

CITY OF ELIZABETHTON, TENNESSEE



# PROCUREMENT POLICIES AND PROCEDURES

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## 1. PURPOSE

The purpose of this manual is to set forth policies, procedures and standards for the City of Elizabethton's Purchasing Department and all City departments that execute purchases. It serves as a procurement guide for city officials, and all purchases shall be processed in accordance with these policies and procedures. The contents of this document are not intended to conflict with the law, the law shall take precedence and said sections(s) in conflict shall be severed from the manual. All other provisions, sections, and subsections hereof shall not be affected thereby and shall remain in full force and effect.

## 2. MISSION STATEMENT AND OBJECTIVES

To accomplish the purpose described above, the Purchasing Department's mission statement and objectives are as follows:

*Our mission is to provide professional services to acquire quality goods and services in the most cost effective, efficient, and timely manner, while adhering to all applicable procurement legislation, for departments of the City of Elizabethton. It is our policy to ensure an open and fair, competitive environment for all vendors who wish to do business with the City.*

*Our objective is to maintain the integrity of the procurement process in a manner that facilitates fair and open competition.*

## 3. ENABLING LEGISLATION

As designated in the City Charter, the City Manager, or his designee, shall act as Purchasing Agent for the City with power, except as set out in these procedures, to purchase materials, supplies, equipment, secure leases, and lease-purchases, and dispose of and transfer surplus property for the proper conduct of the City's business. All contracts, leases, and lease-purchase agreements extending beyond the end of any fiscal year must have prior approval of the governing body.

The Municipal Purchasing Law of 1983 does not apply to purchases by authorized officials in municipalities having charter provisions or private act requirements governing competitive bidding and purchasing. In November of 2017 the governing body approved the revision of the procurement policy and raised the bid threshold to fifteen thousand dollars (\$15,000.00) for non-emergency, nonproprietary purchases.

## 4. GENERAL INFORMATION

All purchases on the City's behalf shall be authorized by a departmental purchase order, requisition, or other contract approved by the City Manager, prior to ordering. A vendor has no legal obligation to supply the item without proper authorization, and the City is not obligated to pay.

- Estimated cost of items will enable purchasing to determine what method of purchase is required.

- If a purchase request is incomplete or not properly prepared, the Purchasing Department may return it to the originating department for completion. Incomplete requests can cause unnecessary delays.
- Purchases shall not be split to circumvent any provision of the City Code/Charter, this manual, or any policy established by the City. Also, purchases shall not be charged to a wrong line item because there are funds available.
- If a purchase request is urgent, it should be marked with a brief explanation. This process will be the exception rather than the rule and should not be due to poor planning.
- Purchaser should not give a verbal order to a vendor without a purchase order number. A purchase order is a contract, and a vendor has no legal authority to supply the item without written documentation.
- All purchase requests submitted to the Purchasing Department will be reviewed and subject to change if determined to be in the City's best interest.

## 5. PURCHASING DEPARTMENT ROLE

The Purchasing Department is a staff activity of the City of Elizabethton, operating under the direction and supervision of the City Manager, who is designated as the Purchasing Agent by directive of the City Charter. The Director of Purchasing shall have general supervision over the department and reports directly to the City Manager.

The Purchasing Department is responsible for the procurement of all City supplies, equipment, and services and for the disposal of all surplus property in accordance with the City Charter. Unless otherwise directed by the City Manager, in writing, the City Manager and the Director of Purchasing (and their designees) are the only representatives authorized to obligate the expenditure of City funds above the departmental purchase threshold.

The Purchasing Department will provide assistance to all departments within the City to secure the best materials, supplies, equipment, and services at the lowest possible cost, consistent with the quality needed for the proper operation of each department. To have an effective and efficient purchasing program, all City employees, directly or indirectly associated with the purchasing function, must work as a team to promote the City's best interests in obtaining the maximum value for each dollar of expenditure. For any purchases made on behalf of the City, the Purchasing Director, upon careful review, reserves the right to recommend alternate awards as may be in the City's best interest.

## 6. PURCHASING DEPARTMENT RESPONSIBILITIES

The Purchasing Department is responsible for ensuring that competition is free and open without preference or consideration of special interests. Service and material providers shall be selected in an atmosphere free of fear or favor, and without political duress or similar contrast. Responsibilities of the Department include the following:

- To aid and cooperate with all departments in meeting their needs for procuring supplies, equipment, and services.
- To process all purchase requests in a timely manner and maintain all procurement files.
- To select vendors, prepare purchase orders, process, and maintain purchase order and requisition files.
- To prepare, solicit, and advertise formal sealed bids, request for proposals, and request for qualifications.
- To negotiate contracts that are otherwise not suitable for competitive bidding.
- To establish and enforce purchase specifications as needed.
- To monitor established contract usage.
- To transfer or dispose of any items that are declared surplus.
- To search for new and improved sources of supplies and services.
- To assist in preparation of specifications and maintain specifications and historical performance files.
- To obtain prices on comparable materials.

## 7. REQUESTING DEPARTMENT RESPONSIBILITIES

Responsibilities of the Requesting Department include the following:

- To properly plan their material, service, and supply needs in order to provide ample lead time for the Purchasing Department to process the requisition, issue the purchase order, and allow for delivery time from the supplier.
- To prepare a complete and accurate description of the materials, supplies, and/or services needed.
- To assist Purchasing by suggesting sources of supply and obtaining prices if below the formal solicitation threshold.
- To initiate specifications preparation on items to be solicited.

- To advise Purchasing of defective merchandise or dissatisfaction with vendor performance. Written documentation is required.
- To submit properly completed paperwork/photos of any proposed surplus.
- To maintain/store departmental property that is surplus or obsolete until such time that it is sold or disposed of.

## 8. REQUESTING DEPARTMENT PERSONNEL PURCHASE AUTHORITY

The Finance Department maintains a file of departmental personnel who are authorized to make purchases or approve payments on behalf of the department. Authorization forms will be completed every fiscal year.

## 9. LIMITS OF EXPENDITURE AND AUTHORITY LEVELS

The following chart shows, in large part, the manner in which purchases are made. The thresholds indicate the lawful manner in which purchases may occur. When planning a purchase for the City, employees must bear the following thresholds in mind:

<b>DOLLAR THRESHOLD</b>	<b>PURCHASE METHOD</b>	<b>PROCESS</b>
\$500 OR LESS	Departmental Purchase Order	Complete Departmental Purchase Order, Enter into Incode, Requires Department Head Approval
\$501.00-\$14,999.99	Requisition	Enter Requestion into Incode for Processing After Department Head Approval
\$14,999.00-\$24,999.99	Requisition Three (3) quotes preferred	Enter Requestion into Incode for Processing After Department Head Approval
\$25,000.00+	Sealed Solicitation	Requestion To Purchasing. Purchasing Issues Sealed Solicitation

## 10. METHODS OF PURCHASE

The following purchase methods detail the mechanisms by which the Purchasing Department procures products and services. Other purchase methods (sole source, emergency, cooperative contract, state contract, sourcewell, etc.) may be utilized if determined by the Director of Purchasing to be in the City's best interest.

### 10.1. DEPARTMENTAL PURCHASE ORDER (\$500.00 or less)

#### A. Purpose

Departmental Purchase Orders allow the using department to handle small purchases without processing a requisition through the Purchasing Department.

#### B. When Used

Departmental Purchase Orders are to be used for the purchase of items which cost five hundred dollars (\$500.00) or less.

#### C. Who Prepares the Departmental Order

The department head or his/her designee will manually fill out a departmental purchase order and then enter it into the City's purchasing program within a timely manner.

#### D. How to Prepare

A properly prepared Departmental Purchase Order will contain the following information:

1. Number (No.) - Assigned by the Purchasing Department.
2. Remarks.
3. Received By.
4. Vendor - Firm or person from whom purchase is made.
5. Account Number to be charged.
6. Amount
7. Description - Brief description of item(s) to be purchased.

#### E. Routing

A Departmental Purchase Order is a two-part form consisting of the following:

- White Copy - Original given to the vendor.
- Blue Copy - Department file.

## **F. General Information:**

The department head shall be responsible for holding expenditures within budgetary appropriations.

These Purchase Orders will be numbered and issued to the using department by the Purchasing Department.

It is the responsibility of the department head, considering price and quality, to determine the best source of supply. All local sources should be considered before a purchase is made. The Purchasing Department will assist in vendor selection upon request.

Under no circumstances may multiple forms be used, if the purchase is over the dollar limit, in an effort to avoid entering a Purchase Requisition.

## **10.2. REQUISITION**

### **A. Purpose**

The Purchase Requisition serves to inform the Purchasing Department of the needs of the using department and to correctly define the material or service requested. A requisition is required for purchases, requesting price information, initiating a bid request, and for requesting City Council approval on major expenditures.

### **B. When Prepared**

Requisitions shall be prepared far enough in advance to enable the Purchasing Department to obtain competitive prices and to allow sufficient time for the vendor to make delivery.

### **C. Who Prepares the Requisitions**

Requisitions shall originate in the using department and be approved by the department head.

### **D. How to Prepare**

A properly processed Purchase Requisition must contain the following information:

1. Date Wanted - State a definite delivery date. "At Once, ASAP, and Rush" are vague instructions and do not give the Purchasing Department sufficient information. Prepare far enough in advance to avoid emergencies.
2. Requisitioner - Name of person initiating the purchase request.
3. Suggested vendors.
4. To be delivered to - Be specific (if vague or indefinite, confusion may result in costly delays)
5. Quantity - The number required.



6. Unit of Measure - Each, dozen, lineal feet, gallons, etc.
7. Description - Give a clear description of the items desired as to size, color, type, etc. If the purchase is of a technical nature, cannot be described without a great deal of detail, a brief description should be given followed by a trade name and model number of an acceptable item "or approved equal." Requisitions must not give specifications that will favor one supplier to the exclusion of any others. Note: Incomplete information in this area will result in the requisitions being returned to the using department for clarification.
8. Account to be Charged - Complete budgetary code. If the account is over budget a line item must be completed and approved by the Finance Department prior to the Purchasing Department approving the requisition.
9. Unit Price - Price for each individual item.

#### E. Routing of Requisitions

Requisitions will be entered into the City's purchasing program. The department head or their designee is responsible for entering the requisition. After approval at the department head level, the requisition will be forwarded to finance to ensure that the proper account has been charged and of the availability of budgetary funds. The requisition is then forwarded to the Purchasing Department for processing the purchase order, preparing a bid, or submitting to City Council for approval.

#### F. General Information

A requisition must be entered before a purchase is made, except as otherwise provided herein.

Suggested vendors will be of great assistance to the Purchasing Department and will be given full consideration. This information will allow the Purchasing Department to process the requisition more rapidly.

Approximate cost of items will enable the Purchasing Department to determine if bids are required.

If a requisition is incomplete or improperly prepared, the Purchasing Department shall return it to the using department for completion. An incomplete requisition could cause unnecessary delays.

Requisitions shall not split orders to circumvent any provision of the City Code of Charter, this manual, or any policy established by the City, nor shall requisitions be submitted for the sole purpose of using up budgetary balances at the end of the fiscal year.

If it is determined by the Finance Department that an account lacks a sufficient budget or cash balance, it will be returned to the issuing department.

### 10.3. REQUISITION THREE (3) QUOTES PREFERRED

An approved requisition shall be submitted to the Purchasing Department with all applicable information including product and/or details. If the total cost of the product and/or service is between \$14,999.00-\$24,999.99 it is preferred that the requesting department receive a minimum of three (3) quotes either written or by e-mail transmission. It is the responsibility of the departments to maintain a file of the quotes received for the product and/or service. If three (3) sources are not available a written explanation should be included as a part of the file. Once all requirements have been met the Purchasing Director will issue the purchase order and the department may notify the vendor.

### 10.4. SEALED SOLICITATIONS/INVITATION TO BID (+\$25,000.00 OR MORE)

The Purchasing Department will prepare and solicit either an Invitation to Bid, Request for Proposal, or Request for Qualification, which will be available through the Purchasing Department. All sealed solicitations will include the General Terms and Conditions, requirement for bids, insurance requirements, and the specifications provided by the requesting department.

## 11. SOLICITATION PROCESS

*SEALED SOLICITATIONS +\$25,000.00 (SEALED BIDS, REQUEST FOR PROPOSALS, REQUEST FOR QUALIFICATIONS)*

### 11.1. SEALED SOLICITATIONS (INVITATION TO BID)

Sealed bids are required on purchases of twenty-five thousand dollars (\$25,000.00) or more. Advertisements of bids in a local newspaper of general circulation must be not less than five (5) days before the bid opening date.

#### A. Purchasing Department's Responsibility

- Prepare Bid Request.
- Establish date and time for bid opening.
- Select possible sources of supply.
- Prepare Specifications provided by requesting department.
- Issue bids to vendors that provide the requested product and/or services, either by mail, email, or through the City website.
- Receive and Open Bids.
- Evaluate bid with using department's assistance.
- Prepare bids and make recommendations on award to City Council for approval.

- Process Purchase Order after City Council approval.
- Maintain all specifications and bid data files.

## B. Using Department's Responsibility

- Prepare requisition to initiate bid process. This should contain specific information about items needed, quantity, size, preferred brand, performance requirements, etc.
- Submit requisitions to initiate bid request to the Purchasing Department at least three (3) weeks prior to the date the bids are to be opened.
- Prepare Specifications to the Purchasing Department for the requested product and/or service.
- Assist in evaluation of bid results.

## C. General Information

The following policies shall apply to sealed bids:

1. Bid or Proposal Opening – Bids will be opened at the time and date specified on the bid request. All bids are opened publicly and read aloud, with a tabulation provided to all vendors participating. Proposals for extensive systems, complicated equipment, or construction projects, with prior approval of the City Council, may be opened privately in cases where the disclosure of the contents of the proposal could not be readily evaluated and would have a negative impact on both the vendor and the city.
2. Late Bids – No bids received after closing time will be accepted. Bids postmarked on the bid opening date but received after the specified time will be considered late and will be unopened.
3. Bid Opening Schedule – The Purchasing Department is responsible for setting bid opening dates and times.
4. Telephone Bids – The Purchasing Department will not accept any bid by telephone.
5. Faxed or E-mailed Bids – Faxed or e-mailed bids are permitted on the day of bid, only as a last resort, as long as original bid is mailed the same day and permission is granted by the Director of Purchasing.
6. Bid Form – The Purchasing Department sends bid request forms to each bidder. Bids will not be accepted on any vendor letterhead, vendor bid form or other substitutions unless special permission is granted by the Purchasing Agent.
7. Unsigned Bids – Failure of a vendor representative to sign a bid proposal removes that bid from consideration. A typed official's name will not be acceptable without that person's written signature.

8. Acceptance of Bids – The City reserves the right to reject any or all bids, to waive any irregularities in a bid, to make awards to more than one bidder, to accept any part or all of a bid, or to accept that bid (or bids) which in the judgment of the City Council is in the best interest of the City.
9. Shipping Charges – Bids are to include all shipping charges to the point of delivery. Bids will only be considered based on delivered price, except as otherwise authorized by the City Council.
10. Sample Product Policy – The Purchasing Department may request a sample product as part of a bid. If this is stated on the bid proposal form, the vendor is required to comply with this request or have the bid removed from consideration.
11. Approved Equal Policy – Specifications furnished in the request for bid are intended to establish a desired quality or performance level or other minimum requirements which will provide the City with the best products available at the lowest possible price.

*Note:* When a brand name and/or model is designated, it signifies the minimum quality acceptable. If an alternative is offered, the bidder must include the brand name or model to be furnished, along with the complete specifications and descriptive literature, and if requested, a sample for testing. Other than designated brands and/or models approved as “equal to” designated products shall receive equal consideration.

12. Alternate Bids – Should it be found, after bids have been opened, that a product has been offered with an alternate specification and that this product would prove to be satisfactory and more economical for the City to use, all bids for that item may be rejected and specifications re-drawn to allow all bidders an equal opportunity to submit on the alternate item.
13. Vendor Information - Potential suppliers are selected from existing vendor files, using department’s suggestions, and any sources available to locate vendors related to a specific product or service. New suppliers are added to the bid list as they are identified.
14. Tie Bids – A tie bid is one in which two or more vendors bid identical items at the same unit cost.

Tie bids may be determined by one of the following factors:

- a. Discount allowed.
- b. Delivery schedule.
- c. Previous vendor performance.
- d. Vendor location.
- e. Trade-in value offered.

15. Cancellation of Invitation for Bid or Request for Proposal – An invitation for bid, Request for proposal, or other solicitations may be canceled, or any or all bids or proposals may be rejected in part as may be specified in the solicitation when it is in the best interest of the City. The reasons therefore shall be made a part of the bid or proposal file.
16. Public Advertisement – In addition to publication in a newspaper of general circulation, the Purchasing Agent may make any other efforts deemed appropriate to notify all prospective bidders of the invitation to be bid. This may be accomplished by delivery, verbally, by mail, or by posting the invitation to bid. It is not required that specifications are included in the invitation to bid; however, notice should state clearly the purchase that is to be made and the availability of specifications.
17. Sealed Bids and Sealed Proposals - “Although the formal sealed bid process should remain a standard in public purchasing, there is a place for competitive negotiation. Competitive sealed bidding, as defined in this guide, is the preferred method of procurement. The competitive sealed bidding is not practicable.”

“Both methods utilize price and product competition, but to different degrees and in different manners. The use of functional or performance specifications is allowed under both methods to facilitate consideration of alternative means of meeting needs, with evaluation, where appropriate, based on total or life cycle costs. The methodology and the ranking or relative importance of the criteria to be used in the evaluation process under either method must be fully disclosed in the solicitation may be used to evaluate the items bid or proposed.”

The two methods of source selection differ in the following ways:

- a. Under competitive sealed bidding, subjective factors may be used only to determine if the supply service, or construction item bid meets the purchase description. Under competitive sealed proposals, subjective factors may be used to determine not only if the items being offered meets the purchase description but may also be used to evaluate competing proposals. The effect of this different use of subjective evaluation is that under competitive sealed bidding, once the subjective evaluation is completed, award is made on a purely objective basis to the lowest responsible bidder. Under competitive sealed proposals, the quality of competing products may be compared, and tradeoffs made between price and quality of the items offered (all as set forth in the solicitation). Award under competitive sealed proposals is then made to the responsible proposer whose proposal is most advantageous to the City.
- b. “Competitive sealed bidding and competitive sealed proposals also differ in that, under competitive sealed bidding, no change in bids is allowed once they have been opened, except for correction of errors in limited circumstances. The competitive sealed proposal method, on the other hand, permits discussions after proposals have been opened to allow clarification and changes in proposals, provided that adequate precautions are taken to treat each proposer fairly and to ensure that information gleaned from

competing proposals is not disclosed to other proposers.” [Source: A Model Procurement Code for State and Local Governments – Coordinating Committee’s Tentative Draft. American Bar Association, July 978. Pages 54 & 55.]

#### **D. Other Aspects to be Considered in Bid Awards**

In addition to price, the following aspects also will be considered in the award of bid:

1. The ability of the bidder to perform the contract or provide the material or service required.
2. Whether the bidder can perform the contract or provide the material or service promptly or within the time specified, without delay or interference.
3. The character, integrity, reputation, experience, and efficiency of the bidder.
4. The previous and existing compliance, by the bidder, with laws and ordinances relating to the contract or service.
5. The ability of the bidder to provide future maintenance and service for the use of the subject contract.
6. Terms and conditions stated in bid.
7. Compliance with specifications or request for proposal.

#### **E. Non-Performance Policy**

Failure of a bidder to complete a contract, bid, or purchase order in the specified time agreed upon, or failure to provide the service, materials, or supplies required by such contract, bid, or purchase order, or failure to honor a quoted price on services, materials, or supplies on a contract, bid or purchase order may result in one or more of the following actions:

1. Removal of a vendor from the bid list for a period to be determined by the City Council.
2. Allowing the vendor to find the needed item for the city from another supplier at no additional cost to the city.
3. Allowing the City to purchase the needed service, materials, or supplies from another source and charge the vendor for any difference in cost resulting from this purchase.
4. Allowing monetary settlement.

#### **F. Delinquent Delivery**

Once the Purchasing Department has issued a Purchase Order, no follow-up work is done unless the using department advises the item has not been received. Upon this notification, the Purchasing Department will initiate action, either written or verbal, as time allows to investigate. The using department will be advised of any further problems or a revised delivery date.

## **G. Contractual Purchases**

Such materials, supplies, or services which are constantly needed for City operations will be taken on a formal bid and will be awarded by the City Council for a contract period determined to be in the best interest of the City. This procedure shall be used in cases where the amount of the purchase of said materials, supplies, or services will be \$10,000.00 or more within the fiscal year. For amounts below \$10,000.00 within the fiscal year, the award will be made by the Purchasing Agent.

## **H. Items Covered by Warranty or Guarantee**

The City acquires many items which have a warranty or guarantee for a certain length of time, such as tires, batteries, water heaters, roofs, and equipment. Before these items are repaired or replaced, the Purchasing Director should be consulted to see if the item is covered by such warranty or guarantee.

The Purchasing Director shall maintain a current active file with complete information on such warranties or guarantees. All warranties must be remitted to the Purchasing Director with the invoice indicating date of receipt.

## **I. Signatures**

Contracts, applications for title, tax exemption certificates, agreements, and contracts for utilities shall not be signed by any city employee other than the Purchasing Agent, their designee, or by action of the City Council.

## **J. Trade-In(s)**

A list of equipment to be used as trade-in(s) shall accompany the Request for Bid and specifications. The list shall include the model, year, serial and city tag numbers, and other pertinent data.

## **K. Inspection and Testing**

When deemed necessary, the Purchasing Director may initiate an inspection of all deliveries of supplies, materials, equipment, or contractual services to determine their performance with the specifications set forth in an order or contract.

The Purchasing Director may require chemical and physical test of materials submitted with bids and delivery samples, or after products have been delivered, to determine their quality in conformation with specifications. In the performance of such tests, the Purchasing Director may make use of any laboratory facilities.

## **L. Contracts for Professional Services**

As stated in TCA-12-4-106 "Contracts by counties, cities, metropolitan governments, towns, utility districts and other municipal and public corporations of the state, for legal services, fiscal agent, financial advisor or advisory services, educational consultant services, and similar

services by professional persons or groups of high ethical standards, shall not be based upon competitive bids, but shall be awarded on the basis of recognized competence and integrity. The prohibition against competitive bidding in this section shall not prohibit any entity enumerated from interviewing eligible persons or groups to determine the capabilities of such persons or groups.”

The basic premise of this requirement is that the procurement of professional services will be based on recognized competence and integrity, rather than competitive bidding. Cost is always an important consideration, but it should not be the only consideration in selecting professional services. Identifying and selecting the firm or individual best qualified to meet the City’s needs should be the first consideration.

There are several ways to find the firms most suited for the City’s needs:

1. Personal experience with firms that the City has successfully dealt with on other projects.
2. Referrals from other cities or utilities that have recently completed similar projects may help you in choosing a firm.
3. Directories from professional organizations such as Consulting Engineers of Tennessee or Tennessee Society for Professional Engineers.
4. Advertisements in newspapers, trade magazines, and through the internet.
5. Direct mail to firms or individuals.
6. Request for Qualifications (RFQ)
7. Request for Proposals (RFP)

## 11.2. REQUEST FOR PROPOSAL/REQUEST FOR QUALIFICATION

These processes are used when the Competitive Sealed Bid process is not practicable or advantageous to the City. A public opening will be held at which time only the names of the Respondents are read aloud. No public inspection is allowed at this time. The respondents list will be available as soon as practical thereafter.

- A. A written Request for Proposal shall be issued indicating in general terms what is to be procured. It will specify the factors that will be used in evaluating the proposal and contain or incorporate by reference other applicable contractual terms and conditions, outlining any unique capabilities, qualifications, expertise, and experience that will be required of the contractor or service provider.
- B. Selection shall be made of two or more proposers deemed to be fully qualified and best suited among those submitting proposals, based on the factors involved in the request, including price, if so stated. Negotiations shall then be conducted with the top-rated proposer and a contract offered if both parties agree. If a contract cannot be negotiated with the top-rated



proposer, then negotiations shall be conducted with the second rated proposer and a contract offered if both parties agree, and so on.

- C. Offerors shall be accorded fair and equal treatment regarding any opportunities for discussion and revision of proposals. Such revisions may be permitted after submission and before award in order to obtain the best and final offer. In conduction discussions, there shall be no disclosure of any information derived from proposals submitted by competing proposers. This method of contracting is suitable for use in acquiring professional services.

RFQ's or RFP's must be solicited, and a formal "qualification-based selection process" as put forth by the Municipal Technical Advisory Service (MTAS) must be followed if the anticipated total professional fees for the project will exceed \$20,000. However, if the project is a continuation of previous work, or is similar in nature to previous work done satisfactorily by a professional entity, services by that professional may be continued with Council approval.

Procedures and documentation for the qualification-based selection process must be based on the MTAS guidance document (available from the Office of the Purchasing Director). Procedures and documentation specifically required by funding agencies may also be used if it meets the minimum standard of the MTAS guidelines.

RFQ's or RFP's must be solicited through the Purchasing Department. They are to be publicly advertised and sent to those firms the City wishes to inquire about. The RFP's are not intended to solicit competitive bidding and will not be opened such as a formal bid opening is.

A selection committee will be comprised of the Purchasing Director, the Department Head, Head of Engineering, or their designee, and advisors. The City Manager and/or Finance Director is encouraged to be a part of this process.

Once interviews are performed, and the selection of a firm is finalized by the selection committee, then negotiations are the next step in achieving a contract.

As stated in section (B) of 12-4-106. "The selection committee/procurement official shall negotiate a contract with the qualified firm for architectural and engineering services at compensation which the selection committee/procurement official determines to be fair and reasonable to the government. In making such a determination, the selection committee/procurement official shall take into account the estimated value of the services to be rendered, the scope of work, complexity and professional nature thereof."

If both parties are unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price determined to be fair and reasonable, negotiations will continue with other qualified firms until an agreement is reached. Agreements or contracts for professional services where the fees will be \$10,000.00 or more must be formally approved by City Council. Regardless of the procedure followed to procure professional services, all agreements or contracts must be signed by the mayor.

## **12. EXCEPTIONS TO THE ABOVE PURCHASE METHODS**

The following methods of purchase/award may be used in the event methods are not practicable or advantageous to the City, as determined by the Director of Purchasing. These methods can include, but not limited to:

- A. Sole Source of supply or proprietary items.
- B. Preferred/best source.
- C. Emergency Expenditures.
- D. Purchase of used items (TCA 12-3-1202)
- E. State of Tennessee Contract purchase (TCA 12-3-1201)
- F. Federal and State surplus property acquisitions.
- G. Property obtained from other governmental agencies (TCA 12-2-420)
- H. Purchases for and from other local governmental units (TCA 12-3-1203)
- I. Purchases utilizing cooperative contracts (TCA 12-3-1205)
- J. Federal Government Contracts.
- K. Any other methods that may be determined to be in the best interest of the City by the Purchasing Director.

### **12.1. SOLE SOURCE PROCUREMENT POLICY**

Where permitted by law, and notwithstanding any other provision of this manual, a contract may be awarded for a supply, service, or construction item without competition when, under procedures established by the City, the Director of Purchasing, or a designee, determines, in writing, that there is only one product/service and only one source for the required supply, service, or construction item. Purchasers having knowledge of only one source of supply shall provide justification with the requisition. A single source or proprietary item must be documented by a complete explanation as to the special need and why it is not available from other sources. Note that the Purchasing Department may conduct research to confirm this information.

### **12.2. PREFERRED/BEST SOURCE POLICY**

Pending Purchasing Director approval, this method may be utilized when a vendor has specific knowledge/experience with the type/scope of product/work being provided and it is determined to be in the best interest of the City to utilize this specific vendor. Written justification must be submitted by the authorized requestor for review by the Purchasing Director.

### 12.3. EMERGENCY PROCUREMENT POLICY

Emergency purchases are costly and should be kept to a minimum. Emergency purchases are defined as when critical functions and operations of the department would be hampered by proceeding in the regular manner or where property, equipment, or life are endangered through unexpected circumstances and materials and labors, etc., are needed immediately.

Where permitted by law, and notwithstanding any other provision of this manual, the Director of Purchasing, or a designee, may make or authorize others to make an emergency purchase where there exists a threat to public health, welfare, or safety. Such emergency procurements shall be made with as much competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the contractor shall become part of the procurement file. The above policy statement shall not apply to procurements that were caused from poor planning or scheduling by the requesting department as determined by the City Manager or his/her designee.

After determining that a true emergency exists, the following procedure should be used:

- A. Notify the Purchasing Department of the need and nature of the emergency. The Purchasing Department will give verbal approval and issue a Purchase Order number. This number will be referenced on the requisition when entered.
- B. Using department shall at all times use sound judgement in making emergency purchases of materials and supplies, and for labor on equipment, at the best possible price. Orders should be placed with vendors with whom the using department has had previous satisfactory experiences.
- C. Suppliers shall furnish sales tickets, delivery slips, invoices, etc., for the supplies or services rendered. Terms of the transactions, indicating price and other data, shall be shown.
- D. Upon completion of the purchase, preferably on the same or following business day, the using department shall perform the following:
  1. Enter a completed requisition stating a description of the emergency. The words "Confirming Emergency Purchase" shall be entered on the requisition, along with the Purchase Order number used.
  2. The sales ticket, delivery slips, and invoices confirming the purchase must be submitted to the Finance Department.
  3. The Purchasing Department will issue the vendor a Purchase Order marked "Confirmation."
- E. If an emergency should occur during a time when the Purchasing Department normally is closed, the using department will follow the above procedure with the exception of step one (1). The evidence of purchase, such as sales slip, counter receipt, delivery slip, invoice, etc., which the supplier normally furnishes, shall be forwarded to the Accounting Department.

- F. The person authorizing the emergency purchase shall prepare a report to the Purchasing Director, Finance Director, City Manager and City Council as soon as possible, specifying the amount paid, the item(s) purchased, from whom the purchase(s) was made, and the nature of the emergency.

## **12.4. PURCHASE OF USED (SECONDHAND) ITEMS**

As per T.C.A. § 12-3-1202 (a) Any municipality may purchase used or secondhand articles consisting of goods, equipment, materials, supplies, or commodities from any federal, state, or local governmental unit or agency without public advertisement and competitive soliciting. T.C.A. § 12-3-1202 (b) Any municipality may purchase used or secondhand articles consisting of goods, equipment, materials, supplies, or commodities from any private individual or entity without public advertisement and competitive soliciting as long as the purchasing government documents the general range of value of the purchased item through a listing in a nationally recognized publication or through an appraisal by a licensed appraiser, and the price is not more than five percent (5%) higher than the highest value of the documented range. Used equipment may be purchased without sealed solicitations if all the following exist:

- A. There is considerable savings over new equipment and the department has a justifiable need.
- B. The source has been identified as reputable.
- C. Other sources have been researched for availability of item(s).
- D. The price is reasonable and within department budget limits.
- E. The equipment was purchased from another governmental agency.

## **12.5. STATE OF TENNESSEE CONTRACT**

Per T.C.A. § 12-3-1201, local governments in Tennessee are authorized to purchase items and services from the State of Tennessee contracts without using the competitive process.

## **12.6. FEDERAL AND STATE SURPLUS PROPERTY**

Authority is granted to the City's Purchasing Director or his/her designee to monitor both federal and state surplus property programs and to allow purchases to be made if (a) the price is reasonable; (b) the item is budgeted; (c) funds are available; and (d) justification of need is provided. A purchase order and/or approval to purchase will be obtained from the Purchasing Department before making the purchase.

## **12.7. PROPERTY OBTAINED FROM OTHER GOVERNMENTAL AGENCIES**

Per T.C.A. § 12-2-420 local governments may purchase, trade or receive as a gift any used or surplus personal property from another governmental agency.

Purchasing surplus property from governmental entities through public auction including web-based public auction sites (i.e., GovDeals.com) is allowable. The following criteria must be met:

- A. The Request for Purchase and not to exceed amount must be established and approved by either the Board of Commissioners or the City Manager (dependent on the expenditure value). Copies of the approval shall be directed to the Purchasing Department.
- B. No tax shall be paid on any item purchased at public auction, except to the extent that no exemption is available to the City under applicable law.
- C. The Department Director, or their designated proxy, shall act as bidder for the City at the auction.
- D. The bidder is prohibited from submitting any bid above the preapproved not-to-exceed amount.
- E. If the City is the successful bidder, the Finance Department Director may determine at his/her discretion if payment by wire transfer or a check is a more cost-effective option. A "Certificate of Sale" will be effected and copies of all sales certificates, receipts, bills of sale and other applicable documents (i.e.: certification that items are free of any liens or encumbrances, operational manuals, etc.) must be forwarded to the Purchasing and Finance Directors.

## 12.8. PURCHASES FOR AND FROM OTHER LOCAL GOVERNMENTAL UNITS

Per T.C.A. § 12-3-1203 local governmental units of the state may, upon request, purchase supplies, equipment, and services for any other municipality, county, utility district, or other local governmental unit.

- A. T.C.A. § 12-3-1203 (a)(1) The purchases shall be made on the same terms and under the same rules and regulations as regular purchases of the purchasing entity.
- B. T.C.A. § 12-3-1203 (a)(2) The cost of the purchase shall be borne by the local government for which the purchase was made.
- C. T.C.A. § 12-3-1203 (a)(3) Where the local government making the request is required to advertise and receive bids, it shall be sufficient for those purposes that the purchasing entity comply only with its own purchasing requirements.
- D. T.C.A. § 12-3-1203 (c)(1) Any municipality, county, utility district, or other local governmental unit of this state may purchase supplies, goods, equipment, and services under contracts or price agreements entered into by any other local governmental unit of this state. Such purchases shall be made on the same terms and under the same rules and regulations as regular purchases of the purchasing entity. Any local governmental unit that purchases supplies, goods, equipment, or services under this section shall directly handle payment, refunds, returns, and any other communication or requirements involved in the purchase without involving the local governmental unit that originated the contract. The originating local

governmental unit shall have no liability or responsibility for any purchases made by another local governmental unit under a contract that the originating local governmental unit negotiated and consummated. Where any local or private act, charter, or general law requires that a local governmental unit purchase by competitive bidding, the local governmental unit may, notwithstanding the local or private act, charter, or general law, purchase without public advertisement or competitive bidding in accordance with this section.

- E. T.C.A. § 12-3-1203 (c)(2) This subsection shall not apply to: Purchases of new or unused motor vehicles, unless the motor vehicles are manufactured for a special purpose as defined in § 12-3-1208; and (B) Purchases related to any transportation infrastructure project, including, but not limited to, projects for the construction or improvement of streets, highways, bridges, tunnels, or any roadway related facility.

## 12.9. COOPERATIVE PURCHASING AGREEMENTS

Per T.C.A. § 12-3-1205(b), the City may purchase from Cooperatives and an agency of the United States (GSA). GSA purchases are limited to specific schedules (70 and 84) except in an emergency.

- A. T.C.A. § 12-3-1205(b)(1) Notwithstanding any other law to the contrary, any municipality, county, utility district, or other local government of the state may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any goods, supplies, services, or equipment with one (1) or more other governmental entities outside this state, to the extent the laws of the other state permit the joint exercise of purchasing authority, or with an agency of the United States, to the extent federal law permits the joint exercise of purchasing authority, in accordance with an agreement entered into between or among the participants; provided, such goods, supplies, services, or equipment were procured in a manner that constitutes competitive bidding and were advertised, evaluated, and awarded by a governmental entity and made available for use by other governmental entities.
- B. Per T.C.A. § 12-3-1205 this subsection shall not apply to: purchases of new or unused motor vehicles; purchases of construction services or equipment, engineering or architectural services, fuel, fuel products and lubricating oils.

## 12.10. FEDERAL GOVERNMENT (GSA) CONTRACTS

The Cooperative Purchasing Program allows state, local and tribal governments to benefit from prevented industry partners on a variety of information technology products and services as well as security and law enforcement products and services offered through specific GSA Schedule contracts. This program allows eligible entities to purchase from Cooperative Purchasing approved industry partners, at any time, for any reason, using any funds available. Schedule contracts open under Cooperative Purchasing, include:

- A. Schedule 70 - This is the largest and most widely used acquisition vehicle in the federal government. It features a wide variety of information technology products and services

including mobile device and mobile application management (MDM/MAM) tools, automated data processing equipment (firmware), software, cloud computing services, hardware, support equipment, and professional services.

- B. Schedule 84 - This is used for the purchase of security and law enforcement equipment. It features alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services.
- C. GSA's Disaster Purchasing Program allows state and local governments to buy supplies and services directly from all GSA Schedules to facilitate recovery from major disaster or facilitate disaster preparation and response.

### **13. SPECIAL REQUIREMENTS FOR CONSTRUCTION PROJECTS**

As per the Tennessee Board of Architectural and Engineering Examiners Reference Manual – public works projects involving architecture, engineering or landscape architecture by the State, any county, city, town, village, or other political subdivision of the state must have plans, specifications, and estimates prepared by a registered architect/engineer when they are:

- A. Greater than \$50,000.00 (contemplated expenditure for complete project) or
- B. Alter the structural, mechanical, or electrical system of the project.
- C. In no case can anyone other than an architect or engineer registered in Tennessee provide design documentation with regard to assembly, institutional, and educational occupancies.

### **14. PROTEST PROCEDURE**

Any protest to the award of a contract by the City of Elizabethton shall be submitted, in writing, to the Director of Purchasing, with a copy to the City Manager, and delivered not later than seven (7) calendar days from the date of the City's award recommendation. In order for the City to consider the protest, a protest bond in the amount of \$350 (cashier's check payable to the City of Elizabethton) must be submitted to the Purchasing Director. This protest bond will serve as a guarantee by the protester of the validity and accuracy of the protest. If the protest is denied by the City Manager, the bond will be retained to cover costs associated with the protest. In the event the protest is upheld, the bond will be returned to the vendor.

The award of a contract does not have to be delayed during the seven-day period allowed for a bidder or offeror to protest; however, in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer will expire.

Upon receipt and review of written submission and any independent investigation deemed appropriate by the City, the City Manager shall either:

- A. Render a decision that shall be final and advise all interested parties of same in writing or
- B. At the sole election of the City Manager, in his/her absolute discretion, conduct an informal hearing at which time the interested participating parties will be afforded an opportunity to present their respective position and facts, documents, justification and technical information in support thereof.
- C. Parties may, but are not required to, be represented by counsel at the informal hearing, which will not be subject to formal rules of evidence or court procedures. Following the informal hearing, the City Manager shall render a decision that shall be final and advise all interested parties thereof in writing.

## **15. SURPLUS PROPERTY POLICY AND PROCEDURES**

When a department head determines that there is surplus equipment or material within the department, he/she shall notify the Purchasing Director in writing of any such equipment or materials. The Purchasing Director will determine the best method of disposal of those items and instruct the department head as to the disposal method. The Purchasing Department will provide City Council with a list of City owned surplus property that are to be sold utilizing a web-based online auction service for approval prior to disposal/sale. Items with an estimated value of more than one hundred dollars (\$100.00) shall be advertised and made available for sale utilizing a web-based online action service. Such equipment or material shall be sold to the highest bidder. Surplus items with an estimated value of less than \$100.00 can be sold to the general public or disposed of in a manner deemed to be in the City's best interest.

The Department Head or his/her designee initiates a surplus request by completing the appropriate surplus request form (vehicle/equipment form), attaching a minimum of three (3) photographs of the asset and submitting it to the Purchasing Department. The Purchasing Department will verify the asset information (make, model, year, VIN, etc.) and check for any remaining book value. Equipment acquired by a department through federal or state funding which no longer serves the needs for which originally acquired shall be disposed of in accordance with the property management regulations of the funding agency.

Disposition of Surplus: All markings related to the City (name, logo, or any number references) shall be removed or permanently covered up prior to taking photographs. The Purchasing Department will post the item(s) for sale utilizing a web-based online auction service or by any other means determined to be in the best interest of the City. The Purchasing Department will strive to post the items for sale within 90 days of receipt of all information. The Requesting Department will be notified when the sale is posted and of the eventual results. All surplus sales will be advertised in the local newspaper. Proceeds from disposition shall be credited to the applicable fund.

T.C.A. § 6-54-125 prohibits municipal officials and employees from purchasing surplus property except at public auction during the tenure of such person's office or employment or for six (6) months thereafter. According to T.C.A. sale of surplus property by public auction includes sale by internet auction allowing the City of Elizabethton to sell its surplus property by public auction, through a web-based auction site. City officials and employees are permitted to participate in public auctions, including web-based auctions, but prohibited from doing so while on City time or using City computers.



## 16. CONFISCATED/IMPOUND DISPOSAL

The Police Department will notify the Purchasing Department when an accumulation of confiscated/impounded property is ready for sale. Impounded and confiscated goods (vehicles, equipment, etc.) are sold by the City through public auction after being released for sale by the Police Department. The released/approved confiscated item listing shall be submitted along with the applicable vehicle or equipment inspection forms and a minimum of three photographs.

Confiscated or retired firearms may not be sold at public auctions. After a court order has been rendered, if applicable, they may be sold or traded by the City utilizing a formal solicitation process.

Per T.C.A. § 12-2-208, no person involved in the seizure of property may purchase such property, including at public auction. Employees and officials purchasing or bidding on seized property shall attest in writing to the Purchasing Department that they have not been involved in any way with the seizure of said property.

## **17. ETHICS IN PROCUREMENT AND CONTRACTING**

### **TCA section 6-54-107. Interest of officer(s) in municipal contracts prohibited.**

(a) No person holding office under any municipal corporation shall, during the time for which he has elected or appointed, be capable of contracting with such corporation for the performance of any work which is to be paid for out of the treasury. Nor shall such a person be capable of holding or having any other direct interest in such a contract. "Direct Interest" means any contract with any business in which the official is the sole proprietor, a partner, or the person having the controlling interest. "Controlling Interest" shall include the individual with the ownership or control of the largest number of outstanding shares owned by any single individual or corporation.

(b) No officer in a municipality shall be indirectly interested in any contract to which the municipality is a party unless the officer publicly acknowledges his interest and recuses himself from any of his duties which include the consideration of, voting on, or overseeing the contract. "Indirectly interested, means any contract in which the officer is directly interested, but is the sole supplier of goods or services in a municipality. [See TCA 6-54-108 for penalty.]

### **TCA section 12-4-101. Personal interest of officers prohibited.**

(a) It shall not be lawful for any officer, committeeman, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any municipal corporation, county, state, development districts, utility districts, human resource agencies, and other political subdivisions created by statute shall or may be interested, or be directly interested in any such contract. "Directly interested:" means any contract with the official himself or with any business in which the official is the sole proprietor, a partner, or the person having the controlling interest. "Controlling interest" shall include the individual with the ownership or control of the largest number of the outstanding shares owned by any single individual or corporation.

(b) It shall not be lawful for any officer, committeeman, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any municipal corporation, county, state, development districts, human resource agencies, and other political subdivisions created by statute shall or may be interested, to be indirectly interested in any such contract unless the officer publicly acknowledges his interest. "Indirectly Interested" means any contract in which the officer is interested but not directly so but elude contracts where the officer is directly interested but is sole supplier of goods or services in a municipality or county. [See TCA 12-4-102 for penalty].

### **2 CFR 200.317 Procurements by states.**

When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with [§§ 200.321, 200.322, and 200.323](#) and ensure that every purchase order or other contract includes any clauses required by [§ 200.327](#). All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in [§§ 200.318 through 200.327](#).

## 18. DEFINITIONS, ADDITIONAL TERMS, AND TERM REFERENCES

**Acceptance of Solicitations** – The City of Elizabethton reserves the right to reject any or all solicitations, to waive informalities or irregularities in a solicitation, to make awards to more than one vendor, to accept any part or all of a solicitation or to accept that solicitation or solicitations which in the judgment of the proper authority is in the best interest of the City.

**Acceptance Period** – The City shall have sixty (60) days after the solicitation opening date in which to review the submittals and enter into a contract, unless otherwise specified in the solicitation. Periods exceeding sixty (60) days shall be acceptable if by mutual consent of both parties.

**Addendum** – Any necessary change to a solicitation must be submitted via an “addendum” form issued by the Purchasing Department. Any addenda not issued by the Purchasing Department is not valid. Addenda will be issued to all known, interested parties and posted on the City website. All addenda issued shall become part of the solicitation documents. It is the vendor’s responsibility to determine and acknowledge any or all addenda issued for a solicitation. No addenda will be issued less than two (2) working days prior to the solicitation opening as per T.C.A. §, Title 12, Chapter 4, Part 1, as amended.

**Alternate Product Specifications** – Should it be found, after solicitations have been opened, that a product or service different from the original specifications would better serve the City’s needs, the City may reject all solicitations and produce another solicitation based on a revised set of requirements.

**Annual Purchase Orders** – Annual purchase orders may be issued to cover materials and supplies needed on a regular basis from area manufacturers or vendors who qualify as sole source suppliers. This same type of order may also be issued to agencies of the City that provide an exclusive service such as utilities and health care facilities.

**Anti-Trust Laws** – All purchases shall be made according to applicable prevailing state and federal antitrust laws. Non-competitive practices will not be encouraged or approved. All methods of purchases shall be designed to promote open and fair competition.

**Approved Equal Policy** – Specifications furnished in the sealed solicitation establish a desired level of quality, service and performance. The intent is to set forth minimum requirements that will provide the City with the best product or service available at the lowest possible total cost.

If a vendor offers an alternate, they must include the brand name and/or model and complete descriptive literature and specifications that clearly describe the article offered and how it differs from the reference brand. The City alone will determine whether an alternate is equivalent and meets the standards of quality and suitability to the City's needs in performance, quality and purpose. An alternate that is determined equal may be accepted by the City.

**Award to Other than Low Bidder** – If the award is made to other than the low bidder, a complete statement of the reasons will accompany the recommendation and will be filed with the bid documents. The responsibility for justification rests with the requisitioner. If the Purchasing Director does not concur, the requisitioner will be solely responsible for the appropriate approvals.

**BAFO** – The best and final offer (BAFO) process represents an optional step in the selection process in the request for proposal (RFP) process and is not part of the contract negotiation process.

**Bid Bond** – A bid bond ensures the bid or proposal will not be withdrawn for a period of sixty (60) days, ensures the bidder/proposer will execute a contract and ensures the bidder/proposer will furnish such bonds, insurance certificates, etc. as required by the City in the solicitation. If a bid bond is required and not included in the submittal, the submittal may not be considered. A bid bond shall be issued by a surety company licensed to do business in the State of Tennessee, the amount of which will be stated in the bid as a set amount or a percentage of the total bid price that shall not exceed five percent (5%) of the total contract price. Bid bonds submitted by unsuccessful vendors will be returned upon request. In lieu of a bid bond, a cashier's check (made out to the City of Elizabethton, TN) will be acceptable. Personal checks are not acceptable.

Solicitations may require a bid bond in order to guarantee the bidder will enter into a contract should their offer be accepted and a performance and payment bond to guarantee that the contractor will perform the contract according to the specifications of the bid document and make all necessary payments.

**Blanket Purchase Orders** – Blanket purchase orders may be issued for repetitive small dollar purchases that are combined into one contract. Blanket order purchases cannot exceed \$2,000 daily and \$14,999 annually.

**The Brooks Act** – (Public Law 92-582), A Federal requirement, also known as Qualifications Based Selection (QBS), which was enacted on October 18, 1972, that establishes the Federally funded procurement process by which Architects and Engineers are selected for design contracts with design and construction agencies.

**Cash Discounts** – Vendors are urged to compute cash discounts into their submitted price with terms of payment to be Net Thirty (30) days, unless otherwise specified in the solicitation. Additional discounts for prompt payment may be a consideration in the bid award.

**Change Order** – A Change Order provides the vendor written authority to change the scope of the original contract. Any changes necessary to an existing order will be brought forward through a change order. A written notification must be submitted to the Purchasing Department stating the reasons for a change. After the appropriate approvals have been secured, the change order will be executed by the Purchasing Department.

**Classification of Bidders** – Bidders eligible for a contract award must be both responsible and responsive.

**Confiscated Property** – Property that has been seized by the City's Police Department.

**Conflict Of Interest** – The provisions of this article supplement, but do not supersede, other provisions of law including T.C.A. § 12-4-101. No employee shall have any financial interest in the profits of any contract, service or other work performed by the City, he shall not personally profit directly or indirectly from any contract, purchase, sale or service between the City and any person or company. Any employee violating the provisions of this rule shall be subject to appropriate disciplinary actions including dismissal. If a using department has knowledge that a former employee is or may be submitting pricing to the City – that information must be communicated to the Purchasing Director.

**Contracts/Agreements** – All contracts and agreements are formal and legally binding. Contracts and agreements (other than the City's standard purchase order) must be reviewed and approved by the Legal Department prior to issuing contract/agreement. When an award is made requiring a signed contract/agreement rather than a purchase order for construction or major projects, the requesting department has the responsibility of formulating and executing the contract. A copy of the executed contract and associated documents will be retained in the solicitation file. A purchase order, properly endorsed by the City Manager's designated agent and one accepted by the vendor, also forms as a binding contract.

**Contracts for Professional Services** – As per T.C.A. §12-4-107 All contracts for architectural, engineering and construction services shall be procured using the Request for Qualifications procurement method (Brooks Act procedures). When soliciting an RFP/RFQ for architectural, engineering and construction services, cost cannot be a factor in the selection process. Per T.C.A. §12-4-107 (4) A city, county or utility district having a satisfactory existing working relationship for architectural, or engineering services may expand the scope of the services provided that they are within the technical competency of the existing firm, without exercising this section.

**Contract Termination** – The City may choose to terminate any contract for cause following written notification of intent.

**Delinquent Delivery** – The Purchasing Department will check delivery dates as stated on the purchase order and contact the vendor if the scheduled delivery is not met. Any unreasonable extension of delivery time will be reported to the Requisitioner to determine if the order should be cancelled, or a penalty imposed on the vendor.

**Gifts and Rebates** – Purchasing Staff are expressly prohibited from accepting, directly or indirectly, from any person, company, firm or corporation to which any purchase order or contract is, or might be, awarded, any rebate, gift, special consideration, money or anything of value.

**Indemnification** – In submitting a solicitation response, the vendor shall indemnify and defend the City against any and all claims or legal actions arising as a result of his/her performance of the contract, whether or not such claims relate to damages or alleged sustained by physical injury to contractor's personnel, subcontractors, City employees or other persons or against any lawsuits arising from alleged or actual patent infringements, and shall hold the City, its various departments, employees, and any and all persons or entities acting on its behalf harmless from the same.

**Information Technology Related Purchases** – Any purchase of technology related goods/services and subscriptions (including software renewals) shall be approved by the Information Technology Director or designee. The intent is to maintain uniformity of quality and functionality, as well as compatibility, throughout the City. Copiers – prior to switching out copiers or printers, the Information Technology Department must be contacted to make arrangements to have the memory cleared before removal or transfer.

**Insurance** – The City may require specific insurance for any purchase or solicitation of goods and services. The amount will be determined by the scope of work relative to the risk involved. The amount of insurance coverage required is a function of the extent of the risk inherent in the contract and is not related to the contract value. The Risk Manager shall determine the requirements and shall review and approve such prior to any contract award. These requirements are intended to assure the financial responsibility of the contractors and suppliers and to protect the assets of the City and the public from injuries or damages arising out of the negligence or nonperformance of those with whom the City has contracted and of anyone that serves as subcontractor for any contracted work. When insurance is required the awarded vendor is to name the City of Elizabethton, Tennessee as additional insured before work begins.

**Internal Purchase Order** – If an award is made utilizing a contract or agreement, the City may issue an Internal Purchase Order but is not required. The Department head or his/her designee may code the invoice with the appropriate account number that the funds are to be taken from. The official document will be the signed contract or agreement.

**Iran Divestment Act** – As per T.C.A. § 12-12-111 (2017) (a) On or after July 1, 2016, every bid or proposal made to a political subdivision of the state or any public department, agency, or official thereof where competitive bidding is required by statute, rule, regulation, or local ordinance or resolution, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury: "By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list 28 created pursuant to § 12-12-106.

**Mistakes in Bids** – Any mistake in a bid may be corrected prior to the bid opening. The correction must be done in ink and initialed by the person making the correction, who shall be an authorized representative of the company. After the bid opening but before an award is made, mistakes may be corrected only if minor in nature and the intent of the bid is apparent. Major mistakes, if detected at this stage in the bid process, may not be corrected but withdrawal could be allowed if the bidder provides a written request stating the reasons for the error. Mistakes detected after the award has been made do not relieve the contractor from performance according to the contract requirements. Failure to perform will result in default penalty. In the event of a price extension error the unit price will prevail.

**Multi-year Award** – Certain materials, supplies or services may best be awarded for a contract period of one year, renewable in one-year increments not to exceed five-year terms. The City also reserves the right to extend these contracts for additional years if in the City's best interest. These contracts are generally conditioned upon the prices, terms and conditions of the original bid remaining unchanged. Should it be determined at the end of any term that the bid is not renewable, the contract will be re-bid.

**Oral Interpretations** – No oral interpretations or instructions given by any City employee, or any other person shall apply to any solicitation. Changes relative to any purchase document will be in writing to all known vendors and will originate from the Purchasing Department.

**Partial Payment** – Partial (or progress) payment may be allowed only if addressed in the solicitation or in the terms of the contract.

**Performance and Payment Bonds** – Performance and Payment bonds ensure the City against cash loss that might result if the vendor does not complete the project/tasks as contracted. Such bonds help ensure that the successful vendor will properly complete and meet the standards and specifications of the contract and will help protect the City against any financial claims for unpaid debts associated with the project. If the vendor fails to meet the conditions of the contract the performance may be forfeited. Performance and Payment bonds shall be issued by a surety company licensed to do business in the State of Tennessee, the amount of which will be stated in the bid as a percentage of the total bid price that shall not exceed one hundred percent (100%) of the total contract price. Performance and payment bonds must be filed with the Purchasing Department within ten (10) working days after the contract has been issued. In lieu of a performance or payment bond, a cashier's check (made out to the City of Elizabethton, TN) will be acceptable. Personal checks are not acceptable. An irrevocable letter of credit from a state or national bank or state or federal and savings loan association having its principal office in Tennessee may be accepted instead of a performance and payment bond, subject to approval of the terms and conditions of said irrevocable letter of credit. In the event that the successful bidder fails to furnish performance and payment bonds and execute a contract within the time period allowed, the bid deposit of the bidder shall be retained by the City as liquidated damages and not as a penalty.

**Pre-bid/proposal meeting** – It may be determined that a pre-bid/proposal meeting is necessary to ensure the scope of work is clear and to answer questions by potential bidders/proposers. Any changes/clarifications discussed at this meeting will be brought forward in the form of an addendum. This meeting may be mandatory and if so will be clearly stated in the solicitation. If attendance is mandatory, only those firms whose names are listed on the pre-bid attendance roster are eligible to submit a solicitation.

**Price Negotiation** – The Director of Purchasing may enter into price negotiation if it is determined there is only one source of supply and the item is proprietary or if the successful bidder/proposer's price exceeds the amount budgeted for that particular product/service. Construction projects that are over budget may be discussed with the low bidder provided the contractor's working papers are presented for line item review and evaluation and the scope or intent of the project does not change.



**Public Advertisement** – This is the City’s official notice of a search for qualified vendors on a requested purchase for goods or services. The notice provides the public with details about the solicitation, rules of submission and award. In addition to public advertisement every effort deemed appropriate to notify all known prospective vendors will be made to foster competition and assure adequate response to each solicitation.

**Public Disclosure of Bidders** – Bid lists and information regarding the names and number of bidders on any solicitation will not become a part of the bid file until after the bids are opened. On large construction projects the plan holders list is public information.

**Public Examination of Bid** – Bidders present at bid openings may examine any bid and supporting documents submitted unless they have been declared confidential 30 or proprietary by the bidder. During the evaluation phase, after the bids are opened and before an award is made, the bid package is a working product not subject to review. Bid tabulations are available upon request made to the Purchasing Department as soon as practical after the bid opening. The bid package becomes a matter of public record after the bid is approved by the City Council, if required, and a bid award is made by the Purchasing Department.

**Public Examination of Proposals (RFPs and RFQs)** – Proposals are not eligible for public inspection until an award is made. A list of proposal respondents is available and can be made available as soon as practical after the opening. This request needs to be made to the Director of Purchasing. Proposals become a matter of public record after an award is made.

**Purchase Order** – A purchase order is executed (after all necessary approvals) by the Purchasing Department and is the contract document that authorizes the vendor or contractor to furnish the materials or service as specified and to invoice the City for same. Purchase orders shall be written so they are clear, concise and complete and shall contain reference for all necessary required approvals (City Manager, City Council, Insurance, etc.).

**Quality Assurance, Inspection and Testing** – The Director of Purchasing or a designee may take such steps as deemed desirable to ascertain or verify supplies, services or construction items procured conform to specifications. This authority may be delegated to the requisitioner if the best interest of the City is served. A Qualified Products List (QPL) may be created that specifies certain products or manufacturers that have been examined and tested and have satisfied all applicable qualification requirements. These lists may be used on procurements to set a standard when quality is such a critical factor and testing is so lengthy or expensive that a QPL will better facilitate the purchase.

**Recycled Product Policy** – The City of Elizabethton shall be environmentally conscious by encouraging the use of recycled products whenever practicable and in the best interest of the City

**Requisitions** – Requisitions are requests from Department Directors (or otherwise authorized designee) issued to the Purchasing Department to purchase or lease commodities or services. A requisition is required for purchases over the same dollar threshold.

**Responsible Bidder** – Is defined as a vendor or contractor who has the capacity in all respects to satisfactorily comply with all contract requirements and the integrity and reliability that will assure good faith performance in a timely manner.

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**Retainage Escrow Accounts** – T.C.A. § 66-34-104 requires a separate escrow account for retainage withheld on construction contracts and sub-contracts of \$500,000 or greater. The release of those funds can only be approved by the City upon satisfactory performance by the contractor. All escrow accounts are required to be housed with the City's financial institution. The City's standard escrow agreement has been approved by the Legal Department and is required for all applicable contracts.

**Sample Product Policy** – The Purchasing Department may request a sample product as part of a solicitation. Failure of a vendor to comply with this request may remove their submittal from consideration. Samples will be provided free of charge to the City and will remain the property of the City if not picked up by the bidder within two weeks of the solicitation award. Samples of the successful vendor will be retained until delivery is received and accepted as being equal to the sample.

**Shipping Charges** – Prices shall include all shipping charges to the point of destination (FOB: Delivered) with freight prepaid and allowed, unless otherwise specified in the solicitation.

**Solicitation Award** – Contracts and purchases, if made, will be entered into with the lowest responsive and responsible bidder(s) meeting specification both in quality and performance for materials or services as deemed in the best interest and advantage of the City. Should there be only one responsive submitter and adequate steps have been taken to assure competition, the City may enter into a contract with a single respondent providing the terms, conditions and specifications of the solicitation have been met and price is reasonable and within budgetary limits.

The following may also be considered in the award of a solicitation:

- A. The ability of the vendor to perform the contract or provide the material or service required in a timely manner without delay or interference.
- B. The character, integrity, reputation, experience, and efficiency of the vendor.
- C. Past performance of the vendor on contracts for supply of materials and services.
- D. The ability of the vendor to provide future maintenance and service the material(s) purchased.
- E. The quality and performance of the product or service as related to its intended use.
- F. Special prompt payment discounts.
- G. Any other provision that has been identified in the solicitation and might affect the value received for the expenditure.

**Solicitation Cancellation** – The issuance of a solicitation does not compel the City to award a contract. A solicitation may be cancelled in whole or in part when there are clear and compelling reasons that the cancellation is in the City’s best interest. The Purchasing Director has the authority to cancel a solicitation when in the best interest of the City. A cancellation notice shall be posted on the City website and all interested parties shall be notified. The reasons shall be made a part of the solicitation file.

**Solicitation Extensions** – The City reserves the right to purchase additional like items from any solicitation, without re-soliciting, provided the subsequent purchase is within a one-year period from the original contract award date and the specifications, prices terms and conditions have remained unchanged and both parties agree.

**Solicitation Postponement** – The City reserves the right to postpone any solicitation opening under circumstances warranting such action, including but not limited to instances when the City receives fewer than two responses.

**State Contractors License** – For Public Works Contracts \$ 25,000 or more - Bidder must be a licensed contractor in the State of Tennessee, as required by the Contractor's Licensing Act of 1994, State of Tennessee (T.C.A. § 62-6-119). A copy of Bidder's State Contractor's License shall be included with bid package.

Per T.C.A. § 62-6-102 (4) (A) (i) "Contractor" means any person or entity that undertakes to, attempts to or submits a price or bid or offers to construct, supervise, superintend, oversee, schedule, direct or in any manner assume charge of the construction, alteration, repair, improvement, movement, demolition, putting up, tearing down or furnishing labor to install material or equipment for 33 any building, highway, road, railroad, sewer, grading, excavation, pipeline, public utility structure, project development, housing, housing development, improvement or any other construction undertaking for which the total cost is twenty-five thousand dollars (\$25,000) or more; provided, however, with respect to a licensed masonry contractor, such term means and includes the masonry portion of the construction project, the total cost of which exceeds one hundred thousand dollars (\$100,000), materials and labor.

**Surplus Property** – City owned property that has reached the end of its useful life and is ready for disposal.

**Tax Exemption** - The City is exempt from Federal excise tax, State, and City sales tax. Contractors are not exempt from the use tax on materials and supplies used in the production of an item or in the performance of a repair or construction contract. Tax exemption certificates will be furnished upon request.

**Tie Bids** – A tie bid is one in which two or more competing companies bid identical items at the same unit cost. Tie bids may be determined by one of the following factors:

- A. Delivery Schedule
- B. Previous company performance
- C. Vendor location
- D. If all thing equal, coin toss
- E. Preference will be given to the local company in case of a tie bid.

**Trade-in Equipment** – The City may request bids for new equipment that include consideration of an offer for a trade-in. The City reserves the right to evaluate the bids and award a contract either with or without the trade-in offer. Any fixed asset offered for trade-in on new purchases will require City Council approval.

**Unidentified Submittals** - Improperly identified bid/proposal submittals may be opened, solely for identification, and only by a member of the Purchasing Department. In the event a sealed solicitation is opened accidentally, the person who opens it shall immediately close the envelope, reseal it to the extent possible, sign the envelope, and place it in the opening queue. No information contained therein can be disclosed prior to the public opening.

**Vendor Default** – In the case of vendor default, the City may, by written notice, cancel the contract and purchase from another source and recover the excess costs by:

- A. Presentation of invoice.
- B. Deduction from an unpaid balance due.
- C. Collection against the bid and/or performance bond.
- D. A combination of the aforementioned remedies or other remedies as provided by law.

All costs associated with default will be borne by the contractor. The city reserves the right to remove a company in default from the active bid file for a time period determined by the Director of Purchasing.

**Vendor Identification** – Potential suppliers are selected from existing vendor files, suggestions by the requisitioner and any other source available to locate companies related to a specific product or service.

**Vendor Selection** – Along with public advertisement, every effort shall be made to identify potential vendors for each solicitation to foster competition and insure a fair and equitable environment. The Purchasing Department utilizes an online vendor registration system that is vendor maintained and based on services and commodities of particular interest. In addition to this listing the Purchasing Department will include any known relative vendors and/or previous solicitation responders.

**Withdrawing Bids** – Bids may be withdrawn before the bid opening date and time. The person requesting such action must be an authorized representative of the company and present proof of same to purchasing personnel.

Greg Workman

Purchasing Director, City of Elizabethton

Revised: June 8, 2023