



**PROCUREMENT
POLICY AND PROCEDURES**

Approved by:



City Manager



Date

Table of Contents

CHAPTER 1 ~ GENERAL PROVISIONS.....	4
§1-101 Purpose.....	4
§1-102 Public Procurement.....	5
§1-103 Mission.....	6
§1-104 Function and Responsibilities.....	6
§1-105 Principles.....	8
§1-106 Code of Ethics.....	8
§1-107 Conduct When Dealing with Vendors.....	10
§1-108 Conflict of Interest.....	11
§1-109 Procurement Records and Information.....	12
CHAPTER 2 ~ ADMINISTRATIVE MATTERS.....	13
§2-101 Applicability.....	13
§2-102 Signatory Authorities and Approval Thresholds.....	13
§2-103 Department Representative(s).....	16
§2-104 Processes.....	17
§2-105 Non Competitive Bid Items.....	20
§2-106 Change Orders.....	22
§2-107 Historically Underutilized Business (HUB).....	24
§2-108 Small Business Program.....	25
§2-109 Certificate of Interested Parties (Form 1295) Effective January 1, 2016.....	25
§2-110 Tax Exempt Status.....	25
§2-111 Confidential Information.....	25
CHAPTER 3 ~ SOURCE SELECTION.....	26
§3-101 Methods of Source Selection.....	26
§3-102 Competitive Sealed Bidding (Request for Bid).....	27
§3-103 Competitive Sealed Proposals or Request for Proposal.....	31
§3-104 Construction Related Procurements.....	32
§3-105 Purchases Less than \$ 50,000.....	35
§3-106 Cooperative Procurements.....	35
§3-107 Separate, Sequential or Component Purchases.....	36
§3-108 Finality of Determinations.....	37
§3-109 Bid Protests.....	37
§3-110 Reporting of Anticompetitive Practices.....	38
§3-111 Retention of Procurement Records.....	38
§3-112 Federal Excluded Party Verification-All Funds.....	38

§3-113 Non-Compliant Purchases.....	38
§3-114 IT (Information Technology) Related Purchases.....	39
CHAPTER 4 ~ SPECIFICATIONS AND AMENDMENTS	40
§4-101 Specification Preparation	40
§4-102 Specifications Prepared by Other Than City Personnel.....	40
§4-103 Specification Amendments.....	40
§4-104 Pre-Bid Conferences and Site Visits.....	41
CHAPTER 5 ~ LEGAL REQUIREMENTS	42
§5-101 Insurance	42
§5-102 Prompt Payment Act	44
§5-103 Public Works Bonding Requirements	44
CHAPTER 6 ~ CONTRACT ADMINISTRATION, MODIFICATION AND TERMINATION	53
§6-101 Multi-Year Contracts.....	53
§6-102 Definition	53
Professional Services.....	54
§6-103 Competitive Sealed Qualifications	54
§6-104. Initiation of Contract	56
§6-105 Monitoring and Contractor Report Cards	56
§6-106 Renewals	57
§6-106 Change Orders.....	58
§6-107 Terminations	58
§6-108 Maintenance Agreements	59
§6-109 Lease Agreements	59
§6-110 Contract Review and Approval	59
CHAPTER 7 ~ SURPLUS MATERIALS AND EQUIPMENT	60
§7-101 City-Owned Materials and Equipment	60
GLOSSARY OF TERMS	62
Attachment A. SOLE/SINGLE SOURCE FORM.....	67
Attachment B. CERTIFICATION OF EMERGENCY PURCHASE FORM	68
 EXHIBITS	
A – Check Request Form	
B – Conflict of Interest Form	
C – Surplus Property Disposition Form	

CHAPTER 1 ~ GENERAL PROVISIONS

§1-101 Purpose

The City of Hutto, Texas (City) Procurement Division presents this manual to promote understanding by employees, vendors, contractors, and the public regarding the procurement of goods and/or services on behalf of the City.

The public must have confidence that public funds are spent prudently, on its behalf, and not for the personal benefit of City employees, officials, or their friends. The deliberate elements of actual or perceived conflict of interest, fraud and abuse can be destructive to the public trust. The policies and procedures incorporated within should:

- Provide a combined centralized and decentralized procurement program encompassing nationally approved principles and practices.
- Be reviewed, thoughtfully and regularly, to ensure the utility of procurement statutes and for periodic modifications for improvements that will enhance the efficiency and effectiveness of the procurement function.
- Promote and encourage ethical management and efficiency in City procurement procedures.

The purpose of this manual is to establish policies and procedures that will be used to:

- Simplify, clarify and modernize the City of Hutto's procurement practices.
- Ensure the application of consistent and sound business practices in City purchasing and demonstrate ongoing commitment to increasing communication among the departments.
- Bolster public confidence in public procurement procedures.
- Ensure the fair and equitable treatment of all persons dealing with the City procurement system.
- Foster effective broad-based competition within the free enterprise system.
- Provide increased economy in City procurement activities.
- Maximize the procurement value of City funds.
- Safeguard the high quality and integrity of the procurement system.
- Ensure that expenditure of public funds (including federal and state funds) complies with the terms and conditions of the funding source. If federal or state requirements conflict with provisions of this manual, nothing in the manual shall prevent the City from complying with the terms and conditions of the federal or state requirements.

Because the City buys diverse services and commodities to support its operation, it uses a combined centralized and decentralized procurement system. These policies set forth the following elements of a centralized/decentralized procurement function:

Centralized. These policies are to be followed by anyone who has the authority to act as an agent of the City in the procurement of all goods and services regardless of the dollar value. This authority lies within the Procurement Division.

Decentralized. These policies are for the benefit of City personnel responsible for the procurement of goods and services for their departments.

This manual is strictly a policy and procedural 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.

§1-101.1 City Manager Role

The ultimate responsibility for all purchases for the City of Hutto is held by the City Manager. The City Manager shall establish the rules and regulations for the purchase and procurement of all goods and services, which shall be followed by all City employees.

The City Manager possesses the sole authority for any deviation from purchasing regulations. If improper purchasing practices or discretion may happen to appear, the City Manager may invoke disciplinary actions upon the individual, division, and/or department. Disciplinary action may be in the form of restricted purchasing privileges, restitution, suspension, termination, or any other action deemed appropriate by the City Manager.

§1-101.2 City Charter's Override Provision

The policies, procedures and practices contained in this manual should not be read to conflict with the City of Hutto 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. (TX. Code.252.002)

§1-102 Public Procurement

Procurement in the public sector is the process through which a government acquires goods and services. The terms "procurement" and "purchasing" are often used interchangeably. However, "purchasing" is only one of three stages of the procurement cycle.

1. Planning and scheduling. Procurement activities to meet program and budgetary objectives;

2. Source selection. (Purchasing) The process through which solicitations are issued, advertisements run, vendors selected, and goods and services received and;
3. Contract administration. Enforcement of the terms of the purchase agreement or contract and payment of invoices.

One of the most important standards of public procurement to remember is that each procurement action results in a legal contract between the City and the supplier. Each procurement action is a legal action. Public procurement activities are governed by common law, the Uniform Commercial Code (UCC) for goods, government procurement laws, ordinances and case law.

§1-103 Mission

The Procurement Division's mission is to assist all City departments in the procurement of materials, supplies, equipment and services at the lowest possible cost, consistent with the quality and delivery required. All purchases by an employee, acting as an agent of the City, must be made in an open, fair and ethical manner to promote competition and best serve the taxpayers.

§1-104 Function and Responsibilities

A. The Procurement Division

Under the general supervision of the Procurement Manager, some of the functions and responsibilities of the Procurement Division are as follows:

- 1) To observe and enforce the procedures outlined and adopted in the City of Hutto Procurement Manual, City Ordinances, City Charter and State Law.
- 2) To operate the Procurement Division in such a manner that vendors:
 - a. Will be aware of the fairness of all awards
 - b. Will be encouraged to continually furnish competitive bids so the City shall secure the best goods and services of the right quality and the best price.
- 3) To encourage competitive bidding at all times while maintaining good vendor relations. To solicit new vendors, specifically vendors, and do all things possible to encourage maximum participation.
- 4) To assist department directors in their efforts to purchase all supplies, materials and contractual services for the City.
- 5) To explore the possibilities of consolidating purchases of like, when possible, or common items to obtain the maximum economic benefits.
- 6) To assist in the preparation of specifications, where practical, for various items.
 - a. However, when it is proposed to purchase articles of technical or scientific nature for special use, the head of the requisitioning department shall submit recommended specifications.

- 7) To provide for the inspection and appropriate testing for goods delivered, although this responsibility may be delegated to the head of the using department, in order to insure that inferior or unsatisfactory articles are rejected or returned.
- 8) To monitor contract timelines in order to assure timely bids and contract renewals.
- 9) To maintain a record of all bids, quotations and purchases.
- 10) To investigate violations of the purchasing policies and regulations.
- 11) To arrange for the disposal of surplus/scrap materials and equipment, including obsolete stock and scrap, as outlined by this manual.
- 12) To manage the City's relations with vendors, in particular, those who have disputes and/or are disbarred.

B. Using Departments

The Procurement Division shall continuously familiarize itself with the particular requirements of the other City departments and be receptive to suggestions or comments. The using departments can assist the Procurement Division in complying with state and local laws and regulations by:

- Planning their work so that "Rush Orders" and "Emergencies" will be held to a minimum. Requests for procuring goods and services should be forwarded to the Procurement Division far enough in advance to allow them to obtain vendors and in turn, allow the vendor sufficient time to complete the request for bids or proposals.
- Monitoring staff purchases and requiring strict compliance with policies (i.e. no splitting of invoices to avoid the City's purchasing limits).
- Preparing complete and reasonable specifications for materials that require engineering or technical background. Specifications should be written in a way that encourages maximum vendor participation to ensure the City receives the best goods and services at the most advantageous cost or best value as defined in §2155.074 of the Texas Local Government Code.
- Assisting the Procurement Division in developing and maintaining vendor lists by providing contact information as new vendors are identified.
- Preparing Council agenda items timely, to allow for review by the Procurement Division, Finance Department and the City Manager.
- Monitoring contract timelines in order to assure timely bids and contract renewal.

No City employee shall purchase supplies, materials or equipment of any kind for personal use.

C. Vendors

The vendor community can assist the Procurement Division in complying with state laws and regulations by:

- Following ethical business practices and procedures by working within the purchasing process, treating other vendors fairly and respectfully, not colluding or offering kickbacks.

- Providing goods and/or services as specified and on time.
- Completing and returning required forms, bid documents, affidavits and conflict of interest questionnaires.

§1-105 Principles

The Procurement Division personnel shall comply with these principles:

- In all transactions, to consider first what is in the best interests of the City. To believe and carry out the established policies of the City.
- To be receptive to competent counsel from City Attorney.
- To be guided by counsel without impairing the dignity and responsibility of the office.
- To establish practical procedures for the conduct of the office.
- To subscribe to and work for honesty and truth in buying and selling and to denounce all forms and manifestations of commercial bribery.
- To accord a prompt and courteous reception to all who call on a legitimate business mission.
- To counsel and assist fellow employees in the performance of their duties.
- To cooperate with and participate in organizations and with individuals engaged in activities designed to enhance the development and standards of procurement.

§1-106 Code of Ethics

A. Employee Code of Ethics

No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or be financially interested directly, or indirectly in the sale to the City of Hutto any land, materials, supplies, or services, except on behalf of the City as an officer or employee. Any knowing and willful violation of this Section shall constitute malfeasance in office and any officer or employee guilty thereof shall be removed from his office or position.

By participating in the purchasing process, employees of the City of Hutto agree to:

1. Avoid the intent and appearance of unethical or compromising practice in relationships, actions, and communications.
2. Demonstrate loyalty to the City by diligently following the lawful instructions of the employer, using reasonable care of the authority granted.
3. Refrain from any private business or professional activity that would create a conflict between personal interests and the interest of the City.

4. Refrain from soliciting or accepting money, loans, credits, prejudicial discounts, and the acceptance of gifts, entertainment, favors, or services from present or potential suppliers.
5. Avoid unfairly dispensing special favors or privileges to anyone, whether as payment for services or not; and refrain from acceptance for self or family members: favors or benefits under circumstances which might be construed by a reasonable person as influencing the performance of your employment duties.
6. Engage in no business with the City, directly or indirectly, which is inconsistent with the conscientious performance of Governmental duties.
7. Handle confidential or proprietary information of the City or suppliers with due care and proper consideration of ethical and legal ramifications.
8. Never use any information gained confidentially in the performance of job-related duties as a means of making private profit.
9. Promote positive supplier relationships through courtesy and impartiality in all phases of the purchasing cycle.
10. Know and obey the letter and spirit of laws governing the purchasing function and remain alert to the legal ramifications of purchasing decisions.
11. Expose corruption and fraud wherever discovered.
12. Uphold these principles, ever conscious that public office is a public trust.

B. Vendor Code Of Ethics

City of Hutto is committed to a procurement process which fosters fair and open competition, while conducting business under the highest ethical standards and fostering the public trust. To achieve these purposes, City requires each vendor who seeks to do business with the City to subscribe to the following Code of Ethics.

1. A Vendor's bid or proposal shall be competitive, consistent and appropriate for the specifications submitted.
2. A Vendor shall not discuss or consult with other vendors intending to bid on the same contract or similar City contract for the purpose of limiting competition.
3. Vendor shall not make any attempt to induce any individual or entity to submit or not submit a bid or proposal.
4. Vendor shall not disclose the terms of its bids or proposal, directly or indirectly, to any other competing vendor prior to the bid or proposal closing date and time.

5. Vendor will completely perform any contract awarded at the contracted price pursuant to the terms set forth in the contract.
6. Vendor will submit timely, accurate and appropriate invoices for goods and/or services actually performed under the contract.
7. Vendor will not offer or give any gift, item or service of value, directly or indirectly, to a City employee, employee family member or other vendors contracted by the City.
8. Vendor will not cause, influence or attempt to cause or influence, any City employee or City of Hutto official, which might tend to impair his/her objectivity or independence of judgment; or to use, or attempt to use, his/her official position to secure any unwarranted privileges or advantages for that vendor or for any other person.

§1-107 Conduct When Dealing with Vendors

All employees of the City are prohibited (except with the express permission of the City Manager) from accepting any gifts, entertainment, special personal price considerations, fees, commissions or other gratuities from any vendors or bidders. Employees may accept items of negligible value used as obvious forms of advertisement such as pencils, calendars, notepads and key rings, etc., which shall not be considered gratuities. Vendors or bidders who offer gifts, entertainment, etc. may be declared irresponsible bidders and may be debarred from bidding. An employee who accepts a gift, entertainment, etc., shall be subject to disciplinary action, up to and including termination.

When performing procurement duties on behalf of the City, it is important to:

- Deal with suppliers fairly.
- Do not disclose one vendor's price to another in an attempt to obtain the same price from a preferred vendor.
- Offer to give equal assistance to all suppliers and potential vendors.
- Be certain to make procurement records open and available to anyone requesting information following the City policy. This excludes information you receive that is proprietary or confidential.
- Make certain solicitation activities are truly competitive.
- State the award criteria in the terms of the solicitation and do not change those criteria without each bidder's knowledge.
- No preference should be given to any supplier. Goods or services should not be called proprietary or sole source unless it is determined that they are and that determination can be documented.
- No subjective favoritism is permitted; for example, a statement like "We have always bought from that vendor" is reasoning that does not encourage or allow for competition.

- Be certain to give the same kind of service to internal customers and external suppliers as you expect to receive from them.

The ability to make purchases on behalf of the City does not entitle the buyer to any kind of special personal privileges from the vendor and no professional buying for the City should be, in any way, tied to any personal purchases at any time.

PERCEPTION IS EVERYTHING. Even if a procurement decision is sound, the method of determination should be documented and will be open to public inspection. If a decision is perceived to be less than fair to all competitors, then the perception becomes the reality to the unsuccessful bidders. And, if the opinion is that the City has “favorite companies we always do business with,” our job is to set the record straight with all who may have this complaint.

It is important that awards are made based on competition and/or the best value for the City. In addition, the reason(s) for those awards should be documented, defensible, and based on facts that demonstrate the purchase is in the best interest of the City.

§1-108 Conflict of Interest

Effective June 29, 2007, H.B. No. 1491 of the 80th Texas Legislature requires a vendor that wishes to conduct business or be considered for business with the City of Hutto, Texas to file a Conflict of Interest Questionnaire (Exhibit B). These forms, once completed by the vendor and submitted with vendor’s bid response, will be maintained by the Procurement Division.

Pursuant to the requirements of §176.002(a) and §176.003 of the Texas Local Government Code, vendors or respondents who meet the following criteria must fill out a Conflict of Interest Questionnaire no later than the seventh (7th) day after the person begins contract discussions or negotiations with the City or submit an application, response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with the City:

A vendor or respondent that –

- (1) Contracts or seeks to contract for the sale or purchase of property, goods, or services with a local governmental entity; or
- (2) Is an agent of a person described above in the person’s business with a local governmental entity; or
- (3) Any person who meets the criteria, as for enforcement to ensure the veracity of the City of Hutto, the statute makes it a Class C Misdemeanor to violate the vendor disclosure provisions.

The forms required to comply with the above Government Code are available on the Ethics Commission website at: <http://www.ethics.state.tx.us/forms/CIQ.pdf>.

The City shall not contract for goods or services for any department if the contract is with an employee of that department.

Furthermore, contracting for goods or services with an employee, administrative officer, member of the employee's immediate family, or a company which is owned in whole or part by an employee, administrative officer, or a member of his/her immediate family, or a company in which an employee, administrative officer, or a member of his/her immediate family has a financial interest (as defined below), is permitted with strict adherence to the following requirements:

- (1) The Procurement Division shall be notified immediately in writing, of such an ownership interest or financial interest.
- (2) No contract for goods or services shall be written to an employee owned business if it could be construed or there is an appearance that the City employee owned business has an advantage over other competitors.
- (3) No solicitation of business by the employee shall take place during his/her normal duty hours.
- (4) All purchases or contracts involving employee owned businesses, regardless of estimated cost, shall be executed by the Procurement Division.

For the purpose of this provision,

- Owned in part means having an ownership interest of more than 10% of the business.
- Financial interest means any interest in the business by means of a loan or other evidence of indebtedness, in excess of 10% of said business' outstanding indebtedness.
- Immediate family is defined as a spouse, parent, child, or sibling.

§1-109 Procurement Records and Information

Public access to procurement information. Procurement information shall be a public record and shall be available to the public.

Copies of procurement information. Copies of procurement information, subject to public access, are available to the public upon written request to the Office of the City Secretary. A charge of \$.10 per page may be collected from the requesting party and shall be paid to the City of Hutto, TX prior to obtaining the copies.

CHAPTER 2 ~ ADMINISTRATIVE MATTERS

§2-101 Applicability

Policies and procedures set forth in this manual shall apply to all purchases entered into by the City. Contracts funded, in whole or in part, with federal assistance monies shall comply with the appropriate federal, state and local laws and the rules and regulations promulgated pursuant to such law.

Policies and procedures set forth in this manual, in addition to the standard state and local requirements, shall apply to all employees acting as agents of the City for the purpose of procurement of goods and/or services. Any employee who expends City funds: (a) for personal use; (b) without the written approval of his/her manager; (c) without being authorized to act as an agent of the City; or (d) without following the procedures as set forth by the City will be subject to disciplinary action(s), up to and including termination.

§2-102 Signatory Authorities and Approval Thresholds

Generally, the City is required to follow the bidding or proposal procedures outlined in Local Government Code Chapter 252 when it plans to make an expenditure of more than \$50,000. Only the City Council has the authority, or may designate the authority to commit funds. The City Manager has approved and delegates the following authority:

A. Goods and Services

- \$0 - \$1,999.99 - Supervisors/Managers
- \$0 - \$3,000 – Directors
- \$0 - \$5,000 – Executive Directors
- \$0 - \$10,000 - Police Chief & Exec Director of Communications
- \$0 - \$20,000 – Assistant City Managers
- \$0 - \$49,999.99 - City Manager
- \$50,000 and above - City Council

B. Construction Contract Change Orders

- City Manager or Assistant City Manager may approve Construction Contract Change Orders up to \$49,999.99 in the aggregate. Construction Contract Change Orders greater than \$50,000 require City Council or designee approval.

Authority to sign contracts or agreements on behalf of the City is granted to the City Manager or designee. This applies to all types of documents including, but not limited to: purchase requisitions, contracts for services, leases, rental agreements, service/maintenance agreements, facility use agreements, etc.

Employees granted authority to make and approve purchases, will be held accountable for ensuring that each purchase is made in accordance with this policy and all applicable federal, state, and local law, procedures, directions, and good business practices.

City personnel should be aware that personal financial liability or disciplinary action, up to and including termination of employment, may result if an individual makes purchases without delegated authority as defined.

Special Note: This delegation of authority to obligate is not assignable to others without the express and written consent of the City Manager.

The following table clearly articulates the Purchasing Workflow and Authority.

Dollar Range	Approval Authority	Quotes Requirement	Alternate Approver	Notification
\$0-\$1,000	Department Representative	3 Quotes are not required. Usage of P-card is allowed.	Division Manager	Manager and Director
\$1,001 - \$2,000	Division Manager	3 Quotes are not required. Usage of P-card is allowed with Director's signed approval	Director	Director and Chief Financial Officer
\$2,001 - \$3,000	Director	3 Quotes are not required for amounts up to \$2,999.99. Purchases at or above \$3,000 must have 3 quotes which should include a HUB quote. Usage of P-card is allowed for amounts under \$3,000 with Exec. Director's signed approval	Executive Director	Assistant City Manager (ACM)
\$3,001 - \$5,000	Executive Directors	Requires three quotes and HUB. Creating a requisition is required	Assistant City Manager	
\$5,001 - \$10,000	Police Chief & Communication Executive Director	Requires three quotes and HUB. Creating a requisition is required	City Manager	City Manager
\$10,001 - \$20,000	Assistant City Manager	Requires three quotes and HUB. Creating a requisition is required.	Assistant City Manager	City Manager
\$20,000.01 - \$49,999	City Manager	Requires three quotes and HUB/ or formal solicitation. Creating a requisition is required.	Assistant City Manager	

\$50,000 and above	City Council	Requires a formal solicitation and creating a requisition is required.	City Manager subject to Council's Approval	
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§2-103 Department Representative(s)

Department heads of each using department shall appoint a responsible and qualified employee(s) who shall assume the duties of liaison between their department and the Procurement Division. The employee shall be responsible for the proper initiation of all purchasing matters concerning their departments, for the supervision of all receiving procedures and handling inventory for their department. Mandatory training for department representatives will be held on a bi-annual basis.

All department heads should make provisions to appoint an alternate in order to ensure that this Program is maintained during the representative's absence. The Procurement Division shall be advised by each department head of the name of the individual(s) who is designated as its representative.

Authority has been granted for each designated department buyer to obtain at least three (3) written quotes up to \$49,999.99 for purchases subject to the approval requirements. The Procurement Division will not be restricted to the quotes provided by the department and maintains the right and authority to supplement the quotes from other providers, if necessary. After a formal solicitation process or approved justification, any request over \$50,000 must be presented to City Council by the Department Director or City Manager designee for approval prior to transacting a purchase.

Once written quotes have been received, or a contract issued (if required), a purchase requisition must be entered into the system. A purchase order may be processed by the Procurement Division authorizing the vendor to provide the goods and/or services requested. Any authorization of a purchase of \$3,000 or greater to a vendor without a purchase order is not valid and will require the approval of the Department Director and the Assistant City Manager. Once the purchase order is created, the Procurement Division may electronically transmit the purchase order to the department who may forward to the vendor representative.

Any department requiring assistance for any purchase, regardless of the estimated cost, should contact the Procurement Division.

§2-104 Processes

1) Petty Cash (\$0 to \$100.00)

No quotes are required when purchasing items with petty cash. Any item bought with petty cash cannot exceed \$100.00.

2) Purchases less than \$2,999.99

Purchases less than \$2,999.99 do not require competitive bidding, quotation forms, or purchase orders. Department approved designees, may without further approval of the Procurement Manager, make purchases less than \$2,999 with their Purchase card or check request method.

3) Purchases of \$3,000 to \$ 20,000

The Department must submit every purchase request for \$3,000 or more to the Procurement Manager for approval through the Requisition Process. If a purchase is \$3,000 or greater, the Department Liaison must contact at least two Historically Underutilized Businesses (HUB), unless the list fails to identify a HUB that provides similar goods or services in Williamson County according to Texas Government Code, Chapter 252.0215.

The Department must obtain at least three bid prices or quotes in writing, including any HUB quotes If applicable, and attach each to the purchase requisition, unless exempted from the competitive process. The Procurement Division will issue a purchase order upon the approval of the Department Director, the Executive Director, the Assistant City Manager depending on the authorized approval level.

4) Purchases for \$20,001 and over

The City Manager or his designee must approve, through the requisition process, all expenditures for \$20,000 or more.

Except as provided in Non-Competitive Bid Items, competitive bids are required, and the City must formally advertise for bids and award the bid to the lowest responsible bidder, or to the best value bid for the city if the proposed purchase is \$50,000 or more according to the City policy.

The department shall enter a requisition when initiating the request for contractual goods and services. The formal bid procedures takes at least four to six weeks. The Procurement Manager will be responsible for vendor solicitation and legal advertisements before the bid opening. Such goods and services may be acquired by the issuance of a purchase order. All purchases greater than \$50,000 require the prior approval of the City Council.

A. Purchasing Process

1. All purchases \$3,000 and over shall be made by an official City of Hutto Purchase Order.
2. Purchase requisitions will be initiated by the City departments and used to generate a Purchase Order. The department director or their designee shall approve all requisitions through the Incode Purchasing Workflow detailed above.
3. Once approved by the department director, the Procurement Manager shall approve the purchase order.
4. A purchase requisition must clearly and accurately represent all of the following requirements:
 - a. Company name or suggested vendor and address, if available.
 - b. Date
 - c. Shipping instructions (Complete shipping address including receiver's name and department)
 - d. Quantity and unit of item(s)
 - e. Description of goods or services ordered
 - f. Unit price
 - g. Discount (Make note of any discount even if \$0 or 0%)
 - h. Prices extended and totalled correctly
 - i. Freight and/or delivery charges if applicable
 - j. Vendor contract #
 - k. Account code to be charged

B. Requisition Process

1. No ordering of goods and services \$3,000 or over will be processed through Purchasing without an approved and budgeted requisition.
2. Requisitions are to be complete and specific.
3. A specific date by which the item is needed must be provided. Requisitions marked "RUSH" or "AS SOON AS POSSIBLE" will be processed according to date of receipt in the Procurement Division.
4. Purchasing will review requisitions based on previous experience with the item, records of past purchases, and vendor catalogues. Procurement Manager retains the right to change the vendor, if deemed to be in the best interest of the City.

C. Tax Exemptions

The City of Hutto is exempt from payment of taxes under Chapter 20, Title 122A, Article 20.04, Revised Civil Statutes of Texas, for the purchase of tangible personal property. Any use of the City's tax exemption certificate for personal purchases is prohibited. Anyone using the City's tax exemption certificate for personal purchases may be subject to prosecution under the Texas Penal Code, Chapter 39, Abuse of Office, Section 39.01.

The Texas Sales Tax Exemption Certificate may be requested from the Procurement Division.

D. Capitalized Fixed Assets

A capitalized fixed asset is tangible and intangible property that the City can leverage as a resource in providing services to the residents and inhabitants of the City. A capitalized fixed asset includes land, infrastructure, buildings, furniture and fixtures, motor vehicles and equipment with a cost of \$5,000 or more and a useful life of more than two years.

Capitalized fixed assets are acquired for use in normal operations and are not for resale. These assets are long-term in nature and are subject to depreciation. Capitalized assets and projects should be charged to a capital project asset account. Items costing less than \$5,000 should not be charged to a capital account. Any capital purchases/acquisitions (i.e. new buildings, significant building renovations, new vehicles or other motorized equipment, or real property) should be reported to the Chief Financial Officer, in the absence of a Risk Manager, for property liability insurance evaluation.

§2-105 Non Competitive Bid Items

Statement

The City may not require competitive bids for any of the following goods and services. Such goods and services may be acquired by the issuance of a purchase order or execution of a contract.

E. Emergency Situations

An emergency is an unforeseen situation that adversely and unduly affects the life, health, or convenience of the citizens of the City of Hutto or a circumstance that would cause a loss to the City.

In an emergency, the department director may proceed with the emergency acquisition. Emergency purchases shall be reported to the City Manager with twenty-four hours. If the cost is \$3,000 or more, the department shall send a confirming requisition, along with a completely filled out Emergency Purchases form and invoices to the Procurement Manager within one business day of completion or receipt of goods or services. The Procurement Manager will then assign a purchase order number and advise the user department to forward that number to the appropriate vendor in accordance with Texas Local Government Code 252.022 (1), (2) & (3).

F. Professional Services

Professional services means services within the scope of the practice, as defined by state. The City may not select a provider of professional services or a group or association of providers or award a contract for the services based on competitive bids submitted for the contract or for the services, but shall make the selection and award; (1) on the basis of demonstrated competence and qualifications to perform the services; and (2) for a fair and reasonable price. The professional fees under the contract: (1) must be consistent with and not higher than the recommended practices and fees published by the applicable professional associations; and (2) may not exceed any maximum provided by law in accordance with Texas Government Code §2254.002, §2254.003.

The City, acting by its City Manager or a designated evaluation committee, shall first select the most highly qualified provider of services. If a qualified provider is not known then a Request for Qualifications shall be issued. The City Manager or a designated evaluation committee shall select the most highly qualified provider of services, who responded to the Request for Qualification (RFQ), on the basis of demonstrated competence and qualifications, and attempt to negotiate a contract at a fair and reasonable price with that provider.

If the City cannot negotiate a satisfactory contract with the most highly qualified provider, then the City shall formally end negotiations with that provider, select the next most highly qualified provider and attempt to negotiate a contract with that provider at a fair and reasonable price.

The City will continue the process described to select and negotiate with providers until the City enters into a contract. The City Manager and/or the appropriate department director will execute contracts for the City.

The following services have been held to be professional services in Texas cases. Attorney General Opinions have defined professional services as:

- Abstracters
- Certified Public Accountant (excluding external auditor)
- State Certified or Licensed Real Estate Appraisers
- Architects
- Models
- Optometrists
- Physicians
- Plat Book Preparers
- Private Consultants
- Property Tax Consultants
- Scientists
- Supervisors of Public Construction Projects
- Surgeons
- Land Surveyors
- Tax Appraisal Engineers
- Landscape Architect
- Attorney
- Professional Engineers in connection with his professional employment or practice.

G. Sole/Single Source Procurement

State law provisions exist for the following types of procurements from a sole source:

1. patents, copyrights, secret processes, or natural monopolies;
2. films, manuscripts, or books.
3. electricity, gas, water and other utility services.
4. captive replacement parts or components for equipment.
5. books, papers, and other library materials for a public library that are available only from the person holding exclusive distribution rights to the materials.
6. management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significantly financial or other benefits.
7. Emergency repairs to ensure public safety.

After an independent review by the Procurement Division, an interpretation will be provided to the department as to whether the item under review is a sole source item. Sole source purchases over \$50,000 must be approved by City Council.

A Single Source may be available from more than one vendor but has a justifiable reason to be purchased from a single vendor. See the Sole/Single Source Information Form at the end of this PPP.

H. Purchase of Land or Right-of-Way

The purchase of land or right-of-way is exempt from competitive bidding requirements.

§2-106 Change Orders

Statement

A change order is required if, after the contract has been executed:

- a. Changes in plans or specifications are necessary;
- b. It is necessary to decrease or increase the quantity of work to be performed;
- c. It is necessary to decrease or increase the quantity of materials, equipment, or supplies to be furnished.

A. Material Changes

A material change in scope, quantities, or related work may not be made. A material change is defined as a substantial revision.

In the event there is a change to a contract or purchase order, a change order form shall be completed for all written contract documents. Also all change orders must include sufficient explanation or detail for the Procurement Manager to make an informed consent to change the original contract. If necessary, a supplemental memo or supporting documentation may be attached to the change order. The change order shall be executed before any activity relating to the change is effected.

B. Changes to Work Performed, Materials, Equipment or Supplies

If the change order involves an increase or decrease of \$50,000 or less, the City Manager (or City Manager's designee) may approve the change order request. The original contract price may not increase by more than 25 percent. The original contract price may not be decreased by more than 25 percent without the consent of the contractor.

Once a cumulative total of \$50,000 in change order has been reached, each subsequent change order must go to Council for approval. This requirement is applicable regardless of the original contract amount.

C. Changes to Professional Services

Changes to the standard Professional Services Contract for Architects and Engineers may be approved by the City Manager (or City Manager's designee) provided that the

change order does not increase or decrease the original contract amount by more than \$50,000.

Once a cumulative total of \$50,000 in change order has been reached, each subsequent change order must go to Council for approval. This requirement is applicable regardless of the original contract amount.

D. Changes to All Other Professional Services Contracts

Written change orders to the Standard Consultant Contract may be approved by the City Manager or the City Manager's delegate, provided that the change order does not increase the amount of the Contract by more than fifty thousand dollars (\$50,000.00). Changes that increase the contract by more than \$50,000 must be approved by the City Council prior to commencement of the services or work.

E. Change Order Routing Procedures

1) Change Orders of \$0.01 to \$2,999.99

Approval for change orders less than \$3,000 may be authorized by the Department Director. The change order form is required and shall be approved by the following people:

- Department Director
- Project Manager
- Contractor

In the event a purchase order is created, change orders must be forwarded to Procurement Division within one week of execution in order to increase/decrease the encumbrance on the Purchase Order.

2) Change Orders of \$3,000.00 to \$50,000.00

Change orders for \$3,000 to \$50,000 must be pre-approved by the following people prior to performance of the work:

- Project Manager
- Procurement Manager
- Department Director
- Executive Director
- Chief Financial Officer
- Assistant City Manager
- City Manager
- Contractor

Executed change orders must be forwarded to Purchasing within one week of execution in order to increase/decrease the encumbrance on the Purchase Order.

3) Change Orders Greater than \$50,000.00

All change orders greater than \$50,000 of the original contract amount are subject to the bidding statute and require Council approval prior to the commencement of the services or work.

F. Electronic Bids Policy

Electronic sealed bids or proposals shall be in accordance with Section 252.0415(a) of the Local Government Code requiring the identification, security, and confidentiality of electronic bids or proposals to remain effectively unopened until the proper time. The electronic bids shall not be opened or printed until after the bid offer closes.

§2-107 Historically Underutilized Business (HUB)

State law requires a City to attempt to contact at least two (2) historically underutilized businesses if the City makes an expenditure between \$3,000 and \$50,000.

- (1) *Definition.* Vendor must be (a) at least 51% owned by an Asian Pacific American, Black American, Hispanic American, Native American, American woman and/or Service Disabled Veteran, (b) an entity with its principal place of business in Texas, and (c) has an owner residing in Texas with a proportionate interest that actively participates in the control, operations and management of the entity's affairs.
- (2) *Requirements.* According to §252.0215 of the Texas Local Government Code, the City, in making an expenditure of more than \$3,000 but less than \$50,000, must contact at least two (2) HUBs on a rotating basis, based on information provided by the comptroller. If the list fails to identify a HUB in Williamson County, the City is exempt. If the expenditure is for less than \$3,000 or for more than \$50,000, this special notification requirement does not apply.
- (3) *Procedure.* Departments must contact at least two (2) HUBs in the procurement process of construction, goods and services (including professional and consulting) if the expenditure is between \$3,000 and \$50,000. To determine what businesses within the county are classified as HUBs, departments can access the comptroller's website:

<https://mycpa.cpa.state.tx.us/tpasscmlsearch/index.jsp>, select "HUBs Only" and enter the appropriate search criteria. Documentation must be presented to the Procurement Division via the Incode requisition module, certifying that requesting department either made contact with available Williamson County HUB vendors or that no applicable HUB vendors were identified in Williamson County for the particular commodity being ordered.

§2-108 Small Business Program

The City places great importance on affording small businesses and vendors the opportunity to bid on construction related contracts to be awarded by the City. Businesses that register with the City will be contacted by the City's Purchasing Office whenever bids or quotes greater than \$ 50,000 are solicited in the businesses specific commodity.

§2-109 Certificate of Interested Parties (Form 1295) Effective January 1, 2016

In 2015, the Texas Legislature adopted [House Bill 1295](#), which added section 2252.908 of the Government Code. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million. The disclosure requirement applies to a contract entered into on or after January 1, 2016.

§2-110 Tax Exempt Status

The City is exempt from federal, state, and local taxes except in certain prescribed cases. A sales tax exemption certificate is available from the Accounting Department and will be furnished to any of the City's suppliers upon request.

Employee use of any tax exemption is solely at the discretion of the Director of Finance. Use of exemptions for personal use is strictly prohibited. Violators will be reported to the Director of Finance for disciplinary action.

§2-111 Confidential Information

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

CHAPTER 3 ~ SOURCE SELECTION

Part A ~ Methods of Source Selection

§3-101 Methods of Source Selection

Prior to issuing an acquisition request, City may issue a Request for Information (RFI) where the City cannot clearly identify product requirements, specifications, and purchase options. The RFI shall clearly indicate that award of a contract will not automatically follow. RFI, as a pre-purchase option, is hereby distinguished from Contractor's Request for Information which is used to resolve gaps or conflicts in the construction documents (agreements, drawings and specifications) in the construction phase.

There are a variety of methods available to acquire goods and services. Unless otherwise authorized by law, all City contracts shall be awarded by one of the following methods:

- a) Section 3-102 (Competitive Sealed Bidding);
- b) Section 3-103 (Competitive Sealed Proposals);
- c) Section 3-104 (Construction Related Procurements);
- d) Section 3-105 (Purchases less than \$ 50,000);
- e) Section 3-106 (Sole Source Procurements);
- f) Section 3-107 (Emergency Procurements);
- g) Section 3-108 (Cooperative Procurements);
- h) Section 3-109 (Separate, Sequential or Component Purchases).

Dollar Range	Procedure
\$0.00 to \$2,999.99	<ul style="list-style-type: none">○ City departments may contact vendors directly for price quotation. Minimum three competitive quotes required or a purchase from a Cooperative; State Contractor, etc.○ Procurement Cards may generally be used for purchases up to \$1,000.00.○ Procurement Cards may be used for purchases of between \$1,000 and \$2,999.99 with the approval of the Department Director.

<p>\$3,000.00 to \$49,999.99</p>	<ul style="list-style-type: none"> ○ City departments and/or Purchasing will solicit a minimum of three informal quotes (should be written quotes). A minimum of one (1) minority-owned business and one (1) woman-owned business shall be invited to quote, if available, documented on the Requisition Coversheet and sent to the Procurement Division. ○ Purchasing will use its discretion to issue a solicitation and obtain competitive bids via the City's website or other other media. Purchasing staff will consult with user department personnel to develop applicable bid specifications. ○ Requisition should be entered by department along with all supporting documentation. ○ Purchase Orders are generally created by Purchasing within two business days of approved requisition.
<p>\$50,000.00 and up</p>	<ul style="list-style-type: none"> ○ Purchasing must issue a formal solicitation and obtain competitive sealed bids. ○ Requires advance Public Notice of the bid opportunity in the City's Newspaper of Record or at the City Hall. Minimum posting is 14 consecutive days before the date set to publicly open bids and read them aloud. ○ Award of bid requires approval by City Council. Requires CIP Form 1295 (see item 2-107)

§3-102 Competitive Sealed Bidding (Request for Bid)

- (1) **Conditions for Use.** Contracts shall be awarded by competitive sealed bidding for any solicitation that is projected to exceed \$50,000 except as otherwise provided in Section 3-101 (Methods of Source Selection).
- (2) **Request for Bids.** State law requires a formal, competitive process for purchases of more than \$50,000 (Texas Local Government Code §252.021). However, there are sixteen (16) general exceptions delineated in Section 252.022 of the Local Government Code.
<http://www.statutes.legis.state.tx.us/SOTWDocs/LG/htm/LG.252.htm>.

Generally notwithstanding the aforementioned, a Request for Bid shall be issued and shall include, at a minimum:

- the purchase description
- contractual terms and conditions applicable to the procurement
- any special terms and conditions
- criteria for evaluating the bids received

- whether the bid will be awarded by line item, groups of items or the entire bid

(3) **Public Notice.** Any solicitation that is projected to exceed \$50,000 (at a minimum) will be advertised. In accordance with §252.041 of the Texas Local Government Code: “notice of the time and place at which the bids will be publicly opened and read aloud must be published at least once a week for two consecutive weeks in a newspaper published in the municipality. The date of the first publication must be before the 14th day before the date set to publicly open the bids and read them aloud.” Bids are also posted on BidNet website, www.BidNetDirect.com, and/or State of Texas Electronic State Business Daily (ESBD) (bid notification systems).

(4) **Bid Opening.** Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Request for Bids. The amount of each bid, and such other relevant information as may be specified by regulation, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection.

(5) **Bid Acceptance.** Bids shall be unconditionally accepted without alteration or correction, except as authorized in this manual. Un-opened bids are to be time and date stamped at the office of the Procurement Manager (or any other designated location) to validate the time of receipt. The internet phone time for Central Standard will be the official time for recording and receiving bids/proposals. Late bids shall not be considered and will be returned un-opened to the bidder. Bids which are lacking an appropriate signature on the Bid Proposal page or Affidavit form will be rejected. The Affidavit allows bidders to verify that they are not in arrears in their obligations to the City.

Bids which are not received in a sealed envelope by bid opening date/time will be rejected by the Procurement Division. This includes all envelopes, which are secured by metal clasp, twist tie string, etc. or those, which do not otherwise preclude unauthorized access. Bidders who deliver their bids in an envelope which is not sealed may be allowed to correct this deficiency provided they do so before time/date specified for opening of bids.

(6) **Bid Evaluation.** Bids shall be evaluated based on the criteria set forth in the Request for Bids in order to determine which represents the lowest responsive and responsible bidder. Any criteria, other than price, to be used in evaluating solicitations shall be clear and exact and stated in the Request for Bids. They must be stated with sufficient clarity and exactness to inform each bidder of the factors which will be used in evaluating a bid in relation to others. This statement enables bidders to estimate, within reasonable limits, the effect of the application of the evaluation factors to their bid. Factors such as estimated quantities, and delivery time when the need is urgent, together with liquidated damages in case of delay and any other circumstances which may cause the award to be made in an "unusual" manner, must be set forth in the request for quotations or Request for bids.

If a bid is non-responsive, it shall be rejected and there is no need to continue the evaluation. Rejected bidders are not to be considered for award.

Responsiveness is compliance with the requirements of the solicitation, including specifications and contractual terms and conditions. It also insures that all bidders respond to a solicitation in a common manner that provides the basis for equal competition. Absolute conformity is not required. Conformity in material respects suffices. This protects the bidders from being denied from the competition for reasons that are inconsequential. Failure by the bidder to accept the requirements of the bid is grounds for rejection of its bid. Some common instances where bids must be rejected and declared non-responsive are:

- The bidder states that it will not accept an award unless the solicitation terms and conditions are modified or altered.
- The bidder states that it will only accept an award for all line items when the solicitation allows award by line item or aggregate grouping of line items.
- The bid is not submitted on the City's Bid Proposal page.
- The Affidavit is not signed.
- The bidder is found to be in arrears in their obligations to the City.
- The bidder has been identified on the Federal Excluded Parties List System (EPLS) at <https://www.gao.gov/products/GAO-09-174v>. See §3-115.
- The bid item does not meet the stated specifications and the bidder has not indicated the item bid is an alternate.

(7) Correction or Withdrawal of Bids; Cancellation of Awards. Bidders are allowed to make corrections to their bid only before the bid opening date and time. Bids will still be due at the specified date and time in order to be considered for award. 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.

A bidder choosing to withdraw their bid may do so by providing a signed letter requesting to withdraw their bid. The withdrawal request letter must identify the method of return or identify the person authorized to receive the bid. If no method of bid return is identified, the bid shall be destroyed after bid opening.

Cancellation of awards or contracts shall be permitted with City Council approval and is appropriate only under the following circumstances:

- Unavailable, inadequate, ambiguous specifications, terms, conditions or requirements were cited in the solicitation;
- Specifications, terms, conditions or requirements have been revised;
- The supplies or services being contracted for are no longer required;
- The solicitation did not provide for consideration of all factors of cost to the agency;
- Bids received indicate that the needs of the agency can be satisfied by less expensive article differing from that for which the bids were invited;

- All otherwise acceptable bids received are at unreasonable prices or only one bid is received and the agency cannot determine the reasonableness of the bid price;
- No responsive bid has been received from a responsible bidder, or
- The bid process was not fair or equitable.

If any of the above criteria apply to the solicitation and an award is not consistent with the City's best interests, one of the following actions should be taken, as appropriate, after Council approval:

Re-bid

1. Document the purchase file with summary narrative fully explaining the decision making process that lead to the decision to re-bid.
2. The narrative must clearly demonstrate that one or more of the statutory criteria are met.
3. Initiate the re-bid process and make changes to bid document as appropriate.

Cancellation of Request for Bid

1. The bid may be cancelled if the services or supplies are no longer needed.
2. Document the purchase file with summary narrative fully explaining the decision making process that lead to the decision to cancel the procurement.
3. The narrative must clearly demonstrate that one or more of the statutory criteria are met.

(8) **Award.** The contract shall be awarded with reasonable promptness by the City Council to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the City. In determining the best value for the City, the City may consider those things listed in §252.043 of the Texas Local Government Code. The Best Value Method is determined by considering the following:

- (1) the purchase price;
- (2) the reputation of the bidder and of the bidder's goods or services;
- (3) the quality of the bidder's goods or services;
- (4) the extent to which the goods or services meet the municipality's needs;
- (5) the bidder's past relationship with the municipality;
- (6) the impact on the ability of the municipality to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities;
- (7) the total long-term cost to the municipality to acquire the bidder's goods or services; and
- (8) any relevant criteria specifically listed in the request for bids or proposals.

If the aforementioned Best Value Method is utilized, it must be specifically stated in the bid as part of the "terms and conditions" for award.

Identical Bids.

Per §271.901 of the Texas Local Government Code:

(a) If a municipality or district is required to accept bids on a contract and receives two (2) or more bids from responsible bidders that are identical, in nature and amount, as the lowest and best bids, the governing body of the municipality or district shall enter into a contract with only one of those bidders and must reject all other bids.

(b) If only one (1) of the bidders submitting identical bids is a resident of the municipality or district, the municipality or district must select that bidder. If two (2) or more of the bidders submitting identical bids are residents of the municipality or district, the municipality or district must select one of those bidders by the casting of lots. In all other cases, the municipality or district must select from the identical bids by the casting of lots.

(c) The casting of lots must be in a manner prescribed by the mayor of the municipality or the governing body of the district and must be conducted in the presence of the governing body of the municipality or district. All qualified bidders or their legal representatives may be present at the casting of lots.

(d) This section does not prohibit a municipality or district from rejecting all bids.

(e) This section applies to all municipalities and districts required by general or special law or by municipal ordinance or charter to accept bids and award contracts on the basis of the lowest and best bid, but does not apply to bidding for contracts to act as a depository for public funds or as a depository for school funds under Subchapter G, Chapter 45, Education Code.

(9) **Multi-Step Sealed Bidding.** When it is considered impractical to initially prepare a purchase description to support an award based on price, a Request for Information (RFI) may be issued requesting the submission of un-priced offers to be followed by a Request for Bids.

§3-103 Competitive Sealed Proposals or Request for Proposal

(1) **Conditions for Use.** A contract may be entered into by competitive sealed proposals when the Procurement Manager or Director or City Manager determines that the use of competitive sealed bidding is either not practicable or not advantageous to the City.

(2) **Request for Proposals.** Proposals shall be solicited through a Request for Proposals (RFP). The relative importance of price and other evaluation factors must be specified.

(3) **Public Notice.** Adequate public notice of the RFP shall be given in the same manner as provided in Section 3-102(3). (Competitive Sealed Bidding, Public Notice)

(4) **Receipt of Proposals.** Proposals may be opened so as to avoid disclosure of contents to competing offers. Only the name and location of the responding vendors will be announced. A tabulation/record shall be prepared and may be open for public inspection after a contract has been executed.

(5) Evaluation Factors. The RFP shall state the relative importance of price and other factors and sub-factors, if any, that will be considered in awarding a contract. Proposals shall be evaluated by committee to be formed by the Purchasing Manager or designee. The evaluation committee shall screen and rate all of the responses that are submitted.

(6) Discussion with Responsible Offerors and Revisions to Proposals. As provided in the RFP, discussions may be conducted with up to five (5) responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(7) Award. Award shall be made to the responsible offer or whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to the City taking into consideration price and the evaluation factors set forth in the RFP. No other factors or criteria shall be used in the evaluation. Written notice of the award of a contract to the successful offeror shall be given to all offerors.

(8) Debriefings. The Procurement Manager is authorized to provide debriefings that furnish the basis for the source selection decision and contract award only after an award has been made by City Council.

§3-104 Construction Related Procurements

This policy only relates to major public service projects such as buildings, construction and roads.

There are other methods of solicitation and contracting allowed by State Law that may be considered by the City Manager based on the nature and extent of the project for general and specific construction.

The Public Works and Engineering department will assist Purchasing with these specialized processes. Working with Public Works staff, the Procurement Division will be responsible for maintaining all bid documentation required by State Law and for obtaining all necessary contracts, bonding and insurance for each project as well as conducting pre-bid conferences and bid openings.

Construction Contract Modification Policy

These procedures are to be followed when deviation from the scope of a construction project results in a change in the total contract amount.

Definitions as applied to this policy:

- **Field Modification** – An item of work that changes the scope of the work and/ or the contract specifications, but is not more than the approved original contract and authorized contingency amount as outlined below.
- **Change Order** – An item of work that changes the scope of the work and the contract amount plus the authorized contingency amount, up to 25% over the original contract amount. Any change order over 25% of the original contract amount must be re-advertised for bids.
- **Contingency Amount** – A fixed sum of money added to the contract sum. The amount of contingency depends upon the total project amount and complexity of the project. A schedule is attached. The schedule may be modified if an unusually complex project is considered. Any deviation from the typical contingency schedule must be accompanied by written detailed explanation for the deviation for approval by Council.

Contingency Amount Schedule

1. Water/Sewer Projects	\$1-\$400,000 15%	\$400,001-up 10%
2. Drainage Improvements	\$1-\$400,000 20%	\$400,001-up 15%
3. Street Construction, new	\$1-\$250,000 20%	\$250,001-up 15%
4. Street Reconstruction	\$1-\$500,000 15%	\$500,001-up 10%
5. Building Construction, new	\$1-\$100,000 20%	\$100,001-up 15%
6. All Others (grading, sweeping, etc.)	10%	

Policy Application:

- Field Modifications may be approved by the City Manager or designee if less than 25% of the contingency amount. Requests for Field Modifications must be accompanied by a written cost quote. Field Modifications costing more than 25% of the project's contingency amount must be approved by the City Manager. Modifications that are more than 25% of the total project cost, including contingencies, are considered change orders and must be approved by City Council action or its designee.
- Questions about this policy should be directed to the Procurement Manager or the Executive Director for Public Works.

§3-105 Purchases Less than \$ 50,000

(1) *Conditions for Use.* Any procurement not exceeding \$49,999 may be recommended by the Department Head or his designee in accordance procedures provided below. Per §3-102 of this manual, Competitive Sealed Bidding, purchases above \$50,000 will be procured by the Procurement Division. Per §3-105 of this manual, purchases shall not be artificially divided so as to constitute a small purchase under this Section.

Note: Any purchase expected to exceed \$50,000 initially and/or in the aggregate must go through a solicitation process and be approved by City Council prior to entering into or agreeing to any contract.

(2) *Request for Quotes.* Quotes are to be solicited for purchases between \$3,000 and \$49,999.

- a) A minimum of three (3) timely quotations shall be sought from vendors, if available. If fewer than three (3) sources are solicited, the reasons are to be explained on the Requisition Coversheet.
- b) A minimum of one (1) minority-owned business and one (1) woman-owned business shall be invited to quote, if available, documented on the Requisition Coversheet and sent to the Procurement Division. See § 2-106.
- c) Awarded to the lowest, responsive and responsible quote. Quote submitted by a qualified bidder with the lowest or best price and whose business and financial capabilities, past performance and reputation meet the required standards.
- d) If the description of the need is lengthy or complicated, a written solicitation should be used.

The following elements should, at a minimum, be included in a Request for Quotes:

- 1) Administrative information: name, address, and phone number of using department and any special shipping instructions.
- 2) Date of the quote, including duration of quote.
- 3) Any special terms and conditions.
- 4) The purchase description.
- 5) Specifications covering the item or items needed.
- 6) Criteria for evaluating the quotes received.

§3-106 Cooperative Procurements

(1) *Definition.* The Interlocal Cooperation Act, Chapter 791 of the Government Code and Chapter 271, subchapters F and G, of the Local Government Code authorizes local governments to enter into interlocal agreements with other governmental jurisdictions including all states within the United States, independent school districts, counties, councils of governments, and non-profit corporations created to provide various

governmental functions/services. Furthermore, §271.103 of the Texas Local Government Code provides for the purchase of goods and services under Federal supply schedules of the U.S. General Services Administration.

(2) *Requirements.* Purchases of goods and services through co-ops satisfy any state law requiring the City to seek competitive bids for the purchase of the goods or services.

Using departments are requested to contact the Procurement Division to determine that proper Inter-local Contracts are in place before attempting to secure pricing through any co-ops.

§3-107 Separate, Sequential or Component Purchases

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

It is important to note that the phrases “separate purchases,” “sequential purchases” and “component purchases” are all specifically defined by §252.001 of the Texas Local Government Code. “Separate purchases” means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase. “Sequential purchases” means purchases, made over a period of time, of items that in normal purchasing practices would be purchased in one purchase. Aggregate purchases of over \$50,000 should be competitively bid or be on an inter-local contract and be approved by City Council in order to be in compliance. “Component purchases” means purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.

Part B ~ Determinations and Reports

§3-108 Finality of Determinations

The determinations required by Section 3-102(7) (Competitive Sealed Bidding, Correction or Withdrawal of Bids; Cancellation of Awards), Section 3-103(1) (Competitive Sealed Proposals, Conditions for Use), Section 3-103(7) (Competitive Sealed Proposals, Award), Section 3-106 (Sole Source Procurement), Section 3-107 (Emergency Procurements), Section 5-101 (Multi-Year Contracts) are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

§3-109 Bid Protests

(1) *Notice of Protest.* A vendor wishing to protest any aspect of the procurement process must do so, in writing and submit to the Procurement Manager. The written protest should include, at a minimum:

- Both the name and address of the protestor, as well as the vendor they represent, if different
- The name of the bid being protested
- A statement of the grounds for protest and any supporting documentation

A protest may be submitted to the Procurement Manager no later than ten (10) working days after award.

(2) *Staff Review.* A protest must be in writing and supported by sufficient information in order to be considered. A decision and response to the protest will be prepared by the Procurement Manager or his designee, in consultation with the Department Director and the City Attorney, within fifteen (15) days of receipt of the protest. Within the fifteen (15) day time period, the City may:

- Allow for informal conference on the merits of the protest with all interested parties.
- Allow for reconsideration if data becomes available that was not previously known, or if there has been an error of law or regulation.
- Render a decision supporting or canceling the award, such decision shall be in the form of a staff recommendation.

(3) *Appeals.* If the protesting vendor does not agree with staff recommendation, they may appeal to the City Manager within five (5) working days. Staff recommendations may be made available for public review prior to consideration by the City Manager. City Manager will render a decision within thirty (30) calendar days. His decision will be final.

§3-110 Reporting of Anticompetitive Practices

When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the City Attorney for referral to the Attorney General.

§3-111 Retention of Procurement Records

All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the City Council. All procurement records, which include and are not necessarily limited to: solicitation responses; tabulations, contracts, correspondence, Purchase Orders, etc., must be made available to the City Secretary in order to remain in compliance with the City's Records Retention Schedule.

§3-112 Federal Excluded Party Verification-All Funds

For any expenditure, regardless of funding source, in excess of \$25,000.00, the Procurement Division will run a System for Award Management (<https://www.gao.gov/products/GAO-09-174v>) excluded party search on the prospective awarded vendor prior to issuance of a Purchase Order and maintain a copy of the results in its documentation. Any findings of exclusion, debarment or suspension will result in the vendor being ineligible for participation in City of Hutto purchases.

§3-113 Non-Compliant Purchases

Purchases made without using an authorized purchasing method (Purchase Order, Contract/Agreement or P-Card) require justification and approval by the Departmental and Finance Director prior to the issuance of a Purchase Order or payment. The justification from the department's Director should include:

- Documentation of the reason for the non-compliant purchase;
- Name and title of the individual responsible for the purchase;
- Amount of purchase;
- Signed statement declaring that the individual involved has been informed of proper purchasing procedure;
- Agreement that future purchases will be made in accordance with purchasing procedures. Note: Future non-compliant purchases may be refused reimbursement.
- Appropriate signature of the Departmental Director/Executive Director AND the City Manager.

Recurring non-compliant purchases may be reviewed for further discipline, up to and including termination.

§3-114 IT (Information Technology) Related Purchases

IT related purchases, regardless of its value and scope, including, but not limited to software (downloaded or otherwise); peripheral items: USB drive, external hard drives, phones, desktops; laptops, monitors, printers/copiers, keyboards, mouse and any technology based equipment must be approved in ADVANCE by the IT manager or designee and purchased by the IT department. Any unauthorized purchase will be deemed against City Policy and the individual will be held responsible for the cost.

CHAPTER 4 ~ SPECIFICATIONS AND AMENDMENTS

Part A - Specifications

§4-101 Specification Preparation

The creation and submission of specifications to the Procurement Division is the responsibility of the using department. Purchasing will assist the using department in any way necessary to develop specifications that will promote full and unrestricted competition.

Departments should provide the Procurement Division at least two (2) weeks to properly prepare a solicitation. It is imperative that using departments carefully plan their requests giving consideration to the Procurement Division's timelines in connection with department deadlines.

All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the City's needs, and shall not be unduly restrictive.

§4-102 Specifications Prepared by Other Than City Personnel

The requirements of this chapter regarding the purposes and non-restrictiveness of specifications shall apply to all specifications prepared other than by City personnel, including, but not limited to, those prepared by architects, engineers, and designers.

§4-103 Specification Amendments

If, after issuance of a solicitation, changes must be made in quantity, specifications, delivery schedule, or closing date, or if corrections are needed because of defects or ambiguities, an amendment to the solicitation will be issued, in writing, no later than seventy-two (72) hours prior to the date and time fixed for submission of bids/proposals. Sole issuing authority of addenda shall be vested in the Procurement Manager. If there was a mandatory pre-bid conference, only those vendors that were in attendance may be notified of amendments. Bidders are required to sign the amendment and submit it with their bid, attesting to the fact that the changes are reflected in their bid. Failure to submit a signed amendment may be grounds for a bid to be rejected. The City assumes no responsibility for the proposer's failure to obtain and/or properly submit any addendum. It is the vendor's responsibility to check for any addendums that might have been issued before bid closing date and time. All addenda will be numbered consecutively, beginning with the number one (1). Addenda will be posted, with the referenced solicitation, to the www.BidNetDirect.com website.

§4-104 Pre-Bid Conferences and Site Visits

(1) *Conditions for Use.* A pre-bid conference may be held when specifications or the scope of work is considered somewhat complex and requirements need to be clarified by City personnel. Because of this, some pre-bid conferences are mandatory and any vendor/supplier that does not attend a mandatory meeting will not have their bid considered.

(2) *Process.* The Procurement Manager of the City of Hutto or his designee shall conduct all pre-bid meetings. In addition to the Procurement Manager or his designee, there will be at least one City employee from the requesting department present at the pre-bid meeting. This employee must be knowledgeable of the bid specifications and should be prepared to answer all questions that pertain to the specifications. Pre-bid conferences and site visits are an opportunity for dialogue between the Procurement Division, the using department and the supplier community. Both facilitate the timely exchange of information to enable all involved to clarify bidding requirements and specific program needs. Bidder servicing or equipment capabilities, application of industry requirements or standards may be clarified. In addition, any need for changes in specifications or bid requirements may be identified to facilitate a more competitive environment or to better define the City's needs so that we obtain the desired materials, equipment or services to meet our program needs. Sign-in sheets will be made available to all attending the pre-bid conference. Bids received from vendors not listed on the role of attendees of mandatory pre-bid conferences will be rejected and returned unopened to the bidder.

CHAPTER 5 ~ LEGAL REQUIREMENTS

§5-101 Insurance

Contractors performing work on City property or public right-of-way for the City of Hutto shall provide the City a certificate of insurance listing City of Hutto as additional insured and evidencing the coverages and coverage provisions identified below. All insurance must be written by an insurer licensed to conduct business in the State of Texas, unless otherwise permitted by Owner. The Contractor shall, at his own expense, purchase, maintain and keep in force insurance that will protect against injury and/or damages which may arise out of, or result from, operations under a contract, whether the operations be by himself or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

For construction and construction-related projects, all contractors and sub-contractors, including those delivering equipment or materials, performing service on a Public Works project, shall provide Texas workers' compensation for all employees. All contractors shall provide proof of coverage satisfactory to the Procurement Division within fifteen (15) days of award. Contractor shall not commence until certificate has been provided to the Procurement Division. Prime contractors are responsible for ensuring that sub-contractors carry the same or higher insurance amounts as those required of the prime contractor. Contractors shall post required signs at job site(s) informing all workers of their right to workers' compensation coverage.

The following minimum limits of insurance and bond coverage will be required:

Contractor shall maintain, at his sole cost, at all times while performing work hereunder, the insurance and bond coverage set forth below with companies satisfactory to the Owner with full policy limits applying, but not less than stated. A certificate evidencing the required insurance and specifically citing the indemnification provision set forth in the Agreement shall be delivered to the Owner within fifteen (15) days that Notice to Proceed has been accepted by Contractor.

- (1) Workman's Compensation Insurance as required by laws and regulations applicable to and covering employees of Contract engaged in the performance of the work under this agreement with a limit of not less than \$1,000,000.00;
- (2) Employers Liability Insurance protecting contractor against common law liability, in the absence of statutory liability, for employee bodily injury arising out of the master-servant relationship with a limit of not less than \$100,000.00.
- (3) Comprehensive General Liability Insurance including products/completed operation with limits of liability of not less than: Bodily Injury \$1,000,000.00 per each person, \$1,000,000.00 per each occurrence/\$2,000,000.00 aggregate; Property Damage \$1,000,000.00 per each occurrence;

- (4) Excess Liability Insurance Comprehensive general Liability, Comprehensive Automobile Liability and coverage's afforded by the policies above, with the minimum limits of \$5,000,000.00 excess of specified limits;
- (5) Builders "All-Risk Insurance" protecting the respective interest of Owner and contractor and its "Field Subcontractors" covering loss of damage during the course of construction of the Project described in this agreement and all property at the job site or in transit thereto which shall become a part of such Project. Such insurance shall be maintained until such Project is completed and accepted. This insurance shall be terminated with respect to portions of such Project when such portions are completed and accepted; and
- (6) Performance Bond and Payment Bond, furnished as guaranty of the faithful performance of the work and for the protection of the claimants for labor and material, each in the full amount of the Contract price, executed by a surety company or surety companies authorized to execute surety bonds under and in accordance with the laws of the State of Texas.

Errors and Omissions Insurance (Professional Liability Insurance)

Errors and omissions, or professional liability, insurance shall be required to cover professional advice and service providing individuals and companies with limits of liability not less than \$1,000,000.00, per each occurrence.

Medical Malpractice Insurance

Medical malpractice insurance shall be required to cover medical services with limits of liability not less than \$1,000,000.00, per each occurrence.

Exceptions to these minimum requirements may be increased/decreased at the discretion of the City Manager or his designee.

In no event shall these minimum requirements be less than the maximum claim amounts listed under the Texas Tort Claims Act (Texas Local Government Code §101).

§5-102 Prompt Payment Act

Payment will be made upon receipt of the original invoice and the acceptance of the goods or services by the City of Hutto, in accordance with the State of Texas Prompt Payment Act. The City's standard payment terms are net 30, i.e. payment is made within thirty (30) days from the date of the invoice. Exceptions for early payment may only be approved under the authorization of the Department Director and Finance Director.

103 Public Works Bonding Requirements

Chapter 2253 of the State of Texas Government Code states the following regarding public work performance and payment bonds:

§ 2253.021. PERFORMANCE AND PAYMENT BONDS REQUIRED.

- (a) A governmental entity that makes a public work contract with a prime contractor shall require the contractor, before beginning the work, to execute to the governmental entity:
- 1) a performance bond if the contract is in excess of \$100,000; and
 - 2) a payment bond if the contract is in excess of \$50,000.
- (b) The performance bond is:
- 1) Solely for the protection of the state or governmental entity awarding the public work contract;
 - 2) In the amount of the contract; and
 - 3) Conditioned on the faithful performance of the work in accordance with the plans, specifications, and contract documents.
- (c) The payment bond is:
- 1) Solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material; and
 - 2) in the amount of the contract.
- (d) A bond required by this section must be executed by a corporate surety in accordance with Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code).
- (e) A bond executed for a public work contract with the state or a department, board, or agency of the state must be payable to the state and its form must be approved by the attorney general. A bond executed for a public work contract with another governmental entity must be payable to and its form must be approved by the awarding governmental entity.
- (f) A bond required under this section must clearly and prominently display on the bond or on an attachment to the bond:

- 1) the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or
- 2) the toll-free telephone number maintained by the Texas Department of Insurance under Article 1.35D, Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.

(g) A governmental entity may not require a contractor for any public building or other construction contract to obtain a surety bond from any specific insurance or surety company, agent, or broker.

§ 2253.022 PERFORMANCE AND PAYMENT BONDS; INSURED LOSS

(a) A governmental entity shall ensure that an insurance company that is fulfilling its obligation under a contract of insurance by arranging for the replacement of a loss, rather than by making a cash payment directly to the governmental entity, furnishes or has furnished by a contractor, in accordance with this chapter:

- 1) a performance bond as described by Section 2253.021(b) for the benefit of the governmental entity; and
- 2) a payment bond as described in Section 2253.021(c) for the benefit of the beneficiaries described by that subsection.

(b) The bonds required to be furnished under Subsection (a) must be furnished before the contractor begins work.

(c) It is an implied obligation under a contract of insurance for the insurance company to furnish the bonds required by this section.

(d) To recover in a suit with respect to which the insurance company has furnished or caused to be furnished a payment bond, the only notice required of a payment bond beneficiary is the notice given to the surety in accordance with Subchapter C.

(e) This section does not apply to a governmental entity when a surety company is complying with an obligation under a bond that had been issued for the benefit of the governmental entity.

(f) If the payment bond required by Subsection (a) is not furnished, the governmental entity is subject to the same liability that a surety would have if the surety had issued the payment bond and the governmental entity had required the bond to be provided. To recover in a suit under this subsection, the only notice required of a payment bond beneficiary is a notice given to the governmental entity, as if the governmental entity were the surety.

§ 2253.023 ATTEMPTED COMPLIANCE

- (a) A bond furnished by a prime contractor in an attempt to comply with this chapter shall be construed to comply with this chapter regarding the rights created, limitations on those rights, and remedies provided.

- (b) A provision in a bond furnished by a prime contractor in an attempt to comply with this chapter that expands or restricts a right or liability under this chapter shall be disregarded, and this chapter shall apply to that bond.

§ 2253.024 INFORMATION FROM CONTRACTOR OR SUBCONTRACTOR

- (a) A prime contractor, on the written request of a person who provides public work labor or material and when required by Subsection (c), shall provide to the person:
 - 1) the name and last known address of the governmental entity with whom the prime contractor contracted for the public work;
 - 2) a copy of the payment and performance bonds for the public work, including bonds furnished by or to the prime contractor; and
 - 3) the name of the surety issuing the payment bond and the performance bond and the toll-free telephone number maintained by the Texas Department of Insurance under Article 1.35D, Insurance Code, for obtaining information concerning licensed insurance companies.

- (b) A subcontractor, on the written request of a governmental entity, the prime contractor, a surety on a bond that covers the public work contract, or a person providing work under the subcontract and when required by Subsection (c), shall provide to the person requesting the information:
 - 1) the name and last known address of each person from whom the subcontractor purchased public work labor or material, other than public work material from the subcontractor's inventory;
 - 2) the name and last known address of each person to whom the subcontractor provided public work labor or material;
 - 3) a statement of whether the subcontractor furnished a bond for the benefit of its subcontractors and material suppliers;
 - 4) the name and last known address of the surety on the bond the subcontractor furnished; and
 - 5) a copy of that bond.

- (c) Information requested shall be provided within a reasonable time but not later than the 10th day after the receipt of the written request for the information.

- (d) A person from whom information is requested may require payment of the actual cost, not to exceed \$25, for providing the requested information if the person does not have a direct contractual relationship with the person requesting information that relates to the public work.

- (e) A person who fails to provide information required by this section is liable to the requesting person for that person's reasonable and necessary costs incurred in getting the requested information.

§ 2253.025 INFORMATION FROM PAYMENT BOND BENEFICIARY

- (a) A payment bond beneficiary, not later than the 30th day after the date the beneficiary receives a written request from the prime contractor or a surety on a bond on which a claim is made, shall provide to the contractor or surety:

- 1) a copy of any applicable written agreement or purchase order; and
- 2) any statement or payment request of the beneficiary that shows the amount claimed and the work performed by the beneficiary for which the claim is made.

- (b) If requested, the payment bond beneficiary shall provide the estimated amount due for each calendar month in which the beneficiary performed public work labor or provided public work material.

§ 2253.026 COPY OF PAYMENT BOND AND CONTRACT

- (a) A governmental entity shall furnish the information required by Subsection (d) to any person who applies for the information and who submits an affidavit that the person:

- 1) has supplied public work labor or material for which the person has not been paid;
- 2) has contracted for specially fabricated material for which the person has not been paid; or
- 3) is being sued on a payment bond.

- (b) The copy of the payment bond or public work contract is prima facie evidence of the content, execution, and delivery of the original.

- (c) An applicant under this section shall pay any reasonable fee set by the governmental entity for the actual cost of preparation of the copies.

- (d) A governmental entity shall furnish the following information to a person who makes a request under Subsection (a):

- 1) a certified copy of a payment bond and any attachment to the bond;
- 2) the public work contract for which the bond was given; and
- 3) the toll-free telephone number maintained by the Texas Department of Insurance under Article 1.35D, Insurance Code, for obtaining information concerning licensed insurance companies.

§ 2253.027 LIABILITY OF GOVERNMENTAL ENTITY

- (a) If a governmental entity fails to obtain from a prime contractor a payment bond as required by Section 2253.021:

- 1) the entity is subject to the same liability that a surety would have if the surety had issued a payment bond and if the entity had obtained the bond; and

2) a payment bond beneficiary is entitled to a lien on money due to the prime contractor in the same manner and to the same extent as if the public work contract were subject to Subchapter J, Chapter 53, Property Code.

(b) To recover in a suit under Subsection (a), the only notice a payment bond beneficiary is required to provide to the governmental entity is a notice provided in the same manner as described by Subchapter C. The notice must be provided as if the governmental entity were a surety.

Notice Requirements

§ 2253.041 NOTICE REQUIRED FOR CLAIM FOR PAYMENT FOR LABOR OR MATERIAL

(a) To recover in a suit under Section 2253.073 on a payment bond for a claim for payment for public work labor performed or public work material delivered, a payment bond beneficiary must mail to the prime contractor and the surety written notice of the claim.

(b) The notice must be mailed on or before the 15th day of the third month after each month in which any of the claimed labor was performed or any of the claimed material was delivered.

(c) The notice must be accompanied by a sworn statement of account that states in substance:

- 1) the amount claimed is just and correct; and
- 2) all just and lawful offsets, payments, and credits known to the affiant have been allowed.

(d) The statement of account shall include the amount of any retainage applicable to the account that has not become due under the terms of the public work contract between the payment bond beneficiary and the prime contractor or between the payment bond beneficiary and a subcontractor.

§ 2253.042. COPY OF AGREEMENT AS NOTICE OF CLAIM FOR UNPAID LABOR OR MATERIAL.

A payment bond beneficiary has the option to enclose with the sworn statement of account, as the notice for a claim under a written agreement for payment for public work labor performed or public work material delivered, a copy of the written agreement and a statement of the completion or the value of partial completion of the agreement.

§ 2253.043. NOTICE OF CLAIM FOR UNPAID LABOR OR MATERIAL WHEN WRITTEN AGREEMENT DOES NOT EXIST.

(a) Except as provided by Section 2253.044, if a written agreement does not exist between the payment bond beneficiary and the prime contractor or between the payment bond beneficiary and the subcontractor, the notice for a claim for unpaid bills must contain:

- 1) the name of the party for whom the public work labor was performed or to whom the public work material was delivered;
- 2) the approximate date of performance or delivery;
- 3) a description of the public work labor or material for reasonable identification; and
- 4) the amount due.

(b) The payment bond beneficiary must generally itemize the claim and include with it copies of documents, invoices, or orders that reasonably identify:

- 1) the public work labor performed or public work material delivered for which the claim is made;
- 2) the job; and
- 3) the destination of delivery.

§ 2253.044. NOTICE OF CLAIM FOR MULTIPLE ITEMS OF LABOR OR MATERIAL.

The notice for a claim for lump-sum payment for multiple items of public work labor or material must:

- (1) describe the labor or material in a manner that reasonably identifies the labor or material;
- (2) state the name of the party for whom the labor was performed or to whom the material was delivered;
- (3) state the approximate date of performance or delivery;
- (4) state whether the contract is written or oral;
- (5) state the amount of the contract; and
- (6) state the amount claimed.

§ 2253.045. NOTICE OF CLAIM FOR UNPAID LABOR OR MATERIAL UNDER WRITTEN UNIT PRICE AGREEMENT.

The notice for a claim for public work labor performed or public work material delivered by a payment bond beneficiary who is a subcontractor or material man to the prime contractor or to a subcontractor and who has a written unit price agreement that is wholly or partially completed is sufficient if the beneficiary attaches to the sworn statement of account:

- (1) a list of units and unit prices set by the contract; and
- (2) a statement of those completed and partially completed units.

§ 2253.046. NOTICE REQUIRED FOR CLAIM FOR PAYMENT OF RETAINAGE.

(a) To recover in a suit under Section 2253.073 on a payment bond for a claim for payment of retainage, a payment bond beneficiary whose contract with a prime contractor or subcontractor provides for retainage must mail written notice of the

claim to the prime contractor and the surety on or before the 90th day after the date of final completion of the public work contract.

(b) The notice shall consist of a statement of:

- (1) the amount of the contract;
- (2) any amount paid; and
- (3) the outstanding balance.

(c) Notice of a claim for payment of retainage is not required if the amount claimed is part of a prior claim made under this subchapter.

§ 2253.047. ADDITIONAL NOTICE REQUIRED FOR PAYMENT BOND BENEFICIARY WITHOUT DIRECT CONTRACTUAL RELATIONSHIP WITH PRIME CONTRACTOR.

(a) To recover in a suit under Section 2253.073 on a payment bond, a payment bond beneficiary who does not have a direct contractual relationship with the prime contractor for public work labor or material must mail notice as required by this section.

(b) A payment bond beneficiary who contracts with a subcontractor for retainage must mail, on or before the 15th day of the second month after the date of the beginning of the delivery of public work material or the performance of public work labor, written notice to the prime contractor that:

- (1) the contract provides for retainage; and
- (2) generally indicates the nature of the retainage.

(c) The payment bond beneficiary must mail to the prime contractor written notice of a claim for any unpaid public work labor performed or public work material delivered. The notice must be mailed on or before the 15th day of the second month after each month in which the labor was performed or the material was delivered. A copy of the statement sent to a subcontractor is sufficient as notice under this subsection.

(d) The payment bond beneficiary must mail to the prime contractor, on or before the 15th day of the second month after the receipt and acceptance of an order for specially fabricated material, written notice that the order has been received and accepted.

(e) This section applies only to a payment bond beneficiary who is not an individual mechanic or laborer and who makes a claim for wages.

§ 2253.048. MAILING NOTICE

(a) A notice required by this subchapter to be mailed must be sent by certified or registered mail.

(b) A notice required by this subchapter to be mailed to a prime contractor must be addressed to the prime contractor at the contractor's residence or last known business address.

- (c) A person satisfies the requirements of this subchapter relating to providing notice to the surety if the person mails the notice by certified or registered mail to the surety:
- (1) at the address stated on the bond or on an attachment to the bond;
 - (2) at the address on file with the Texas Department of Insurance; or
 - (3) at any other address allowed by law.

Claims On Bonds; Enforcement

§ 2253.071. TERMINATION OR ABANDONMENT OF CONTRACT; PROCEEDS OF CONTRACT.

- (a) The proceeds of a public work contract are not payable, until all costs of completion of the contract work are paid by the contractor or the contractor's surety, to a contractor who furnishes a bond required by this chapter if:
- (1) the contractor abandons performance of the contract; or
 - (2) the contractor's right to proceed with performance of the contract is lawfully terminated by the awarding governmental entity because of the contractor's default.
- (b) The balance of the public work contract proceeds remaining after the costs of completion are paid shall be paid according to the contractor's and the surety's interests as may be established by agreement or by judgment of a court.
- (c) A surety that completes a public work contract or incurs a loss under a performance bond required under this chapter has a claim to the proceeds of the contract prior to all other creditors of the prime contractor to the full extent of the surety's loss. That priority does not excuse the surety from paying an obligation under a payment bond.

§ 2253.072. CITY NOT LIABLE FOR COSTS

The city is not liable for payment of a cost or expense of a suit brought by any party on a payment bond furnished under this chapter.

§ 2253.073. SUIT ON PAYMENT BOND

- (a) A payment bond beneficiary who has provided public work labor or material under a public work contract for which a payment bond is furnished under this chapter may sue the principal or surety, jointly or severally, on the payment bond if the claim is not paid before the 61st day after the date the notice for the claim is mailed.
- (b) Suit may be brought under Subsection (a) for:

- (1) the unpaid balance of the beneficiary's claim at the time the claim was mailed or the suit is brought; and
- (2) reasonable attorney fees.

§ 2253.074. COSTS AND ATTORNEY FEES

A court may award costs and reasonable attorney fees that are equitable in a proceeding to enforce a claim on a payment bond or to declare that any part of a claim is invalid.

§ 2253.075. ASSIGNMENT OF CLAIM

A third party to whom a claim is assigned is in the same position as a payment bond beneficiary if notice is given as required by this chapter.

§ 2253.076. LIMITATIONS ON CERTAIN CLAIMS; MAXIMUM RETAINAGE

- (a) The amount of a subcontractor's claim, including previous payments, may not exceed the proportion of the subcontract price that the work done bears to the total of the work covered by the subcontract.
- (b) A claim for specially fabricated material that has not been delivered or incorporated into the public work is limited to material that conforms to and complies with the plans, specifications, and contract documents for the material. The amount of the claim may not exceed the reasonable cost, less the fair salvage value, of the specially fabricated material.
- (c) A claim for retainage in a notice under this subchapter is not valid for an amount greater than the amount of retainage specified in the public work contract between the payment bond beneficiary and the prime contractor or between the payment bond beneficiary and the subcontractor. A claim for retainage is never valid for an amount greater than 10 percent of the amount of that contract.

§ 2253.077. VENUE

A suit under this chapter shall be brought in a court in a county in which any part of the public work is located.

§ 2253.078. STATUTE OF LIMITATIONS

- (a) A suit on a performance bond may not be brought after the first anniversary of the date of final completion, abandonment, or termination of the public work contract.
- (b) A suit on a payment bond may not be brought by a payment bond beneficiary after the first anniversary of the date notice for a claim is mailed under this chapter.

§ 2253.079. CRIMINAL OFFENSE FOR FALSE AND FRAUDULENT CLAIM.

- (a) A person commits an offense if the person willfully files a false and fraudulent claim under this chapter.
- (b) An offense under this section is subject to the penalty for false swearing.

CHAPTER 6 ~ CONTRACT ADMINISTRATION, MODIFICATION AND TERMINATION

Part A - General Information

All written contracts/agreements, whether they have been competitively bid or not, require appropriate approval. That approval is delineated in §2-102 of this Policy on Signatory Authority. Legal review is required on all non-City approved written contracts/agreements.

Part B - Preferred Type of Contract

The preferred type of contracts to use for most City procurement is firm fixed price. It requires minimum administration and provides maximum incentive to the supplier.

§6-101 Multi-Year Contracts

(1) *Specified Period.* Unless otherwise provided by law, a contract for supplies or services may be entered into for generally two (2) years with a renewal option of typically not more than three (3) one year renewals (one year at a time). The term of the contract and conditions of renewal or extension, if any, are to be included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore.

(2) *Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods.* When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled.

Part C - Basic Contract Process

§6-102 Definitions

Basically, an agreement is necessary, regardless of cost, when a person or a company will perform a service for the City, either on City property or at another location. The following agreements have been approved by the Procurement Manager and the City Attorney for use in contracting with vendors. Generally, these agreements are considered in two unique categories:

1. Professional/Consulting Service Agreements

The State of Texas, under Government Code 2254, has defined Professional Services as those services performed by:

- ❖ "Professional services" means services: (A) within the scope of the practice, as defined by state law, of: (i) accounting; (ii) architecture; (iii) landscape architecture; (iv) land surveying; (v) medicine; (vi) optometry; (vii) professional engineering;

(viii) real estate appraising; or (ix) professional nursing; or (B) provided in connection with the professional employment or practice of a person who is licensed or registered as: (i) a certified public accountant; (ii) an architect; (iii) a landscape architect; (iv) a land surveyor; (v) a physician, including a surgeon; (vi) an optometrist; (vii) a professional engineer; (viii) a state certified or state licensed real estate appraiser; or (ix) a registered nurse.

Professional Services

- (1) *Definition.* Generally, those services performed by an individual or group of individuals where education, degrees, certification and/or license is required for qualification to perform the service. The service is usually based on intellectual qualifications as opposed to craftsmanship. Certain professions are specifically named in the Professional Services Procurement Act, Government Code Sec. 2254.002(2)(a).
- (2) *Method of Selection.* The City may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award: (1) on the basis of demonstrated competence and qualifications to perform the services; and (2) for a fair and reasonable price. The professional fees under the contract may not exceed any maximum provided by law per Government Code §2254.003 and must be consistent with and not higher than the recommended practices and fees published by the applicable professional associations.

§6-103 Competitive Sealed Qualifications

- (1) *Conditions for Use.* A contract may be entered into by competitive sealed qualifications for such professional services as architecture, land surveying, or professional engineering.
- (2) *Request for Qualifications.* Qualifications may be solicited through a Request for Qualifications (RFQ). The relative importance of competence, qualifications and other evaluation factors must be specified.

For projects where fees are less than \$50,000, the City Manager may permit a modified selection process to determine the most qualified vendor.

- (3) *Public Notice.* Adequate public notice of the RFQ shall be given in the same manner as provided in §3-102(3). (Competitive Sealed Bidding, Public Notice)
- (4) *Receipt of Qualifications.* Qualifications shall be opened so as to avoid disclosure of contents to competing offerors. Only the name and location of the

responding vendors will be announced. A Register of Qualifications shall be prepared and shall be open for public inspection.

- (5) *Evaluation Factors.* The RFQ shall state the relative importance demonstrated compliance with requirements, offeror qualifications, financial capacity, project schedule and other factors, if any. Qualifications shall be evaluated by committee to be formed by the Procurement Manager. The evaluation committee shall screen and rate all of the responsive submittals.
- (6) *Discussion with Responsible Offerors and Revisions to Proposals.* As provided in the RFQ, discussions may be conducted with up to five (5) responsible offerors who submit qualifications determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion. In conducting discussions, there shall be no disclosure of any information derived from qualifications submitted by competing offerors.
- (7) *Negotiations.* Once the evaluation committee has selected the most highly qualified provider, the City Manager, or his designee, must attempt to negotiate with that provider a contract at a fair and reasonable price. If a satisfactory contract cannot be negotiated with the most highly qualified provider, the City Manager, or his designee, shall formally end negotiations with that provider, select the next most highly qualified provider and attempt to negotiate a contract with that provider at a fair and reasonable price. This process shall continue until a contract is entered into.
- (8) *Award.* Award shall be made to the responsible offeror whose qualifications conform to the solicitation and is determined in writing to be the most advantageous to the City taking into consideration the evaluation factors set forth in the RFQ. No other factors or criteria shall be used in the evaluation.
- (9) *Debriefings.* The Procurement Manager is authorized to provide debriefings that furnish the basis for the source selection decision and contract award only after an award has been made by City Council.

The State of Texas, under Government Code 2254, has defined Consulting Services as those services performed by:

- ❖ "Consulting service" means the service of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee. "Consultant" means a person that provides or proposes to provide a consulting service.

Under included exhibits, a pre-approved agreement is available to City employees wishing to engage either a provider for Professional/Consulting Services.

City Approved Standard Contract

A City approved standard contract is required for providers who are performing a service for the City, usually on City property, where the City must ensure that all protections for the City (insurance, Worker's Comp, etc.) are in full force and effect. For example, grounds maintenance, software, maintenance agreements and janitorial services, etc. are prime examples of general services that would require a Vendor Agreement. Purchasing has developed a formal agreement for these type services which has been approved by the City Attorney. The Procurement Manager is responsible for determining which standard contract/agreement will be used for the project.

In both of the aforementioned instances, the Signatory Authority noted on page 14 of this document is understood. Only those employees with specific authority may obligate the City and sign an agreement.

§6-104. Initiation of Contract

In order to begin the process of a contract initiation, a Department must enter a requisition for the said goods or services (or combination). This requisition will begin the process for solicitation; documentation and execution. After the contract or agreement has been fully executed (all parties have agreed and signed), Purchasing will electronically file in the appropriate file and to the City Secretary for electronic filing and retention.

The requisition and subsequent Purchase Order will directly reflect the agreement. No payment will be issued to the provider until the complete, executed file is in place in the Purchasing system.

§6-105 Monitoring and Contractor Report Cards

(1) Using Departments. The using department is responsible for monitoring the vendor and the goods and services being provided to the City. It is imperative that using

department heads and Directors familiarize themselves with their contracts in order to help facilitate vendor compliance. The scope of work, services and the terms and conditions of the contract must be met prior to making payment.

§6-106 Renewals

(1) *Vendor Agreement.* The Procurement Division, with the cooperation and approval of the using department, shall be responsible for obtaining, in writing, a vendor's agreement to renew a contract at the original contract price or with pre-approved escalation. Once received, the Procurement Division shall forward this information to the using department.

(2) *Procurement Division.* The Procurement Division shall be responsible for preparing the necessary paperwork to submit a contract renewal to City Council for approval. The renewal process should be completed prior to a contract's expiration to allow for uninterrupted operations.

Part D - Contract Modifications and Terminations

§6-106 Change Orders

- (1) *Definition.* As stated in Texas Local Government Code §252.048, if changes in plans or specifications are necessary after the performance of the contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished.
- (2) *Requirements.* The original contract price may not be increased by more than twenty-five percent (25%). The original contract price may not be decreased by more than twenty-five percent (25%) without the consent of the Contractor.
- (3) *Appropriations.* The total contract price may not be increased because of the change orders unless additional money for increased costs is appropriated for that purpose from available funds.

§6-107 Terminations

- (1) *For Cause.* If, through any cause, a Contractor shall fail to fulfill in a timely and proper manner his obligations under a contract, or if a Contractor shall violate any of the covenants, agreements or stipulations of a contract, the City shall thereupon have the right to terminate the contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. Notwithstanding, the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the contract by the Contractor, and the City may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the City from the Contractor is determined.
- (2) *For Convenience.* The City may terminate a contract at any time giving at least thirty (30) days notice in writing to the Contractor. If a contract is terminated by the City as provided herein, the Contractor will be paid for the service that it has performed up to the termination date.

Part E - Maintenance and Lease Agreements

§6-108 Maintenance Agreements

(1) *Definition.* The City maintains service agreements with manufacturers and authorized service centers for various machines and equipment. Criteria used to determine this need are:

- (a) The item cannot be repaired by City maintenance personnel without extensive training;
- (b) The item has many moving mechanical parts or is of such a nature that regular adjustment of an exacting nature is required;
- (c) The equipment is old, costly to replace, but in adequate shape for continued use.
- (d) The item is costly and the guarantee has expired.

Computer related equipment is maintained through the Information Technology Department (IT). No computer maintenance agreements will be contracted for, until first approved by IT.

(2) *Responsibility.* It is the using department's responsibility to budget funds for and obtain necessary maintenance agreements. It is also the responsibility of the using department to assure that equipment is serviced per terms of the agreement. The using department must inform Purchasing of any disposition of equipment that makes it necessary to cancel an existing maintenance agreement.

§6-109 Lease Agreements

All lease purchases or capital leases shall be coordinated with the Finance Department. This type of purchase and financing is unique and is generally accounted for through debt service funds, not the customary departmental expenditure accounts.

§6-110 Contract Review and Approval

Regardless of value, the City Manager, or his designee, will review and approve all contracts prior to execution. All contracts will be reviewed and approved prior to execution by the appropriate designee per §2-102 Signatory Authorities and Approval Thresholds. Non-standard contracts will be reviewed as to form by the City Attorney prior to execution.

CHAPTER 7 ~ SURPLUS MATERIALS AND EQUIPMENT

Part A - Disposal

(1) *Definition:* The Procurement Manager is responsible for the final disposition of City- owned surplus property through a public on-line or live auction. Surplus property shall consist of the following:

- City-owned property, real or personal, which has been retired from service and no future need of same property is anticipated.

(2) Under this provision, an employee may not purchase property of any type through an internal City organized auction. However, they may participate in a third-party coordinated auction.

(3) *Proceeds:* The Procurement Manager shall deposit the proceeds from the sale of salvage or surplus property into the City's general fund or other fund as appropriate.

§7-101 City-Owned Materials and Equipment

(1) *Procedure.* The Procurement Manager will periodically notify each department of the dates that the department will be available to accept surplus items. Using departments will complete the Surplus Property Disposition Form (Exhibit C) and submit to the Purchasing office via e-mail procurement@huttotx.gov or interoffice mail, those items (including vehicles and heavy equipment) that they wish to dispose of.

Vehicles and Heavy Equipment. Using departments that have vehicles and/or heavy equipment that they wish to dispose of must contact the City's Fleet Maintenance Division and arrange for the equipment to be placed at the garage.

(2) *Responsibilities:*

Purchasing. The Procurement Manager shall be responsible for:

- Maintaining an inventory log of surplus items and equipment.
- Preparing an agenda item for City Council approval for the sale of the items and equipment, when appropriate or required.
- Photographing all items and equipment and submitting to the auctioneer, along with descriptions, location, preview dates, contact information, etc.
- Scheduling the auction, coordinating with the auctioneer and overseeing the sale.
- Releasing the property to the successful bidder, if not already in Auctioneer's storage. No auction items shall be released to any buyer without a paid sales receipt from the Auctioneer.
- Collecting the revenue from the auctioneer and depositing it with Accounting.

Equipment Services. Vehicle Maintenance shall be responsible for:

- Preparing the appropriate forms for the Auctioneer and submitting them to Purchasing.
- Removing any decals from the vehicle(s).
- Removing all additional equipment (GPS, siren, etc.) from the vehicle(s).
- Removing all license tags from the vehicle(s).
- Submit notification of transfer with Texas Department of Motor Vehicles.
- Providing adequate personnel to assist in the management, placement and physical removal of auction vehicles and equipment prior to, during and after the auction.
- Issuing an Application for Transfer of Title and the original title to the buyer of vehicles and equipment. (City Secretary's office performs this task.)

Auctioneer. The Auctioneer shall be responsible for:

- Providing an on-line internet auctioneering service according to the terms and conditions of the City's most current contract.
- Providing storage for the items to be auctioned when City is unable to warehouse the items.
- Setting minimum prices on items sold at auction. However, should it be in the best interest of the City to set a minimum price, the item should be appraised by an expert to determine a fair market value.
- Collecting all monies from the successful bidder(s) per the contract agreement.
- Providing receipts to the Procurement Manager when buyers have rendered payment.
- Submitting payment of the total gross sales less sales tax and Auctioneer commission to the Procurement Manager, along with the sales recap outlining (for each item sold) the buyer's name, address and amount of sale.

Buyer. The successful bidder shall be responsible for:

- Rendering payment to the Auctioneer within timeframe set forth by Auctioneer.
- Removing the property from the City's facility or Auctioneer's storage within ten (10) working days, unless other arrangements have been made and approved by the Procurement Manager.
- The ownership of the property shall revert back to the City if the successful bidder does not comply with the removal time requirement.

GLOSSARY OF TERMS

The following definitions are intended to assist you in understanding the language used throughout this manual. When using this manual, if you find a word or words that you may not clearly understand or if it is not defined in this section, please do not hesitate to contact someone in the Purchasing Department for clarification and/or interpretation.

Local contract - Contracts protect pricing for a period of one year and are awarded to vendors for supplies, equipment and services routinely required by one or more departments.

Award – The presentation, after careful consideration, of a purchase agreement or contract to the selected bidder.

Best value - If the sealed competitive bidding requirement applies to the contract for goods or services, the contract may be awarded to the lowest responsible bidder or to the bidder who provides the goods or services at the best value for the City. In determining the best value for the City, we may consider:

- the purchase price;
- the reputation of the bidder and of the bidder's goods or services;
- the quality of the bidder's goods or services;
- the extent to which the goods or services meet the 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 total 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.

Bid advertisement - For expenditures over \$50,000 a public notice shall be placed in a newspaper of general circulation and published at least once a week for two consecutive weeks. The notice shall contain the time and place at which bids will be publicly opened.

Bonds

Bid bond – A bond required of a contractor to ensure that the contractor will enter into the contract, for which he has submitted a formal written bid and/or proposal.

Payment bond – A bond required that ensures that all suppliers and subcontractors of the contractor will be paid for work and/or material supplied in the course of the contract.

Performance bond – A bond required that guarantees vendor performance during the execution of the contract.

Capital equipment – Assets that are used in operations with a useful life greater than one year and valued at \$5,000 or more at the time of acquisition.

Change order – A change order is issued to a purchase order or contract if changes in plans or specifications are necessary in order to increase or decrease the quantity of work to be performed or of materials, equipment, or supplies to be furnished. Change orders must not be issued unless funds are available for the increase and the original contract may not be increased by more than 25 percent. The contract may not be decreased by more than 25% without the consent of the contractor.

City Council - The elected officials of the City of Hutto, Texas given the authority to exercise such powers and jurisdiction of all City business as conferred by the City Charter and the State of Texas Constitution and Laws.

Commodity code - A specific group of goods or services categorized into distinct classes that have been assigned a numerical reference number within the purchasing and inventory system.

Competitive bidding - The process wherein a vendor openly competes with other vendors, through a formal or informal process, for the City's business.

Component purchases - Purchases of component parts of an item, which in normal purchasing practices would be purchased in one purchase.

Consulting services - The service of studying or advising the City under a contract that does not involve the traditional relationship of employer and employee.

Contract - An agreement between the City and a Supplier, with binding legal and moral force, usually exchanging goods or services for money or other consideration.

Contractor - The successful vendor(s) awarded a contract by the City of Hutto.

Delivery date - The date by which goods or services are needed by the department or are promised by the vendor.

Emergency - Purchases that are made to meet a critical, unforeseen need of the City, where the City's ability to serve the public would be impaired if the purchase is not made immediately. Emergency purchases are exempt from standard purchasing procedures and must qualify for exemption as outlined in LGC 252.022. Emergency purchases must follow the procedure set forth in this manual.

Encumbrance – Commitments related to unperformed contracts for goods or services.

Expedite - To accelerate the purchasing process through normal procedures in order to prevent work stoppage or loss of city equipment or property.

Goods - A generic term that includes all types of property to be purchased by the City; equipment, supplies, materials, component and repair parts.

Inter-local agreement – An agreement made between two governmental entities to perform governmental functions and services (such as purchasing, records management, police /fire protection, public health, etc.) for another as provided under Government Code Chapter 791.025.

Invitation to bid – A formal written document that requests from bidders a firm price and delivery details for specified goods or services. An invitation to bid is generally required when the anticipated level of expenditure will be greater than \$50,000. It may be used any time the Procurement Manager, the Department, or the City Manager deems it is justified.

Lowest responsible bidder - This is the vendor who offers the lowest bid, which meets all the specifications, requirements, and terms and conditions of the invitation to bid. It is expressly understood that the lowest responsible bid includes any related costs to the City, using a total cost concept. The term “responsible” refers to the financial and practical ability of the bidder to perform the contract. The term is also used to refer to the experience or safety record of the vendor.

Maintenance agreements – An agreement with equipment manufacturers or authorized service centers for the upkeep of equipment that neither adds to its permanent value nor prolongs its intended life appreciably, but instead keeps it in an efficient operating condition.

Professional services - Services rendered by members of a recognized profession or possessing a special skill. Such services are generally acquired to obtain information, advice, training, or direct assistance. (Mental or intellectual skills, rather than physical or manual)

Purchase - An act that includes the acquisition of goods or services, to include the act of leasing personal or real property. Separate, sequential, and component purchases shall be treated as a single purchase.

Purchase order - A purchaser’s written document to a vendor formalizing all of the terms and conditions of a proposed transaction, such as a description of the requested item(s), delivery schedule, terms of payment, and transportation. When accepted by a vendor, the agreement specified in the purchase order becomes a contract. A purchase order grants the vendor the authority to deliver the goods or services and invoice for the same. It is the City’s commitment to accept the goods or services and pay for them at the agreed price.

Request for proposal - A formal written document requesting that potential vendors make an offer for goods or services to the City. The request for proposal method of procurement may be used for all goods and services. RFP’s differ from invitations to bid

in that the City is seeking a solution, as described in the document, not a bid/quotation meeting firm specifications for the lowest price. Proposals are evaluated based on criteria formulated around the most important features of a product or service, of which quality, testing, references, availability or capability may be overriding factors, and price is not the sole factor of the award. All request for proposals are kept secret during negotiations until a contract is awarded.

Request for qualifications - A formal written document used when soliciting providers of architectural, engineering or land surveying services. The City must comply with Government Code 2254.004 in the procurement of these services. The City must first select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications. After a firm has been selected based on qualifications and experience, then a fair and reasonable fee shall be negotiated. If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land surveying services, the City shall formally end negotiations with that firm and select the next most highly qualified firm and begin negotiations with that provider for a fair and reasonable price.

Requisition - The source document for all purchasing activity. This form communicates a department's needs to the Purchasing Department and grants authorization to enter into a contractual relationship for delivery of the goods and/or services. A requisition is for communicating internal requirements and should not be used by the departments for the order and delivery of goods and/or services.

Separate purchases - Purchases made separately of items that in normal purchasing practices would be purchased in one purchase.

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

Services - A generic term to include all work or labor performed for the City on an independent contractor basis, including maintenance, construction, manual, clerical or professional services.

Single source procurement - A term used to mean a single source is available from more than one vendor but has a justifiable reason to purchase from that single provider.

Sole source procurement - Purchases of goods or services that are available from only one supplier. There may be just one vendor because of patents or copyrights, or simply because the vendor is the only one that supplies the good or service. These purchases are exempt from the standard bidding requirement and must qualify as outlined in LGC 252.022 but must comply with the procedures outlined in this manual.

Specifications – A description of the physical or functional characteristics, or of the nature of a supply, service, or construction item; the requirements to be satisfied by a product, material or process indicating, if appropriate, the procedures to determine

whether the requirements are satisfied. Specifications should be descriptive, but not restrictive.

State contract purchase – Items that are available through the State of Texas Procurement and Support Services Cooperative Purchasing Program. The State has publicly advertised and received qualified bids for specific items. These appear on a listing periodically published by the State. The City of Hutto has elected to participate in the cooperative purchasing program for governmental subdivisions and other state agencies.

Surplus - Item(s) no longer needed by a department, regardless of its value or condition.

Vendor - A generic term applied to individuals and companies alike, who provide goods and services to the City.

ATTACHMENT A



SOLE/SINGLE SOURCE FORM

SOLE SOURCE: Items available from only one source because of patents, copyrights, secret processes or natural monopolies. A single source is available from more than one vendor but has a justifiable reason to purchase from that single source.

Department: _____

Vendor: _____

Services/Equip.: _____

Dollar Amount \$ _____

Date: _____

The vendor/equipment/services stated above must be purchased as a SOLE SOURCE/SINGLE SOURCE purchase as defined by the local government code for the following reasons: (circle one)

- 1. Patents
- 2. Copyrights
- 3. Secret Processes
- 4. Natural Monopolies
- 5. Unique Expertise
- 6. Unique Experience
- 7. Other _____

Approvals:

Name: _____	Signature: _____	Date: _____
Requestor		
Name: _____	Signature: _____	Date: _____
Managing Director		
If expenditures are over \$15,000, the appropriate Asst. City Manager must also sign:		
_____	Date: _____	
Asst. City Manager		

ATTACHMENT B



CERTIFICATION OF EMERGENCY PURCHASE FORM

Section 252.022 of the Texas statutes provides exemptions to the bidding laws for emergencies as follows:

(A)(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.

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

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

Complete the section below and forward to Procurement Division no later than next business day.

Purchase involved was necessary because of (A)(1) (A)(2) (A)(3)
(indicate one by placing an 'X' in the box)

Description/Justification of Emergency:

Emergency Dollar Amount: \$ _____

Name/Title of official responsible for initiating emergency action. Date:

Signature of Managing Director: Date
Required for any dollar amount

Dollar Level Authority Signature Date
(if necessary per Directive 1, Authorization of Expenditures)

Purchasing Use Only

Date Received: _____

PO Number: _____

Director/Buyer Signature: _____