completeness.
- Check computations (total price, etc.) for accuracy.
- Verify contract provisions, if on an existing contract.
- Check any cost analysis or estimates that may be required.

8.5 Standard Format and Required Information

When entering a Requisition into PeopleSoft each User Department is responsible for including (at minimum) the following information in the Header Comments:

- Contract # or quotes
- Expiration date of contract
- Department contact person and phone number for billing/delivery
- Personnel authorized to place orders (for open POs)
- General description of product/service to be purchased, directly referencing details contained in the contract or quotes

If there are a number of distinct products and/or services to be purchased that require individual line items, each line item should contain in its Line Comments a description of that particular product/service, again directly referencing details contained in the contract or quotes.

An example of a Standard Comment can be as follows:

****

RQ2009XXXXXX
Please reference Contract #2009-XXX for product specifications and details.
Expiration Date: XX/XX/20XX. All Purchase Order Terms and Conditions apply.

For Billing/Delivery information on the Purchase Order, please contact:
DEPARTMENT CONTACT at 915-PHONE NUMBER

Personnel authorized to place orders:
PERSONNEL NAMES

For information regarding this purchase order please contact:

ANALYST NAME at 915-541-NNNN or e-mail at ANALYST_EMAIL@elpasotexas.gov

THE CITY OF EL PASO IS TAX EXEMPT. TAX ID # 74-6000749

****

If the Requisition is for a new Contract and is entered into PeopleSoft before some of the above information is known, simply notify the Purchasing Analyst in charge of the Contract that the information is intentionally missing at that time. For example, if the winning vendor is not known yet, or if the vendor's information has not been inputted into PeopleSoft yet (a new vendor), then notify the Purchasing Analyst in charge of the Contract that this information is intentionally missing. That Analyst will then notify the vendor, obtain the necessary information and enter it into the system, and assign the vendor to the Requisition once it is determined that they are the winning bidder. Note that the User Department person who initially approved the requisition is also able to un-approve the same Requisition if changes are needed.

8.6 Header Comments vs. Line Comments

Header Comments are for more critical updates that effectively produce a change order. For example, a request from the department to increase the amount of the PO or to cancel it outright should be recorded as a Header Comment. Line Comments are for less important updates that do not produce a change order. For example, changing the 'Ship To' address of the Department would best be recorded as a Line Comment.

8.7 Quantities Known vs. Open Requisitions

If the item or service to be purchased can be quantified, the resulting Requisition and Purchase Order should specify that quantity. For example, a single item purchase, or a purchase for uniforms, or a purchase for vehicles.

Quantity: 10
UOM: EACH or LOT
PO Price: $xxx,xxx.xx

If the item or service to be purchased cannot be quantified, the resulting Requisition and Purchase Order should be an "open" one whereby the quantity is a dollar amount instead of a specific quantity. For example, replacing air conditioning parts on an as-needed basis.

Quantity: $xxx,xxx.xx
UOM: DLR
PO Price: 1

Below is a list of possible units of measure in PeopleSoft:

Unit of Measure	Description
AMP	Ampere
AMT	AMOUNT
ASY	Assembly
BAG	Bag
BDL	Bundle
BLE	Bale
BOX	Box
BSH	Bushel
BTL	Bottle
C	One Hundred
CAN	Can
CPY	Copy
CRG	Charge
CRT	Cartridge
CS	CASE
CTN	Carton
DAY	Day
DLR	DOLLARS
DOZ	DOZEN
DRM	Drum
EA	EACH
EST	Estimate

Unit of Measure	Description
FEE	Fee
FT	Feet
FT2	SQUARE FEET
FT3	Cubic Feet
GAL	Gallon
GRS	Gross
HR	HOUR
IN	Inch
JAR	Jar
JOB	JOB
KW	Kilowatt
L	Fifty
LBS	Pounds
LFT	Lineal Feet
LOT	Lot
M	ONE THOUSAND
MI	Miles
MIN	Minute
MM	Two Thousand
MMO	Work Month
MO	Month
PAD	Pad

Unit of Measure	Description
PK	Pack
PKG	Package
PR	Pair
PT	Pint
QT	Quart
QTR	Quarter
REL	Reel
RLL	Roll
SAK	Sack
SET	Set
SHT	Sheet
SPL	Spool
SUM	Sum
TNM	Ton Mile
TON	Ton
TUB	Tub
VL	Vial
WAT	Watt
WK	Week
YD	Yard
YD2	Square Yard
YD3	Cubic Yard
YR	Year

8.8 Capital Assets over $500

Capital items, items that are worth more than $500 with a useful life of more than one year will have to include the following:

- Items $500 - $4,999.99 must be entered using correct quantities and will be tracked as "controlled assets" by property control. Assets in this category should be accounted for in the 5033xx account number series.
- Items that are $5,000 and above will need to be entered using correct quantities and also capitalized. This is completed under the asset information tab. The asset information is line by line on Requisitions/POs and is accessed by the Distribution link from the Schedule tab. Assets in this category should be accounted for in the 508xxx account number series.
- The Assets Matrix developed by the Financial Services Department guide the entry of assets into the Peoplesoft system. See the Asset Matrix on the next page.

Below is a step-by-step guide to how to accomplish this in PeopleSoft:

1. Click on the Schedule tab. Click on the 'Distributions' link. Click on the 'Asset Information' tab or link.
2. In the AM Unit field click on the hourglass and select the business unit responsible for the purchase (in most cases this will be COFEP).
3. In the Profile ID field click on the hourglass and select the asset profile description that most closely matches the type of purchase involved.
4. Make sure that the box titled 'Capitalize' is check marked. Click OK.

ACCOUNTING RULES FOR ASSET MANAGEMENT

Depreciable Capital Asset	Tangible asset over $5,000 will be tracked, capitalized and depreciated on the City's Asset Management System.
Capital Asset	Tangible or intangible assets over $500 that are used in operations and that have initial useful lives extending beyond a single reporting period and that the City will track on its Asset Management System. The City has elected to track all items between the amounts of $500 through $4,999.99 as non-capital items on its Asset Management System.
Controlled Assets	Assets under $500 that are purchased will not be tagged or tracked and the responsibility for the monitoring and maintenance of these items will be at the departmental level. If identification is required for grant or other purchase, the user department may request this from PCS.

		PROFILES
	Assets under $500.00 will be tracked as follows:	
	- Only Grant Related Assets are applicable -	
a	- all firearms	CONTROLLED ASSET
b	- stereo systems	CONTROLLED ASSET
c	- still & video cameras	CONTROLLED ASSET
d	- facsimile machines	CONTROLLED ASSET
e	- VCRs & VCR/TV combinations	CONTROLLED ASSET
f	- cellular & portable telephones	CONTROLLED ASSET
	USE	
503304	FURNITURE & EQUIP LESS $500	CONTROLLED ASSET

	Assets between $500.00 and $5,000.00 will be tracked as follows:	
	USE	
503300	EQUIPMENT MAT $500 - $4,999.99	NON-CAPITAL ASSET
503301	FURNITURE $500 - $4,999.99	NON-CAPITAL ASSET
503302	DATA PROCESS EQP $500-4,999.99	NON-CAPITAL ASSET
503303	OTHER EQUIPMENT $500-$4,999.99	NON-CAPITAL ASSET

Assets over $5,000.00 will be tracked as follows:
- Will utilize an account code structure of 508XXX -

USE		
508000	LAND	LAND
508001	LAND IMPROVEMENTS	IMPROVEMENTS
508002	BUILDINGS	BUILDINGS
508003	BUILDING IMPROVEMENTS	IMPROVEMENTS
508004	PUBLIC USE FACILITIES EQUIP	MACHINERY AND EQUIPMENT
508005	TRAFFIC CONTROL EQUIPMENT	MACHINERY AND EQUIPMENT
508006	VEHICULAR EQUIPMENT	VEHICLES - 3 YEAR
508007	PUBLIC SAFETY EQUIPMENT	MACHINERY AND EQUIPMENT
508008	MAJOR OFFICE EQUIP & APPLIANCE	FURNITURE AND EQUIPMENT
508009	FURNITURE AND FIXTURES	FURNITURE AND EQUIPMENT
508010	DATA PROCESSING EQUIPMENT	FURNITURE AND EQUIPMENT
508011	CULTURAL WORKS	ART AND HISTORICAL TREASURES
508012	MEDICAL SCIENTIFIC EQUIPMENT	FURNITURE AND EQUIPMENT
508013	ANIMALS	NON-CAPITAL ASSET
508014	HAZARDOUS MATERIALS EQUIPMENT	MACHINERY AND EQUIPMENT
508016	CONTRACTUAL ARCHITEC & DESIGN	INFRASTRUCTURE
508017	SURVEYS (CWIP)	INFRASTRUCTURE
508018	CITY SURVEY CHARGES (CWIP)	INFRASTRUCTURE
508019	APPRAISALS (CWIP)	INFRASTRUCTURE
508020	SITE PREPARATION	INFRASTRUCTURE
508021	CITY ENGINEERING CHARGES (CWIP	INFRASTRUCTURE
508022	CITY ADMIN CHARGES (CWIP)	INFRASTRUCTURE
508024	TESTING (CWIP)	INFRASTRUCTURE
508025	TRAFFIC ENGINEERING	INFRASTRUCTURE
508026	INSPECTIONS (CWIP)	INFRASTRUCTURE
508027	CONSTRUCTION (CWIP)	INFRASTRUCTURE
508028	PROJECT CONSULTING	INFRASTRUCTURE
508029	HEAVY OFF ROAD EQUIPMENT	MACHINERY AND EQUIPMENT
508034	PUBLIC ACCESS	MACHINERY AND EQUIPMENT
508035	COMMUNICATIONS EQUIPMENT	FURNITURE AND EQUIPMENT
508036	STREET LIGHTS TRAFFIC SIGNALS	MACHINERY AND EQUIPMENT
508037	HANDICAP BUSES	VEHICLES - 7YR
508038	OTHER INFRASTRUCTURE NOC	INFRASTRUCTURE
508039	LIBRARY BOOKS - HARDBACK	NON-CAPITAL ASSET
508050	ARCHITECTURE AND DESIGN (CWIP)	INFRASTRUCTURE
508051	PROJECT ENGINEERING	INFRASTRUCTURE
508052	ENVIRONMENTAL ENGINEERING	INFRASTRUCTURE
508053	CONSTRUCTION MANAGEMENT	INFRASTRUCTURE
508054	CARS_PICKUPS_VANS	VEHICLES - 5 YEAR
508055	BUSES_LARGE TRUCKS	VEHICLES - 10 YEAR
508056	COMPRESSOR TRAILER MOWER	MACHINERY AND EQUIPMENT
508057	MOTORCYCLES	VEHICLES - 3 YEAR
508058	AUDIO VISUAL	FURNITURE AND EQUIPMENT
508059	HVAC EQUIPMENT	MACHINERY AND EQUIPMENT
508060	ENVIRONMENTAL COSTS	INFRASTRUCTURE

8.9 Other Requisitions Information

In the preparation of requisitions, other bits of information may be necessary to ensure that the Requisition has adequate and complete information to be able to verify the minimum requirements of acceptability of the item(s) being purchased. Pertinent information to be included in the specifications may include, but is not limited to, the following:

1. Quantity
2. Unit of measure
3. Common name of item
4. Commodity class Code Number
5. Description, including size, color, finish or other detail or unique characteristics of item(s); or detail requirements
6. Scope or general requirements or best value criteria
7. Delivery time (after receipt of purchase order)
8. Delivery location and hours of operation
9. Warranty requirements
10. Termination of contract provision
11. Stocks and warehouse facilities requirements
12. Packaging and shipping requirements
13. Testing and certification requirements
14. Sample requirements
15. Bidder and facilities requirements
16. Term of Agreement (if term contract)
17. Bidding and Award provisions
18. Estimated pricing information
19. Materials requirements
20. Audit provision
21. Telephone number of specification preparer
22. Date specification prepared
23. Initials of specification preparer
24. Page numbers and date of preparation on each page
25. Justification memorandum or cost and price analysis or cost estimate (if required)
26. Specification pages should be sent electronically to Purchasing if too large to be included in the text area of the electronic requisition.
27. If a particular manufacturer's product was used as a basis for developing the specification, please identify the specific make and model number.

NOTE: Temporary personnel services should be charged to 501030 Account number; no purchase order is required for these type of services as they are processed through Human Resources and should have an agreement associated with these type of services.

9.0 Specifications

A specification is a detailed description of a product or service that a user seeks to procure, and consequently, a description of what a bidder must offer to be considered for an award. Specifications are the primary means of communicating the City's needs to potential bidders.

Specifications control the following procurement aspects:

- the quality of the product
- suitability of the product or service for the job

The Department should develop the specifications using the following Specification Guidelines or best practices manual as a guideline:

9.1 Guidelines/Requirements

The following are specification guidelines that can be used to identify need:

1. Performance based specifications – quantitative measures to specify operating characteristics or functional requirements
2. Physical description
3. Samples (if deemed necessary)
4. Technical data
5. Design data
6. Market grade
7. Blueprints/Schematics (either included in the specifications or requested as part of the bidder's submittal)
8. Brand name item. Examples if no other data available or not cost effective due to low dollar value or item is a replacement component part or item.
9. Best Value criteria

Specification Requirements:

1. Identify minimum requirements
2. Allow for a competitive bid (generic enough to allow all potentially interested vendors to compete)
3. Contain only technical or performance, not contractual or administrative requirements unless it is a best value procurement
4. List producible test methods
5. Be clear, legible, and concise
6. Be as simple as is consistent with exactness
7. Reasonable in tolerances
8. Fair to the vendor

PROCUREMENT METHODS

10.0 Overview- Selecting a Purchasing Method

There are a variety of purchasing methods available depending on the dollar amount of the expected expenditures; the nature of the purchase, how urgent is the need, and the amount of flexibility desired by the User Department. Selecting the correct procurement method is one of the most critical aspects of the procurement process. When selecting a method, keep in mind the timelines for processing the solicitation (see following pages). The matrices below outline the various procurement methods and their characteristics.

INFORMAL (UNDER $50,000)	**Purchasing Interlocal Agreements***	**Single Source**	**Three Quotes**	**Informal Bid**
Under $3,000				
Any Service/Product	X	X		
$3,000 - $49,999.99				
Any Service/Product	X		X	X

FORMAL (OVER $50,000)	**Interlocal Agreement***	**Competitive Sealed Bid- Low Bid**	**Competitive Sealed Bid- Best Value**	**Request for Qualifications**	**Request for Proposals**
Basic Products					
e.g. Nuts and Bolts	X	X			
e.g. Fuel	X	X			
Special Products					
e.g. Vehicles	X	X	X		
e.g. Flare Equipment	X	X	X		
Services					
e.g. Janitorial Services	X	X	X		
e.g. Security Services	X	X	X		
e.g. Landscaping Services	X	X	X		
Unique Purchases					
Consulting Services					X
Professional Services**				X	
Planning Services***				X	X
Technology Purchases	X				X
Insurance					X

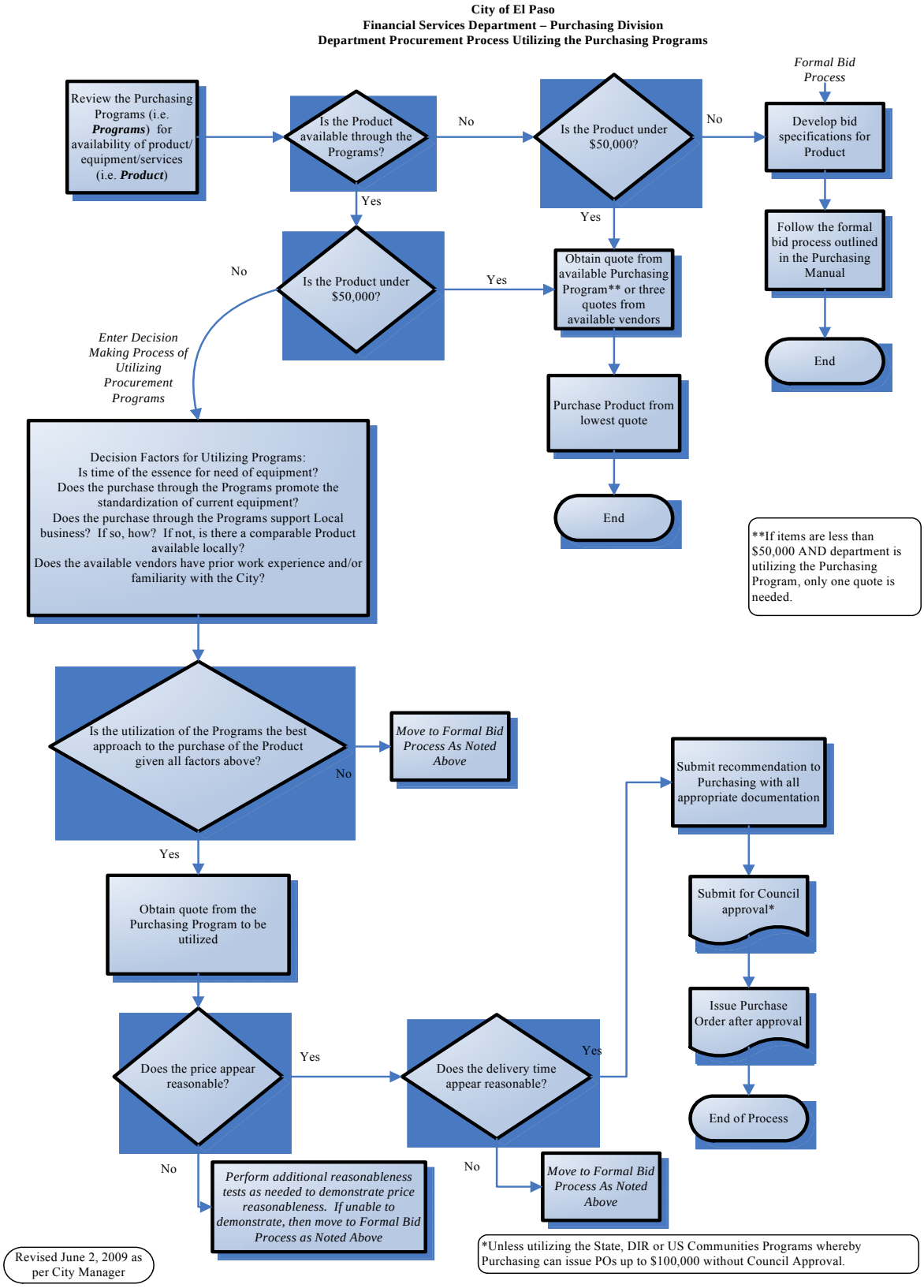
Time to Complete →

Amount of Work Involved →

Flexibility ←

* DIR, TXMAS, COOP Programs, Etc.
** As defined by Chapter 2254 of the Government Code.
*** Exempt if land use planning

The following flowchart depicts the thought process for selecting a procurement method:



City of El Paso
Low Bid Procurement Process
Timeline for Processing

		Number of Working Days		
	Steps	**Routine**	**Additional Issues**	**Total**
PHASE I: CREATION				
1	User Department identifies the exact need that must be satisfied.	-	-	-
2	Department coordinates with Purchasing if there is a question regarding how the item should be procured and if the purchase is deemed to be an exception to the standard purchasing cycle (e.g. emergency purchases). If so, a different set of procurement rules will apply	-	-	-
3	User Department determines dollar amount of estimated expenditures to determine formal or informal course of procurement. If necessary, contact the Purchasing Department for advice regarding process.	-	-	-
4	User Department selects the low bid method of purchasing based on the dollar amount, level of urgency, and amount of flexibility desired.	-	-	-
5	User Department contacts the Purchasing Analyst in charge of that department to get confirmation of method of purchasing and to initiate purchasing process.	-	-	-
6	User Department conducts outreach with other user departments to determine if there is participation in the low bid procurement. Confirm with Purchasing Division of such participation to ensure bid contains appropriate language.			
7	User Department develops detailed and accurate bid specifications. Department prepares and submits completed Sections B and F of the bid solicitation for Purchasing review.	-	-	-
8	User Department should identify source of funding for both the purchase and the advertising costs in order to move forward with the solicitation.	-	-	-
9	User Department enters a Requisition and provides funding source for advertising costs.	1	-	1
10	Purchasing review specifications and prepares all other sections and develop formal bid package. During this time, Purchasing discusses Section A with User Department to ensure concurrence with award criteria.	10	-	10
11	If User Department makes changes to prior bid specifications or award factors, this will add additional time for review.	-	5	5

Created: 6/1/2008
Updated: 2/5/2010

12	Bid package is approved, finalized and prepared for advertisement.	3	-	3
PHASE II: ADVERTISEMENT				
1	Bid is let out for a minimum of two weeks and up to a period of four weeks depending on the complexity of the bid. Bids are advertised on a Tuesday and will run for a period of two weeks from that date. Bid opening is scheduled on a Wednesday and the average has been incorporated into the routine days.	11	-	11
2	If an addendum is required due to an issue with the bid specifications, vendors requiring clarification, question and answer period being extended or other issues, then the bid will be extended.	-	10	10
3	Bid is opened on the scheduled date of opening.	1	-	1
PHASE III: AWARD SELECTION				
1	Bids are tallied by the Bid Section and provided to the Procurement Analyst for review and approval.	4	-	4
3	Bids are reviewed and approved by Analyst and a "Bid Tabulation Sheet" and an RCA request is send to the User Department.	3	-	3
4	If issues related to non-responsiveness or non-responsibility, these are considered non-routine and additional days will be addressed prior to the bid tabulation forwarded to the user department.	-	5	5
5	Department reviews the Bid Tabulation Sheet and makes selection. Department prepares the RCA and forwards with all appropriate documentation to Purchasing for placement on Council agenda.	5	-	5
6	If procurement of software, a cost/benefits analysis must accompany RCA form. IT approval is also required. The purchase of software is not normally a low bid but added for disclosure.	-	2	2
PHASE IV: PREPARATION OF COUNCIL AWARD AND AGENDA				
1	Purchasing reviews the recommendation from the User Department and ensures that all necessary documentation is complete and accurate.	5	-	5
2	If new company, a financial capacity review may have to be performed in order to ensure that company is financially capable of performing work or providing product.	-	5	5
3	Indebtedness forms requested by Analyst to ensure that recommended vendor is not indebted to the City. If indebted to the City, additional time will be required to resolve the issue. Days included in Step 1 in Phase IV.	-	-	-
4	Council package is prepared and submitted to the Purchasing Manager for review and approval for placement on Council agenda. Days included in Step 1 in Phase IV.	-	-	-

5	Purchasing Manager recommends item on Council agenda on a Monday, eight days prior to the Council agenda.	8	-	8
6	Purchasing Manager reviews items with Legal to ensure that items are in order. (Days included in Step 5 in Phase IV)	-	-	-
7	Purchasing Manager reviews items with City Manager on the Wednesday prior to the Tuesday council meeting. (Days included in Step 5 in Phase IV)	-	-	-
8	Item is placed on Council for award for a Tuesday council meeting. (Days included in Step 5 in Phase IV)	-	-	-
9	Purchasing notifies all bidders of upcoming Council award through an email system. (Days included in Step 5 of Phase IV)	-	-	-
PHASE V: AWARD				
1	Upon award, a Purchase Order is issued by Purchasing and delivery of goods and/or services is initiated by the vendor upon receipt.	4	-	4
2	If bonds and/or insurance documents need to be provided post-council award, this may delay the award letter and PO being sent out.	-	10	10
	Total Days for Award of Low Bid Solicitation	**55**	**37**	**92**

Note: The dollar amount will determine whether the purchasing process will be an informal or formal one. There are standard thresholds based on purchasing law that must be complied with although there is some discretion as to the exact method of purchasing that can be used once it is known whether the bid will be informal or formal. Final determination of the appropriate procurement method will be made by the Purchasing Division on a case-by-case basis before beginning work. - -

Note: Non-routine tasks are defined as those purchases that have not been previously bid, have complex bid specifications, or require additional expertise on the part of either procurement or legal staff. These tasks generally are legal-related and no time has been defined for such.

City of El Paso
Best Value Procurement Process
Timeline for Processing

		Number of Working Days		
Steps		**Routine**	**Additional Issues**	**Total**
PHASE I: CREATION				
1	User Department identifies the exact need that must be satisfied.	-	-	-
2	Department coordinates with Purchasing if there is a question regarding how the item should be procured and if the purchase is deemed to be an exception to the standard purchasing cycle (e.g. emergency purchases). If so, a different set of procurement rules will apply	-	-	-
3	User Department determines dollar amount of estimated expenditures to determine formal or informal course of procurement. If necessary, contact the Purchasing Department for advice regarding process.	-	-	-
4	User Department selects the best value method as the desired method of purchasing based on the dollar amount, level of urgency, and amount of flexibility desired.	-	-	-
5	User Department contacts the Purchasing Analyst in charge of that department to get confirmation of method of purchasing and to initiate purchasing process.	-	-	-
6	User Department conducts outreach with other user departments to determine if there is participation in the best value procurement. Confirm with Purchasing Division of such participation to ensure bid contains appropriate language.			
7	User Department develops detailed and accurate bid specifications. Department prepares and submits completed Sections B and F of the bid solicitation for Purchasing review.	-	-	-
8	User Department should identify source of funding for both the purchase and the advertising costs in order to move forward with the solicitation.	-	-	-
9	User Department enters a Requisition and provides funding source for advertising costs.	1	-	1
10	Purchasing review specifications and prepares all other sections and develop formal bid package. During this time, Purchasing discusses Section A with User Department to ensure concurrence with award criteria.	10	-	10
11	If User Department makes changes to prior bid specifications or award factors, this will add additional time for review.	-	5	5
12	Bid package is approved, finalized and prepared for advertisement.	3	-	3

PHASE II: ADVERTISEMENT				
1	Bid is let out for a minimum of two weeks and up to a period of four weeks depending on the complexity of the bid. Bids are advertised on a Tuesday and will run for a period of two weeks from that date. Bid opening is scheduled on a Wednesday and the average has been incorporated into the routine days.	11	-	11
2	If an addendum is required due to an issue with the bid specifications, vendors requiring clarification, question and answer period being extended or other issues, then the bid will be extended.	-	10	10
3	Bid is opened on the scheduled date of opening.	1	-	1
PHASE III: AWARD SELECTION				
1	Bids are tallied by the Bid Section and provided to the Procurement Analyst for review and approval.	4	-	4
3	Bids are reviewed and approved by Analyst and a "Bid Tabulation Sheet" and an RCA request is send to the User Department.	3	-	3
4	If issues related to non-responsiveness or non-responsibility, these are considered non-routine and additional days will be addressed prior to the bid tabulation forwarded to the user department.	-	5	5
5	Department reviews the Bid Tabulation Sheet and selects committee to review best value bids. Committee makes a selection and recommendation to the department head. Department prepares the RCA and forwards with all appropriate documentation to Purchasing for placement on Council agenda.	15	-	15
6	If procurement of software, presentations are required and a cost/benefits analysis must accompany RCA form. IT approval is also required.	-	2	2
PHASE IV: PREPARATION OF COUNCIL AWARD AND AGENDA				
1	Purchasing reviews the recommendation from the User Department and ensures that all necessary documentation is complete and accurate.	5	-	5
2	If new company, a financial capacity review may have to be performed in order to ensure that company is financially capable of performing work or providing product.	-	5	5
3	Indebtedness forms requested by Analyst to ensure that recommended vendor is not indebted to the City. If indebted to the City, additional time will be required to resolve the issue. Days included in Step 1 in Phase IV.	-	-	-

4	Council package is prepared and submitted to the Purchasing Manager for review and approval for placement on Council agenda. Days included in Step 1 in Phase IV.	-	-	-
5	Purchasing Manager recommends item on Council agenda on a Monday, eight days prior to the Council agenda.	8	-	8
6	Purchasing Manager reviews items with Legal to ensure that items are in order. (Days included in Step 5 in Phase IV)	-	-	-
7	Purchasing Manager reviews items with City Manager on the Wednesday prior to the Tuesday council meeting. (Days included in Step 5 in Phase IV)	-	-	-
8	Item is placed on Council for award for a Tuesday council meeting. (Days included in Step 5 in Phase IV)	-	-	-
9	Purchasing notifies all bidders of upcoming Council award through an email system. (Days included in Step 5 of Phase IV)	-	-	-
PHASE V: AWARD				
1	Upon award, a Purchase Order is issued by Purchasing and delivery of goods and/or services is initiated by the vendor upon receipt.	4	-	4
2	If bonds and/or insurance documents need to be provided post-council award, this may delay the award letter and PO being sent out.	-	10	10
	Total Days for Award of Low Bid Solicitation	**65**	**37**	**102**
Note: The dollar amount will determine whether the purchasing process will be an informal or formal one. There are standard thresholds based on purchasing law that must be complied with although there is some discretion as to the exact method of purchasing that can be used once it is known whether the bid will be informal or formal. Final determination of the appropriate procurement method will be made by the Purchasing Division on a case-by-case basis before beginning work.			-	-

Note: Non-routine tasks are defined as those purchases that have not been previously bid, have complex bid specifications, or require additional expertise on the part of either procurement or legal staff. These tasks generally are legal-related and no time has been defined for such.

City of El Paso
RFQ/RFP Procurement Process
Timeline for Processing

		Number of Working Days		
Steps		**Routine**	**Additional Issues**	**Total**
PHASE I: CREATION				
1	User Department identifies the exact need that must be satisfied.	-	-	-
	Department coordinates with Purchasing if there is a question regarding how the item should be procured and if the purchase is deemed to be an exception to the standard purchasing cycle (e.g. emergency purchases). If so, a different set of procurement rules will apply	-	-	-
3	User Department determines dollar amount of estimated expenditures to determine formal or informal course of procurement. If necessary, contact the Purchasing Department for advice regarding process. Generally an RFP/RFQ is utilized when a purchase is made over $50,000. If the purchase is less than $50,000, contact the Purchasing Department before proceeding this course.	-	-	-
4	User Department selects the RFQ/RFP method as the desired method of purchasing based on the dollar amount, level of urgency, and amount of flexibility desired.	-	-	-
5	User Department contacts the Purchasing Analyst in charge of that department to get confirmation of method of purchasing and to initiate purchasing process.	-	-	-
6	User Department conducts outreach with other user departments to determine if there is participation in the best value procurement. Confirm with Purchasing Division of such participation to ensure bid contains appropriate language.			
7	User Department develops detailed and accurate bid specifications. Department prepares and submits completed Sections B and F of the bid solicitation for Purchasing review. All RFQs and RFPs require a legal review prior to letting out by the Purchasing Department.	-	-	-
8	User Department should identify source of funding for both the purchase and the advertising costs in order to move forward with the solicitation.	-	-	-
9	User Department enters a Requisition and provides funding source for advertising costs.	1	-	1
10	Purchasing review specifications and prepares all other sections and develop formal bid package. During this time, Purchasing discusses Section A with User Department to ensure concurrence with award criteria.	15	-	15
11	If User Department makes changes to prior bid specifications or award factors, this will add additional time for review.	-	5	5
12	Bid package is approved, finalized and prepared for advertisement.	3	-	3

Created: 6/1/2008
Updated: 2/5/2010

PHASE II: ADVERTISEMENT				
1	Bid is let out for a minimum of four weeks depending on the complexity of the bid. Bids are advertised on a Tuesday and will run for a period of two weeks from that date. Bid opening is scheduled on a Wednesday and the average has been incorporated into the routine days.	21	-	21
2	If an addendum is required due to an issue with the bid specifications, vendors requiring clarification, question and answer period being extended or other issues, then the bid will be extended.	-	10	10
3	Bid is opened on the scheduled date of opening.	1	-	1
PHASE III: AWARD SELECTION				
1	Bids are tallied by the Bid Section and provided to the Procurement Analyst for review and approval.	4	-	4
2	Bids are reviewed and approved by Analyst and a "Bid Tabulation Sheet" and an RCA request is send to the User Department.	3	-	3
3	If issues related to non-responsiveness or non-responsibility, these are considered non-routine and additional days will be addressed prior to the bid tabulation forwarded to the user department.	-	5	5
4	Department reviews the Bid Tabulation Sheet and selects committee to review RFP/RFQ respondents. If RFP, a Best & Final Offer and/or Presentation may be requested. If RFQ, Presentations maybe requested. Committee makes a selection and recommendation to the department head. Department prepares the RCA and forwards with all appropriate documentation to Purchasing for placement on Council agenda.	15	-	15
5	If procurement of software, a cost/benefits analysis must accompany RCA form. IT approval is also required.	-	2	2
PHASE IV: PREPARATION OF COUNCIL AWARD AND AGENDA				
1	Purchasing reviews the recommendation from the User Department and ensures that all necessary documentation is complete and accurate.	10	-	5
2	If new company, a financial capacity review may have to be performed in order to ensure that company is financially capable of performing work or providing product.	-	5	5
3	Indebtedness forms requested by Analyst to ensure that recommended vendor is not indebted to the City. If indebted to the City, additional time will be required to resolve the issue. Days included in Step 1 in Phase IV.	-	-	-

4	Council package is prepared and submitted to the Purchasing Manager for review and approval for placement on Council agenda. Days included in Step 1 in Phase IV.	-	-	-
5	Purchasing Manager recommends item on Council agenda on a Monday, eight days prior to the Council agenda.	8	-	8
6	Purchasing Manager reviews items with Legal to ensure that items are in order. (Days included in Step 5 in Phase IV)	-	-	-
7	Purchasing Manager reviews items with City Manager on the Wednesday prior to the Tuesday council meeting. (Days included in Step 5 in Phase IV)	-	-	-
8	Item is placed on Council for award for a Tuesday council meeting. (Days included in Step 5 in Phase IV)	-	-	-
9	Purchasing notifies all bidders of upcoming Council award through an email system. (Days included in Step 5 of Phase IV)	-	-	-
PHASE V: AWARD				
1	Upon award, a Purchase Order is issued by Purchasing and delivery of goods and/or services is initiated by the vendor upon receipt.	4	-	4
2	If bonds and/or insurance documents need to be provided post-council award, this may delay the award letter and PO being sent out.	-	10	10
	Total Days for Award of Low Bid Solicitation	**85**	**37**	**117**

Note: The dollar amount will determine whether the purchasing process will be an informal or formal one. There are standard thresholds based on purchasing law that must be complied with although there is some discretion as to the exact method of purchasing that can be used once it is known whether the bid will be informal or formal. Final determination of the appropriate procurement method will be made by the Purchasing Division on a case-by-case basis before beginning work. - -

Note: Non-routine tasks are defined as those purchases that have not been previously bid, have complex bid specifications, or require additional expertise on the part of either procurement or legal staff. These tasks generally are legal-related and no time has been defined for such.

10.1 Purchasing Interlocal Agreements (Cooperatives and Public Agencies)

Purchasing Interlocal Agreements are recommended as the fastest way to complete a purchase. A key assumption in utilizing interlocal agreements is that time is of the essence for completing the purchase. The City of El Paso has interlocal agreements with a variety of purchasing cooperatives and public agencies to purchase goods and services. The contracts utilized through these agreements are competitively bid and are considered the lowest price at the time of award. Therefore, if another contract with reasonable pricing already exists for a particular good or service then there is no reason to pursue the lengthier processes of creating a new one.

Once it has been determined that a desired good or service is available through an interlocal agreement, the following is required:

- A copy of the Interlocal Agreement's contract*
- A quoted price from the vendor specifying work to be completed or materials to be delivered
- The Department's Cooperative Purchase Memo as described below (if purchase is over $50,000)
- Request for Council Action (RCA) or Request for Board Action (RBA) Form (if Council or Mass Transit Board approval is required)

*NOTE: WHEN A DEPARTMENT IS USING THE PURCHASING PROGRAM AND THE PURCHASE IS BETWEEN $0 AND $50,000, A COPY OF THE PURCHASE ORDER MUST BE SENT TO THE ADMINISTRATIVE ASSISTANT IN PURCHASING IN ORDER TO MAINTAIN AN ACCURATE ACCOUNTING OF THE AMOUNT OF ANNUAL PURCHASING PROGRAM PURCHASES.

The Department's Cooperative Purchase Memo addressing the five (5) factors is used to demonstrate that due diligence has been done to establish that the purchasing program's contract is reasonable and therefore it is in the City's best interest to purchase through the cooperative rather than formally bidding for the product/service. There are several important factors addressed by the memo: 1) time, 2) support of local business, 3) promotion of equipment standardization, 4) past relationship, and 5) price reasonableness. Departments should address how they ascertained price reasonableness by detailing rationale, which may include the following:

- assumption of lowest price on the Program
- prior purchases (i.e. previous City contracts or work performed for the City of a similar nature)

- prior formal bids
- past experience with similar situations (i.e. other city contracts (not under the recommended contract) of a similar nature)
- other Coop contracts of a similar nature
- other quotes obtained from companies for similar materials/services (similar to the informal bid procedure of obtaining quotes)
- knowledge of department
- market prices and indicators (indexes, financial rates, etc.)

10.1.1 Approved Interlocal Agreements (Cooperatives and Public Agencies)

There are a diverse group of Purchasing Cooperatives available and City Council has authorized the use of various Purchasing Cooperatives without additional Council approval up to certain threshold amounts (see 10.1.1.2 below). Generally purchases through Texas State agreements that exceed $100,000 in the aggregate have to go to Council for approval. With regards to other Cooperative agreements (see 10.1.1.3 below), purchases that exceed $50,000 in the aggregate have to go to Council for approval. A complete list of approved Purchasing Programs and their threshold limits for Council review/approval is below. Contact the Division for the most up-to-date approved list.

10.1.1.1 Step-by-Step Guide to using Purchasing Programs

1. Identify the bid within the Purchasing Program and print a copy of it for verification purposes.
2. Determine the total expenditure and confirm pricing as compared to other sources.
3. Complete the Department Cooperative Purchase Memo addressing the five factors.
4. Provide an RCA recommending the Award through the Purchasing Program identified and the vendor awarded or selected and forward to Purchasing for review and placement on City Council agenda.

10.1.1.2 Purchases over $100,000 (Council Approval)

- Texas Procurement and Support Services (TPASS) [Approved by Council 2/27/07] [Formerly Texas Building & Procurement Commission (TBPC)] Includes: State of Texas Term Contracts - approx. 200 merchandise and service bids. Bid types – autos, fax machines photocopiers, tires, mailing equipment, and furniture, etc.
- TXMAS Contracts – (Federal Contracts adopted by the State of Texas) Approx. 35 merchandise and service bids. Bid types – facilities management, generators, security devices, and publication media etc.
- Piggyback Contracts & (TXDOT) Open Market PO'S – approx. 450 bids. Bid types – asphaltic mix, cement, signs, traffic detection systems, equipment, vehicles, lamps, landscape materials, and trauma kits, etc.
- State Emergency Mgmt Contracts – approx. 30 bids. Bid types – towels, blankets, bottled water, cots, fuel, generators, and toilets, etc.
- Department of Information Resources (DIR) [Approved by Council 2/2707] approx. 50 bids Bid types - Technology hardware, software, telecommunication devices, and cabling, etc.
- U.S. Communities Cooperative Purchasing Alliance [Approved by Council 2/27/07] approx. 20 bids. Bid types – office supplies, furniture, park and playground, and homeland security, etc.

10.1.1.3 Purchases over $50,000 (Council Approval)

- Texas Association of School Boards (TASB) BuyBoard [Approved by Council 9/19/06] approx 26 bids. Bid types – first aid, floor coverings, parks equipment, public safety, and water treatment, etc.
- The Cooperative Purchasing Network (TCPN) Region 4 (Service Center-Houston) [Approved by Council 3/27/07] approx. 150 bids. Bid types – software, job order contract, Cisco routers, playground equipment, and disaster recovery, etc.

- Houston-Galveston Area Council (HGAC) [Approved by Council 5/8/07] approx. 40 bids. Bid types – defibrillators, radio communication, fire apparatus, environmental planning, traffic control, earth moving equipment, 911 systems, and street equipment, etc.
- Region 19 Cooperative Purchasing Program [Approved by Council 3/4/08] approx. 200 bids Bid types – Maintenance repairs, HVAC, fencing, printing supplies, medical supplies, temporary services, electrical supplies, automotive supplies, and skilled labor, etc.
- Harris County Department of Education (HCDE) [Approved by Council August 18, 2009]
- Tarrant County [Approved by Council November 10, 2009)
- Other interlocal agreements with specific governmental agencies for specific purchases (e.g. Massachusetts Bay Transit Authority for the purchase of buses)

10.1.1.4 Exempted per State of Texas

- Texas Industries for the Blind and Handicapped (TIBH)
- Texas Department of Corrections

NOTE: When using a Cooperative, the quote from the vendor has to include some acknowledgment that the pricing is being made available under a Cooperative contract (e.g. "TXMAS pricing" or "HGAC pricing", etc.).

11.0 Informal - Contract Types and Bidding Methods

11.1 Single Source

A Direct PO should be entered for this type of purchase between $250 up to $2,999.99. A Purchase Order should not be entered for purchases under $250. Quotes may be obtained by user department but they are not required. However, the Purchasing Department recommends acquiring some sort of documentation from the vendor indicating the price for the commodity to be

purchased. Also, the Purchasing Department encourages buying from local vendors and to use HUB suppliers for this level of purchase.

11.2 Three Quotes Procurement

Section 252.0214 of the local government code which requires purchases over $3,000 and less than $50,000; contacting at least two (2) Historically Underutilized Businesses (HUBs) within El Paso County. It is recommended by Purchasing to acquire as many quotes as feasible in order to get to the most competitive pricing. Quotes obtained must all be equivalent in respect to what is being requested such as quantity, commodity, any and all additional charges (i.e. freight, fuel surcharge, service, installation, etc.) in order for the quotes to be competitively compared to one another. The quotes need to be included in the Header Comments of the Requisition. Hard copies of the quotes will also need to be sent to the Purchasing Division.

Step-by-Step Guide to Three Quotes Procurement

1. Department to contact vendors to receive quotes on commodities being requested.
2. Once quotes are obtained, department to submit quotes and all pertinent documentation to the Purchasing Division.
3. Department to enter a requisition in the system with the recommended lowest quote bidder.
4. Purchasing to review all documentation and verify that two HUB's were contacted by the department (verification performed on the Texas Comptroller of Public Accounts HUB vendor list) to acquire the HUB documentation needed to pursue with the purchase.
5. If a "No Quote" is received then at least one more quote needs to be acquired to establish due diligence and price reasonableness.
6. Purchasing to issue a Purchase Order to the lowest vendor quote bidder.

11.3 Informal Bid

These are purchases that may be awarded on a "requirements", "one-time" basis in which the annual requirements does not exceed $49,999.99 in value. The standard award criterion is based on the lowest bidder, but may be awarded to a non-lowest bidder if it will benefit the City and the department if in conjunction with the local government code. The bid process complies with Section 252.0214 of the local government code which requires purchases over $3,000 and less than $50,000; contacting at least 2 Historically Underutilized Businesses (HUBs) within El Paso County.

Step-by-Step Guide to Informal Bid Procurement

1. User Department submits specifications/requirements to Purchasing Division.
2. Purchasing to transcribe the specifications on to the bid documentation.
3. Purchasing submits the draft informal bid to Department for review and approval.
4. Purchasing will then issue the informal bid solicitation.
5. Purchasing will contact local HUB's and local vendors (if applicable) for invitation to bid.
6. Purchasing will submit bid tabulation and all vendor bids to Department for review and recommendation.
7. Purchasing will issue a Purchase Order to the lowest bidder.

12.0 Formal - Contract Types

These are purchases on a "requirements", "one-time", or "best value" basis in which the annual requirements exceed $50,000 in value. These purchases require the Purchasing Department to formalize a contract and obtain Council approval prior to issuing a purchase order. The bidding methods for formal bids are determined by the Purchasing Department using the appropriate State and/or federal guidelines and the requirements of the State Competitive Bid Statutes.

12.1 Requirements Contracts

A *requirements contract* is one in which the purchaser commits to place all of its requirements for a particular item or service with a particular contractor during a specified contract period, with deliveries or performance to be scheduled at the time each order is placed under the contract. This type of contract is used when quantities and/or the times of needed deliveries are uncertain. It permits flexibility to the purchaser in both quantities and delivery schedules. It may also shorten the delivery time of a product that has a longer production lead time because the contractor knows that the purchaser will obtain all of its requirements under its contract and in this situation contractors may be willing to maintain some level of inventory. A *requirements contract* also allows for the ordering of supplies or services *after requirements become known.* It promises the contractor that all of the purchaser's requirements for the particular item will be procured from the contractor. The *requirements contract* may produce better prices for the purchaser in that the contractor is assured from the beginning that all supplies or services of the type called for will be procured from the contractor during a stated period of time.

Estimated total quantity (specific items and estimated quantities) - When this type of contract is used, purchaser should state a realistic estimated total quantity in the solicitation and in the resulting contract. This estimate is not a guarantee by the purchaser that it will buy the estimated quantity, but is a good faith estimate of what the requirements are likely to be. The estimate should be based on records of previous requirements as well as the most current information available.

Maximum and minimum quantities - The contract should protect the contractor by stating a maximum limit of the contractor's obligation to deliver. This maximum limit may be expressed for the entire contract, as well as for each individual order and for any particular period of time within the contract period of performance. Minimum order amounts may also be expressed for each order placed and for the contract as a whole. Minimum order amounts, however, are not required for this type of contract because the purchaser's commitment to buy its requirements from the contractor represents the legal consideration necessary to make the contract binding. It should be noted that the minimum and maximum quantities in a *requirements contract* are for the contractor's protection and do not necessarily limit the purchaser's procurement authority to order more units (since the purchaser has contracted to award *all of its requirements* to the contractor). Thus the purchaser's authority to add units to a requirements contract without re-competition is founded on its initial promise to award all of its requirements to the successful contractor and such additions would not constitute an impermissible increase in scope. Increases cannot exceed the 25% threshold as defined under procurement statutes.

12.2 Best Value Contracts

Best Value procurements are awarded to the bidder who provides goods or services, other than professional services as defined by Section 2254.002 of the Government Code, at the best value for the City. Some factors to be considered in determining best value can be: purchase price; reputation of the bidder and of the bidder's goods or services; the quality of the bidder's goods or services; the extent to which the goods or services meet the City's needs; the bidder's past relationship with the City; the impact on the ability of the City to comply with laws and rules relating to contracting with historically underutilized businesses and non profit organizations employing persons with disabilities; the long-term cost to the City to acquire the bidder's goods or services; and any relevant criteria specifically listed in the request for bids or proposals.

12.3 One-Time Contracts

One-time contracts are very similar to Requirements Contracts except that the purchase is for a supply or service to be used one time. For example, a

purchase of twenty new buses is a one-time purchase with no expectation to buy additional quantities, although the purchaser may ask to purchase up to a certain percentage of the original quantity within a specific time limit if the vendor agrees to it.

13.0 Formal - Bidding Methods (Definitions and Procedures)

There are generally three types of formal bid solicitation methods, Competitive Sealed Bid (for both Requirements and Best Value contracts), Requests for Proposals and Request for Qualifications. The Low Bid Procurement is appropriate for simple purchases on a cost benefit basis. Best Value Procurement may be utilized for more complex purchases since it allows for consideration of the relative importance of various evaluation criteria. Requests for Proposals (RFP) and Request for Qualifications (RFQ) may be utilized in accordance with state statutes. Examples are procurement of highly technical supplies and services and highly specialized services as authorized in Section 252 of the Local Government Code. Other types of bids such as Requests for Depositories are specialized, more complex bid and are subject to Purchasing Division oversight as necessary.

13.1 Competitive Sealed Bid- Low Bid

Step-by-Step Guide to Low Bid Procurement

1. Bid Opening.
2. The Purchasing Department reviews offers to eliminate any offer that can be deemed as not responsive at this point.
3. The Purchasing Department forwards copies of the offers and bid tabulation to the User Department.
4. The User Department forwards recommendation to Purchasing Department.
5. The Purchasing Department receives and reviews recommendation for award from User Department.
6. Purchasing Department prepares City Council agenda item for award.
7. City Council awards contract to the lowest, responsive and responsible Offeror or reject all offers.
8. Purchasing Department issues Notice of Award and Purchase Order to vendor.

13.2 Competitive Sealed Bid--Best Value

Step-by-Step Guide to Best Value Procurement

1. Bid Opening.
2. The Purchasing Department reviews offers to eliminate any offer that can be deemed as not responsive at this point and ensures that all best value documentation and information has been submitted.
3. The Purchasing Department forwards copies of the bids, bid tabulation, and best value score sheets to User Department's designated representative. An Evaluation Committee shall be formed. Committee will be selected by the User Department and/or Purchasing. Committee membership must be documented in bid file. Committee shall consist of 3 – 5 City Employees.
4. Committee meets and ranks responsive offers that could yield enough best value points to be considered after cost rating is determined. Ranking is in accordance with best value criteria.
5. The User Department forwards recommendations and evaluation to The Purchasing Department.
6. The Purchasing Department receives and reviews the Individual and Committee score sheets for each Offeror, and the recommendation of the Committee, signed by all Committee Members. Individual score sheets will be identified by rater number, not Committee Member's name, and maintained in bid file.
7. The Purchasing Department prepares City Council agenda item for award.
8. City Council awards contract to the Offeror with the highest best value ranking or rejects all offers.
9. The Purchasing Department issues Notice of Award and Purchase Order to vendor.

14.0 Request for Qualifications (RFQ)

State and federal statutes are very specific on what falls into this category of Purchasing. Professional Services are obtained after use of the RFQ process. Requests to use the RFQ method not specifically addressed in the State or federal statutes or reviewed by the Legal Department in the past must be reviewed by the Legal Department prior to submittal to Purchasing or prior to issuance of the RFQ.

Funding source will dictate guidelines to be followed. Specific areas with additional guidelines include but not limited to:

- State or Federal Grants
- Sun Metro Purchases
- FTA Funded Purchases
- FAA/FHWA/DOT Funded Purchases
- DOT Funded Purchases

- W.I.C. Purchases

Step-by-Step Guide to Request for Qualifications (RFQ) procurement

1. Request and specifications are forwarded to Purchasing for review and determination of the appropriate purchasing method.
2. If an RFQ method is selected, then The Purchasing Department will ask, in addition to the specification and Scope of Work, the proposed evaluation criteria for selection of the highest ranked proposer.
3. Once the highest ranked vendor is selected, then the City enters into negotiations with the vendor and if both parties agree to the price, then the recommendation to award the vendor and amount goes to Council for approval.
4. If the negotiations are not agreed upon by both parties, then the negotiations are terminated in writing and the City goes to the second ranked vendor and commences to negotiate with that vendor and so on until both parties agree to a negotiated price at which time the recommendation for award goes to Council for approval.
5. The Purchasing Department issues Notice of Award and Purchase Order to vendor.

15.0 Request for Proposals (RFP)

The City shall develop a Request for Proposal (RFP) as described below:

Instructions for Proposals: Instructions for proposals should give, in summary fashion, general information about what is required. The instructions should include the proposal due date and time, the number of copies of the proposal, the person and address for submission, and information about any pre-proposal meeting(s). Proposers shall be considered "non-responsive" if they fail to conform to the requirements of the bid to the extent that there is a material defect of the submittal. The Purchasing Department makes the determination whether the proposal is “non-responsive”.

Purpose: The purpose briefly describes the objective of the proposal.

Proposal Content: The proposal content describes the specific information to be supplied by the proposer including: a cover letter, study methodology, key personnel, management plan, and related work, etc. or as applicable.

Criteria for Evaluation: The criteria and weight to be used in evaluating the proposals must be included in the RFP.

Selection Procedure: All contracts are evaluated by the appropriate committee. Usually a subcommittee or a project oversight committee is appointed to review proposals. This review committee will rank proposals and make recommendations to the Purchasing Division for a Best and Final Offer (BAFO), if applicable, and then re-ranking of proposals as appropriate and then recommend award by City Council or the Mass Transit Board.

Two-step process: Depending on the complexity of the proposal or if the RFP is for software, then a two-step process may be used to determine the highest ranked proposer. Step one of the process determines a short list of proposers based on written submittals and/or technical specifications or the evaluation criteria, whichever is appropriate. Step two of the process may include evaluation of oral presentations or interviews, scoring or rescoring of the evaluation criteria, and a Best and Final Offer, if requested.

Duration of Contract: The anticipated length of the contract is described in this section.

Compliance with Federal Regulations: This section calls the attention of the proposer to the fact that any contract that is funded through financial assistance from the United States and Texas Departments of Transportation and as such, the contract must comply with all applicable Federal and State regulations.

Debarment Certification: All prospective contractors are required, if applicable, to execute a "Certification of Lower-Tier Participant" form as a part of their proposal for applicable Federal or State contracts. Verification can be done by Internet research at http://www.epls.gov.

Background: This section should give a brief background on the project and the reasons for which contract is being sought.

Scope of Work: The Scope of Work shall incorporate a clear and accurate description of the technical requirements of the product or service being procured. Such description shall not contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the product or service being procured and shall set forth minimum essential characteristics and standards to which it must conform if it is to satisfy the intended use.

Step-by-Step Guide to Request for Proposals Procurement

The following procedures for Request for Proposals are outlined in a series of steps culminating in presentation to City Council of most highly ranked offeror for acceptance or rejection.

1. The User Department advises Purchasing of the members of the Evaluation Committee. Committee shall consist of 3-5 City Employees. Committee membership is documented in the RFP file by way of an Evaluation Committee Certification Form.

2. Proposal Opening. Only names of Offerors are released.

3. The Purchasing Department reviews offers to eliminate any offer that can be deemed as non-responsive at this point and ensures that all documentation and information has been submitted.

4. Offers which contain any questionable items, exceptions or qualifications to the City's terms and conditions, or additional agreements or contracts to be executed are forwarded to the City Attorney's Office for review.

5. The Purchasing Department forwards copies of the offers and Rater's score sheets to the Evaluation Committee for review. The Committee may require more information and will request through the Purchasing Division, clarification notices be sent to all Offerors.

6. The Committee rates, ranks and may create a short list of proposers if desired or necessary (see Two-step process).

7. The Purchasing Department sends written notification to short listed Offerors, if applicable.

8. Presentations
   a. Request presentations from all Offerors on the short list (as applicable)
   b. No presentations from any Offerors

9. The Committee creates a request for a Best and Final Offer (BAFO) noting specific requirements if desired or necessary.

10. All Offeror's on the short list are contacted in writing by the Purchasing Division for submittal of Best and Final Offer if desired or necessary.

11. After review of the BAFO, the Purchasing Department rescores the cost criteria and final scores of the Committee Score Sheet.

12. The Committee makes a recommendation to award.

13. The Purchasing Department receives and reviews the Individual and Committee score sheets for each Offeror, and the recommendation of the Committee, signed by all Committee Members. Individual score sheets will be identified by rater number, not Committee Member's name.

14. The Purchasing Department prepares City Council Agenda Item for Award

15. City Council awards contract to the highest ranked proposer or rejects all offers.

16. Contract documents executed by both parties.

This criteria used to evaluate RFPs can be similar to Best Value procurements. Different criteria can be used to meet the requirements of the bid and evaluation factors' respective weights are determined by the user department. If federal funds are being expended no other criterion can be scored higher than cost.

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ADDITIONAL PROCUREMENT DETAILS

16.0 City Manager Contract Approval

The City Manager has been vested with the power to approve formal contracts to a certain extent. The City Manager can approve one-year contracts up to $50,000 or two-year contracts up to $100,000.

17.0 Period of Contract Performance

The performance period of a contract may be based on the dates specified in the bid or the dates specified in the adjoining contract or agreement and may or may not coincide with the Council's motion.

18.0 Contract Extensions

If a contract initially went to Council for approval then any extensions also need to go to Council for approval, regardless of the dollar amount of the contract. Also, the User Department can change the annual amount at the time of the extension award if the change is within twenty-five percent (25%) of the original award. Also, an extension date is generally based on the date of the original motion date unless otherwise specified in the Motion or resulting contract.

19.0 Exempt Purchases

Several types of purchases are exempt from the standard purchasing requirements. If the User Department determines that the purchase falls within one of the exempt categories under Section 252.022 of the Texas Local Government Code, the Department should contact its assigned Purchasing staff.

Exemptions under the code are as follows:

(1) a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality;

(2) a procurement necessary to preserve or protect the public health or safety of the municipality's residents;

(3) a procurement necessary because of unforeseen damage to public machinery, equipment, or other property;

(4) a procurement for personal, professional, or planning services;

(5) a procurement for work that is performed and paid for by the day as the work progresses;

(6) a purchase of land or a right-of-way;

(7) a procurement of items that are available from only one source, including:
   (A) items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies;
   (B) films, manuscripts, or books;
   (C) gas, water, and other utility services;
   (D) captive replacement parts or components for equipment;
   (E) books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and
   (F) management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits;

(8) a 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 property that will benefit from the improvements;

(10) a public improvement project, already in progress, authorized by the voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes authorized by the voters;

(11) a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212;

(12) personal property sold:
   (A) at an auction by a state licensed auctioneer;
   (B) at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code;
   (C) by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or
   (D) under an interlocal 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 a municipality for subsequent retail sale by the municipality;

(15) electricity; or

(16) advertising, other than legal notices.

Advertising

With regard to advertising, the City is exempt from having to bid advertising other than legal notices. This extends to the advertisement of items in local, state and national publications, but not to the actual development of the piece to be advertised. For example, the design of a logo or the development of the ad itself is not exempt from the procurement statutes and is required to follow all standard procurement standards. Except for legal ads, all advertising is exempt. What isn't exempt is the preparation or producing of the ads. Example forms of advertising are newspapers, magazines and other publications, billboards, flyers, radio and TV, etc.

20.0 Emergency Purchases (Section 252.022)

Emergency purchases are made to meet a critical, unforeseen government need. Because the government's ability to serve the public would be impaired if purchases are not made immediately, emergency purchases are exempt from standard purchasing procedures. The City Council may be required to grant the exemption at a future date.

These are purchases where due to unforeseen conditions where the transaction must be done immediately. If you have Emergencies under $50,000, contact Purchasing for an authorization number. For Emergency purchases over $50,000 the department head needs to contact the Deputy City Manager and the Purchasing Manager if possible. The City Manager must approve all Emergency purchases over $50,000. Emergency purchases over $50,000 must be taken back to Council to be ratified. Placement on City Council for approval will be handled by Purchasing or Engineering.

In case of emergencies occurring during "non working" hours, the Department should attempt to contact their assigned purchasing analyst especially in cases where it is anticipated that an expenditure in excess of $50,000 may be required. Regardless, these should be brought to the attention of the Purchasing Division as soon as possible the next business day. State bid statutes define emergencies as "…a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality; … to preserve or protect the public health or safety of a municipality's

residents; and …unforeseen damage to public machinery, equipment or other property" (Section 252.022 of the Local Governmental Code).

21.0 Sole Source

Sole source purchases are goods and services available from only one supplier and, therefore, competition (bidding) is precluded by the existence of a patent, copyright, secret process or monopoly as stated under Section 252.022, Subchapter A of the Local Governmental Code 7A or as provided for under 7B-F of the same section. A letter explaining the reasons why this purchase or Vendor is a qualified sole source must be provided by the manufacturer. A notarized affidavit to that effect also needs to be submitted by either the local vendor or the manufacturer.

All sole source transactions are subject to review by the Legal department and subject to an audit by Internal Audit, State Examiners, and other governing Agencies. A sole source justification cannot be based on price. State law requires price consideration be evaluated via competitive bid only. A sole source purchase request must be based on the requestor's research and evaluation of the requested product/services and its availability from only one source or lack of availability from multiple sources/brands.

From Section 252.022:

(7) a procurement of items that are available from only one source, including:
- (A) items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies;
- (B) films, manuscripts, or books;
- (C) gas, water, and other utility services;
- (D) captive replacement parts or components for equipment;
- (E) books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials;
- (F) management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits;

21.1 Sole Source Letter

The letter must specify the exclusive capabilities of the vendor or the unique capabilities and/or personnel they have to perform the work, and why this is the only source/service available (i.e. exclusive). If a sole source because of the existence of a **patent, copyright, secret process or monopoly**, the letter should explain why the Vendor is the only source for this item, product or service and describe its unique features or characteristics and the availability

(or unavailability) of other products that would serve the same purpose or function.

If a sole source because of **captive replacement parts or components for equipment**, the letter should describe the product currently used by the City, the availability of component parts from Vendor and the availability (or unavailability) of replacement parts or components from other vendors in the open marketplace.

If such item, product or service is distributed only through the **manufacturer or authorized distributors**, Vendor should also attach a letter from the manufacturer explaining the distribution network, including whether the item, product or service is available through only one source or distributor and whether the distributor territory is exclusive. Copies of supporting documentation from the Original Equipment Manufacturer (OEM) stating that the selected vendor is the only source for this product must accompany the request.

If Vendor's or Manufacturer's name or product names have changed due to **merger, acquisition or other transaction**, the letter should state the original and changed names, date of transition and other pertinent information that is relevant to the sole source purchase. All letters must be dated and signed by an executive officer of the manufacturer or Vendor, as applicable.

21.2 Sole Source Affidavit

A Sole Source Affidavit (form available on Purchasing's website) **must** be filled out and notarized by either the requesting vendor or the manufacturer along with a letter detailing specifically why their product or service is unique. The affidavit requires that Vendor attest that "there is/are no other like item(s) or product(s) available for purchase that would serve the same purpose or function." **Providing false information on an affidavit may result in disqualification of vendor in current and all future bidding opportunities.**

21.3 Examples of Sole Sources

Following are examples in which Sole Source/Brand could be acceptable:

- Only one supplier can satisfy the technical requirements because of unique technical competence or expertise. (Technical requirements must be valid and verifiable.)
- Only one source possesses patents or exclusive rights to furnish the item/service. (For example, the product is only available from the manufacturer, software developer, etc.) or only one supplier has the

ability to furnish the item or service and the warranty would be invalid if another vendor repaired the item.

- Sole Distribution Point: The item is manufactured or produced by entity, or entity holds exclusive rights to item, and entity does not sell direct to the customer. Entity solely distributes the item through only one dealer or distributor in the world, United States, region, Texas or identified market area.
- Enhancements of Existing Equipment: The purchase is for accessories sought for enhancement of existing equipment where compatibility with equipment from original manufacturer is paramount. (After review, this situation may not be sole source).
- If a sole-source system is expanded to other buildings and it includes software that interfaces, then the purchase could also be deemed a component purchase of an existing system and be considered a sole source for additional purchases.

Once a vendor has been confirmed as a sole source and Council has approved an initial purchase, they exist as unique contractors that require two things. Every year an updated sole source letter and affidavit must be collected in order to maintain their status as a sole source, and every three years additional purchases and their status must be approved by Council again. In other words, sole source contracts do not have an expiration date in the normal sense, but instead merely require an annual renewal of their sole source affidavits and letters. During that time the vendor is considered preapproved for like purchases and they do not need to be reviewed and approved each time by Council, unless the new purchase exceeds $50,000.

22.0 Substitutions of Products

If the vendor offers a substitute product in lieu of the awarded one, the City requires written notification on official company letterhead with signature that the vendor certifies that the substituting product is of equal or greater value and the substituted product specs must be provided. The User Department then needs to approve the new product upon review of the specs and inform Purchasing that it is ok to issue the PO for the new product.

23.0 State Reciprocity

When evaluating bidders from other States, that nonresident bidder's state reciprocity laws are applied to the bidder. For example, if a 10% preference would be applied to a nonresident bidder's home state on their contracts, then the City would penalize the nonresident bidder 10% when bidding in Texas.

24.0 Media and Promotional Items

The City's Public Information Officer ("***PIO***") has the final authority to approve any type of purchases that involves the media or promotion of City projects.

City Funded

Ordering Reusable Bags as promotional items to promote departments/programs are the only promotional items authorized by City Manager using general fund monies unless otherwise approved by the PIO.

Promotional Items - Grant Funded

If grant funds (not general fund) call for promoting a specific program and departments need to order items other than the permitted reusable bags, a request should be submitted to the Communications and Public Affairs Manager in the City Manager's office. Purchases of any additional promotional items need to be appropriate and directly related to the needs of the program.

Static Billboards

City Departments are permitted to use static billboards (not digital billboards) to promote events/programs, using grant funding. Before entering into a contract of this kind, departments must locate the billboards that will be used and check with Development Services to ensure that the billboards are in compliance with City Code.

Broadcast media and/or Internet

Prior to the use of film crews, web developers, or other electronic media, the department should coordinate with Communications and Public Affairs Manager in the City Manager's Office. Coordinating with staff assigned to web development in the City's Information Technology Department prior to using any outside resources is highly recommended.

25.0 Registrations, Memberships, and Subscriptions

Purchases such as registrations, memberships, and magazines subscriptions are processed by the Fiscal Operations Division of the Financial Services Department, not the Purchasing Division. Payments for these purchases should be processed through the PeopleSoft financial system directly.

Registrations

Registration for conferences, seminars and conventions for government employees may be handled at the Department Level and are not subject to local bidding procedures.

Memberships

Memberships in trade or professional organizations will be processed by the individual department based upon business needs.

Subscriptions

Each Department shall handle purchases of books, magazines, periodicals and newspapers EXCEPT where such purchases exceed the thresholds listed in Section 7.

26.0 Utilities

A variety of utilities are considered exempt from the standard purchasing cycle and handled by specific Departments. (Examples are electricity, gas and water.)

Telephones

Telephone is considered a technology and is handled by the Information Services Department (See Section 11: Technology for more information). This includes, but is not limited to, line transfers, line additions, yellow page listings, etc. NO I.T. RELATED CONTRACT IS TO EVER BE SIGNED WITHOUT THE I.T. DEPARTMENT'S INVOLVEMENT AND APPROVED IN ADVANCE BY THE LEGAL DEPARTMENT.

Water Meter Installations

Contact the El Paso Water Utilities (EPWU) at 915-594-5501 for more information.

Electrical

Street Lighting is the Engineering Department's responsibility. Start-up meters for new facilities are to be obtained by User Department. No other utility procurements are handled though the Purchasing Division except one-time changes from EPWU or the telephone and electric companies.

27.0 Price Increases

If there is no escalation clause in the bid, then there is no possibility of escalating the bid price during the course of the contract. The guidelines for requesting and

receiving price list increases are clearly defined in Section E: Part II -- Price List Pricing Instructions of those solicitations that required its inclusion.

28.0 Third-party Department Use of Contracts

The bid volume, price quoted and subsequent approval were specific and to the original requesting department. That department has authority over the bid and whether their contract will be used by other city departments because other departments may deplete the quantity approved. As stated in the solicitation templates, "Only personnel from the bid requesting department are authorized to directly place orders against this Contract. Personnel from other City departments may utilize this contract only with express written authorization from the bid requesting department and only if the additional usage is within reasonableness given the total awarded amount of the Contract."

29.0 Wage Increases

If there is no escalation clause in the bid, it is not possible to escalate the bid price during the course of the contract. Likewise, if there is no clause about increasing the bid price for labor due to the federal minimum wage hike, then the hourly rate quoted in the bid cannot be increased. This is why it is very important to include those additional clauses in contracts that contain price-sensitive materials or minimum wage labor. Also, a company is only allowed to pass along minimum wage increases to those employees that are being paid at the base minimum wage level. Those employees that are already being paid over the minimum wage level are not allowed to take advantage of this type of wage increase. Finally, in regards to the minimum wage increases, City will approve not only the Federal Minimum Wage increase itself but also any other factors that increase the labor cost to the vendor, including:

- FICA
- Medicare (OASI)
- FUTA Tax
- State Tax
- Workman's Comp

30.0 General Insurance Requirements

Following are the default insurance requirements to be submitted by companies when registering as a City vendor and to be submitted along with any formal or informal solicitations:

COMPREHENSIVE GENERAL LIABILITY INSURANCE

For the duration of this contract and any extension hereof, Contractor shall carry in a solvent company authorized to do business in Texas, comprehensive general liability insurance in the following amounts:

$1,000,000.00 – Per Occurrence
$1,000,000.00 – General Aggregate
$1,000,000.00 – Products/Completed Operations-Occurrence & Aggregate

With respect to the above-required insurance, the City of El Paso and its officers and employees shall be named as additional insured as their interests may appear. The City shall be provided with sixty (60) calendar days advance notice, in writing, of any cancellation or material change. The City shall be provided with certificates of insurance evidencing the above required insurance prior to the commencement of this contract and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least fifteen (15) calendar days prior to the expiration or cancellation of any such policies.

WORKERS' COMPENSATION

For the duration of this contract and any extension hereof, Contractor shall carry Workers' Compensation and Employers' Liability Insurance in the amount required by Texas law: $500,000.00. Out-of-state Contractors that provide goods through US mail, UPS, etc. are exempt from this requirement.

31.0 Approval Procedures for Special Purchases

31.1 Technology

The Information Technology Department (IT) department must approve all technology purchases. This includes all computers and computer related equipment, software, technology systems, audio/visual technology, and communications equipment (voice, data and radio) including telephones. Technology Request Forms need to be signed by the IT Director or his designated representative.

31.2 Software

In addition to the aforementioned I.T. Approval Form, there are two other requirements specific to software purchases. The first requirement is that a demonstration of the software product by the vendor must be made at a meeting in which representatives from the User Department, I.T. Department, and Purchasing Department are present. The second

requirement is that each vendor provides a sample agreement of final terms and conditions offered by the vendor. The sample agreement is primarily for information purposes only, and the terms of the City's contract will remain effective unless and until the City specifically agrees to the vendor's contract terms. This will allow some room to negotiate the license and other contract documents before going to Council to award the contract.

31.3 Vehicles

General Services must approve all vehicle and rolling stock purchases.

31.4 Engineering Projects

Engineering projects are handled through the Engineering Department and information regarding procurement should be directed to that department.

31.5 FTA/FAA/FHWA/DOT/DOT Sole Source Procurements

A cost/price analysis must be completed on any FTA/FAA/FHWA/DOT/DOT funded sole source or sole bid procurements as per 49CFR as it currently states or as revised or superseded.

31.6 Professional Services

Under the Professional Services Act, a Request for Qualifications (RFQ) must be initiated to acquire such services. See the Request for Qualifications (RFQ) section for more details.

31.7 MPO Consultant Services

The MPO retains consultant services through two methods of procurement; competitive and noncompetitive. Competitive procurement is the preferred method of procurement by the MPO. Noncompetitive procurement is only used in the following limited situations:

1. The item is available only from a single source.
2. Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive solicitation.
3. The Federal grantor and/or State agency authorized noncompetitive procurement.
4. After solicitation of a number of sources, competition is determined to be inadequate.

The MPO retains consultant services for transportation planning studies, public involvement assistance, and auditing services. Consequently, the

majority of the contractors retained by the MPO are architectural, engineering, or accounting firms. Under Texas State Law, the MPO must engage such firms based on their qualifications (RFQ) and experience, with fees being determined through negotiations following selection. Accordingly, the MPO solicits proposals from a number of sources through the issuance of a Request for Proposal (RFP). Contained in the RFP is a conceptual Scope of Work to which prospective contractors must respond. At the time the conceptual Scope of Work is developed, a project budget is established. The project budget is published as a part of the RFP. Upon receipt of solicited proposals, contractors are evaluated based on the qualifications of the prospective contractor, the prospective contractor's understanding of the scope of work, knowledge of the study area, the firm's previous related work experience, and the proposed management plan. Proposers are ranked and authorization from the MPO Steering Committee to initiate contract negotiations with the firms in rank order is obtained.

31.8 Scope of Work

A Scope of Work shall be developed for any Third Party Contract based on the primary objective and tasks as outlined in the latest approved Unified Work Program (UWP). The Scope of Work should be sufficiently definite and clear to permit the preparation of proposals on a common basis to obtain the benefit of full and free competition. The Scope of Work should include general conditions, special conditions, and technical specifications for the work to be accomplished. Special conditions include the procedures by which contract proposals will be evaluated and selected.

31.9 Cost and Price Analysis

In order to properly evaluate the contractor's cost proposal, the MPO shall perform a cost or price analysis in connection with every negotiated procurement action, including contract modifications.

A cost analysis is a detailed evaluation of the cost elements in the potential contractor's offer to perform. It is conducted to form an opinion as to the degree to which the contractor's proposed costs represent what his or her performance should cost.

A cost analysis is generally conducted to determine whether the contractor is applying sound management in proposing the application of resources to the contracted effort and whether costs are proper, allowable, and allocable. A cost analysis is performed in these situations:

1. When an offeror is required to submit the elements of his estimated cost.
2. When adequate price competition is lacking.

3. For sole-source procurements (including contract modifications or change orders), unless price reasonableness can be established on the basis of a market price or based on prices set by law or regulation.

A price analysis is an evaluation of a proposed price that does not involve an in-depth evaluation of all separate cost elements and the profit factors that comprise a price proposal. Price analysis is a broad term that includes whatever actions the MPO takes to reach a price decision without using cost analysis methods. These actions may include:

1. A comparison of competitive price quotations submitted to the MPO.
2. A comparison of prior quotations and contract prices with current quotations for the same or similar projects.
3. The use of yardsticks to point out apparent gross inconsistencies.

Documentation of any cost or price analysis will be included in the contract file.

31.10 Evaluation and Selection

Evaluation and Selection were outlined in the Request for Proposals (RFP) section.

31.11 Processing Procedures

Other normal processing procedures were outlined in the Request for Proposals (RFP) section. In the event of a conflict the HUD Federally Funded Procurements section shall prevail.

31.12 Public Notice

For contracts in excess of $50,000, the MPO places a notice of contract opportunity in the local official newspaper as determined annually by City Council.

31.13 Negotiated Consultant Contracts

These are handled through the Legal Department in conjunction with various committees, departments and boards. Contact your designated Assistant City Attorney for advice before proceeding.

31.14 Architectural and Engineering (A&E) Contracts

These are considered Professional Services and are handled through an RFQ process. The Engineering Department should be contacted directly for A&E Services.

31.15 HUD Federally Funded Procurements

In order to comply with the United States Housing and Urban Development's Procurement Standards, as set forth in 24 CFR § 84.40 through 84.48 and 24 CFR § 85.36, the Purchasing Division will use its own procurement procedures as outlined in this manual and which reflect applicable state and local laws and regulations. These procurement procedures are intended to conform with all applicable Federal laws and standards as identified in the aforementioned sections of the Code of Federal Regulations (CFR).

In the consideration of procurement of goods and services and where appropriate, an analysis may be made for lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal government.

31.16 Best Value – Legislative Resolutions (Construction)

Sept. 1, 2001

The 77th Legislature passed into law Senate Bill 510 which authorized alternative project delivery methods which included Best Value Procurement Competitive Sealed Proposals.

March 12, 2002

City Council approved a Resolution adopting the use of the new alternative project method "Competitive Sealed Proposal" to procure contracts for the construction of facilities. Council further determined that this method provides the Best Value for the City for the procurement of all contracts for the construction of facilities.

July 14, 2004

Purchasing Legislative Review Committee takes action on changes to **construction procurement** methodologies.

- Added Design Build for facilities (to be handled through A&E process)
- Added Job Order Contacts for facilities
- Revised Construction Best Value Criteria (see July 20, 2004 for criteria)

July 20, 2004

As recommended by the Legislative Review Committee, City Council approved a Resolution adopting the use of the following methods that provide the Best Value to the City when entering into a contract for **construction**:

- Competitive Sealed Proposal;
- Design Building; or
- Job order contract for the minor construction, repair, rehabilitation or alteration of a facility if the work is of a recurring nature but the delivery times are indefinite and indefinite quantities and orders are awarded substantially on the basis of pre-described and pre-priced tasks.

The following factors were to be used when utilizing the Best Value for construction:

- The purchase price – maximum of 65 pts.
- Offeror's past experience with the City – maximum 10 pts
- Offeror's experience and qualifications – maximum 10 pts
- Health benefits the offeror provides where 60% or more shall be paid by offeror – max 5 pts
- Prime contractor has local project manager – maximum 5 pts
- Local subcontracts shall work a total of 75% or more of the cumulative total of subcontracting work – maximum 5 pts

Each of the methods listed above requires a slightly different set of procedures and corresponding documents, although there is great similarity between many of them.

CONSTRUCTION BIDDING

32.0 Construction Procurement- General Overview

Most of the construction bidding process is handled by staff in the City's Engineering Department. The procedures covering those tasks remaining for Financial Services, Procurement Division are outlined below under "Construction Procurement Procedures- Financial Services/Procurement."

Construction bidding is a unique form of procurement differentiated from procurements handled by purchasing because of several factors: Plans and Specifications, Materials Testing, Prevailing Wage Rates, Apprenticeship, Review of Certified Payrolls, Progress Payments, Change Orders, Insurance Requirements (Builders Risk/Workers Compensation) and performance and payment bonds.

Plans and specifications prepared by professional engineers normally accompany any construction procurement. Plans and specifications must be prepared by a licensed professional engineer and these services are procured separately from the construction services by law. Materials testing is a service that is by law also procured separately from construction services. The City contracts separately from the construction procurement for a company with staff who are licensed to perform tests on the concrete and other materials installed in a construction contract to ensure the materials are up to specifications of the project.

Contractors who submit a bid or proposal requesting to contract with the City on a construction project must pay applicable prevailing wage rates. The Davis Bacon Act (1931), a Federal law governing wages paid to workmen on federally funded construction projects or Texas Government Code chapter 2258 regarding payment of prevailing wage rates governs the pay of workers on City jobs depending on type of project constructed (Building, Highway, or Heavy Construction). The City's Engineering Contract Compliance Division monitors weekly certified payrolls on all City construction projects to ensure compliance with State and Federal wage rates and compliance with the City's apprenticeship program on building construction projects over $100,000.00.

Construction projects are paid monthly based on submission of correct certified payrolls and an approved payment request. Construction progress payments must comply with Texas Government Code chapter 2251, The Prompt Payment Act. Payment requests reflect Change Orders that have been processed each month. Change orders are processed for increases in quantities, design oversights, and scope changes to City construction projects.

Insurance on construction projects also distinguishes these types of procurements from all others. General insurance amounts for commercial general liability (bodily injury), property damage, vehicle liability and "general aggregate" are larger for

construction projects than insurance required for other types of procurement. In addition to the standard types of insurance, construction insurance requires workers compensation for worker injury claims and builders risk insurance when constructing a building. All construction projects over twenty-five thousand dollars require a payment bond, for the protection of the project's sub contractors and suppliers and a performance bond for protection of the City in case of unexpected contract termination.

Construction procurement is distinct from other types of procurement and is governed primarily by Section 271 of the Texas Local Government Code. Competitive Sealed Bidding (low bid) is a procurement method used on the majority of the City's construction procurement process and is intended primarily for use when construction public work projects like streets, bridges, and drainage improvements.

The City has all been authorized to use several "alternative" procurement methods, per Texas Local Government Code chapter 271, for the construction of a facility. In order to prove the best value to the City, the El Paso City Council has authorized (7/20/2004) three additional procurement methods: Competitive Sealed Proposal (CSP), Design Build, and Job Order Contract for use on City construction projects.

The two most commonly used procurement methods are Competitive Sealed Bidding (low bid) for public works projects and Competitive Sealed Proposal (CSP); though the City has experimented with Job Order Contracting. The Design Build method is still under development and has not been used as of yet.

32.1 Construction Procurement Procedures- Financial Services/Procurement

The procedures below cover only those functions retained by Financial Services Procurement including: record keeping, the "bids on-line" website, contract review, contract execution, change orders, and informal bids.

32.2 Bid Document Preparation

- Issue bid number to Engineering Department upon request.
- Maintain electronic file of bid book with bid number, advertising dates, bid opening date, awarded vendor and contract amount.

32.3 Contract Amendments

- Place electronic copy of front page of amendment on purchasing website.

32.4 Advertising

- Place electronic copy of bid document on website that contains; pre-bid notice-invitation to bid, and scope of work.

32.5 Notice of Award/Contract Execution

- Post name of awarded vendor on Purchasing website.

32.6 Materials Testing and Environmental Purchase Orders

- After Materials Testing and Environmental On-Call Contracts are approved by Council, backup is forwarded to Purchase in order to create contract ID numbers for each on-call contract in PeopleSoft.
- Contract IDs are created in PeopleSoft and spreadsheet is updated with Contract Name, Vendor name, Contract Period, and not to exceed amount.
- Purchase Order Request Form with requisition number and Proposal (with approval signature from Engineering Department) is forwarded to Purchasing.
- Lab PO issued.

32.7 Contract Execution by City and Preparation of Official Documents

- Two original copies of contract routed for City signatures (Financial Services, City Engineer, Legal, and City Manager) are first reviewed by Purchasing Manager.

32.8 Contract Execution

- Issue Purchase Order upon receipt of proper documentation from Engineering (minimum PO request form with requisition number and Council Motion.
- Distribution of Purchase Order to Engineering, Vendor and purchasing files.

32.9 Project Change Orders

32.9.1 Project Change Orders/Agenda Items/Cos over 25K

- Council approval is required on all lump sum (building/facility) project change orders over $25,000.00.
- Unit price contracts can be increased up to the 25% contract limit if the increase is within the scope of the project and increased quantities only with no change to unit price amounts.
- Review Change order and provide Financial Approval.
- Enter purchase order increase and approve.
- Ensure authorization check box is marked indicating item is either “to council” or not.

- Distribute amended Purchase Order to Contractor, Engineering, and to Purchasing file.

32.9.2 Project Change Orders under 25K

- Review change order package from Engineering-Construction Division for accuracy.
- Authorized to process and approve change orders for lump sum contracts (building/facility) and unit price contracts up to 25K including processing purchase order increase for up to 25k.
- Check box indicating council approval not required.
- Review Change order and provide Financial Approval.
- Enter purchase order increase and approve.
- Distribute Purchase Order to Contractor, Engineering Department, and to Purchasing file.

32.10 Informal Bids

The following is the bid procedures for projects where the construction estimate is under $50,000 the project can be let on an informal basis.

- Buyer or Procurement analyst issues bid number and records title of bid to Engineering Department and tracks bid opening date, awarded vendor, award date, department, purchase order number and amount.
- Purchasing-Bid Section posts informal bid on website and keeps hard copy at front desk for walk-in customers.
- City is required to notify at least two Historically Underutilized Businesses for each informal bid.
- Provide completed informal bid documents as backup to buyer in order to issue Purchase Order.
- If low bidder is not selected, documentation in the form of an e-mail or memo is required prior to releasing purchase order.
- Issue purchase order after proper documentation is received from Engineering Department.

PURCHASING POLICIES/PROCEDURES

33.0 Purchasing Deadlines

In an effort to standardize the agenda posting process, the following Purchasing Deadlines for Agenda items will go into effect immediately.

Departments must submit their agenda items to the Purchasing Analyst by **12:00 noon Mondays**, 2 weeks prior to the proposed agenda date. All documentation must be provided in their entirety by the departments.

The Purchasing Analysts must submit their items to the Senior Office Assistant by **12:00 noon Thursdays**. All items must be complete with required documents attached, signatures obtained, and funding sources verified. No item will be submitted to City Clerk's office unless all the information is correct. There should be no changes after the item has been submitted. <u>If an item cannot be submitted by this deadline, it must be deferred to the following agenda date.</u>

There will be occasional exceptions and/or emergencies, and these will be accommodated within reason.

34.0 Contract Compliance

The Purchasing Division will always provide a copy of each bid to the user department so that they can review them all in full detail to make an award decision (the originals of the bids stay with the Purchasing department). Ultimately one or more of those bids will become the final contract(s) and that bid(s) should be retained by the user department for contract maintenance/invoicing purposes during the life of the contract(s). The user department is ultimately responsible for ensuring that the terms and conditions (pricing, delivery terms, etc.) of the contract are being met by the vendor. If the vendor is not satisfying the conditions of the contract, the User department should contact the vendor to try to cure the issue. If the User Department determines that the vendor is non-responsive to their attempts, the User department should contact the Purchasing department to initiate a Cure Letter.

35.0 Direct Purchase Orders

Direct Purchase orders can be issued by properly approved employees in each Department up to $3,000. These cannot be increased above $3,000. Purchases above this limit are subject to State procurement regulations. P-cards are designed to handle smaller purchases in this range and their use is encouraged as being more efficient. Finally, a Direct Purchase Order should never be altered. If corrections are needed, the Direct Purchase Order should be canceled and a new one entered with the correct information.

A Direct Purchase order is NOT the responsibility of the Purchasing Division; it is the responsibility of the department that issued it. Alternatively, direct purchase orders should never be made against a formal contract-only Purchasing should be issuing Purchase Orders based on contracts.

36.0 Exceeding Awarded Contract Amounts Procedure

According to § 252.048 (d) of the Texas Local Government Code, "the original contract price may not be increased under this section by more than 25 percent". Therefore there is a 25% overage limit for expenditures exceeding the award amount and this should be taken into account when issuing Purchase Orders.

Once the Purchase Order that exceeds the originally awarded amount is approved, the analyst in charge of that contract shall notify the originating Department that total expenditures under the contract has exceeded the award amount and that a new contract should be initiated to replace it. The department should send updated specifications to rebid as soon as possible. If the department anticipates any possibility of the 25% overage amount being reached before the end of the contract term then the standard form requesting what action to take regarding bidding for the services/supplies will be issued to the department and the bid section will be copied so that they are appraised of the situation and the hard copies of the contract file can be marked as “pending rebid/early termination”.

If the 25% overage amount is reached before the end of the contract term, regardless of whether a new bid is ready to replace it, the assigned analyst will notify the originating department, copy the bid section, and notify the vendor(s) via memo authorizing the continuation of the current bid until the replacement bid is ready for award. When the new bid is ready to replace the old one then the award of the new contract and termination of the old contract can be performed on the same Council date. The award/termination dual action is also the procedure if a new bid is ready to be awarded prior to reaching the 25% overage amount of the old bid.

37.0 Preventing Excessive Expenditures Best Practices

This procedure is designed to prevent a contract from exceeding expenditures. There is only one analyst who is considered the point of contact for a contract, as designated by the person listed as such in the solicitation itself. Even if multiple departments have created a bid together, there can only be one originating department associated with one analyst. That originating department has authority over the bid and whether their contract will be used by other city departments because other departments may deplete the quantity approved. That analyst is responsible for the expenditures on that contract, among other contract maintenance items. Thus the analyst in charge of the contract needs to maintain a record of expenditures for the vendor(s) associated with the contract (see the file ‘Instructions for Logging Contract Expenditures’ for one way to do this).

1. Analyst receives a Requisition for a contract that is not one of his own.
2. Analyst informs the requesting department that they need to obtain written approval (email is sufficient) from the originating department that it is ok to use their contract and for how much.
3. Analyst receives that written approval and ensures that enough expenditure exists on the contract to accommodate the request by checking with and receiving written approval from the responsible analyst.
4. Analyst completes Purchase Order and includes a hard copy with the contract file, completing by hand the checklist amount found on the inside cover as well.

38.0 Best Value Bid Evaluation

Instructions

The standard Best Value bid evaluation procedures are as follows:

1. Purchasing reviews all bids submittals to eliminate any offer that can be deemed as not responsive and ensures that all documentation and information has been submitted.

2. Purchasing forwards copies of the bids, bid tabulation, and evaluation documents to User Department's designated representative. An Evaluation Committee is formed, composed of members selected by the User Department and/or possibly another department. Committee membership shall consist of a minimum of three to five City employees and must be documented in the bid file. User Department's designated representative forwards a Rater sheet to each member.

3. Individual Committee members rate each bid according to the Best Value criteria detailed in the solicitation. Each bid should be evaluated against the criteria of the solicitation, not against other bids. Individual raters score sheets will be identified by rater number, <u>not</u> by Committee Member's name. All criteria other than Cost (which is determined by Purchasing using a standard, quantitative formula) are guided by the following point scale, although values other than the ones shown below can be assigned (for example, a 9 out of 10 can be awarded to a company if they fall between Excellent and Very Good).

POINT SCALE					
5	**10**	**15**	**20**	**RATING**	**DESCRIPTION**
5	10	15	20	Excellent	Exceeds criteria in all ways, with very little or no risk
4	8	12	16	Very Good	Meets criteria in all ways, exceeds it in some, little risk involved
3	6	9	12	Good	Meets the criteria and is acceptable, with acceptable risk
2	4	6	8	Marginal	Meets some criteria, but may be deficient or limited in some area(s), some element of risk
1	2	3	4	Poor	Offer is difficult to assess against criteria, high risk
0	0	0	0	Non-Compliant	Offeror has either stated non-compliance, demonstrated non-compliance, or there is insufficient information to assess

4. When individual Rater's score sheets are completed Committee meets and collectively determines a final score for each criterion. The final score may be an average of all individual rater scores; however, it is best if all Committee Members agree on a final score after deliberation rather than simply averaging individual rater scores. When the Committee score sheet is completed the Committee Recommendation & Certification form is signed by all Committee members.

5. User Department forwards all pertinent evaluation documents to Purchasing. These documents include:

   a. All Rater Score Sheets
   b. Committee Score Sheet
   c. Committee Recommendation & Certification
   d. Department Recommendation for Award (RCA)

6. Purchasing reviews all documentation and upon approval forwards recommendation to Council for award of contract to the highest ranked offeror providing the best value.

General Best Value Criteria Scales

The standard set of Best Value criteria are as follows but depending on the bid can have varying percentages and criteria:

- Cost – 70% (but can be as low as 35%)
- Reputation & Quality of the Bidder's Service – 15%
- Employee Medical Benefits and Incentives – 10%
- Past Relationship/Performance with the City – 5%

- Various criteria can be established and some bids can have as many as six (6) or eight (8) different criteria.

1. Cost – 70%

This is to be completed by the Purchasing Division using a standard formula to calculate the amount of points allocated for Cost to each bidder. The Cost points (and Medical points below) are scored by the Purchasing Department prior to bid review and evaluation of the other criteria by the User Department. Payment terms are to be taken into consideration when determining the cost for each bidder. Each of the bidders will be assigned a proportionate amount of percentage points based on the following formula:

$$\frac{\textbf{Final Calculated Offer of the Lowest Bidder}}{\textbf{Bidder Final Calculated Bid}} \times \textbf{Max points allocated to Cost}$$

2. Reputation & Quality of the Bidder's Service – 15%

This criterion is based in part on the reputation and quality of references provided by each bidder. The standard bid requests at least three references. The number and quality of the references should be considered in evaluating the bidders. It is the responsibility of the department to contact those references to fully determine the reputation and quality of the bidder's service. If a reference comes back negative or does not check out at all then the department can take that into consideration in the score.

3. Employee Medical Benefits and Incentives – 10% (medical insurance is only used on certain types of service bids)

Medical benefits offered by the bidder's company comprise the bulk of this criterion. Following is the evaluation matrix used to determine scoring of the medical benefits portion:

SCORE	IF…
10	Provides insurance and pays 100%
8	Offers to pay more than 60%
6	Offers to pay more than 40% but 60% or less
4	Offers to pay more than 20% but 40% or less
2	Offers to pay up to 20% and/or offers other employment benefits
0	Does not offer insurance or other employment benefits

NOTE: If some employees are covered at one rate and others covered at another rate (or not covered at all), an evaluation of the average amount of coverage provided for all company employees will be conducted by the analyst and this may result in a reweighted score.

If a vendor does not offer insurance to its employees but does offer at least two other employment incentives then those incentives can only be used to increase a bidder's score from 0 to a score of 2. These incentives include workers' compensation benefits, retirement savings, education plans, paid vacation, sick leave, etc. Also, as noted in the matrix above, it is only possible for a bidder to score a 10 if they provide and pay for 100% medical insurance (*Approved by Terry Freiburg on 3/12/09*).

4. Past Relationship/Performance with the City – 5%

This criterion is based on the level of performance of the bidder with previous City of El Paso contracts. This is based on the experience of the User Department of each of the bidders (if applicable) and on letters of recommendation provided by other departments. This is the most subjective of the standard criteria and all consideration should be made by the User Department to weigh it appropriately. If a vendor has a current contract with the same department that is now issuing a new bid, then the department can fill out a "Vendor Performance Evaluation Form" in lieu of a formal recommendation letter.

Other Possible Criteria for Best Value Procurement

Other possible evaluation factors for Best Value Procurement for Equipment, Goods and Services include the following:

1. Offeror responsiveness to solicitation requirements
2. Offeror's Past Performance with the City and/or other entities or businesses and experience

3. The extent to which the offeror's goods or services meet the needs of the City
4. Number of persons that Offeror employs locally (City of El Paso)
5. The reputation of the vendor and the vendors' goods and services
6. Offeror's employees are offered employer-sponsored Medical Insurance and pays 50% of benefits
7. Evaluation of system design, as per specifications and/or drawings submitted by Bidder, that best meets the needs and requirements of the City of El Paso.
8. Hours of operation for obtaining technical assistance
9. Reputation of product, reliability, ease of use, capabilities/limitations, and general functionality
10. Impact of proposed equipment on budget associated with existing maintenance agreements for service and support for existing equipment currently in use by the City of El Paso
11. Compatibility of proposed equipment and current equipment, including any spare parts inventory necessary or required
12. Compatibility of proposed item with current diagnostic equipment and tools held by the City of El Paso
13. Industry certifications of key personnel
14. Locations of warehouse/store and average delivery time
15. Average turn around time for warranty or services repairs
16. **Any other relevant factor that is germane to the selection process.**

39.0 Non-Responsiveness and Non-Responsibility

Only Council can make the decision to disqualify a vendor. Department staff can recommend disqualification but the Council has to actually make that decision. Formal notice is not given to vendors if they are recommended for disqualification for either non-responsiveness or non-responsibility.

Responsiveness

A responsive bid conforms to the essential elements and requirements of the bid. It is the bidder's promise to provide the organization exactly what is being asked for as outlined in the bid. Sometimes a bid deficiency is not substantive in nature and can be classified as a minor informality or irregularity. Such bids can still be considered for award as long as the bidder agrees to correct the problem. Bidders should always be given the opportunity to correct minor problems in their bids. In

some cases where the bidder fails to correct the problem, such as EEO certification, the buyer must reject the bid.

Here are some examples of bid irregularities that are substantive and that could be considered a material defect and cause the bid to be rejected as being nonresponsive:

- The bid fails to conform to the delivery schedule as specified in the bid.
- The bid offers supplies or services that do not meet the essential requirement of the bid.
- The bidder adds conditions to his/her bid that are not authorized (Conditional Bid).
- The bid does not provide a clear and unencumbered price.
- The bid fails to meet bid requirements as to timeliness or method of submission.
- The bidder may not have accepted all the terms and conditions of the bid.

Examples of minor deficiencies include failure of the bidder to:

- Provide information concerning the total number of employees.
- Provide affidavits concerning parent company and affiliates.
- Provide certifications for Equal Employment Opportunity (EEO) and affirmative action.
- Return the proper number of signed copies of the BID
- Acknowledge receipt of an amendment.

Responsibility

In order to fully determine responsibility the User Department and purchasing must review the lists of parties debarred, suspended, or otherwise ineligible for contract award; identify data from various sources that bear on the issue of responsibility; apply the general and special standards of responsibility; and decide whether to request a pre-award survey. The burden of proof in determining responsibility lies with the contractor. It is incumbent upon serious bidders to prepare and present their own cases of responsibility to the purchasing office. In the absence of information clearly indicating that a prospective contractor is responsible, the Purchasing Department must make a determination of non-responsibility.

There are several general standards of responsibility. A bidder is a responsible bidder if the following is demonstrated:

- Bidder is qualified or eligible to receive an award
- Bidder's performance on past projects is satisfactory
- Bidder has the necessary organization, experience, accounting and operational contracts, and technical skills to perform the work contemplated in the bid.
- Bidder has the necessary production, construction, technical equipment and facilities
- Bidder has adequate financial resources
- Bidder is able to comply with the delivery schedule
- Bidder has a satisfactory record of integrity
- Bidder has no interest in any litigation against the City
- Bidder is not indebted to the City

For some purchases, it may be necessary to use special standards in addition to the general standards above to determine a prospective contractor's responsibility. Special standards must be clearly stated in the bid. Some examples are:

- Requirements for specialized technical experience or expertise.
- Requirements for specialized facilities, i.e., those handling foodstuffs, that must comply with strict sanitation codes.
- Special standards may also apply to subcontractors undergoing determinations of responsibility.
- Responsiveness is determined solely by purchasing and relates to basic requirements of the bid.
- Responsibility is largely determined by the Purchasing Department with the assistance of the User Department.

40.0 Termination of Contracts

40.1 Default or Convenience

Only the City Council can make the decision to terminate a vendor. Staff can recommend termination for either default or convenience, but City Council will make the final decision to terminate a City contract.

The City of El Paso may terminate a contract, in whole or in part, at any time by written notice to the Contractor. The Contractor will be paid its costs, including the contract close out costs, and profit on work performed up to the time of termination. The Contractor will promptly submit its termination claim to the City of El Paso to be paid the Contractor. If the Contractor has any property in its possession belonging to the City of El

Paso, the Contractor will account for the same, and dispose of it in the manner the City of El Paso directs.

40.2 Default by the City

If the City fails to perform any of its duties under a contract, Contractor may deliver a written notice to the Purchasing Manager describing the default, specifying the provisions of the contract under which the Contractor considers the City to be in default and setting forth a date of termination not sooner than 90 days following receipt of the Notice. The Contractor at its sole option may extend the proposed date of termination to a later date. If the City fails to cure such default prior to the proposed date of termination, Contractor may terminate its performance under this Contract as of such date.

41.0 Vendor Protests/Disputes/Appeals (Submittal Requirements)

The City of El Paso encourages potential offerors to resolve issues regarding the procurement process through written correspondence and discussions. The City wishes to foster cooperative relationships and to reach a fair agreement in a timely manner. If a bidder wishes to protest a bid, they must do so in strict accordance with the procedures outlined herein.

Only a responsible bidder on the solicitation may appeal an award decision. A vendor who has submitted a formal offer that is responsive to the bid is considered a bidder. A "No Bid", in the context of a Protest, does not constitute a formal offer. If the vendor's bid is non-responsive, then it cannot submit a Protest. Furthermore, there can be no degrees of responsiveness. A vendor's bid is either responsive or not.

The Protesting Bidder, carries the burden to prove, that an award determination was clearly erroneous, arbitrary, capricious, or contrary to law.

The City of El Paso will not consider protests filed by manufacturers or suppliers selling through distributors, or businesses listed as subcontractors in a vendor's offer. Protests that do not follow the following procedures shall not be considered.

In order to initiate a protest, a bidder must follow these steps:

1. A Protest must be sworn.
2. Only a bidder who has actually submitted a bid response/proposal may appeal an award decision.
3. Failure to follow the requirements of the Protest procedures established by the City of El Paso, Texas, shall constitute a waiver of all protest rights.

4. Protest must be made after the Council agenda has been posted and by 5 p.m. the day before the Council meeting in which the award will be made. The bidder must write a letter to the Purchasing Manager using the phrase "Bid Protest" to the address listed above. Protest must be sent by certified or registered mail or delivered in person. Note: the recommendation for award is posted on the City's website at least 72 hours before each Tuesdays Council meeting.
5. The written protest should include 1) the bid number and should clearly state, with particularity, the relevant facts believed to constitute an error in the award recommendation, or desired remedy; 2) a specific identification of the statutory or regulatory provision that the Protesting Bidder alleges has been violated and the provisions entitling the Protesting Bidder to relief; 3) a specific factual description, with particularity, of each action by the City that the Protesting Bidder alleges to be a violation of the statutory or regulatory provision that the Protesting Bidder has identified pursuant to item (2) of this paragraph (mere disagreement with the decisions of City employees does not constitute grounds for protest). If there is no disputed issue of the material fact, the Protest must indicate this as well.
6. Only the information provided within the protest period will be considered in making a recommendation to Council. The Purchasing Manager is not required to take into consideration any material filed by any party after the appeal deadline.
7. Provide all information establishing the timeliness of the Protest.
8. A statement that copies of the Protest have been mailed or delivered to the Purchasing Manager and all other identifiable interested parties.
9. The Purchasing Manager or his designee will provide a written decision after investigating the matter or, if more information is needed, will schedule an informal meeting before issuing a decision. This decision is final.

The decision shall be provided to the Protesting Bidder using a method that provides evidence of receipt. The ruling by the Purchasing Manager will be the final action on behalf of the City.

The procedure and time limits set forth herein are mandatory and are the Protesting Bidder's sole and exclusive remedy in the event of a Protest and failure to comply with these procedures shall constitute a waiver of any right to further pursue the Protest, including filing a *writ of mandamus* or legal proceedings.

41.1 Debriefing Requests

A written request for a debriefing should be directed to the Analyst identified in CONTRACT ADMINISTRATION in Section C within five (5)

days after the date of award. Debriefing requests will be scheduled with the appropriate evaluation committee and Purchasing representative.

41.2 Non-Appealable Issues

To maintain the integrity of the purchasing process and to ensure that the City receives purchases without undue delay, protests requesting a waiver of the following omissions and requirements cannot be granted:

1. Failure of a bidder to sign a bid.
2. Failure of a bidder to properly submit a bid, per bid instructions.
3. Failure of a bidder to submit the bid to the Purchasing Division by the due date and time.
4. Failure of a bidder to provide insurance documents.
5. Failure of a bidder to provide samples, descriptive literature, or other required documents by the bid deadline or other specified time.
6. Failure of a bidder to provide a required Cost Deposit by the date and time specified.
7. Submission of post-bid opening Protests based upon conditions that should have been apparent before the bid opening.
8. Failure to file the written Protest within the required time limits established herein shall constitute a waiver of the right to protest the award recommendation.
9. Protests which lack a detailed statement of the legal and factual grounds of protest or which fail to clearly state legally sufficient grounds of protest may be summarily dismissed.

In fairness to bidders who meet specifications and to prevent delays in purchasing, the Purchasing Division will not withdraw a recommendation to award or reevaluate bids when a Protest maintains that the bid specifications were unnecessarily restrictive or that a bid exceeding specifications provided a better value than a lower bid meeting specifications. A vendor must raise concerns about bid specifications as described under **"Inadequate Specifications" (see below)**.

The inclusion of the bid price in a bidder Protest is prohibited unless determination of the bid price is at issue in the Protest. This measure has been implemented in order to maintain the integrity of the bid process, avoid any appearance of potential impropriety, and ensure a protest is decided solely on its merits without regard to price. Protests, which include the bid price where determination of such price is not at issue, will not be considered.

42.0 Inadequate Specifications

It is the responsibility of a “prospective bidder” to inform the City when the specifications or other bidding requirements are faulty, unnecessary, or a deficiency in the solicitation process. The use of the word "prospective" indicates that in order to be eligible to protest, one who has not actually submitted an offer must be expecting to submit an offer prior to the closing date of the solicitation, the opportunity to qualify either as an actual or a prospective bidder ends upon the closing of the solicitation’s due date and time. Therefore, if a party decides not to submit a bid or protest the solicitation’s requirements prior to the close of bidding, the party is not a "prospective bidder" and does not have standing to challenge an award.

Inquiries concerning inadequate specifications should be brought to the City’s attention as soon as possible so that any valid issues can be addressed in an amendment. An amendment serves to modify the original solicitation, and may affect specifications, quantities, selection criteria, and pricing. An amendment would be issued to all of the vendors currently reflected on the bid list.

A vendor questioning the specifications contained in a solicitation must raise such an objection, in writing, not less than ten (10) calendar days before the bid due date. The Purchasing Division shall consider these concerns, and shall issue an amendment, if necessary, to clarify, modify, or cancel the solicitation, Request for Proposals (RFP) or Invitations for Bids (IFB).

Any question, issue, objection or disagreement concerning, generated by, or arising from the published requirements, terms, conditions or processes contained or described in the solicitation shall be deemed waived by the Protesting Bidder and shall be rejected as a basis for a Protest administered herein, unless it was brought by that bidder or proposer to the attention, in writing, of the Purchasing Manager, at least ten (10) calendar days prior to the hour of bid opening or proposal submission.

Any Protests of the solicitation’s specifications must be fully supported with technical data, test results, or other pertinent information. No change is allowed that would impair the interests of the City or would be inequitable to other bidders. The Purchasing Division may consider questions, but shall not be required to consider new information that is forthcoming prior to the execution of an award. Verbal responses to vendor’s questions constitute undocumented communications, which do not waive or modify the requirements of a solicitation and shall be considered inadmissible in the protest proceedings.

42.1 Appeal of Specifications- Procedure

1. The City of El Paso reserves the right to postpone bid openings for its own convenience.

2. Changes to specifications will be made by amendment.
3. Vendors may make appointments to discuss these specifications. This, however, does not relieve them from the written, documented requests required by paragraph D below.
4. Vendors questioning the specifications contained in a solicitation must raise such an objection, in writing, not less than ten (10) calendar days before the bid due date. Any request for any "approved equal" or protest of the specifications must be fully supported with technical data, test results, or other pertinent information as evidence that the substitute offered is equal to or better than the specification requirement.

Requests should be submitted in writing to:

City of El Paso
Attn: Purchasing Manager or directly to the Procurement Analyst
2 Civic Center Plaza, 7th Floor
El Paso, Texas 79999

5. The City replies to request under paragraph D above will be postmarked at least <u>five (5) days</u> before the bid opening.

43.0 FTA Protests

All protests shall be filed, handled and resolved in a manner consistent with the requirements of Federal Transit Administration (FTA) Circular 4220.1F Third Party Contracting Guidelines dated April 15, 1996 and the SCMTD's Protest Procedures which are on file and available upon request.

Current FTA Policy states that: "Reviews of protests by FTA will be limited to a grantee's failure to have or follow its protest procedures, or its failure to review a complaint or protest. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date he protester knew or should have known of the violation. Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local officials. "(FTA Circular 4220.1F, Section 7, paragraph l., Written Protest Procedures)

43.1 Protests of Award on Federally Funded Procurements

A. Protests on informal bid awards must be made within 24 hours of notice of award.

B. Protests on formal bid awards must be made within five (5) days of notice of award.

C. Response will be postmarked within ten (10) days of receipt of protest.

D. Any protest/appeal denied can be protested to City Council or Mass Transit Board if applicable. The City Clerk's office handles placement of all agenda items for the City Council Agenda, Sun Metro handles the Mass Transit agenda. Protestor should be directed to their offices.

43.2 Appeal Procedures for Non-Construction FTA Contracts

A. The City of El Paso reserves the right to postpone bid openings for its own convenience.

B. Changes to the specifications will be made by amendment.

C. Prime contractors and subcontractors may make appointments to discuss these specifications. This, however, does not relieve them from the written, documented requests required by paragraphs D and F below.

D. Request for clarification of specifications and protests of specifications must be received by the City in writing, not less than **ten (10) days** before the date of scheduled bid opening. Any request for any approved equal or protest of the specifications must be fully supported with technical data, test results, or other pertinent information as evidence that the substitute offered is equal to or better than the specification requirement. In addition, any test requirements in the specifications that pertain to an item under consideration for approved equal must be submitted with request for approved equal.

Any requests under this section should be submitted in writing to:

City of El Paso
Mr. Terrence Freiburg, Purchasing Manager
(or directly to the Procurement Analyst)
Financial Services – Purchasing Division
2 Civic Center Plaza, 7th Floor
El Paso, Texas 79901

A copy of the written request must also be submitted to:

City of El Paso
Department Director
(list applicable department)
2 Civic Center Plaza, 7th Floor
El Paso, Texas 79901

E. The City's replies to request under paragraph D above will be postmarked at least **five (5) days** before the date scheduled for bid opening.

F. Under certain limited circumstances, an interested party may protest to the Federal Transit Administration (FTA) the award of a contract pursuant to an FTA grant. Review the applicable federal regulations for more information.

Review by FTA may be permitted provided that:

1. The protest is filed within the time limits set forth below; and
2. The protestor has exhausted all administrative remedies available at the grantee (City) level. Such protests under this solicitation must be presented to the Purchasing Manager with copy to Sun Metro Director as outlined in preceding paragraph D.

a. Hearing shall be conducted to provide City Council with the necessary information to make a determination in regards to a protest of a decision made during the bid process or decision regarding award.

b. Statements shall be provided by designated City personnel. Statements shall then be made in support of and against the protest subject. Statements shall be limited to a time determined prior to process. Council may then ask questions or seek clarifications. Council shall close hearing, have discussion and make a motion regarding protest.

Definitions:

5. The term "days" refers to working days of the Federal Government.
6. The term "file" or "submit" refers to the date of receipts by FTA.
7. The term "grantee" refers to the City of El Paso.
8. "Exhaustion of administrative remedies at the grantee level" means any action or inaction on the part of the City which is prejudicial to the position taken in a written protest filed with the City. It may include, but is not limited to:

    i. A final City decision on the merits of the protest.

    ii. A procurement action such as the award of a contract or the rejection of a bid despite the pendency of the protest.

    iii. City acquiescence in and active support of continued and substantial contract performance despite the pendency of a protest.

9. The term "interested party" includes an actual or prospective offer or whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. As authority for this conclusion, Federal

Data Corp. vs. United states, 911 F.2d 699 (Fed. Cir.1990). That decision, applying the Brooks Act's definition of "interested party," 40 U.S.C. 759(f)(9)(B) (1988), holds that "the right to protest an agency's procurement practices…is limited and may be exercised only by an actual or prospective bidder who would have been in a position to receive the challenged award." Id. at 703 (emphasis added).

Examples of who is **not** an Interested Party:

- Subcontractors
- In post-award protests, vendors who did not submit an offer
- Unsuccessful offer or "not in line for award"

10. Violation of Federal law or regulation is defined as the infringement of any valid requirement imposed by Federal statute or regulation which requirement governs the letting of contracts pursuant to a grant agreement. However, any protests involving a local matter and/or determination that are clearly within the discretionary powers of the grantee should be resolved at the local level. Specific examples of determinations that are within the discretionary powers of the grantee include, but not necessarily limited to, determinations of responsiveness and responsibility, the revision of specifications to incorporate the evaluation of life-cycle costing (LCC) factors in connection with any given procurement, and determinations regarding bonding requirements. In other words, the protestor must be able to demonstrate or establish a clear violation by the grantee of a specific law or regulation, e.g., a violation of the prohibition against unduly exclusionary and restrictive specifications, or a violation of the Buy American requirements.
11. The term "bid" as used herein also includes the term "offer" or "proposal" as used in the context of negotiated procurements.

G. FTA's review of any protest will be limited to:

1. Violations of Federal law or regulations. Violations of State or local law shall be under the jurisdiction of State or local authorities.
2. Violation of City's protest procedures or failure to review complaint or protest.
   a. Protests must be filed with the grantee in accordance with the local procedures and requirements (section F.2.(1)(2). Following an adverse decision by the City, the protestor may file a protest with FTA, in accordance with paragraph H below, if there has been a violation as described in paragraph G-1 and G-2 above. Protests should be filed with the FTA Regional Office, Fort Worth, Texas and concurrent copies sent to the City of El Paso and FTA headquarters, Attention: UAD-43. To expedite

handling within FTA, the address should include "Attention: Bid Protest."

3. The initial protest filed with the FTA shall:

   a. Include the name and address of the protestor.

   b. Identify the grantee, project number, and the number of the solicitation contract.

   c. Contain a statement of the grounds for protest and any supporting documentation. (The ground for protest filed with FTA must be fully supported to the extent feasible). Additional materials in support of an initial protest will be considered only if filed within the specified time.

   d. Include a copy of the protest filed with the grantee, and a copy of the grantee's decision, if any.

   e. Indicate the ruling or relief desired from FTA.

4. FTA will not consider any data that was not submitted to the grantee. If new data becomes available after the exhaustion of administrative remedies at the grantee level, that data should be filed with the grantee with a request for re-consideration. If the request is denied or if the protestor's administrative remedies at the grantee level are again exhausted, the protestor may then submit the new data to FTA. FTA will consider the data if filed as part of an initial protest within the time limits specified in paragraph H-3, or as additional material filed within the time limits specified in paragraph H-3.

5. No formal briefs or other technical forms of pleading or motion are required, but a protest and other submission should be concise, logically arranged, and clear.

H. Time for Filing

1. Protests shall be filed within the specified time limits set forth in the specifications which are the subject of the procurement and must adhere strictly to any procedures specified therein. The time period established for the filing of protests as set forth in all such specifications will be controlling and will take precedence over a time period established herein.

2. Protests must be filed within the time limits set forth in this paragraph H-2 in order to be considered timely unless the specifications which are the subject of a particular procurement set forth a different period for filing a protest, in which are the provisions of paragraph H-1 above will apply. Protests, based upon restrictive specifications or alleged improprieties in any type of

solicitation, which are apparent prior to bid opening or the closing date for receipt of initial bids, shall be filed not later than three (3) days prior to bid opening or the closing date for receipt of initial bids.

3. In cases other than those covered in the preceding paragraphs of this section, bid protests shall be filed not later than ten (10) days after the exhaustion of administrative remedies at the grantee level is known or should have been known, whichever is earlier.

4. A protest may be considered, even if the initial filing is late, in the following circumstances:

   a. Good cause based on a compelling reason beyond the protestor's control, whereby the lateness is due to the fault of FTA or the grantee in the handling of his protest submission.

   b. FTA determines the protest raises issues significant to procurement practice or procedure.

   c. A court of competent jurisdiction requests, expects, or otherwise expresses interest in FTA's decision.

I. Time for Submission of Additional Information

Any additional information requested or required by FTA, the protestor, the grantee, or interested parties shall be submitted as expeditiously as possible but in no case later than five (5) days after the receipt of such request unless specifically expected by FTA.

J. Notice of Protest, Confidentiality, Submission of Grantee Report, and Time for Filing Comments on Report:

1. The FTA shall notify the grantee by telephone and in writing in a timely manner of the receipt of a protest, requesting the grantee to give notice of the protest to the contractor if award has been made or, if no award has been made, to all bidders or proposers who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied. All who receive such notice shall be instructed that they may communicate further directly with FTA.

2. Material submitted by a protestor will not be withheld from any interested party outside the Government or from any Government agency which may be involved in the protest, except to the extent that the withholding of information is permitted or required by law or regulation. If the protestor considers that the protest contains proprietary material which should be withheld, a statement advising of this fact may be affixed to the front page of the protest document

and the alleged proprietary information must be so identified wherever it appears.

3. The grantee shall be requested to submit a complete report on the protest to FTA, with a copy to the protestor, as expeditiously as possible, but not later than within twenty-five (25) working days of being notified by FTA of the protest. The grantee report shall include:

   a. copies of all relevant bids;

   b. a copy of the Invitation for Bids or Request for Proposals, including pertinent provisions of the specifications;

   c. a copy of the abstract of bids;

   d. any other documents that pertain to the protest, including correspondence with the bidders; and

   e. a statement by the grantee explaining its actions and the reasons for them.

   The protestor must be informed that any comments must be submitted to FTA within ten (10) days (see paragraph J-4 below).

4. Comments on the grantee report shall be filed by the protestor with FTA within ten (10) days after receipt of the report, with a copy to the grantee which furnished the report. The grantee's rebuttal to these comments shall be filed with FTA within five (5) days after receipt of the comments to which the rebuttal is directed.

5. The failure of a protestor or of a grantee to comply with the time limits stated in this attachment may result in resolution of the protest without consideration of the comments untimely filed.

K. Furnishing of Information on Protests

The FTA shall, upon request, make available to any interested party information bearing on the substance of the protest which has been submitted by the protestor, interested parties or grantees, except to the extent that withholding of information is permitted or required by law or regulation. Any comments thereon shall be submitted within a maximum of ten (10) days.

L. Withholding of Award

When a protest has been filed before award, the grantee will not make an award prior to the resolution of the protest, and when a protest has been filed before the opening of bids, the grantee will not open bids prior to the resolution of the protest, unless the grantee determines that:

1. The items to be procured are urgently required; or
2. Delivery or performance will be unduly delayed by failure to make the award promptly; or
3. Failure to make prompt award will otherwise cause undue harm to the grantee or the Federal Government.

In the event that the grantee determines that the Award is to be made during the pendency of a protest, the grantee will notify FTA prior to making such award. FTA reserves the right not to participate in the funding of any contract awarded during the pendency of a protest to FTA.

M. Conference

1. A conference on the merits of the protest with members of FTA may be held at the request of the protestor or the grantee. Request for a conference should be made in a timely manner so as not to interfere with the resolution of the protest and not later than the expiration of the time period allowed for filing comments on the grantee report as specified in Section J. Except in unusual circumstances requests for conferences after such time will not be honored.
2. Conferences normally will be held prior to the expiration of the period allowed for filing comments on the grantee report. Interested parties may request, and in FTA's discretion may be invited to attend the conference.

N. Request for Reconsideration

1. Reconsideration of a decision of FTA may be requested by the protestor or any grantee involved in the protest. The request for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered.
2. Request for reconsideration of a decision of FTA shall be filed not later than ten (10) days after the initial written decision, and shall be filed with the office which issued the decision being appealed. The protest shall not be considered pending during the 10-day period specified in this paragraph.

3. A request for reconsideration shall be subject to these bid protest procedures, consistent with the need for prompt resolution of the matter.

O. Effect of Judicial Proceedings

1. FTA may refuse to decide any protest where the matter involved is a subject of litigation before a court of competent jurisdiction, or has been decided on the merits by such a court. The foregoing shall not apply where the court requests, expects, or otherwise expresses interest in FTA's decision.

43.3 Appeal Procedures for Non-Construction FAA/FHWA/DOT Contracts

A. The City of El Paso reserves the right to postpone bid openings for its own convenience.

B. Changes to the specifications will be made by amendment.

C. Prime contractors and subcontractors may make appointments to discuss these specifications. This, however, does not relieve them from the written, documented requests required by paragraphs D and F below.

D. Requests for clarification of specifications and protests of specifications must be received by the City in writing, not less than **ten (10) days** before the date of scheduled bid opening. Any request for any approved equal or protest of the specifications must be fully supported with technical data, test results, or other pertinent information as evidence that the substitute offered is equal to or better than the specification requirement. In addition, any test requirements in the specifications that pertain to an item under consideration for approved equal must be submitted with request for approved equal.

Any requests under this section should be submitted in writing to:

City of El Paso
Attention: Purchasing Manager
Purchasing Division
2 Civic Center Plaza, 7th Floor
El Paso, Texas 79901

A copy of the written request should also be submitted to:

City of El Paso
Department Director
(list applicable Department)
2 Civic Center Plaza, 7th Floor
El Paso, Texas 79901

E. The City's replies to request under paragraph D above will be postmarked at least **five (5) days** before the date scheduled for bid opening.

F. Under certain limited circumstances, an interested party may protest to the Federal Highway Administration (FAA/FHWA/DOT) the award of a contract pursuant to an FAA/FHWA/DOT grant.

Review by FAA/FHWA/DOT may be permitted provided that:

1. The protest is filed within the time limits set forth below; and
2. The protestor has exhausted all administrative remedies available at the grantee (City) level. Such protests under this solicitation must be presented to the Purchasing Manager with copy to the department Director as outlined in preceding paragraph D.

    a. Hearing shall be conducted to provide City Council with the necessary information to make a determination in regards to a protest of a decision made during the bid process or decision regarding award.

    b. Statements shall be provided by designated City personnel. Statements shall then be made in support of and against the protest subject. Statements shall be limited to a time determined prior to process. Council may then ask questions or seek clarifications. Council shall close hearing, have discussion and make a motion regarding protest.

Definitions:

1. The term "days" refers to working days of the Federal Government.
2. The term "file" or "submit" refers to the date of receipt by FAA/FHWA/DOT.
3. The term "grantee" refers to the City of El Paso.

4. "Exhaustion of administrative remedies at the grantee level" means any action or inaction on the part of the City which is prejudicial to the position taken in a written protest filed with the City. It may include, but is not limited to:

   a. A final City decision on the merits of the protest.

   b. A procurement action such as the award of a contract or the rejection of a bid despite the pendency of the protest.

   c. City acquiescence in and active support of continued and substantial contract performance despite the pendency of a protest.

5. The term "interested party" includes all bidders on the contract or procurement. The term may also include a subcontractor or supplier at any tier who shows that he/she has a substantial economic interest in a provision of the Invitation for Bids (IFB) or the Request for Proposals (RFP), or in the interpretation of such a provision.

6. Violation of Federal law or regulation is defined as the infringement of any valid requirement imposed by Federal statute or regulation which requirement governs the letting of contracts pursuant to a grant agreement. However, any protests involving a local matter and/or determination that are clearly within the discretionary powers of the grantee should be resolved at the local level. Specific examples of determinations that are within the discretionary powers of the grantee include, but not necessarily limited to, determinations of responsiveness and responsibility, the revision of specifications to incorporate the evaluation of life-cycle costing (LCC) factors in connection with any given procurement, and determinations regarding bonding requirements. In other words, the protestor must be able to demonstrate or establish a clear violation by the grantee of a specific law or regulation, e.g., a violation of the prohibition against unduly exclusionary and restrictive specifications, or a violation of the Buy American requirements.

7. The term "bid" as used herein also includes the term "offer" or "proposal" as used in the context of negotiated procurements.

G. FAA/FHWA/DOT's review of any protest will be limited to:

1. Violations of Federal law or regulations. Violations of State or local law shall be under the jurisdiction of State or local authorities.

2. Violation of City's protest procedures or failure to review complaint or protest.

   a. Protests must be filed with the grantee in accordance with the local procedures and requirements (section F.2.(1)(2). Following an adverse decision by the City, the protestor may file a protest with FAA/FHWA/DOT, in accordance with paragraph H below, if there has been a violation as described in paragraph G-1 and G-2 above. Protests should be filed with the FAA/FHWA/DOT Regional Office, Fort Worth, Texas and concurrent copies sent to the City of El Paso and FAA/FHWA/DOT Headquarters, Attention: UAD-43. To expedite handling within FAA/FHWA/DOT, the address should include "Attention: Bid Protest."

3. The initial protest filed with FAA/FHWA/DOT shall:

   a. Include the name and address of the protestor.

   b. Identify the grantee, project number, and the number of the solicitation contract.

   c. Contain a statement of the grounds for protest and any supporting documentation. (The grounds for protest filed with FAA/FHWA/DOT must be fully supported to the extent feasible). Additional materials in support of an initial protest will be considered only if filed within the specified time.

   d. Include a copy of the protest filed with the grantee, and a copy of the grantee's decision, if any.

   e. Indicate the ruling or relief desired from FAA/FHWA/DOT.

4. FAA/FHWA/DOT will not consider any data that was not submitted to the grantee. If new data becomes available after the exhaustion of administrative remedies at the grantee level, that data should be filed with the grantee with a request for reconsideration. If the request is denied or if the protestor's administrative remedies at the grantee level are again exhausted, the protestor may then submit the new data to FAA/FHWA/DOT. FAA/FHWA/DOT will consider the

data if filled as part of an initial protest within the time limits specified in paragraph H-3, or as additional material filed within the time limits specified in paragraph H-3.

5. No formal briefs or other technical forms of pleading or motion are required, but a protest and other submission should be concise, logically arranged, and clear.

H. Time for Filing

1. Protests shall be filed within the specified time limits set forth in the specifications which are the subject of the procurement and must adhere strictly to any procedures specified therein. The time period established for the filing of protests as set forth in all such specifications will be controlling and will take precedence over a time period established herein.

2. Protests must be filed within the time limits set forth in this paragraph H-2 in order to be considered timely unless the specifications which are the subject of a particular procurement set forth a different period for filing a protest, in which case the provisions of paragraph H-1 above will apply. Protests, based upon restrictive specifications or alleged improprieties in any type of solicitation, which are apparent prior to bid opening or the closing date for receipt of initial bids, shall be filed not later than three (3) days prior to bid opening or the closing date for receipt of initial bids.

3. In cases other than those covered in the preceding paragraphs of this section, bid protests shall be filed not later than ten (10) days after the exhaustion of administrative remedies at the grantee level is known or should have been known, whichever is earlier.

4. A protest may be considered, even if the initial filing is late, in the following circumstances:

   a. Good causes based on a compelling reason beyond the protestor's control, whereby the lateness is due to the fault of FAA/FHWA/DOT or the grantee in the handling of his protest submission.

   b. FAA/FHWA/DOT determines the protest raises issues significant to procurement practice or procedure.

   c. A court of competent jurisdiction requests, expects, or otherwise expresses interest in FAA/FHWA/DOT's decision.

I. Time for Submission of Additional Information

Any additional information requested or required by FAA/FHWA/DOT, the protestor, the grantee, or interested parties shall be submitted as expeditiously as possible but in no case later than five (5) days after the receipt of such request unless specifically expected by FAA/FHWA/DOT.

J. Notice of Protest, Confidentiality, Submission of Grantee Report, and Time for Filing Comments on Report

1. FAA/FHWA/DOT shall notify the grantee by telephone and in writing in a timely manner of the receipt of a protest, requesting the grantee to give notice of the protest to the contractor if award has been made or, if no award has been made, to all bidders or proposers who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied. All who receive such notice shall be instructed that they may communicate further directly with FAA/FHWA/DOT.
2. Material submitted by a protestor will not be withheld from any interested party outside the Government or from any Government agency which may be involved in the protest, except to the extent that the withholding of information is permitted or required by law or regulation. If the protestor considers that the protest contains proprietary material which should be withheld, a statement advising of this fact may be affixed to the front page of the protest document and the alleged proprietary information must be so identified wherever it appears.
3. The grantee shall be requested to submit a complete report on the protest to FAA/FHWA/DOT, with a copy to the protestor, as expeditiously as possible but not later than within twenty-five (25) working days of being notified by FAA/FHWA/DOT of the protest. The grantee report shall include:

   a. copies of all relevant bids;

   b. a copy of the Invitations for Bids or Request for Proposals, including pertinent provisions of the specifications;

   c. a copy of the abstract of bids;

   d. any other documents that pertain to the protest, including correspondence with the bidders; and

   e. a statement by the grantee explaining its actions and the reasons for them.

The protestor must be informed that any comments must be submitted to FAA/FHWA/DOT within ten (10) days (see paragraph J-4 below).

4. Comments on the grantee report shall be filed by the protestor with FAA/FHWA/DOT within ten (10) days after receipt of the report, with a copy to the grantee which furnished the report. The grantee's rebuttal to these comments shall be filed with FAA/FHWA/DOT within five (5) days after receipt of the comments to which the rebuttal is directed.
5. The failure of a protestor or of a grantee to comply with the time limits stated in this attachment may result in resolution of the protest without consideration of the comments untimely filed.

K. Furnishing of Information on Protests

FAA/FHWA/DOT shall, upon request, make available to any interested party information bearing on the substance of the protest which has been submitted by the protestor, interested parties or grantees, except to the extent that withholding of information is permitted or required by law or regulation. Any comments thereon shall be submitted within a maximum of ten (10) days.

L. Withholding of Award

When a protest has been filed before award, the grantee will not make an award prior to the resolution of the protest, and when a protest has been filed before the opening of bids, the grantee will not open bids prior to the resolution of the protest, unless the grantee determines that:

1. The items to be procured are urgently required; or
2. Delivery or performance will be unduly delayed by failure to make the award promptly; or
3. Failure to make prompt award will otherwise cause undue harm to the grantee or the Federal Government.

In the event that the grantee determines that the Award is to be made during the pendency of a protest, the grantee will notify FAA/FHWA/DOT prior to making such award. FAA/FHWA/DOT reserves the right not to participate

in the funding of any contract awarded during the pendency of a protest to FAA/FHWA/DOT.

M. Conference

1. A conference on the merits of the protest with members of FAA/FHWA/DOT may be held at the request of the protestor or the grantee. Request for a conference should be made in a timely manner so as not to interfere with the resolution of the protest and not later than the expiration of the time period allowed for filing comments on the grantee report as specified in Section J. Except in unusual circumstances requests for conference after such time will not be honored.

2. Conferences normally will be held prior to the expiration of the period allowed for filing comments on the grantee report. Interested parties may request, and in FAA/FHWA/DOT's discretion may be invited to attend the conference.

N. Request for Reconsideration

1. Reconsideration of a decision of FAA/FHWA/DOT may be requested by the protestor or any grantee involved in the protest. The request for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered.

2. Request for reconsideration of a decision of FAA/FHWA/DOT shall be filed not later than ten (10) days after the initial written decision, and shall be filed with the office which issued the decision being appealed. The protest shall not be considered pending during the 10-day period specified in this paragraph.

3. A request for reconsideration shall be subject to these bid protest procedures, consistent with the need for prompt resolution of the matter.

O. Effect of Judicial Proceedings

1. FAA/FHWA/DOT may refuse to decide any protest where the matter involved is a subject of litigation before a court of competent jurisdiction, or has been decided on the merits by such a court. The foregoing shall not apply where the court requests, expects, or otherwise expresses interest in FAA/FHWA/DOT's decision.

44.0 Ethics/Violations of Procurement Policies and Procedures

44.1 Ethics

Public employment is a public trust. It is the policy of the City of El Paso 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 El Paso. 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 so as to assure 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 El Paso procurement organization.

Section 6.13-1 of the Civil Service Commission Charter defines causes for suspension, reduction or discharge of permanent employees. Violations of the City's ethics ordinance is covered under 6.13-3M. The Ethics Ordinance #010663, attached, is to be strictly followed and action will be taken for any violation thereof.

To achieve the purpose of this article, it is essential that those doing business with the City of El Paso 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 El Paso 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 El Paso to breach the standards of ethical conduct set forth in this code.

3. It shall be a breach of ethics for any employee of the City of El Paso 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 pertaining to 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.

d. any violation of the Ethics Ordinance and Ethics Policy may be cause for termination of a contract.

e. 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 City of El Paso or any person associated therewith, as an inducement for the award of a subcontract or order is a kickback and is a breach of ethics.

f. the prohibition against gratuities and kickbacks prescribed above shall be conspicuously set forth in every contract and solicitation therefore.

g. it shall be a breach of ethics for any employee or former employee of City of El Paso knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any person.

44.2 Violation of Procurement Policies and Procedures

Violation of Federal law or regulation is defined as the infringement of any valid requirement imposed by Federal statute or regulation which requirement governs the letting of contracts pursuant to a grant agreement. However, any protests involving a local matter and/or determination that are clearly within the discretionary powers of the grantee should be resolved at the local level. Specific examples of determinations that are within the discretionary powers of the grantee include, but not necessarily limited to, determinations of responsiveness and responsibility, the revision of specifications to incorporate the evaluation of life-cycle costing (LCC) factors in connection with any given procurement, and determinations regarding bonding requirements. In other words, the protestor must be able to demonstrate or establish a clear violation by the grantee of a specific law or regulation, e.g., a violation of the prohibition against unduly exclusionary and restrictive specifications, or a violation of the Buy American requirements.

The term "bid" as used herein also includes the term "offer" or "proposal" as used in the context of negotiated procurements.

FTA's review of any protest will be limited to:

1. Violations of Federal law or regulations. Violations of State or local law shall be under the jurisdiction of State or local authorities.

2. Violation of City's protest procedures or failure to review complaint or protest.

3. Protests must be filed with the grantee in accordance with the local procedures and requirements (section F.2.(1)(2). Following ad adverse decision by the City, the protestor may file a protest with FTA, in accordance with paragraph H below, if there has been a violation as described in paragraph G-1 and G-2 above. Protests should be filed with the FTA Regional Office, Fort Worth, Texas and concurrent copies sent to the City of El Paso and FTA headquarters, Attention: UAD-43. To expedite handling within FTA, the address should include "Attention: Bid Protest."

Procurement under $50,000

Violations subject the employees to suspension, reduction or discharge in accordance with Section 6.13-1 of the Civil Service Commission Charter.

Procurement over $50,000

Violations subject the employee to punitive actions and penalties as described by the State Bids Statute.

45.0 Miscellaneous Policies and Procedures

45.1 Federal Suspension/Debarment Status Certification/Verification Procedure

According to federal regulations, when a nonfederal entity enters into a procurement contract that is expected to equal or exceed $25,000, the nonfederal entity must verify that the entity is not suspended or debarred or otherwise excluded. Also, Regulations at 2 CFR Part 180 and HUD supplemental regulations at 2 CFR 2424 prohibit nonfederal entities from contracting with or making subawards under covered transactions to parties that are suspended or debarred. The City of El Paso's Financial Services Department, Purchasing Division, collects an affidavit from any potentially contracted vendor certifying that "neither the Contracting Entity nor any of the Owners of 5% or more of the Contracting Entity has been debarred or suspended from contracting with any public entity". In addition, the Purchasing Division also has a standard procedure of verifying the suspension/debarment status of potentially contracted vendors through the Excluded Parties List System (EPLS) search web site maintained by the General Services Administration (GSA). This verification is performed immediately prior to the award of any formal

solicitation and is documented by screen prints from the EPLS search web site.

Following is the standard procedure adhered to by the Purchasing Department analysts:

1. Go to http://www.epls.gov/epls/search.do.

2. Type the exact name of the company (including any punctuation, prefixes, or suffixes) in the '**Partial** Name' EPLS Advanced Search bar. Click Search and print the resulting page.

3. Repeat this procedure for each other name identified by the company (Owner's, DBA's, etc.).

4. If the company is listed on any of the results pages, notify the Purchasing Manager for the appropriate action with respect to the solicitation award.

   The certification and procedure detailed above pertains to all contracts for which the Financial Services Department, Purchasing Division is responsible. Architectural, engineering, and surveying (A&E) contracts are independently administered by the Engineering Department. The Engineering Department requires a suspension and debarment certification from all vendors entering into A&E contracts. Both departments are independently responsible for ensuring that their respective certifications and/or procedures are performed on each and every contract.

45.2 ARRA – Buy American Guidance

According to federal regulations[1], when the City is utilizing ARRA funds (American Reinvestment and Recovery Act) funds, the vendors must maintain a current registration in the Central Contractor Registration ("CCR") at all times during which they have been awarded the contract and are utilizing federal funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) number is one of the requirements for registration with CCR.

Departments are responsible for notifying the Purchasing Division when ARRA Funds are being utilized. Upon notification, the Purchasing Division will verify the registration status of the vendor to ensure compliance as follows:

1. Go to http://www.ccr.gov.

2. Type in the DUNS number or the exact name of the company (including any punctuation, prefixes, or suffixes) in the appropriate spaces available and click on the Search bar. Print the resulting page.

3. Repeat this procedure for each other name identified by the company (Owner's, DBA's, etc.).

4. If the company is not registered, notify the Purchasing Manager for the appropriate action with respect to the solicitation award.

The certification and procedure detailed above pertains to all contracts for which the Financial Services Department, Purchasing Division is responsible. Architectural, engineering, and surveying (A&E) and construction contracts are independently administered by the Engineering Department. Both departments are independently responsible for ensuring that their respective certifications and/or procedures are performed on each and every contract.

[1]**§ 176.50 Award term—Reporting and registration requirements under section 1512 of the Recovery Act.** (c) Recipients and their first-tier recipients must maintain current registrations in the Central Contractor Registration (*http://www.ccr.gov*) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (*http://www.dnb.com*) is one of the requirements for registration in the Central Contractor Registration.

45.3 Vendor File Policy and Procedures

The City of El Paso's vendor file is a vital and essential part of City business. In order to ensure the most accurate information available, the following policies must be adhered to:

1. No vendor information will be entered without a completed W-9 form and Vendor Information Form. All departments must submit both completed documents to the Purchasing Division. No entry will be made unless both documents are submitted.

2. If the W-9 and Vendor Information forms are not legible, and/or not completed in their entirety, they will be returned to the User Department and/or the vendor and may be resubmitted once they have been filled out completely.

3. All new vendors must be researched before entry to determine whether or not the vendor is already in the system. Verification must be made using the Social Security Number and/or Federal ID Number. Must also verify that the name of the vendor is not

already in the system. (Researching this information will take time, so please allow 2-3 additional days for entry.)

4. It is the vendor's responsibility to advise the Purchasing Division of any changes to their information; such as a change in Federal Identification Numbers, business names, merger or acquisitions, billing and mailing addresses, change in contact information and any other information as necessary.

45.4 Cone of Silence Policy

"Cone of Silence" is imposed upon each RFP, RFQ or Bid after advertising. The Cone of Silence prohibits communications with City Council members and staff to attempt to influence the purchasing decision. As such, the Cone of Silence prohibits any communication regarding RFPs, RFQs or Bids between, among others:

- Potential vendors, service providers, bidders, lobbyists or consultants and City's professional staff.

- Potential vendors, service providers, bidders, lobbyists or consultants, any member of the City's professional staff, the Mayor, Council Representatives or their respective staff and members of the respective selection committee.

The provisions do not apply to, among other communications:

- Oral communications with the Purchasing Manager or Contract Administrator, provided the communications is limited strictly to matters of process or procedure already contained in the solicitation document;

- The provisions of the Cone of Silence do not apply to oral communications at pre-proposal or pre-bid conferences, oral presentations before selection committees, contract negotiations during duly notice public meeting, public presentations made to the Mayor and Council Representatives during a duly noticed public meeting; or

- Communications in writing at any time unless specifically prohibited by the applicable RFP, RFQ or bid document.

In addition to any other penalties provided by law, violation of the Cone of Silence by any proposer or bidder shall render that proposer's or bidder's RFP, RFQ or bid award voidable. Any person having personal knowledge of a violation of these provisions shall report such violations to the City Attorney.

The "Cone of Silence" applies to any and all potential subcontractors as well.

45.5 Earnest Money Policy and Procedures

The City of El Paso occasionally releases solicitations for the purchase of various city properties. These solicitations require that the bid be submitted along with an Earnest Money deposit in the form of a Cashier's check or money order. Below are the procedures:

1. Once the bids have been opened, the Bid Section office logs in the Cashier's check or money order, and locks all checks in a secure location.

2. Purchasing will provide the Capital Assets Division the earnest money from the apparent high bidder along with the bid results for all bids for the sale of real property. All other earnest monies from the other bidders will have their checks returned within three to five working days.

3. The Capital Assets Division will deposit the earnest money after the bid results are provided to them.

4. In the event that the earnest money is to be returned to the apparent high bidder, the Capital Assets Division will process an unencumbered voucher to the vendor in the same amount as the earnest money submitted to the City by the vendor.

45.6 Blanket Purchase Order Change Procedures

Blanket Purchase Orders (Issued Under Bids/RFP Contracts)

The use of blanket purchase orders with respect to requirement type bids and/or RFP's that require regular payments or purchases on an ongoing basis are essential and cost effective for administering the payments of these contracts. This particular use of blanket purchase orders has been approved by the Chief Financial Officer.

Blanket Purchase Orders Changes (Not Issued Under Contracts)

The use of blanket purchase orders not referencing either bids or RFP's is generally discouraged**.** If, however, the need to use a blanket purchase order is unique or justified for a particular application then any **changes** to that purchase order will be **limited to three (3) changes** to include price increases or decreases. Once the purchase order is completed, it will be closed.

NOTE: It is strongly recommended that departments engaging in these types of purchase orders should research their needs, expenditures, and historical data thoroughly and initiate the blanket purchase order for the total estimated amount required.

45.7 Vehicle Purchase / Replacement Procedures

Effective 1 June 2002 OMB implemented new procedures for acquiring vehicles through the capital acquisition process. OMB is responsible for reviewing capital equipment requests, approving the final capital equipment list and establishing appropriations. The change in policy tasks Fleet Services with the following responsibilities:

1. Work with Departments in preparing vehicle specifications.
2. Work with the Purchasing Division to finalize bid.
3. Receive all purchased vehicles for inspection/acceptance.
4. Receive all replacement vehicles for property control disposition.
5. Process all receivers for payment to vendors.

For your review and appropriate action, we have attached the policy document, Vehicle Life Cycle Procedures.

During this transition, departments that have accepted vehicles must complete the receiver and submit the invoice to OMB. Those vehicles not already accepted by the departments must process through Fleet Services.

This process will alleviate problems that we are experiencing in receiving vehicles, such as untimely document submittal and/or paying for vehicles not in our possession. Centralizing this process will relieve the departments of paperwork and documentation responsibilities.

Step-by-Step Procedures

1. The User Department identifies vehicle needs in their Department Requested Capital Budget, which is submitted to OMB.
2. OMB reviews vehicle requests with Fleet Services and the User Department.
3. OMB finalizes vehicle requests based on policy direction and available capital funds.
4. Fleet Services submits vehicle requisition in Peoplesoft upon approval of the capital budget.
5. OMB budget checks and approves equipment requisitions.
6. The User Department and Fleet Services prepare and approve specifications.
7. Fleet Services provides Purchasing Division the specifications to prepare the vehicle bid package.
8. The Purchasing Division performs the bid process.

9. The User Department, Fleet Services, and Purchasing review the bids and select a vendor(s) for award.
10. Purchasing goes to City Council for award.
11. Purchasing Division issues Purchase Order to selected vendor(s).
12. The vendor(s) delivers the vehicle, MSO, title application and invoice to Fleet Services.
13. The User Department and Fleet Services conduct a joint inspection and determine acceptance of the vehicle.
14. User departments will turn into Fleet Services those vehicles previously identified as replacement or trade-in vehicles during the capital acquisition review or the bid process. New vehicles will not be released until the replacement vehicle has been turned into Fleet Services.
15. Fleet Services prepares these vehicles for auction or trade. For auction vehicles, Fleet Services transfers the vehicle and title to Purchasing (Property Control) for disposal. For trade-in vehicles, Fleet Services transfers the title to the vendor.
16. When accepted, Fleet Services creates the receiver for the vehicle(s) in Peoplesoft, forwards the original invoice to OMB for processing of payment, and releases unit to User Department. If not accepted, Fleet Services will work with vendor(s) to resolve issue(s) affecting acceptance of the vehicle(s).
17. After processing payment, OMB retains the original invoice on file.
18. Fleet Services obtains the title and license plates.
19. Fleet Services adds the vehicle to the City fleet.
20. Fleet Services coordinates with Purchasing Division for asset inventory.
21. Fleet Services provides maintenance of the vehicles.
22. If a vehicle is deemed inoperable, during its lifetime, whether due to safety, inefficiency, etc, those units will also be “turned-in” to Fleet Services for disposal. Fleet Services transfers the vehicle and title to Purchasing (Property Control).

45.8 Food and Beverage Policy

Allowable Expenses

Elected Officials and Department Heads may use their discretion in authorizing limited purchases of food, beverages and meals for specific municipal purposes with City Funds. If a meal is an integral part of a function, then it is up to the Department Head to make a determination that the meal is allowable. Food, beverages and meals may be purchased in accordance with the following guidelines:

Items must be purchased for authorized "events" that serve a municipal purpose. Appropriate events include but are not limited to the following:

- Parks dedication ceremony
- City-recognized board meeting
- City-sponsored awards presentation
- Scheduled staff training session
- Testing sessions where volunteer assessors and employees are not released or breaks or meal times
- Council and Staff meetings held during normal meal hours where employees are not released from work
- Expenses may be authorized to pay for meals for officials, dignitaries and others invited to City events, as authorized by the Department Head.

Expenses must adhere to City's procurement, P-card and Travel Policy guidelines as outlined in the respective manuals. Funds may only be used if budgeted appropriately. Only the funded food and beverage account (503115) may be used with the exception of discretionary funds as outlined in Section III below. Prior to a purchase using petty cash or the P-card, the budget must be in the appropriate account. Items may be purchased through the City's vouchering process, petty cash or using the City's P-card. All procedures are documented in the City's purchasing, petty cash and P-card manuals and should be followed accordingly. **IF USING A CITY P-CARD FOR FOOD, BEVERAGE AND MEAL PURCHASES, THE APPROPRIATE AUTHORIZATION MUST BE RECEIVED PRIOR TO USING THE P-CARD.** Regardless of the method used, receipts must be retained in order to document the specific municipal purposes.

In accordance with the P-card manual, P-Card holders must submit receipts on a timely basis. If food, beverage and meal expense receipts are not turned in on time, they will be specifically disallowed and individuals will have ten days to reimburse the City for these expenses. Failure to do so will result in the loss of P-card privileges indefinitely and individuals will have their paycheck garnished for the amount owed.

Non-Allowable Expenses

City staff is prohibited from using City funds for any personal financial gain. The following must be adhered to:

- Individuals are not permitted to use City funds, P-cards or petty cash in El Paso area restaurants for their personal meal regardless of function unless the meal is an integral part of the function.
- Individuals may not seek reimbursement for meals for family members or non-business related guests.
- Under no circumstances are City funds to be used for the purchase of alcoholic beverages, unless otherwise allowed by City ordinance.
- Purchases of bottled water are disallowable unless a municipal purpose is specifically identified.
- City employees are not to establish working lunches where the City pays for the meal unless meeting the event conditions specified in I-1 above.
- Meals where only City employees are present unless meeting the "event" conditions specified in I-1 above.

Discretionary Funds

In addition to the above requirements specifically outlined in Sections I and II, Mayor and Council are prohibited from using their discretionary funds for purchasing food locally unless it is for a specific municipal purchase as outlined in Section I above.

Discretionary funds should generally not be used for local meals and entertainment purposes since Mayor and Council representatives receive an expense allowance for these types of purposes. For example, a meal between a representative and a constituent or vendor should not be paid out of discretionary funds. See the Administrative Policy on the use of Discretionary Funds.

Non-compliance

Individuals violating this policy may be required to reimburse the City for unauthorized personal expenses. If an individual fails to reimburse the City for unauthorized personal expenses upon request, the following will apply:

- Possible permanent loss of use of P-card
- Garnishment from paycheck
- Subject to disciplinary action up to suspension or possible termination.

Other issues

Adequate documentation must support all expenses, regardless of method of payment (i.e. P-card, voucher or petty cash reimbursement). An adequate description must be written on the face of every receipt to ensure that it may be easily identifiable as a City-related business purpose. For example, a description of the meeting date, purpose and attendees should be written on the face of the receipt. Any P-card purchases without sufficient documentation will be deemed disallowable and the provisions of Section III-Non-compliance will apply.

All actual receipts for food and beverages must be retained by the department and be specific and detailed in nature to determine the actual items being purchased. For example, a receipt from a restaurant should be detailed to determine amount of meal, meal type purchased, and beverages purchased.

45.9 Equal Opportunity Contracting

The City's contracting opportunities are open to all and it is City policy that no person or firm will be discriminated against because of race, color, national origin, sex, or disability in the award of City contracts. Further, contractors shall not discriminate on the basis of race, color, national origin, sex, or disability in the performance of City contracts.

Regardless of the source of funds or dollar level of purchase, City personnel will purchase from State certified Historically Underutilized Businesses (HUBs) to the fullest extent possible and will make a good faith effort to meet State of Texas goals for doing business with HUBs.

45.10 HUB/DBE Participation

It is the policy of the City to seek participation in its contracts by local small businesses and by small businesses owned by minorities, women and disadvantaged persons. The City has two strategies for achieving this policy objective - a Disadvantaged Business Enterprise (DBE) program for federally funded contracts and concession contracts and a Historically Underutilized Business (HUB) program for contracts that do not include any federal funds.

Historically Underutilized Business (HUB) Program

A HUB is a business with its principle place of business in Texas in which the owner(s) have proportionate interest and demonstrate active participation in the business' management and are identified by the State as economically disadvantaged. The City's HUB program provides bid opportunities to eligible local small business enterprises in City contracting opportunities that are not funded in part or in whole with federal funds. This program is race and gender neutral. Section 252.0215 of the Local Government Code establishes HUB

participation requirements for City contracting opportunities. The Purchasing Division has designed a Procurement Analyst to act as the City's HUB Coordinator, who is responsible for ensuring the City continues its good faith effort to establish business connections with Historically Underutilized Businesses.

A business has to be registered with the state to be considered a HUB. Some sites of interest are as follows:

http://www.window.state.tx.us/procurement//cmbl/hubonly.html
http://www.window.state.tx.us/procurement//cmbl/cmblhub.html
http://www.window.state.tx.us/procurement/prog/hub/

Disadvantaged Business Enterprise (DBE) Program

The DBE program implements the Department of Transportation's regulations in 49 CFR Parts 23 (FTA) and 26 (FAA), as amended. It is the policy of the City to provide opportunities for socially and economically disadvantaged businesses and to encourage their participation in federally funded City contracts and in other contracts subject to the federal DBE program. City contracts that may DBE goals are generally in the areas of professional architecture and engineering services, construction and construction-related services and airport concessions. Overall DBE goals for El Paso International Airport concessions are established by the Department of Aviation and submitted to the Federal Aviation Administration for its concurrence.

45.11 Vendor Indebtedness to the City

For all formal bids and in accordance with Ordinance No. 016529, it is the policy of the City to refuse to do business with a contracting entity, or any owner of 5% or more of such entity, who is indebted to the City or a qualifying governmental entity except in cases where the City deems it in its best interest to enter into such transactions.

This policy applies to all purchase and contracts, formal bids, proposals or otherwise, that require City Council approval. Contracts typically awarded without the submission of a proposal, including but not limited to, contracts for engineering and architectural services, shall be subject to this policy and shall not be approved by Council until a determination as to any indebtedness of the contracting entity or any owner to the City has been made as provided for in this policy.

For purposes of this policy, the following definitions are made:

- *Affidavit* shall mean a sworn statement containing the full names and the business and residence addresses of all persons owing five percent or more of a contracting entity or where the contracting entity is a non-profit corporation, the full names and the business and residence addresses of all officers of the non-profit corporation. (See Appendix 16.5 for form.)
- *Contracting entity* shall mean a sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that proposes or otherwise seeks to enter into a contract or other transaction with the municipality requiring approval by the governing body of the municipality;
- *Debt* shall mean any delinquent sum of money in an amount greater than one hundred dollars ($100.00) levied, imposed or assessed against any contracting entity, or owner thereof, by the City or any qualifying entity for ad valorem taxes on real or personal property located within the boundaries of the city.
- *Debtor* shall mean a contracting entity or owner thereof, owing a debt to the City as shown by City records.
- *Delinquent* shall mean any past due and unpaid debt which is no longer subject to challenge, protest, or appeal as those processes are described in the Texas Tax Code.
- *Indebted* shall mean owing a debt to the City without regard to ability or inability to pay the same, where the amount is delinquent.
- *Owner* shall mean, with respect to a contracting entity, any person owning five percent (5%) or more thereof, or, in the case of a non-profit corporation, any officer of the non-profit corporation.

Determination of Indebtedness

In order to determine whether a contracting entity is indebted to the City, all formal bid proposals shall require an *Indebtedness Affidavit* to be completed by the contracting entity.

Any failure to submit the affidavit(s) required under this policy shall constitute grounds for rejection or non-consideration of any proposal or other information. It shall be the duty of the Purchasing Manager to ascertain that the affidavit has been properly prepared and submitted.

Once the successful contracting entity has been identified but prior to placement of award on City Council agenda, the Purchasing Manager will investigate whether the recommended contracting entity or owner is indebted to the City and determine insofar as possible with the information provided, whether such indebtedness is then under active protest, challenge or appeal by the debtor.

Recommendation of Award

If a Contracting Entity or Owner is deemed to be Indebted to the City, the Purchasing Manager shall send a written notice to the Contracting Entity or Owner, via Certified Mail Return Receipt Requested, stating the amount of Debt and that failure to pay such Debt may result in the City refusing to award a contract or enter into any transaction with the Debtor (the "***Indebtedness Notice***").

The Contracting Entity or Owner will have five (5) business days from the time it receives the Indebtedness Notice to make full payment on the Debt, or appeal the Purchasing Manager's determination to the City's Chief Financial Officer (the "***CFO***").

If the Contracting Entity or Owner desires to appeal the Purchasing Manager's determination to the CFO, the Contracting Entity or Owner must send a written statement and any supporting documents to the CFO regarding payment of the Debt which supports the Contracting Entity's or Owner's contention that they are not indebted to the City. Upon receipt of such statement and supporting documents, the CFO will make a determination of the Indebtedness. If the CFO determines that the Contracting Entity or Owner is Delinquent, the CFO will request immediate payment on the Debt or request payment arrangements be made immediately. If the Contracting entity or Owner does not respond to this request, the CFO may disqualify such Contracting Entity or Owner from entering into a Contract or other transaction with the City. The Contracting Entity or Owner will be notified in writing at least seventy two (72) hours prior to the award of the Contract in question of the CFO's final determination.

The Contracting Entity or Owner may appeal the CFO's final determination to City Council by appearing before Council on the date of the award of the contract.

Appeal of Indebtedness Prior to Award

The Contracting Entity may appeal, in writing, the Purchasing Division's determination to the Chief Financial Officer within three (3) business days of receipt of the notice. A receipt or other written proof of payment should be included in the appeal from the Contracting Entity. The Chief Financial Officer will review such appeal and make a determination of the indebtedness. If the Chief Financial Officer determines that the Contracting Entity is delinquent, a final recommendation will be made to City Council for award to the next lowest bidder, or in the case of a best value procurement, the next qualified bidder.

The Contracting Entity may appeal the Chief Financial Officer's final recommendation to City Council by appearing before Council the date of the award to the next lowest or qualified bidder and submitting a written statement that sets forth fully the basis for any appeal and be accompanied by all

documentation relied upon in support thereof. The statement must be received no later than the Friday, 12:00 noon before the following Tuesday's City Council meeting that addresses the award. A copy of the indebted Contracting Entity's Indebtedness Affidavit will be presented to City Council for review.

45.12 Personal Service Contracts

Personal Services Contracts no longer go through Purchasing (i.e. 501XXX series).

46.0 Withdrawal / Modifying Bids

46.1 Prior to Bid Opening

A bid may be changed or withdrawn if the modification or request to withdraw is received before the bid opening date and time. The modification or request to withdraw can be received via regular mail, certified/registered mail, messenger, and commercial express mail (Fed Ex). Requests to withdraw a bid can additionally be received by facsimile or email from an authorized representative of the vendor.

46.2 After Bid Opening

A bid that has been opened may not be changed for the purpose of correcting an error in the bid price. This chapter does not change the common law right of a bidder to withdraw a bid due to a material mistake in the bid. [TX Local Govt. Code, Chapter 252.043*(g)*]

After a bid is opened it cannot be changed except in response to a request for clarification by the City. Withdrawal of bids due to a material mistake in the bid is only allowed after a written request is received, reviewed by the Purchasing Manager in consultation with the City Attorney's office.

In order for a request to withdraw to be considered the Purchasing Division will request and/or assemble any necessary evidence of the mistake including but not limited to; certified copies of worksheets and other data used in preparing the bid, copies of subcontractor and supplier quotes, published price lists, comparison of line items, any other data necessary to support the allegation.

When the bidder has submitted this evidence, Purchasing Division must determine whether, in fact, there has been a mistake. If there has been a mistake, the procurement analyst will recommend to the Purchasing manager that the mistake be corrected if allowed by law, the bid be withdrawn, or that the bid be considered as submitted.

The Purchasing Manager can recommend correcting a non-clerical mistake based on the evidence presented. The City may accept or reject any bid, therefore its incumbent on everyone involved in the purchasing process to ensure the City is not prevented from taking advantage of a good deal. If correction of the bid still results in the low bid, the City may decide to accept the bid even though the bidder may prefer to withdraw from competition.

Correcting non-clerical mistakes must be carefully considered in light of the integrity required of the sealed bidding method of procurement. Withdrawl of a bid due to a material mistake in the bid is only allowed after a written request is received, reviewed by the purchasing manager in consultation with the City Attorney's Office.

47.0 Title 24- Housing and Urban Development

[Code of Federal Regulations]
[Title 24, Volume 1]
[Revised as of April 1, 2005]
From the U.S. Government Printing Office via GPO Access
[CITE: 24CFR85.36]

[Page 527-533]

TITLE 24--HOUSING AND URBAN DEVELOPMENT

PART 85_ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Subpart C_Post-Award Requirements

Sec. 85.36 Procurement

(a) States. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) Procurement standards.

(1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase 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.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are 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.

(7) Grantees and subgrantees are 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.

(8) Grantees and subgrantees will make awards 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.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a 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.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will 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 grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) Competition. (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of Sec. 85.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local 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 criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall 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, shall 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 equal description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

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

(4) Grantees and subgrantees will 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, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) Methods of procurement to be followed. (1) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in Sec. 85.36(d)(2)(i) apply.

(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 and 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) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(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 shall 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.

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

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services

though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms. (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2)(i) through (v) of this section.

(f) Contract cost and price. (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will 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 will 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.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see Sec. 85.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) Awarding agency review. (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the

specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) 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; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a ``brand name'' product; or

(iv) The proposed award 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

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The ``bid guarantee'' shall 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 his bid, execute such contractual documents as may be required within the time specified.

(2) 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 obligations under such contract.

(3) 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.

(i) Contract provisions. A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled ``Equal Employment Opportunity,'' as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland ``Anti-Kickback'' Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of $2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2000, and in excess of $2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000).

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
[53 FR 8068, 8087, Mar. 11, 1988, as amended at 60 FR 19639, 19642, Apr. 19, 1995]

48.0 Office of the Secretary, HUD Procurement Standards

File located at: http://www.hud.gov/offices/cpo/grantees/24cfr84.doc

§84.40 Purpose of procurement standards

Sections 84.41 through 84.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by HUD upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

§84.41 Recipient responsibilities

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to HUD, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§84.42 Codes of conduct

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to sub-agreements. However, recipients 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 shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§84.43 Competition

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. The other factors shall include the bidder's or offeror's compliance with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), hereafter referred to as "Section 3." Section 3 provides that, to the greatest extent feasible, and consistent with existing Federal, State, and local laws, and regulations, economic opportunities generated by certain HUD financial assistance shall be directed to low- and very low-income persons. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§84.44 Procurement procedures

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that paragraphs (a)(1), (a)(2) and (a)(3) of this section apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following.

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

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

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity; compliance with public policy, including, where applicable, Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u); record of past performance; financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by implementation of E.O.s 12549 and 12689, “Debarment and Suspension,” at 24 CFR part 24.

(e) Recipients shall, on request, make available for the Federal awarding agency, pre-award review and procurement documents, such as requests for proposals or

invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in HUD's implementation of Circular A–110.

(2) The procurement is expected to exceed $100,000 or the small purchase threshold fixed at 41 U.S.C. 403 (11), whichever is greater, 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 small purchase threshold, specifies a “brand name” product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

§84.45 Cost and price analysis

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§84.46 Procurement records

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

(a) Basis for contractor selection;

(b) Justification for lack of competition when competitive bids or offers are not obtained; and

(c) Basis for award cost or price.

§84.47 Contract administration

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

§84.48 Contract provisions

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

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, HUD may accept the bonding policy and requirements of the recipient, provided HUD has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) 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 obligations under such contract.

(3) 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 statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, “Surety Companies Doing Business with the United States.”

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this rule, as applicable.

§84.50 Purpose of reports and records

Sections 84.51 through 84.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§84.51 Monitoring and reporting program performance

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in §84.26.

(b) HUD shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in §84.51(f), performance reports shall not be required more frequently than quarterly or less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. HUD may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report shall not be required after completion of the project.

(d) When required, performance reports shall generally contain, for each award, brief information on each of the following:

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify HUD of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) HUD may make site visits, as needed.

(h) HUD shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

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49.0 Glossary of Terms

- **ADDENDUM:** A written document issued by the city that modifies or clarifies the solicitation prior to the due date. "Addenda" is the plural form of the word.

- **APPROVED PRODUCTS LIST (APL):** A list of products that have been approved prior to the bidding process that meet a defined specification. Referred to as a qualified products list.

- **ASSIGNMENTS:** The legal transfer of a right or property. An assignment is done when a bidder changes their name or legally reorganizes to ensure that a contractual relationship still exists between the City and the new business entity. Requires preparation and resolution with Council action after which new vendor information is added and Purchase Orders are adjusted.

- **AWARD:** The act of accepting a bid, thereby forming a

- **BEST VALUE BID**: Criteria can be included in Bid for consideration in addition to price. Award made to the Bidder who provides goods or services at the best value to the City. No negotiation and no best and final offer allowed.

- **BID:** An offer to contract with the City submitted in response to a bid invitation issued by the Financial Services Department.

- **BID SAMPLE:** A sample required to be furnished as part of a bid, for evaluating the quality of the product offered (bullet proof vests, uniforms).

- **BID SECURITY (OFFER SECURITY):** The bid security protects the City in the event a low bidder (offeror) attempts to withdraw its bid/proposal or otherwise fails to enter into a contract with the City. Acceptable forms of bid/proposal securities are limited to: cashier's checks, certified checks, a surety bond (bid bond) from a company authorized to do business in Texas and United States Treasury listed.

- **BID TABULATION:** The recording of bids and bidding data for purposes of bid evaluation and record keeping.

- **BIDDER:** An individual or entity that submits a bid. The term includes anyone acting on behalf of the individual or other entity that submits a bid, such as agents, employees, and representatives.

- **BIDDER'S LIST:** A list of potential bidders maintained by the purchasing office setting out the names and addresses of suppliers of various goods and services from whom bids, proposals, and quotations can be solicited. This list is used to notify bidders by mail when a new bid is advertised. Vendors can be added to particular bidders list by request.

- **BRAND NAME:** A trade name or product name which identifies a product as having been made by a particular manufacturer. Used in bids only for purposes of establishing a level of quality and performance of the item(s) in the bid specifications.

- **CENTRALIZED MASTER BIDDERS LIST (CMBL):** A list maintained by the Texas Comptroller containing names and addresses of prospective bidders.

- **CERTIFICATE OF NON-COLLUSION:** A statement signed by an individual authorized to sign for the company, submitting a bid/offer affirming that its agents, officers or employers have not directly or indirectly entered into any agreements, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with particular bid/proposal or with any City official.

- **CHANGE ORDER:** A written order, signed by an authorized city official directing the contractor to make a change.

- **CITY SPECIFICATION:** A specification used whenever possible in the purchase of the item involved. Established standard of minimum quality for items or services purchased in volume by the City.

- **COMPETITIVE BIDDING:** The process of inviting and obtaining bids from competing sources in response to advertised competitive specifications, by which an award is made to the lowest and best bidder meeting the specifications. The process contemplates giving potential bidders a reasonable opportunity to bid, and requires all bidders be placed on the came plane of equality. Each bidder must bid on the same advertised specifications, terms and conditions in all the items and parts of a contract. The purpose of competitive bidding is to stimulate competition, prevent favoritism, and secure the best goods and services at the lowest practicable price, for the benefit of the City. Competitive bidding cannot occur where contract specifications, terms or conditions prevent or unduly restrict competition, favor a particular vendor, or increase the costs of goods or services without providing a corresponding benefit to the City.

- **COMPETITIVE SEALED PROPOSAL (CONSTRUCTION):** Used to procure construction services to build City facilities. Similar to competitive bidding above, but provides a process whereby factors other than price can be considered in the award of a contract if these factors are published in the invitation to propose. Once bids are opened contractors are ranked based on the solicitations published criteria, then City staff negotiates with proposers in rank order until a contract is reached.

- **COMPETITIVE SPECIFICATIONS:** A specification stated in such a manner that two or more bidders can meet the specifications on the same plan of equality.

- **CONSTRUCTION:** Construction of new facilities or infrastructure; renovation or improvements to existing facilities or infrastructure. These types of bids are handled

by the Engineering Department and processed through the Purchasing Construction Bidding Section.

- **CONTRACTOR:** An individual, company, corporation, firm or combination thereof with whom the State develops a contract for the procurement of goods or services.

- **CONTRACTOR'S REPRESENTATIVE:** An individual designated by the bidder or Contractor to act on their behalf and with the authority to legally bind the bidder or Contractor concerning the terms and conditions set forth in bid and contract documents. For bonds and/or insurance this is done with a power of attorney document.

- **COOPERATIVE PURCHASING:** A program where the City can take advantage of state purchasing contracts as well as contracts through other entities [The Cooperative Purchasing Network (TCPN), Huston Galveston Area Council (HGAC)] after council authorization.

- **DEBARMENT:** When parties that are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits, pursuant to the provisions of 31 U.S.C. 6101, note, E.O. 12549, E.O. 12689, 48 CFR 9.404, and each federal agency's codification of the Common Rule for Nonprocurement suspension and debarment. In addition, debarment is a term used to refer to the disqualification of a person from bidding/proposing with the city, or the award of a contract by the city, for a specified time commensurate with the seriousness of the offense, the failure, or the inadequacy of performance.

- **DEFAULT:** Failure of a party to a contract to comply with contractual requirements.

- **DESIGN SPECIFICATIONS:** A specification describing the essential physical characteristics which an item bid must possess to be considered for award and so detailed as to describe how the product is to be manufactured.

- **DISADVANTAGED BUSINESS ENTERPRISE (DBE):** As defined in 49 CFR 23.62 or other applicable federal regulations. All bidders/offerors who are not DBE's on city projects, that are federally funded, must make a "good faith effort" to employ DBEs at the percentage rate called for by the particular funding agency.

- **EARLY PAYMENT DISCOUNT:** A discount from the purchase price allowed to the purchaser if payment is made within a specified period. Not used in determining low bid.

- **EMERGENCY PURCHASE:** A [purchase] made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality; (2) a procurement necessary to preserve or protect the public health or safety of the

municipality's residents; (3) a procurement necessary because of unforeseen damage to public machinery, equipment, or other property. [TX Local Govt. Code 252.022(a)1-3]

- **EQUIVALENT PRODUCT:** A product that is equal in performance, quality and other specified characteristic to the specified product desired by the government entity.

- **ESCALATION CLAUSE:** A clause in a bid providing for a price increase under certain specified circumstances.

- **F.O.B.:** "Free on Board." This term refers to the point at which the title to goods transfers. Does not relate to freight charges.

- **FISCAL YEAR (City of El Paso and State of Texas):** A period of 12 consecutive months, beginning September 1 of each year and ending August 31 of the proceeding year.

- **FIXED PRICE CONTRACT:** A contract which provides for a firm price which cannot be increased for the full term of the contract.

- **FORMAL BID:** A written bid submitted in a sealed envelope in accordance with a prescribed format in accordance with procedures established by the Financial Services Department-Purchasing Division.

- **HISTORICALLY UNDERUTILIZED BUSINESS (HUB):** A corporation formed for the purpose of making a profit in which 51 percent or more of all classes of the shares of stock or other requitable securities are owned by one or more socially disadvantaged persons who have a proportionate interest and actively participate in the corporation's control, operation, and management. Groups include: Black Americans, Hispanic Americans, Women, Asian Americans, Pacific Americans, and Native Americans.

- **INTERLOCAL AGREEMENT:** An agreement in accordance with the laws of the State of Texas between the City of El Paso and another government entity or other governmental entities. In Purchasing these inter-local agreements allow the city to participate in purchasing cooperatives or allows another entity to purchase off of city contracts.

- **INFORMAL BID:** An unsealed, competitive bid containing scope of work, bid form, minimal specifications with or without plans, and contract general conditions; submitted in hard copy format or via facsimile. Can be used for purchases under $50,000.00 when more detailed information is need by city and or bidders than what would be provided/submitted when requesting three quotes.

- **INSPECTION:** Examination and/or testing of merchandise to determine whether it has been received in the proper quantity and condition, and to verify that it conforms to the applicable specifications.

- **LATE BID:** A bid that is received at the place designated in the invitation to bid after the time set for bid opening. The formal bid deadline for all bids handled by the Purchasing Division is 2:00 p.m., Wednesday at the office of the Purchasing Manager, 7th floor City Hall, 2 Civic Center Plaza, 7th Floor, El Paso Texas 79901.

- **LEAD TIME:** The period of time between when the contractor receives the order and the agency receives the goods/services.

- **LEASE OF EQUIPMENT:** A contract granting use of equipment or other fixed assets for a specified time in exchange for payment. Title remains with the vendor.

- **LEASE PURCHASE:** An installment sale which gives the lessee the right to purchase the equipment at an agreed upon price under certain conditions. Title passes from seller to purchaser if and at the time the option to purchase is exercised.

- **LETTER OF AWARD:** Letter of notification announcing award of the contract to bidder. May be used in lieu of issuing a Purchase Order to awarded vendor.

- **LIFE-CYCLE COSTING:** A procurement technique which considers operating, maintenance, acquisition price, and other costs of ownership in the award of contracts to ensure that the item acquired will result in the lowest total ownership cost during the time the item's function is required.

- **LOCAL GOVERNMENT:** A county, municipality, school district, junior college district, other special district, or other legally constituted political subdivision of the state.

- **LOW BID/HARD BID:** Awarded on the basis of price. Award must be made to the lowest, responsive, responsible Bidder.

- **LOWEST (RESPONSIVE AND) RESPONSIBLE BIDDER:** The bidder submitting the lowest initial price and capable of performing the proposed contract; or the bidder who submits the most advantageous bid, price and other factors considered, according to the criteria ser forth in the solicitation.

- **MANUFACTURER'S PRICE LIST:** A price list published in some form by the manufacturer and available to and recognized by the trade. The term does not include a price list prepared especially for a given bid.

- **MINOR TECHNICALITY:** A requirement in bid or proposal which, if waived or modified by the city when evaluating bids, would not give a bidder an unfair advantage over other bidders or result in a material change in the contract.

- **MONTH-TO-MONTH:** If a formal contract expires without a new one already in place but the need for the service/supply still exists, that contract can be used up to six months beyond the expiration date or until a new contract is in place, whichever occurs first. This does not mean that a Purchase Order needs to be issued each month in order to continue using the vendor's services- a single additional Purchase Order for more than one month will suffice.

- **MULTIPLE AWARD CONTRACT PROCEDURE:** A purchasing procedure by which the City may make awards to multiple vendors based on the most advantageous combination of base bids, alternate bids, options, or individual bid items in the best interest of the city.

- **NEGOTIATED PROCUREMENT:** A solicitation in which it is not advantageous to set forth all the actual, detailed requirements at the time of solicitation and responses are subject to negotiation. Price must be a factor in the award but not the sole factor.

- **NON RESIDENT BIDDER:** A bidder whose principal place of business is not in Texas, but does not include a bidder whose majority owner or parent company has its principal place of business in Texas.

- **NOTICE OF AWARD:** A letter signed by the Purchasing Manager, his designee or the analyst managing the contract which notified the vendor or vendors of award. The award letter is prepared after El Paso city council has made a motion to award and the letter may contain or precede the issuance of a purchase order.

- **OEM:** Original equipment manufacturer.

- **OFFER:** A bid or proposal by one party to another which is intended of itself to create legal relations on acceptance by the party to whom it is made.

- **ONE TIME PURCHASE:** Type of solicitation used for the purchase of capital items on a "one-time" basis (example: purchase of a forklift or other equipment). Purchases of equipment may include installation and/or setup.

- **OPTION TO EXTEND:** A contract clause that allows the city to reinstate the contract for an additional 1, 2, or 3 year term.

- **PAYMENT BOND:** A corporate surety bond from a company authorized to do business in the state of Texas and U.S. Treasury Certified if the contract amount is over $100,000.00. Payment bonds are supplied by a successful bidder/offeror to protect material suppliers and subcontractors who have a contractual relationship with the prime contractor or a subcontractor to supply public work labor or material on a city project. Acceptable bonds must be provided by a corporate surety licensed to do business in the state of Texas and United States treasury certified if the amount of the

public work contract is $100,000.00 or above. Subcontractors and Suppliers have a defined time limit in which they can make a claim through the project payment bond.

- **PERFORMANCE BOND:** A corporate surety bond from a company authorized to do business in the state of Texas and U.S. Treasury Certified if the contract amount is over $100,000.00. Performance bonds are supplied by a successful bidder to protect the city against loss due to the bidders/offeror's inability to complete the contract as agreed.

- **PERFORMANCE SPECIFICATION:** A specification setting out performance requirements that have been determined to be necessary for the item involved to perform and last as required.

- **PLANHOLDER'S LIST(Construction):** A list of contractors, suppliers, plan rooms, and city staff ,generated for each bid, that have checked out a set of construction plans and specifications. These lists are used as the mailing list for each project when it is necessary to issue an amendment to a construction project and also to verify receipt and return of deposit checks.

- **PRE-BID CONFERENCE:** A meeting scheduled in a solicitation for the purpose of providing clarification as needed. Substantive questions raised at a pre-bid conference are answered in writing and may modify the solicitation via an amendment. In all cases the Pre-Bid Conference must be advertised as non-mandatory.

- **PRINCIPAL PLACE OF BUSINESS:** A permanent business office located in Texas from which a bid is submitted and from which business activities are conducted other than submitting bids to governmental agencies, where at least one employee works for the business entity submitting bids.

- **PROCUREMENT CARD:** City term contract credit card program designed as a payment method to streamline small dollar purchases.

- **PROFESSIONAL SERVICES:** Services that use skills that are predominately mental or intellectual, rather than physical or manual such as accounting, architecture, land surveying, medicine, optometry, professional engineering, etc.

- **PROPRIETARY:** Products or services manufactured or offered under exclusive right of ownership, including rights under patent, copyright or trade secret law. A product or service is proprietary if it has a distinctive feature or characteristic which is not shared or provided by competing or similar products or services.

- **PROTEST PROCEDURES:** Procedures for resolving vendor protests relating to purchasing issues.

- **PUBLIC BID OPENING:** The opening of bids at the time and place advertised in the invitation to bid, in the presence of anyone who wishes to attend. Bids and competitive sealed proposals are read aloud. For RFPs only the bidders name and location are read aloud.

- **PURCHASING FUNCTIONS:** Review of specifications, receipt and processing of requisitions, advertising for bids, evaluation of bids, award of contracts. The term does not include payment request review, invoice, audit, or contract administrative functions.

- **RECYCLED MATERIAL CONTENT:** The portion of a product made with recycled materials consisting of pre-consumer materials (waste), post-consumer materials (waste), or both.

- **RECYCLED MATERIALS:** Materials, goods, or products that contain recyclable material, industrial waste, or hazardous waste that may be used in place of raw or virgin materials in manufacturing a new product.

- **RECYCLED PRODUCT:** A product that meets the requirements of recycled material content as prescribed by the rules established by the Texas Natural Resource Conservation Commission in consultation with the Comptroller of Public Accounts.

- **REMANUFACTURED PRODUCT:** A product that has been repaired, rebuilt, or otherwise restored to meet or exceed the original equipment manufacturer's (OEM) performance specifications; provided, however, the warranty period for a remanufactured product may differ from the OEM warranty period.

- **RENT:** Payment for the use of property.

- **REQUEST FOR INFORMATION (RFI):** To be used when the purchaser cannot clearly identify product requirements/specification.

- **REQUEST FOR OFFER (RFO):** To be used in the catalogue purchasing program by contacting at least three vendors fro offers or quotations of prices.

- **REQUEST FOR PROPOSAL (RFP):** A solicitation requesting submittal of a proposal in response to the required scope of services that usually includes some form of a cost proposal. Utilized only for high technology procurement, purchase of insurance, and highly specialized services.

- **REQUEST FOR QUALIFICATIONS (RFQ):** Used for procuring Professional and Consulting Services. These services are provided by a person who is licensed or registered (examples: CPA, Architect, Physician, Professional Engineer, Real Estate Appraiser, Registered Nurse). Providers of professional services may not be selected on the basis of competitive bids, but must be selected on the basis of demonstrated

competence and qualifications. Note: Architect and Engineering Services are handled by Engineering Department.

- **REQUEST FOR QUOTATION:** To be used in the catalogue purchasing program by contacting at least three vendors for a price quotation. The document generally used for seeking competition on small purchases or on any purchase lower than the amount that requires competitive sealed bidding.

- **REQUIREMENTS BID:** Also known as "materials or supplies" bid. Used for annual requirements that exceed $50,000 in value. Purchaser commits to place all of its requirements for a particular item or service with the awarded contractor for a specified term.

- **REQUISITION:** An internal document by which the User Department requests the Purchasing Division to initiate a procurement.

- **RESPONSIBLE BIDDER:** A business entity which has the capability in all respects to fully perform the contract requirements and whose integrity and reliability will assure good faith performance. Factors considered in evaluating responsibility may include: financial resources, past performance, delivery capability, experience, organization, personnel, technical skills, operations controls, equipment, and facilities.

- **RESPONSIVE BIDDER:** A business entity Determined by the Purchasing Division to be in substantial conformance with the specifications, delivery requirements and conditions prescribed in a solicitation, free of material mistake or errors.

- **SALVAGE VALUE:** The estimated value of a property when the user completes their use of the property.

- **SEALED BIDS:** A bid which has been submitted in a sealed envelop to prevent its contents being revealed or known before the deadline for the submission of all bids; usually required by law or rule on major procurements, to enhance fair competition.

- **SERVICE:** The furnishing of skilled or unskilled labor or professional work but does not include professional services covered by the Professional & Consulting Services Act (defined in Chapter 2254 of the Texas Government Code), or an employee of a ordering entity, and services of public utilities.

- **SERVICES BIDS:** These types of bids include, but are not limited to, janitorial services, security guard services, armored car services, repair services, rental/lease services.

- **SET-ASIDE CONTRACT:** Term often used when referring to Texas Industry for the Blind & Handicapped (TIBH) catalogue and contracts.

- **SOLE SOURCE PROCUREMENT:** An award for a commodity or service to the only known capable supplier, occasioned by the unique nature of the requirement, the supplier, or market conditions.

- **SOLICITATION:** A process of notifying prospective bidders or offerors that the city wishes to receive bids/offers for furnishing goods or services via the invitation for bids, request for competitive sealed proposals, or request for proposal (RFP).

- **SPECIFICATION:** A description of what the purchaser seeks to buy, and consequently, what a bidder or proposer must be responsive to in order to be considered for award of a contract. A specification may be a description of the physical or functional characteristics, or the nature of, a supply or service. It may include a description of any requirements for inspecting, testing, or preparing a supply or service item for delivery.

- **STANDARD:** The established and fixed measure used in assessing quality or performance.

- **STANDING ORDER:** Similar to a blanket order except is has specified quantities and specified delivery dates.

- **TERMINATION:** Action under a purchase order or contract that directs the cancellation, either in whole or in part, of any work or performance remaining to be done. This may be for the convenience of the purchasing organization, or more commonly because of the default of the performing organization.

- **TERMS & CONDITIONS:** The provisions specifying the nature of a contract.

- **TEXAS COUNCIL FOR PURCHASING FROM PEOPLE WITH DISABILITIES:** Approving body authorizing products and services to be included in the TIBH catalogue/contracts.

- **TEXAS LOCAL GOVERNMENT CODE:** The State statutes governing the operation of local governments within the state of Texas. Local Government Code Chapters 252 and 271 government procurement by municipal governments.

- **TEXAS RESIDENT BIDDER:** A bidder with its principal place of business in Texas, including a bidder whose majority owner or parent company has its principal place of business in Texas.

- **TITLE:** Ownership.

- **TOTAL EXPENDITURES ON PRODUCTS WITH RECYCLED MATERIAL CONTENT, REMANUFACTURED PRODUCTS, AND ENVIRONMENTALLY SENSITIVE PRODUCTS:** The total direct acquisition costs (vendor selling price plus delivery costs) of all such products.

- **UNIFORM COMMERCIAL CODE (UCC), ARTICLE 1:** A codification of law which clarifies and regulates the rights and obligations of buyer and sellers engaging in commercial transactions. It has been adopted by all states except Louisiana.

- **UNIT PRICE:** The price of a selected unit of a good or service, e.g., price per ton, per labor hour, or per foot.

- **VENDOR:** A supplier of goods or services to the City.

- **WRITTEN DATA:** Data which is expressly required to be submitted in writing. A bid that expressly requires the submission of written data with the bid includes a statement where bidders may be found non-responsive to the solicitation if they fail to submit the required documents.

Source: City of Austin, TX Standard Purchasing Definitions: [www.ci.austin.tx.us/purchase/downloads/rfq0100.pdf]
Source: State of Texas Procurement Manual:[http://www.window.state.tx.us/procurement/pub/manual/]
Source: State of Oklahoma Glossary of Purchasing Terms:[http://www.doc.state.ok.us/Offtech/120103ac.pdf]
Source: UC Berkley "Glossary of Key Purchasing Terms": [http://businessservices.berkeley.edu/HtmFiles/ ProcureGlossary.htm]
Source: State of Kansas: [http://www.da.ks.gov/PURCH/ GlossaryOfProcurementTerms.doc]
Source: Excluded Parties List System (EPLS): ***https://www.epls.gov/***

50.0 Purchasing Forms

Following are some standard forms that are used in the Purchasing process. The master copy of each form is retained in the Purchasing Division Office, 7th Floor of City Hall.

1. Department RCA Form
2. RCA Form, Termination of Contract
3. RCA Form, Assignment
4. Vendor Indebtedness Verification Inquiry Form
5. Committee Score Sheet
6. Rater Score Sheet
7. Committee Recommendation and Certification Form
8. Best Value Procurement Evaluation Instructions for Purchasing
9. Project Form Requirements
10. Project Form Requirements, City Manager
11. Project Form One-Time
12. Project Form One-Time, City Manager
13. Project Form Cooperative Purchase
14. Project Form Contract Extension
15. Solicitation Amendment
16. Bid Invitation
17. Vendor Mailing Label Template
18. Technology Purchase Request Form
19. Vendor Information Form
20. Business Information Certification
21. Non-Collusion and Business Disclosure Affidavit
22. Indebtedness Affidavit
23. Vendor Performance Form
24. Fax Cover Sheet
25. Sole Source Affidavit
26. Resolution, Termination of Contract
27. Resolution, Assignment

28. Department Cooperative Purchase Memo ("5 factor memo")
29. Vendor Letter, Termination of Contract
30. Vendor Letter, Exceeded Expenditures
31. Vendor Letter, Award (One-Time)
32. Vendor Letter, Award (Requirements, Best Value)
33. Vendor Letter, Contract Extension
34. Vendor Letter, Notice to Stop Services
35. Vendor Letter, Notification to Extend Contract Month-to-Month
36. Vendor Letter, Cure Letter
37. Vendor Letter, Violation of Cone of Silence
38. W-9 Request for Taxpayer Identification Number & Certification

51.0 Other Purchasing Manuals

There are several other manuals available as resources that are posted in P:\Ed\Manuals\. They include:

1. Completing Formal Solicitations
2. Guidelines for Informal Purchases
3. Instructions for Researching Contract Expenditures

CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT:

AGENDA DATE:

CONTACT PERSON/PHONE:

DISTRICT(S) AFFECTED:

SUBJECT:
APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include $ amount if applicable.

BACKGROUND / DISCUSSION:
Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

PRIOR COUNCIL ACTION:
Has the Council previously considered this item or a closely related one?

AMOUNT AND SOURCE OF FUNDING:
How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

Department:
Amount:
Funds Available:
Funds Source:

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A.

********************REQUIRED AUTHORIZATION**********************

DEPARTMENT HEAD: _____
(If Department Head Summary Form is initiated by Purchasing, client department should also sign)

Information copy to appropriate Deputy City Manager

CITY OF EL PASO, TEXAS
REQUEST FOR COUNCIL ACTION (RCA)

DEPARTMENT: GENERAL SERVICES

AGENDA DATE: MARCH 11, 2008

CONTACT PERSON/PHONE: JEFF BELLES, 621-YYYY
TERRENCE FREIBURG, PURCHASING MANAGER: 541-4313

DISTRICT(S) AFFECTED: All

SUBJECT: APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include $ amount if applicable.

Termination for convenience of 2007-XXX (Contract Name).

BACKGROUND / DISCUSSION: Discussion of the what, why, where, when, and how, to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

On January 24, 2008 (Vendor) was notified that the above referenced contract had exceeded the amount originally approved by City Council and that it was to be rebid. The recommendation for award of the new bid (2008-XXX) will be submitted concurrently with this termination for convenience RCA.

PRIOR COUNCIL ACTION: Has the Council previously considered this item or a closely related one?

N/A.

AMOUNT AND SOURCE OF FUNDING: How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

No change to funding.

*********************REQUIRED AUTHORIZATION**********************

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

CITY OF EL PASO, TEXAS
REQUEST FOR COUNCIL ACTION (RCA)

DEPARTMENT: GENERAL SERVICES

AGENDA DATE: MARCH 11, 2008

CONTACT PERSON/PHONE: JEFF BELLES: 621-YYYY
TERRENCE FREIBURG, PURCHASING MANAGER: 541-4313

DISTRICT(S) AFFECTED: All

SUBJECT: APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include $ amount if applicable.

That the City Manager be authorized to sign a Consent to Assignment of the contract by and between the City of El Paso (Vendor) ("Assignor") and (Vendor Assignee) ("Assignee") with respect to the City of El Paso Contract No. 2007-XXX.

BACKGROUND / DISCUSSION: Discussion of the what, why, where, when, and how, to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

On or after August 14, 2007, the City entered into Contract No. 2007-XXX with (Vendor) was purchased by (Vendor Assignee) Assignee agrees to assume and perform all duties, obligations and responsibilities under Contract No. 2007-XXX.

PRIOR COUNCIL ACTION: Has the Council previously considered this item or a closely related one?

Common Council action when vendor changes ownership/name and agrees to assume and perform all duties, obligations and responsibilities of a contract.

AMOUNT AND SOURCE OF FUNDING: How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

No change to funding

**********************REQUIRED AUTHORIZATION**********************

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

INDEBTEDNESS VERIFICATION FORM

Financial Services Department – Purchasing Division

THIS IS AN OFFICIAL PURCHASING DOCUMENT – RETAIN IN CONTRACT FILE

Contracting Entity's Name: _____ Business Owner's name, or designee: _____

Business Address/City/State/Zip Code: _____

Solicitation Title and Solicitation Number: _____

For Internal Use Only (to be completed only if Bidder is the proposed candidate for award):

TAX OFFICE	FINANCIAL SERVICES	DEVELOPMENTAL SERVICES
Is the proposed Bidder indebted to the City for any amount? ☐ Yes ☐ No	Is the proposed Bidder indebted to the City for any amount? ☐ Yes ☐ No	Is the proposed Bidder indebted to the City for any amount? ☐ Yes ☐ No
☐ Delinquent Property Taxes $_____ not under appeal w/CAD $_____ under appeal w/CAD	☐ Delinquent Hotel/Motel Occupancy Taxes" $_____	☐ Delinquent License Fees $_____ ☐ Delinquent Permit Fees $_____ ☐ Delinquent Penalty Fees $_____
☐ Insufficient Funds Check(s) $_____	☐ Insufficient Funds Check(s) $_____	
☐ Other (specify type) $_____	☐ Other (specify type) $_____	☐ Other (specify type) $_____
Signature of Department Representative verifying information: _____ Signature _____ Phone	Signature of Department Representative verifying information: _____ Signature _____ Phone	Signature of Department Representative verifying information: _____ Signature _____ Phone

FOR PURCHASING USE ONLY

If any amount is due, proposed candidate notified by: PA: _____ Date:_____	Certified Mail No:

Please return to the Purchasing Division, ATTN: or call x within 24 hours to facilitate the Award of the Solicitation referenced above.

COMMITTEE SCORE SHEET

SOLICITATION NO: 201X-XXX

SOLICITATION TITLE: PRODUCT NAME
DEPARTMENT NAME

	Bidder #1 Location	**Bidder #2** Location	**Bidder #3** Location	**Bidder #4** Location
Cost 70 points (As submitted on bid)	$xxx,xxx	$xxx,xxx	$xxx,xxx	$xxx,xxx
Reputation and Quality of Bidder's Service 15 points				
Employee Medical Benefits and Incentives 10 points				
Past Relationship/Performance with the City 5 points				
GRAND TOTAL **100 points** (100 points/percent max)				

RATER SCORE SHEET

SOLICITATION NO: 201X-XXX

SOLICITATION TITLE: PRODUCT NAME
DEPARTMENT NAME

	Bidder #1 Location	**Bidder #2** Location	**Bidder #3** Location	**Bidder #4** Location
Cost 70 points (As submitted on bid)	$xxx,xxx	$xxx,xxx	$xxx,xxx	$xxx,xxx
Reputation and Quality of Bidder's Service 15 points				
Employee Medical Benefits and Incentives 10 points				
Past Relationship/Performance with the City 5 points				
GRAND TOTAL **100 points** (100 points/percent max)				

COMMITTEE RECOMMENDATION & CERTIFICATION

The evaluation of offers for 201X-XXX PRODUCT NAME has been completed.

The offeror, _____, has received the highest score of _____ points.

It is therefore determined that this offeror provides the best value for this solicitation.

The initial estimated amount of the award will be $_____ per year for _____ years.

I, _____, of _____
Print Name Department

_____
Sign Name

I, _____, of _____
Print Name Department

_____
Sign Name

I, _____, of _____
Print Name Department

_____
Sign Name

I, _____, of _____
Print Name Department

_____
Sign Name

I, _____, of _____
Print Name Department

_____
Sign Name

concur with this certification on this the _____ day of _____, 20____.

Best Value Procurement Evaluation Instruction for Purchasing

BEST VALUE PROCUREMENT EVALUATION PACKAGE

In accordance with the new Purchasing Manual and in the interest of standardizing procedures, effective immediately, the attached files, making up a "package", shall be forwarded to user departments for evaluation of all Best Value bids and Requests for Proposals.

The package contains the following documents:

1. Purchasing Procedures/General Evaluation Instructions for BVP Bids and RFPs: This serves to standardize procedures and to instruct user departments on evaluating these types of bids.

2. Evaluation Rating Definitions: Provides instructions on scoring method.

3. Raters Score Sheet: This form is to be used by the individual committee members when evaluating each offer. Procurement Analyst, prior to sending to user department, must (1) input solicitation name and number; (2) input offeror names; (3) input criteria (as stated in solicitation) and maximum points assigned for each; (4) input the price for each offer and calculate the points for each offer based on the appropriate points assigned for cost/price. Add additional rows in table, as necessary, to accommodate all criteria.

4. Committee Score Sheet: This form is to be used for aggregating the total points accrued for each offer. This comes from the Committee as a whole and is based on the individual score sheets. Again, the Procurement Analyst must complete Steps 1 through 4 above prior to forwarding to the department for evaluation.

5. Committee Recommendation and Certification: Once evaluation is completed, the Committee completes this form recommending the successful offeror. Each Committee member must sign indicating their concurrence. This completed form is included in the agenda backup. The RCA form is also required.

Additional copies of score sheets can be made as needed, depending on the number of committee members and/or number of offers received. When the evaluation documents are returned to Purchasing by the user department, the Procurement Analyst must verify scores and calculations prior to placing on Council/MTB agenda for award.

Procurement Analysts should attend the committee meeting to administer the initial instructions to the committee on the evaluation process and, if necessary, oversee the proceedings (not participate) for contracts over $1M (as required or requested by the user department). Procurement Analysts should further make themselves available to assist and instruct departments for all other evaluation processes.

Please refer to the Purchasing Manual, Sections 7.5 (Best Value Procurement) and 7.6 (Request for Proposals) for further information.

PROJECT FORM

DATE: January 1, 2010

PROJECT: Product Name
SOLICITATION NO: 201X-XXX
DEPARTMENT: Department Name
BUDGET NO: Dept # - Acct # - Fund # - Grant/Project #
FUNDING SOURCE: Account Name
REPRESENTATIVE DISTRICT(S): All
****

RECOMMENDATION: Vendor: Vendor Name
Vendor Location
Item: All
Amount: $150,000.00 estimated annual expenditures

The General Services and Financial Services Departments recommend award to the lowest responsive, responsible Bidder {Bidder offering the best value to the City} {sole Bidder as indicated} {that the lowest bidder be disqualified as non-responsible and the contract be awarded as indicated to the lowest responsive, responsible bidder}.

This is a thirty-six (36) month requirements type contract for Product Name. Vendor offers the City the option to extend the term of the contract at the same unit price for an additional one (1) year period if the option is exercised prior to the expiration of the original term of the contract {No option to extend the contract is offered}. A 1.5%10N30 payment discount is offered {No prompt payment discount is offered}.

The cost under this requirements contract is only an estimated minimum value. The actual cost of this contract may be higher or lower than the total estimated minimum value and will be the sum total at the end of the contract term, so long as increased funds are appropriated in the budget.

BIDS SOLICITED: 1 (1 local)
BIDS RECEIVED: 1
"NO BID" RECEIVED: 1

TOTAL RECOMMENDED AWARD: $450,000.00
Estimated Total 3 yr Expenditures

****

COUNCIL APPROVED ☐ REJECTED ☐ MUNICIPAL CLERK _____
****

APPROVED: COUNCIL MEETING DATE: January 1, 2010

_____
Terrence Freiburg
Purchasing Manager
Financial Services Department, Purchasing Division

PROJECT FORM

DATE: January 1, 2010

PROJECT: Product Name
SOLICITATION NO: 201X-XXX
DEPARTMENT: Department Name
BUDGET NO: Dept # - Acct # - Fund # - Grant/Project #
FUNDING SOURCE: Account Name
REPRESENTATIVE DISTRICT(S): All
****

RECOMMENDATION: Vendor: Vendor Name
Vendor Location
Item: All
Amount: $150,000.00 estimated annual expenditures

The General Services and Financial Services Departments recommend award to the lowest responsive, responsible Bidder {Bidder offering the best value to the City} {sole Bidder as indicated} {that the lowest bidder be disqualified as non-responsible and the contract be awarded as indicated to the lowest responsive, responsible bidder}.

This is a thirty-six (36) month requirements type contract for Product Name. Vendor offers the City the option to extend the term of the contract at the same unit price for an additional one (1) year period if the option is exercised prior to the expiration of the original term of the contract {No option to extend the contract is offered}. A 1.5%10N30 payment discount is offered {No prompt payment discount is offered}.

The cost under this requirements contract is only an estimated minimum value. The actual cost of this contract may be higher or lower than the total estimated minimum value and will be the sum total at the end of the contract term, so long as increased funds are appropriated in the budget.

BIDS SOLICITED: 1 (1 local)
BIDS RECEIVED: 1
"NO BID" RECEIVED: 1

TOTAL RECOMMENDED AWARD: $450,000.00
Estimated Total 3 yr Expenditures

****

DOES NOT REQUIRE COUNCIL APPROVAL AS PER ORDINANCE CHANGE

****

APPROVED:

_____
Reviewed by Analyst Name
Analyst Title

_____
Terrence Freiburg
Purchasing Manager
Financial Services Department, Purchasing Division

_____
Joyce Wilson
City Manager

_____
Date

_____
Date

PROJECT FORM

DATE: January 1, 2010

PROJECT: Product Name
SOLICITATION NO: 201X-XXX
DEPARTMENT: Department Name
BUDGET NO: Dept # - Acct # - Fund # - Grant/Project #
FUNDING SOURCE: Account Name
REPRESENTATIVE DISTRICT(S): All
****

RECOMMENDATION: Vendor: Vendor Name
Vendor Location
Item: All
Amount: $150,000.00

The General Services and Financial Services Departments recommend award to the lowest responsive, responsible Bidder {Bidder offering the best value to the City} {sole Bidder as indicated} {that the lowest bidder be disqualified as non-responsible and the contract be awarded as indicated to the lowest responsive, responsible bidder}.

This is a fixed-price, single (one-time) purchase type contract for Product Name. Vendor offers the City the option to purchase 100% of the original purchase at the same unit price if the option is exercised within 90 and 180 days from date of award of the contract {No option to purchase additional quantities is offered}. A 1.5%10N30 payment discount is offered {No prompt payment discount is offered}.

BIDS SOLICITED: 1 (1 local)
BIDS RECEIVED: 1
"NO BID" RECEIVED: 1

TOTAL RECOMMENDED AWARD: $150,000.00
One-Time Purchase Amount

****

COUNCIL APPROVED ☐ REJECTED ☐ MUNICIPAL CLERK _____
****

APPROVED: COUNCIL MEETING DATE: January 1, 2010

_____
Terrence Freiburg
Purchasing Manager
Financial Services Department, Purchasing Division

PROJECT FORM

DATE: January 1, 2010

PROJECT: Product Name
SOLICITATION NO: 201X-XXX
DEPARTMENT: Department Name
BUDGET NO: Dept # - Acct # - Fund # - Grant/Project #
FUNDING SOURCE: Account Name
REPRESENTATIVE DISTRICT(S): All
****

RECOMMENDATION: Vendor: Vendor Name
Vendor Location
Item: All
Amount: $150,000.00

The General Services and Financial Services Departments recommend award to the lowest responsive, responsible Bidder {Bidder offering the best value to the City} {sole Bidder as indicated} {that the lowest bidder be disqualified as non-responsible and the contract be awarded as indicated to the lowest responsive, responsible bidder}.

This is a fixed-price, single (one-time) purchase type contract for Product Name. Vendor offers the City the option to purchase 100% of the original purchase at the same unit price if the option is exercised within 90 and 180 days from date of award of the contract {No option to purchase additional quantities is offered}. A 1.5%10N30 payment discount is offered {No prompt payment discount is offered}.

BIDS SOLICITED: 1 (1 local)
BIDS RECEIVED: 1
"NO BID" RECEIVED: 1

TOTAL RECOMMENDED AWARD: $150,000.00
One-Time Purchase Amount

****
DOES NOT REQUIRE COUNCIL APPROVAL AS PER ORDINANCE CHANGE
****

APPROVED:

_____
Reviewed by Analyst Name
Analyst Title

_____
Terrence Freiburg
Purchasing Manager
Financial Services Department, Purchasing Division

_____
Joyce Wilson
City Manager

_____
Date

_____
Date

PROJECT FORM

FINANCIAL SERVICES DEPARTMENT, PURCHASING DIVISION

DATE: January 1, 2010

TO: Municipal Clerk

FROM: Terrence Freiburg — Analyst Name
Purchasing Manager, ext. 4313 — Analyst Title, ext. NNNN

Please place the following item on the **CONSENT** Agenda for the Council Meeting of Tuesday, **January 1, 2010.**

Item should read as follows:

Request that the Purchasing Manager of Financial Services, Purchasing Division, be authorized to issue a Purchase Order to (Vendor) under TXMAS State Contract 7-261020-59 (Tires for Passenger, Trucks, and Bus, and Retread Services) for specialty and oversize tires. Total estimated expenditures are $45,000.00.

The participation by the City of El Paso in the Texas Procurement and Support Services (TPASS), State Contracts Program was approved by Mayor and City Council on February 27, 2007.

Department:	Department Name
Estimated Amount:	$45,000.00
Funds Available in:	Dept # - Acct # - Fund # - Grant/Project #
Funds Source:	Account Name
District (s):	All

Municipal Clerk's Use — ITEM NO. _____

PROJECT FORM

FINANCIAL SERVICES DEPARTMENT, PURCHASING DIVISION

DATE: January 1, 2010

TO: Municipal Clerk

FROM: Terrence Freiburg — Analyst Name
Purchasing Manager, ext. 4313 — Analyst Title, ext. NNNN

Please place the following item on the **CONSENT** Agenda for the Council Meeting of Tuesday, **January 1, 2010.**

Item should read as follows:

Request that the Purchasing Manager of Financial Services, Purchasing Division, be authorized to exercise the City's option to extend current Contract 201X-XXX Product Name with (Vendor) for one (1) additional year(s) pursuant to the provisions of an award approved by the City Council {City Manager} on December 20, 2006. Contract period will be from January 8, 2010 to January 7, 2011.

Department:	Department Name
Option:	One [of One]
Estimated Amount:	$15,000.00 (Total for one (1) year extension)
Funds Available in:	Dept # - Acct # - Fund # - Grant/Project #
Funds Source:	Account Name
District (s):	All

Municipal Clerk's Use — ITEM NO. _____

AMENDMENT OF SOLICITATION

1. AMENDMENT:	2. EFFECTIVE DATE:	3. SOLICITATION:
A00___	**11/04/2009**	**201X-XXX PRODUCT NAME**

4. ISSUED BY:

FINANCIAL SERVICES / PURCHASING DIVISION
CITY OF EL PASO
2 CIVIC CENTER PLAZA
EL PASO, TEXAS 79901-1196
http://www.ci.el-paso.tx.us/financial_services/bids.asp

5. BID DUE DATE:

The hour and date specified for receipt of offers ☒ **is extended** ☒ **is not extended**.

ORIGINAL BID DUE DATE: **11/11/2009 at 2:00pm Mountain Standard Time**.

6. DESCRIPTION OF AMENDMENT:

A. The due date for submissions has been extended until **NOVEMBER 18, 2009** at 2pm MST.

B. Delete and insert the following revised page: Section A, Page 3-R[1].

C. Answers to vendor questions:

Q1: Blah blah blah.

A1: Blah blah blah.

Q2: Blah blah blah.

A2: Blah blah blah.

ALL AMENDMENTS MUST BE ACKNOWLEDGED ON THE "SOLICITATION OF OFFERS" COVER PAGE. FAILURE TO DO SO MAY BE CAUSE FOR REJECTION OF OFFER.
EXCEPT AS PROVIDED HEREIN, ALL TERMS AND CONDITIONS OF THE DOCUMENT REFERENCED IN ITEM 3, AS HERETOFORE CHANGED, REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.

7. CITY OF EL PASO AUTHORIZATION:

TERRENCE FREIBURG, PURCHASING MANAGER

BY /s/ _____
ANALYST NAME, ANALYST TITLE

CITY OF EL PASO
INVITATION FOR BIDS

PRODUCT NAME

DEPARTMENT NAME

Sealed bids will be received by the City of El Paso until **2:00 P.M., WEDNESDAY, MONTH X, 2009**, and then publicly opened and read for furnishing the City with PRODUCT NAME for the DEPARTMENT NAME. **SOLICITATION NO: 201X-XXX**

Use the following accounts:

Advertising:

Postage:

Printing:

☐ **This is a Best Value Procurement.**

☐ **When bonding is required:**
Offeror shall furnish a cashier's check or a bid bond.

DEPARTMENT: DEPARTMENT NAME
CONTACT: DEPARTMENT CONTACT

ADDITIONAL COPIES TO: N/A

TYPE OF CONTRACT: SERVICES ☐
SUPPLIES ☐
ONE-TIME ☐
RFP/RFQ ☐

ADVERTISED IN THE EL PASO TIMES ON:
TUESDAY, MONTH DD, 2009 AND TUESDAY, MONTH DD, 2009

Vendor Mailing Label Template

Technology Purchase Request

Complete this form and forward to Information Technology Department - Attention the Information Technology Director.

Department: ENTER DEPT. NAME **Division:**

Point of Contact: NAME OF CONTACT **Telephone #:**
Fax #:

Describe in detail the Equipment/Software/Services to be purchased:

Detail the intended use of the equipment/software/services described above:

Is the intended use: ☐ **New Service/Activity** ☐ **Enhancement** ☐ **Replacement**

Estimated cost of the equipment/software/services described above: $0.00

Request Information Services to research costs: check here ☐
(Information Services will research equipment/software/services based on your description of intended use.)

Quantify the benefit that will be derived through the purchase of the described equipment/software/services. The requesting department should make every effort to fully document and quantify the benefits such as, new/ enhanced delivery of service(s), FTE reduction, generate revenue, streamline processes, etc, in hard numbers.
Type justification/benefit description here

Funding: ENTER DEPT. ID; FUND; ACCOUNT; PROJECT

Date Submitted: ENTER DATE

☐ Approved ☐ Disapproved _____
Department Head

Date Approved: _____

☐ Approved ☐ Disapproved _____
CIO & IT Director
Information Technology Department

CITY OF EL PASO PURCHASING DEPARTMENT
VENDOR INFORMATION FORM

This form must be accompanied by an IRS Form W-9 and Conflict of Interest Questionnaire.

___ Add ___ Update ___ Inactivate ___ Vendor ___ Contractual Employee ___ City of El Paso Employee

Send To: Suky Flores, Sr. Office Asst. – Purchasing Telephone #: 915-541-4179 Fax #: 915-541-4347

From: Name:_____ City Department:_____ Tel. #_____

VENDOR SALES ADDRESS: If same as W-9 check box ☐

Company Name: _____

Street:_____

City:_____State_____Zip Code_____

Contact Name & Title:_____

Telephone # (_____) _____ Fax # (_____) _____

E-Mail Address:_____ Web Page:_____

VENDOR STATUS:

(Yes ___) (No ___) Small business concern (Less than $1,000,000.00 Annual Receipts or 100 employees.)

(Yes ___) (No ___) Disadvantage business concern (At least 51% owned by one or more socially disadvantaged individuals; or, a publicly-owned business at least 51% of the stock owned by one or more of such individuals.) If your company is certified please send us a photo copy. We must have an updated copy of the certificate on file. DBEs include (Please mark one:)

(___) Black Americans (____) Hispanic Americans

(___) Native Americans (____) Asian-Pacific Americans

(Yes ___) (No ___) Woman-owned business (At least 51% owned by a woman or women who also control and operate it. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day-to-day management.)

(Yes ___) No ___) Handicapped (At least 51% owned by a person or persons with an orthopedic, hearing, mental or visual impairment which substantially limits one of more of his/hers/their major life activities.)

(Yes ___) No ___) Local business enterprise (At least 51% of which is owned by a resident or residents of El Paso County and the principal place of business is in El Paso County.)

(Yes ___) No ___) Hub (Historically Underutilized Business) If your company is certified please send us a photo copy. We need to have an updated copy of the certificate on file.

CITY OF EL PASO EMPLOYEES (IRS-Withholding not required for the following items)

___Pension ___Refund ___Mileage ___Reimbursement ___Settlement ___Travel Request __Tuition Reimbursement

CONTRACTUAL EMPLOYEES OR VENDORS

- Based on W-9, Individual/Sole Proprietor or Partnership are marked as withholding. Corporation is not marked as withholding.
- Vendors for Rent, Medical Services, Attorney Fees are **always** marked as withholding, even if they are a Corporation

IRS-Withholding required information – Mark one of the following which applies to the type of payment that will be made to the vendor: (Incomplete forms will be returned to requester),

___ Wages (Withholding / Default Class 7)

___ Goods (No Withholding / No Default Class)

___ Settlement / Attorney Proceeds (Withholding / Default Class 14)

___ Medical & Healthcare (Withholding / Default Class 6)

___ Garnishment Vendor (No Withholding / No Default Class)

___ Juror (No Withholding / No Default Class)

___ Services (Withholding / Default Class 7)

___ Rental Property (Withholding / Default Class 1)

___ Stipend (No Withholding / No Default Class)

___ Corporation (No Withholding/ No Default Class)

SECTION D
FORMS

BUSINESS INFORMATION CERTIFICATION

Mark all that apply.

- ☐ Manufacturer or Producer
- ☐ Wholesaler
- ☐ Retailer
- ☐ Franchised Distributor
- ☐ Factory Representative
- ☐ Other_____
- ☐ Large Business
- ☐ Small Business

- ☐ Disadvantaged Business Enterprise
- ☐ Asian - Pacific American
- ☐ Black American
- ☐ Hispanic American
- ☐ Native American
- ☐ Woman Owned Business
- ☐ Handicapped
- ☐ Local Business Enterprise
- ☐ HUB State Certified Historically Underutilized Business (please furnish copy of Certification)

SMALL BUSINESS CONCERN: Less than $1,000,000.00 in annual receipts or fewer than one hundred [100] full time employees.

DISADVANTAGED BUSINESS ENTERPRISE: At least fifty-one percent [51%] owned by one or more socially disadvantaged individuals, or a publicly held corporation with at least fifty-one percent [51%] of the stock owned by one or more such individuals.

WOMAN-OWNED BUSINESS: At least fifty-one percent [51%] owned by a woman, or women, who also control and operate the business. "Control" in this context means making policy decisions. "Operate" in this context means actively carrying on day to day management

HANDICAPPED: At least fifty-one percent [51%] owned by a person or persons with an orthopedic, otic [hearing], optic [visual], or mental impairment which substantially limits one or more of their major life activities.

LOCAL BUSINESS ENTERPRISE: A legal entity, a least fifty-one percent [51%] of which is owned by a resident, or residents of El Paso County, and which concern has been physically located within the legal boundaries of El Paso county for at least twelve [12] months.

HUB [HISTORICALLY UNDERUTILIZED BUSINESS]: A Business Enterprise, which has been granted a Certificate by the State of Texas, as a Historically Underutilized Business. The City of El Paso utilizes information on Historically Underutilized Businesses (HUB), from the State of Texas Comptroller of Public Accounts (CPA), HUB Program, 1711 San Jacinto Ave, P.O. Box 13186, Austin, Texas 78711. The City encourages you to contact the State if you feel you may qualify.

I certify that the foregoing information is a full, true and correct statement of the facts.

_____
Signature of Person Authorized to Sign Application

_____
Title Date

BIDDER'S [COMPANY] NAME _____

City Of El Paso
Financial Services Department – Purchasing Division

NON-COLLUSION AND BUSINESS DISCLOSURE AFFIDAVIT

THIS IS AN OFFICIAL PURCHASING DOCUMENT – RETAIN WITH PURCHASE ORDER FILE

Before me, the undersigned official, on this day, personally appeared _____, a person known to me to be the person whose signature appears below; whom after being duly sworn upon his/her oath deposed and said:

1. I am over the age of 18, have never been convicted of a crime and am competent to make this affidavit.

2. I am a duly authorized representative of the following company or firm (the "Bidder") which is submitting a response to *201X-XXX PRODUCT NAME - DEPARTMENT NAME*:

   _____ (Name of Bidder).

3. **BY SUBMITTING THIS BID, I CERTIFY THAT BIDDER AND ITS AGENTS, OFFICERS OR EMPLOYERS HAVE NOT DIRECTLY OR INDIRECTLY ENTERED INTO ANY AGREEMENTS, PARTICIPATED IN ANY COLLUSION, OR OTHERWISE TAKEN ANY ACTION IN RESTRAINT OF FREE COMPETITIVE BIDDING IN CONNECTION WITH THIS PROPOSAL OR WITH ANY CITY OFFICIAL.**

4. I have listed in ***Paragraph 10*** below all the names the Bidder uses and has used in the past and certify that I have disclosed all such names, including any assumed (DBA) names.

5. **Certificate of Organization.** In completing this Affidavit, I have attached a copy of the organization certificate issued by the Secretary of State of the state in which the company was organized (i.e. Certificate of Formation, Certificate of Good Standing, Statement of Operation or Registration and/or a copy of Assumed Name Certificate if the bidder/proposer used a trade name in the Solicitation documents is other than the name under which company was organized).

6. **Material Change in Organization or Operation**. ***Except as described in Paragraph 10 below***, I certify that Bidder is not currently engaged nor does it anticipate that it will engage in any negotiation or activity that will result in the merger, transfer of organization, management reorganization or departure of key personnel within the next twelve (12) months that may affect the Bidder's ability to carry out the contract with the City of El Paso.

7. **Debarment/Suspension**. ***Except as described in Paragraph 10 below,*** I certify that Bidder and its subcontractors, officers or agents are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any covered transactions by any federal, state or local department or agency. If such an event has occurred, state in ***Paragraph 10*** below, the reason for or the circumstances surrounding the debarment or suspension, including but, not limited to, the name of the governmental entity, the period of time for such debarment or suspension and provide the name and current phone number of a governmental contact person familiar with the debarment or suspension.

   I understand the Bidder is obligated to immediately inform the City in the event that the Bidder is included in such a debarment/suspension list during the performance of this Contract with the City of El Paso.

8. **Default/Termination of Contracts**. ***Except as described in Paragraph 10 below***, I certify that, within the last 24 months, there are no Contract(s) between the Bidder and a governmental entity that have been terminated, with or without the Bidder's default. If such a contract has been terminated within the last 24 months, state in ***Paragraph 10*** below the reason for or circumstances surrounding the termination.

9. **Taxpayer Identification.** In completing this Affidavit, I have also attached a copy of a completed Form W-9 that shows the Bidder's taxpayer identification number (Employer Identification Number or Social Security Number). I understand that failure to provide this information may require the City to withhold 20% of payments due under the contract and pay that amount directly to the IRS.

10. Additional Information (state the number of paragraph above which corresponds to the information provided)

_____

_____

_____

_____

_____

_____

_____

_____

_____

(Attach additional pages if needed)

Attached are the following:

Certificate of Organization (required by ***Paragraph 5***)
Taxpayer Identification (required by ***Paragraph 9***)

I understand that by providing false information on this Affidavit, I could be found guilty of a Class A misdemeanor or state jail felony under the Texas Penal Code, Section 37l10. In addition, by providing false information on this Affidavit, the Bidder it could be considered not responsible on this and future solicitations, and such determination could result in the discontinuation of any/all business or contracts with the Bidder by the City of El Paso.

_____
Signature

SUBSCRIBED AND SWORN to before me on this _____ day of _____, 20_____.

_____
Notary Public

_____
Printed Name

_____
Commission Expires

City Of El Paso
Financial Services Department – Purchasing Division

INDEBTEDNESS AFFIDAVIT

THIS IS AN OFFICIAL PURCHASING DOCUMENT – RETAIN WITH PURCHASE ORDER FILE

Before me, the undersigned authority, on this day personally appeared _____ [FULL NAME] (hereafter "***Affiant***"), a person known to me to be the person whose signature appears below, whom after being duly sworn upon his/her oath deposed stated as follows:

1. Affiant is authorized and competent to give this affidavit and has personal knowledge of the facts and matters herein stated.

2. Affiant is an authorized representative of the following company or firm: _____ [*Contracting Entity's Corporate or Legal Name*] (hereafter, "***Contracting Entity***").

3. Affiant is submitting this affidavit in response to the following bid: *Solicitation No. 201X-XXX PRODUCT NAME - DEPARTMENT NAME*, which is expected to be in an amount that exceeds $50,000.00.

4. Contracting Entity is organized as a business entity as noted below (check box as applicable):

For Profit Entity (select below):

☐ Sole Proprietorship
☐ Corporation
☐ Partnership
☐ Limited Partnership
☐ Joint Venture
☐ Limited Liability Company
☐ Other (Specify type in space provided below):

_____

For Non-Profit Entity or Other (select below):

☐ Non-Profit Corporation
☐ Unincorporated Association

5. The information shown below is true and correct for the Contracting Entity. If Contracting Entity is a sole proprietorship or partnership, list all owners of 5% or more of the Contracting Entity. Where the Contracting Entity is an unincorporated association, the required information has been shown for each officer. [Note: In all cases, use FULL name, business and residence addresses and telephone numbers.]

Contracting Entity:

Name	
Business Address [No./Street]	
City/State/Zip Code	
Telephone Number	
Resident Address (if applicable)	
City/State/Zip Code	
Telephone Number	
Federal Tax ID Number	
Texas Sales Tax Number	

5% Owner(s) or Officers of Unincorporated Association ** (If none, state "None"):

Name	
Business Address [No./Street]	
City/State/Zip Code	
Telephone Number	
Resident Address (if applicable)	
City/State/Zip Code	
Telephone Number	

**Attach additional pages if necessary to supply the required names and addresses.

6. Affiant understands that in accordance with Ordinance No. 016529 of the City of El Paso (the "***City***"), the City may refuse to award a contract to or enter into a transaction with Contracting Entity that is an apparent low bidder or successful proposer that is indebted to the City.

7. Affiant understands that the term "***Debt***" shall mean any sum of money, which is owed to the City by a Contracting Entity, Owner, or Vendor, that exceeds one hundred dollars ($100.00) and that has become Delinquent, as defined hereinafter. Such Debt shall include but not be limited to: (i) property taxes; (ii) hotel/motel occupancy taxes; and (iii) license and permit fees.

8. Affiant understands that the term "***Delinquent***" shall mean any unpaid Debt that is past due for sixty (60) days or more and, which is not currently subject to challenge, protest, or appeal.

9. Affiant represents that to the best of its knowledge, the Contracting Entity is not indebted to the City in any amounts as described in Item No. 7 above, as of the date of the submittal. If the Contracting Entity is indebted to the City, the following represents the type and estimated amount of indebtedness:

_____

_____

10. If the Contracting Entity is indebted to the City, describe any payment arrangements that have been entered into to settle the Debt.

_____

_____

11. In the event that the City refuses to do business with a Contracting Entity due to any indebtedness listed above or as determined by the City Financial Services Department, the Contracting Agency may appeal this determination in accordance with the appeal regulations in Ordinance 016529.

Affiant certifies that he is duly authorized to submit the above information on behalf of the Contracting Entity, that Affiant is associated with the Contracting Entity in the capacity noted above and has personal knowledge of the accuracy of the information provided herein; and that the information provided herein is true and correct to the best of Affiant's knowledge and belief. Affiant understands that providing false information on this form shall be grounds for debarment and discontinuation of any/all business with the City of El Paso.

_____
Signature

SUBSCRIBED AND SWORN to before me on this _____ day of _____, 20_____.

_____
Notary Public

_____
Printed Name

_____
Commission Expires

(Rev. Sept. 2009)

City of El Paso

Vendor Performance Form – Electronic Version

City Department Instructions: Complete this form to report exceptional or unsatisfactory vendor performance. Send completed form to your buyer or procurement analyst. If additional space is needed please for any of the fields below please include separate sheet(s) and backup documents as necessary.

City Department Information

Department Submitting Report: _____ Contact Person: _____

Telephone #: _____ Fax #: _____

PO No./Contract #: _____ City Council Authorization Date: _____

Vendor Information

Vendor Name:	Vendor Address:
Brief description of commodity/service provided:	

Vendor Performance Issues

Delivery Issues:

- ☐ Late Delivery
- ☐ 1st written notice issued for late delivery
- ☐ 2nd written notice issued for late
- ☐ Failure to identify shipments per contract terms
- ☐ Short/over weight or count
- ☐ Vendor shipped incorrect merchandise
- ☐ Failure to pick up damaged goods/incorrect shipment
- ☐ Failure to deliver
- ☐ Delivery made at wrong destination
- ☐ Other:_____

Performance Issues:

- ☐ Service not performed within specifications
- ☐ Incorrect invoices
- ☐ Poor product performance
- ☐ Failure to properly notify City concerning manufacturer discontinuation of an item
- ☐ Repair parts not available
- ☐ Failure to meet specifications (list details in comments box)
- ☐ Poor customer service (give details in comments box)

Performance Issues(cont.):

- ☐ Unauthorized substitution
- ☐ Failure to comply with terms/conditions of contract
- ☐ Falsification of / fraudulent submittals
- ☐ Failure to respond to emergencies as required (give details in comments box
- ☐ Failure to respond to phone call, letter or e-mail
- ☐ Poor product quality
- ☐ Other: _____

Comments:

Please comment on the above issues further, explain steps taken at Department level to resolve the problem, and the vendors response:

☐ Issue resolved ☐ Issue pending resolution ☐ unable to resolve issue

Name and Title of person initiating Form:

Approving Supervisor(If Necessary):	Date:

FAX

CITY OF EL PASO
FINANCIAL SERVICES -
PURCHASING DIVISION

To:

Company:

Fax:

Date:

Pages: {Including this page} **2**

Phone:

___ Urgent ___ Review ___ Please Comment ___ **Please** Reply

SUBJECT: **Solicitation**

Dear Mr. XXX ,

You requested I send you any additional information regarding this bid. I have made additional inquiries with the original department requesting the Sodium Bicarbonate sample size and their answer is attached here. The information is also available on the web site.

If you need anything else feel free to contact me.

Analyst Name
Analyst Title, City of El Paso
(915) 541-NNNN fax) (915) 541-4347
analyst_email@elpasotexas.gov

FINANCIAL SERVICES
PURCHASING DIVISION
SOLE SOURCE AFFIDAVIT

THIS IS AN OFFICIAL PURCHASING DOCUMENT – RETAIN WITH PURCHASE ORDER FILE

Before me, the undersigned official, on this day, personally appeared _____, a person known to me to be the person whose signature appears below; whom after being duly sworn upon his/her oath deposed and said:

My name is _____. I am over the age of 18, have never been convicted of a crime and am competent to make this affidavit.

I am an authorized representative of the following company or firm: _____.

The above named company or firm is the sole source for the following item(s), product(s) or service(s):
_____
_____

Competition in providing the above named item(s) product(s), service(s) is precluded by the existence of a patent, copyright, secret process or monopoly as stated under Section 252.022, Subchapter A of the Local Governmental Code 7A or as provided for under 7B-F of the same section. Also, attached hereto is a sole source letter, which sets forth the reasons why this Vendor is a sole source provider (dated and signed).

There is/are no other like item(s) or product(s) available for purchase that would serve the same purpose or function.

Note: This Vendor understands that by providing false information on this Sole Source Affidavit, it may be considered a non-responsible Vendor on this and future purchases and may result in discontinuation of any/all business with the City of El Paso.

_____
Signature

SUBSCRIBED AND SWORN to before me on this _____ day of _____, _____.

_____
NOTARY PUBLIC

_____
PRINTED NAME

_____
MY COMMISSION EXPIRES

COMPANY NAME: _____
ADDRESS, CITY, STATE & ZIP CODE _____
PHONE: _____ FAX NUMBER: _____
CONTACT NAME AND TITLE: _____
WEB ADDRESS: _____ EMAIL: _____
FEDERAL TAX ID NUMBER: _____TEXAS SALES TAX NUMBER: _____

R E S O L U T I O N

WHEREAS, the City awarded Contract No. 2007-XXX to (Vendor) on May 18, 2002 for (Contract Name); and

WHEREAS, the City Council terminates said Contract for convenience pursuant to the provisions of the Contract; and

WHEREAS, pursuant to Section C, Clause 8A of the Contract (Termination for Convenience), the City is authorized to terminate the Contract for convenience.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Purchasing Manager is authorized to notify (Vendor) that the City is terminating Contract No. 2002-XXX for convenience pursuant to the provisions and requirements of Section C, Clause 8A of the Contract Clauses and that the termination shall be effective as of March 2, 2004.

PASSED AND APPROVED this _____ day of _____, 2008.

THE CITY OF EL PASO

_____
John Cook
Mayor

ATTEST:

_____
Richarda D. Momsen
Municipal Clerk

APPROVED AS TO FORM:

_____
Bertha A. Ontiveros
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Terrence Freiburg
Purchasing Manager, Financial Services

R E S O L U T I O N

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the City Manager be authorized to sign Consent to Assignment of the contract by and between the CITY OF EL PASO, (Vendor) ("Assignor") and (Vendor Assignee) ("Assignee") with respect to the City of El Paso Contract No. 2007-XXX.

PASSED AND ADOPTED this _____ day of _____, 2008.

THE CITY OF EL PASO

_____
John Cook
Mayor

ATTEST:

_____
Richarda D. Momsen
Municipal Clerk

APPROVED AS TO FORM:

_____
Bertha A. Ontiveros
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Terrence Freiburg
Purchasing Manager, Financial Services

STATE OF TEXAS)
)
COUNTY OF EL PASO)

CONSENT TO ASSIGNMENT

This Consent to Assignment is executed this _____ day of _____, 2008, by and between the City of El Paso (the "City"), (Vendor) ("Assignor") and (Vendor Assignee) ("Assignee").

WHEREAS, on or after August 14, 2007, the City entered into Contract No. 2007-XXX (the "Contract") with Assignor and fully incorporated herein by reference;

WHEREAS, pursuant to the Contract, the Assignor was to provide (Services) to the City;

WHEREAS, after entering into the Contract, the assets of Assignor were sold to Assignee;

WHEREAS, the Contract provides that it is not assignable without the consent of the City;

WHEREAS, Assignor has requested that the City approve an assignment of the Contract to Assignee;

WHEREAS, Assignee has agreed to be responsible for all duties and obligations under the Contract; and

WHEREAS, the City agrees to the assignment of all rights, duties and obligations encompassed in the Contract to Assignee.

NOW, THEREFORE, IT IS HEREBY AGREED as follows:

1. The City consents to the assignment of the rights, duties and obligations under Contract No. 2007-XXX to Assignee.
2. Assignee agrees to assume and perform all duties, obligations and responsibilities under Contract 2007-XXX.
3. All terms and conditions of Contract No. 2007-XXX shall remain in full force and effect.

4. **Assignee agrees to indemnify, defend and hold harmless the City from and against any and all claims, demands, causes of action, court costs, expenses, and attorney's fees which are connected with or arise from the assignment of this Contract or the City's acceptance and recognition of the assignment of Contract No. 2007-XXX.**

EXECUTED this the_____ day of _____, 2008.

THE CITY OF EL PASO

_____
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

_____
Bertha A. Ontiveros
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Terrence Freiburg
Purchasing Manager, Financial Services

ASSIGNOR:
(Vendor Name)

_____

NAME PRINTED: _____

TITLE: _____

ASSIGNEE:
(Vendor Name)

_____

NAME PRINTED: _____

TITLE: _____

Dedicated to Outstanding Customer Service for a Better Community

S E R V I C E S O L U T I O N S S U C C E S S

MAY 14, 2009

To: Terrence Freiburg, Purchasing Manager
Analyst Name, Analyst Title

From: General Services Director

Signature: _____

Re: TIRES FOR PASSENGER, TRUCKS, AND BUS, AND RETREAD SERVICES

The General Services Department recommends utilizing TXMAS State contract, to issue a $45,000 purchase order to (Vendor) for passenger vehicles, trucks, and bus, and retread services for the General Services Department, Fleet Division. This is an addition to a purchase order that was issued to (Vendor) under State Contract in the amount of $95,000. Total expenditures are $140,000. The following are the factors used to evaluate the use of this procurement program as the best approach:

1. *Is there an urgent need for the product/service? In other words, is time of the essence?*

Yes. The city currently does not have a tire provider on contract that could accommodate the fleet.

2. *Does the purchase through the Program promote the standardization of equipment?*

Yes. The city needs to continue to maintain the same sizes and brands currently used as they have proven to be of high quality and most importantly safe. The continued use of the contract would continue to promote these features as well as maintaining consistency.

3. *Does the purchase through the Program support local business? If not, is there a comparable product/service available locally?*

Yes, local business is being supported. (Vendor) is a local business located at (Vendor's Address)

4. *Do the available vendors have prior work experience and/or familiarity with the City?*

Yes. (Vendor) has been providing (product) to the City of El Paso since 9/11/2007, and a reliable vendor meeting the city's needs in a timely manner.

5. *Is the pricing reasonable as compared to other similar products/work performed for the City of El Paso in the past or as quoted from other companies?*

Price reasonableness has been established because the cooperative purchasing agency used a competitive bidding process in the awarding of the contract.

The participation by the City of El Paso in the Texas Procurement and Support Services, State Contracts Program was approved by Mayor and City Council on February 27, 2007.

Mayor
John F. Cook

City Council

District 1
Ann Morgan Lilly

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City Manager
Joyce A. Wilson

Dedicated to Outstanding Customer Service for a Better Community

S E R V I C E S O L U T I O N S S U C C E S S

October 27, 2010

Vendor Name
Attn: Owner/Manager
XYZ Address Line
El Paso, TX 79915

RE: Solicitation 201X-XXX Product Name

Dear Owner/Manager,

This letter is to inform you that Solicitation 201X-XXX Product Name with XYZ Company was terminated for default {for convenience} by City Council on January 1, 2010.

If you have any questions or concerns, please feel free to contact me.

Sincerely,

Analyst Name
Analyst Title, Purchasing Division
(915) 541-NNNN analyst email@elpasotexas.gov

cc:
Bid File

Mayor
John F. Cook

City Council

District 1
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S E R V I C E S O L U T I O N S S U C C E S S

FEBRUARY 11, 2009

Vendor Name
Address
City, State, Zip Code

RE: SOLICITATION 2007-XXX (Contract Name)

Dear Owner/Manager,

The above referenced contract has exceeded the original amount approved by City Council and subsequently must be re-bid. The City, therefore, is initiating a new bid to accommodate this purchase and/or service as soon as possible. We appreciate your service and support of the current contract and invite you to participate in the new solicitation.

The recommendation for award of the new bid and the termination for convenience of the existing bid will be made in unison by City Council at a later date. Until that time the City intends to continue utilizing this Contract for these services.

If you have any questions, please contact the Purchasing Office.

Sincerely,

Analyst Name
Procurement Analyst

cc:
Bid File

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S E R V I C E S O L U T I O N S S U C C E S S

November 21, 2009

Vendor Name
Attn: Owner/Manager
XYZ Address Line
El Paso, TX 79915

RE: Notice of Award - Solicitation 201X-XXX Product Name

Dear Owner/Manager,

The City of El Paso has accepted your offer in response to our Solicitation number 201X-XXX for Product Name. Accordingly, on January 15, 2009, the City Council approved the award of this Contract 201X-XXX for all items, as listed in the solicitation schedule, to (Vendor) for a total award value of $150,000.00. This is a one-time purchase with an option to purchase 100% of the original purchase amount at the same unit price if the option is exercised within 180 days after date of award. Initial funding is provided by the enclosed Purchase Order No. 201XXXXXXX {Funding will be provided with a forthcoming Purchase Order issued by this office}.

Delivery shall be made within ninety (90) consecutive days after receipt of Purchase Order.

The contract, comprised of the solicitation, your offer and the Purchase Order(s), constitutes a final and complete repository of the agreements between (Vendor) and the City of El Paso. It supersedes all prior or contemporaneous communications, representations, or agreements, whether oral or written, relating to the subject matter of this contract. Modifications to this Contract shall not be binding unless made in writing and signed by an authorized representative of each party.

I will be the Contract Administrator for this Contract and I can be reached at (915) 541-NNNN or fax (915) 541-4347. I will assist you with any questions you may have and will assure that the terms of the Contract are met. Any correspondence regarding this Contract should be sent to my attention. The City of El Paso looks forward to working with you on this Contract.

Sincerely,

Analyst Name
Analyst Title, Purchasing Division
(915) 541-NNNN analyst email@elpasotexas.gov

cc: Bid File

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S E R V I C E S O L U T I O N S S U C C E S S

November 21, 2009

Vendor Name
Attn: Owner/Manager
XYZ Address Line
El Paso, TX 79915

RE: Notice of Award - Solicitation 201X-XXX Product Name

Dear Owner/Manager,

The City of El Paso has accepted your offer in response to our Solicitation number 201X-XXX for Product Name. Accordingly, on January 15, 2009, the City Council {City Manager} approved the award of this Contract 201X-XXX for all items, as listed in the solicitation schedule, to Vendor Name for a total award estimated value of $150,000.00. This is a two year contract with an option to extend for two (2) additional years if the option is exercised prior to the expiration of the original term {with no option to extend the term of contract}. Initial funding is provided by the enclosed Purchase Order No. 201XXXXXXX {Funding will be provided with forthcoming Purchase Orders issued by this office}.

The initial period of performance is from January 31, 2009 through January 30, 2011.

The contract, comprised of the solicitation, your offer and the Purchase Order(s), constitutes a final and complete repository of the agreements between (Vendor) and the City of El Paso. It supersedes all prior or contemporaneous communications, representations, or agreements, whether oral or written, relating to the subject matter of this contract. Modifications to this Contract shall not be binding unless made in writing and signed by an authorized representative of each party.

I will be the Contract Administrator for this Contract and I can be reached at (915) 541-NNNN or fax (915) 541-4347. I will assist you with any questions you may have and will ensure that the terms of the Contract are met. Any correspondence regarding this Contract should be sent to my attention. The City of El Paso looks forward to working with you on this Contract.

Sincerely,

Analyst Name
Analyst Title, Purchasing Division
(915) 541-NNNN analyst email@elpasotexas.gov

cc: Bid File

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S E R V I C E S O L U T I O N S S U C C E S S

November 21, 2009

Vendor Name
Attn: Owner/Manager
XYZ Address Line
El Paso, TX 79915

RE: Notice of Contract Extension - Solicitation 201X-XXX Product Name

Dear Owner/Manager,

The City of El Paso has exercised its option to extend the above mention contract for one (1) additional year. The continued period of performance is from January 8, 2010 through January 7, 2011. Funding will continue to be provided with Purchase Orders issued by this office.

I will be the Contract Administrator for this Contract and I can be reached at (915) 541-NNNN or fax (915) 541-4347. I will assist you with any questions you may have and will ensure that the terms of the Contract are met. Any correspondence regarding this Contract should be sent to my attention. The City of El Paso looks forward to continuing to work with you on this Contract.

Sincerely,

Analyst Name
Analyst Title, Purchasing Division
(915) 541-NNNN analyst email@elpasotexas.gov

cc: Bid File

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S E R V I C E S O L U T I O N S S U C C E S S

October 27, 2010

Vendor Name
Attn: Owner/Manager
XYZ Address Line
El Paso, TX 79915

RE: Notice to Stop Services - Solicitation 201X-XXX Product Name

Dear Owner/Manager,

This letter is to formally acknowledge that services rendered under Solicitation 201X-XXX Product Name will no longer be needed by your company starting Saturday, November 1, 2009. The last day that services will be required is as normally scheduled on Friday, October 30, 2009.

The City of El Paso appreciates your company's services to-date and invites you to participate in future solicitations.

If you have any questions or concerns, please feel free to contact me.

Sincerely,

Analyst Name
Analyst Title, Purchasing Division
(915) 541-NNNN analyst email@elpasotexas.gov

cc: Bid File

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S E R V I C E S O L U T I O N S S U C C E S S

July 7, 2008

Vendor Name
Address
City, State, Zip Code

RE: EXTENSION OF CONTRACT 2008-XXX PRODUCT NAME

Dear Sir,

This is to notify you that 2008-XXX expired on April 26, 2008. The City of El Paso hereby requests that you extend the contract on a month-to-month basis until the new bid is awarded.

For your convenience, you may complete the form at the bottom of this letter and return it either via facsimile to 915-541-4347 to my attention or via email to analyst email@elpasotexas.gov. Please respond as soon as possible.

Feel free to call me at 915-541-4315 if you have any questions or require additional information. Thank you for your cooperation and attention to this matter.

Sincerely,

Analyst Name
Analyst Title, Purchasing Division
(915) 541-NNNN analyst email@elpasotexas.gov

****

I, _____, _____, of _____,
Name *Title* *Company Name*

agree to extend the term of Contract 2005-XXX on a month to month basis until the new bid is awarded.

Please check yes or no below:

YES ☐ **NO** ☐

_____
Signature

Mayor
John F. Cook

City Council

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S E R V I C E S O L U T I O N S S U C C E S S

DECEMBER 7, 2009

Vendor Name
Address
City, State, Zip Code

REF: CONTRACT 2009-XXX (Contract Name)

Dear Sir,

(Vendor) was awarded a three-year Contract 2009-XXX on (Date) and has a current purchase order 201000XXXX. On December 4, 2009, (Department) has informed the City of El Paso, Purchasing Department, that (Vendor) is not meeting the delivery time within twenty-four (24) consecutive hours under Contract 1006-XXX. According to Fleet Division, they are still waiting on delivery for twenty-five (25) tires. These tires were ordered on (Date).

The City of El Paso hereby gives (Vendor) official notice to correct the above referenced non-compliance issue and to provide a letter to my attention no later than the end of working day, Tuesday, December 15, 2009, as to how (Vendor) plans to address the above referenced issue and comply with the contract. If we are not in receipt of your response within the allotted time, then the City will have no other recourse but to terminate contract #2009-XXX for non-compliance of the stated terms and conditions of the contract and cancel purchase order 201000XXXX.

Sincerely,

XXX
Procurement Analyst

cc: Bid File

ENCLOSURE
CERTIFIED MAIL/RETURN RECEIPT REQUESTED:

Mayor
John F. Cook

City Council

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S E R V I C E S O L U T I O N S S U C C E S S

July 13, 2007

Vendor Name
Address
City, State, Zip Code

Dear Owner/Manager,

This is in response to your letter referencing Solicitation No. 2007-XXX Westside Park Improvement and your effort to have various park equipment that you represent, be accepted as an equal for bidding purposes. The letter was addressed to XX and XXX of the Engineering Department and distributed to various Council members, City Manager, and several City staff members including myself. Thank you for notifying the Engineering and Purchasing Departments of your intent to participate in this solicitation.

I would like to make you aware of the Cone of Silence policy that accompanies all solicitations. "Cone of Silence" begins after each solicitation is advertised and ends when a written recommendation is placed on the City Council Agenda. Any communications that occurs during this time must be limited to the Purchasing Department or the Contract Administrator identified in each solicitation. The policy prohibits any communications, in part, to potential vendors, bidders, consultants, the City's Professional staff (except as mentioned above), the Mayor, Council Representatives or their respective staff and members of the respective selection committee.

I understand that it was not your intent to violate this policy but you did inadvertently violate it. Any future communications referencing this bid should be limited to either the Engineering or Purchasing Departments as defined above or as stated in the solicitation. Any further communications as outlined above would be a violation of the policy and would render your participation in this solicitation voidable.

If you have questions, please call me at (915) 541-XXXX.

Sincerely,

Terrence Freiburg
Purchasing Manager
City of El Paso

Cc:

Mayor
John F. Cook

City Council

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Form **W-9**
(Rev. October 2007)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give form to the requester. Do not send to the IRS.

Print or type
See **Specific Instructions** on page 2.

Name (as shown on your income tax return)

Business name, if different from above

Check appropriate box: ☐ Individual/Sole proprietor ☐ Corporation ☐ Partnership
☐ Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶
☐ Other (see instructions) ▶

☐ Exempt payee

Address (number, street, and apt. or suite no.)

Requester's name and address (optional)

City, state, and ZIP code

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

or

Employer identification number

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here **Signature of U.S. person ▶** **Date ▶**

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),

2. Certify that you are not subject to backup withholding, or

3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,