

VENDOR GUIDE



How to Do Business with the City of Amarillo

Purchasing Department
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1. GENERAL INFORMATION

Mission Statement and Purpose: The City of Amarillo's mission is to deliver quality public services and to advance the social and economic well being of our present and future citizens. The first goal of the Purchasing Department is to ensure fair and equal access to all City procurements by any responsible vendor or contractor and to conduct business activities in such a manner as to assure public confidence in the Purchasing Department. The Purchasing Department purchases goods, services, and equipment for all City departments, is responsible for the bidding and contracting of both major and minor construction projects and sells any City property that has been declared surplus. These responsibilities are carried out in the manner set forth by the Texas State Law, the City Charter and City Policy.

This guide is intended to acquaint vendors with the City of Amarillo's procurement processes and encourage all vendors to become suppliers to the City. The guide provides a current source of information for prospective vendors regarding the many selling opportunities existing for the City of Amarillo. The City of Amarillo has developed the purchasing policies and procedures, in accordance with city and state statutes. Procurement is a major activity for the City and the system is designed to ensure fair and equitable treatment of all individuals that participate in the procurement process. Vendors are an important element in this process and vendor participation is crucial to the success of existing and new programs.

Vendors should periodically visit the Amarillo web site at <http://www.amarillo.gov> to review the Vendor Guide on How to do Business with the City of Amarillo for any updated information. From the above link, select *Departments, Purchasing, Vendor Information*, and then select *How to do Business with City*. You can also review Bid Recap sheets and see what bids are currently available from the above link and then select *Departments, Purchasing, Bid Information*, and then select either *Bid Recap* or *Bid Opportunities List*. Bids can be picked up in person from our office at 601 S Buchanan, Room 307 any time during business hours. You may also request bids by calling us at 806-378-3028 or by emailing us purchasing2@amarillo.gov.

The Purchasing Department purchases supplies, materials, services, and equipment for the City of Amarillo. In most cases, economy of scale or volume purchasing by the departments assists the City in securing cost savings for the taxpayers. Where volume purchasing is desirable and reduced costs and efforts are significant, Purchasing develops and implements City term contracts. To insure compliance with all statutes, Purchasing processes solicitation requirements associated with large dollar purchases.

The primary functions of Purchasing include purchasing management, thoughtful policy implementation, adequate training and monitoring of purchases in accordance with City and State statutes. To be effective, Purchasing strives to reduce the cost of City expenses, inspire public confidence in the City, improve the quality and timeliness of services rendered by departments, provide a meaningful partnership with the business community and promote honesty and integrity throughout City operations. The purchasing process becomes much more than a technical or clerical exercise. It is a managerial function that crosses department lines, with a primary mandate to conserve taxpayer dollars.

The information enclosed is provided as a general guideline to help vendors understand their part of the procurement process utilized by the City. Nothing contained herein shall be construed to amend or override any statute, rule, regulation, policy or procedure of the City of Amarillo or the provision of any document used in any competitive procurement. The Purchasing Department reserves the right to modify this guide without prior notice and without issuance of such modification to all holders of the manual.

Authority of the Purchasing Department

The Purchasing Department of the City of Amarillo is charged with the responsibility for the establishing of contracts, leases, purchase orders or other agreements for the procurement of commodities (supplies, materials and equipment) and services for other departments of the City, and for overseeing citywide contracts.

Purchasing Citywide Procurement Program

The Purchasing Department performs daily operations including the following:

- Processes open requisitions on behalf of over 55 departments
- Administers over 130 term contracts and procurement schedules representing several thousand line items
- Provides information and customer service related to purchasing processes as well as the master bidders list
- Reviews proposed service contract specifications and determine delegated authority to Request for Proposal packages or solicitations submitted by departments
- Conducts outreach to vendors, departments, and local governments at trade shows and conferences; and
- Manages the City purchasing system and provides user support for the JDE procurement system

Competitive Bidding Requirement

The Texas Government Code stipulates that municipalities purchase or contract for goods or services through competitive bidding whenever possible.

Negotiation

Negotiation of contracts is permitted for:

- Emergency purchases when there is insufficient time to solicit bids;
- Proprietary purchases or purchases of items for which there is only one source of supply;
- Purchases by means of competitive sealed proposals; and

Commodity Purchases

A commodity purchase is a procurement of supplies, materials or equipment and does not include the purchase of real property or services.

Ethics Statement

A City employee may not have an interest in or in any manner be connected with a contract or bid for a purchase of goods or services for the City; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Entities who are interested in seeking business opportunities with the City must be mindful of these restrictions when interacting with public purchasers or purchasers of any City department.

Indebtedness

Per City Ordinance No. 6706, the City of Amarillo will not make an award to a vendor who is delinquent in any indebtedness to the City.

2. VENDOR REGISTRATION

Vendor Responsibility

Purchasing is responsible for the management of the bidders list which is used to develop a mailing list for vendors to receive bid opportunities based on the products or services they can provide to the City of Amarillo. Manufacturers, suppliers, and other vendors wishing to furnish materials, equipment, supplies, and services to the City should register with Purchasing to receive bidding opportunities. Therefore, the first step to begin doing business with the City is to become a registered vendor.

A vendor may sign up to become a registered vendor by filling out and returning a Vendor Application form. The Vendor Application form is available in our office or can be downloaded from our website at www.amarillo.gov and then going to *Departments, Purchasing, Vendor Information*, and then to *Vendor Application*. There is no registration fee. Vendors with multiple locations may require separate registrations. Once the vendor application has been accessed, the second page has instructions on

how to access the “National Institute of Governmental Purchasing (NIGP) Commodity Book” (see next section for more information). This is needed in order to select the commodity code(s) that best describe the kinds of goods and/or services the vendor would like to supply to the City. It is important to choose and provide the correct NIGP codes because these codes are used to pull potential vendors from our bidders list.

Once a vendor has registered, it is important to remember to keep the name, address, telephone number, etc., current as the vendor profile information changes and to change/revise as necessary the NIGP commodity codes that have been chosen. Changes can be made by email to purchasing2@amarillo.gov or mailed to:

City of Amarillo
Purchasing Department, Room 307
P.O. Box 1971
Amarillo, TX 79105

NIGP Codes

The NIGP Commodity and Services Coding System was developed by the National Institute of Governmental Purchasing (NIGP) to bring consistency to automated purchasing. Each item purchased by the City is assigned an NIGP Class-Item code. To see a list of class and item codes used by the City, please go to http://cmbldreg.cpa.state.tx.us/commodity_book/Numeric_index.cfm. Note: By clicking on the class code with the general description closest to the commodity or service which can be provided, items will appear which are designated for that class.

The commodity or service class drives the bid list. Therefore, vendors should select class codes closest to the actual product or service which can be provided. Procurement opportunities are mailed according to the class (3 digit) and item (2 digit) codes selected and will contain required specifications. If you need help identifying which class and item codes are applicable to your company, contact the Purchasing Department at (806) 378-3028.

If a vendor finds that their company is not receiving bids for a particular good or service, the vendor may not be enrolled in the distinct commodity class or may have an incorrect address on file. Vendors may bid on a commodity class or service other than the classes designated on their registration; however, vendors are responsible for requesting the solicitations.

Help Desk

If you have any problem with the registration process, please contact the Purchasing Department at (806) 378-3028.

Marketing to City

The most successful vendors understand the purchasing process, know their product, work diligently to market their product to the City, and exercise a high degree of business ethics and responsibility in responding to the requirements of their contract with the City.

Additionally, anyone may search the electronic City's Bid Opportunities List at www.amarillo.gov and choose *Departments, Purchasing, Bid Information*, and then *Bid Opportunities List*.

3. METHODS OF PROCUREMENT

Invitation for Bids (IFB)

The IFB is a formal solicitation for bids that are used for expenditures. The IFB is also the main procurement instrument used to solicit City of Amarillo term contracts and open market purchases. All bids should designate a specific time and due date. Bids with an estimated value over \$50,000.00, are publicly opened and the bidder's names and prices are read out loud at the time and place designated in the IFB. After the bids are evaluated and awarded, a Notice of Award or a Purchase Order is issued to the responsible bidder meeting all specifications, contract terms and conditions per the terms of the IFB.

Request for Qualification (RFQ)

An RFQ is a solicitation document requesting submittal of qualifications or specialized expertise in response to the scope of professional and consulting services.

Request for Proposal (RFP)

An RFP is a formal and competitive method of procurement whereby vendors are requested to submit proposals for the supply of goods and services in a format which allows for the consideration of factors in addition to the price in the evaluation and award process. This method of solicitation is used when it is determined by the City that the use of competitive sealed bidding is not practical or is not advantageous to the City and when the project does not lend itself to the creation of a clear and concise Statement of Work. The objective of the RFP solicitation is to determine a vendor who can offer the best possible solution at the most reasonable price.

The RFP describes in general terms the background and needs of the City. However, unlike the informal or formal bidding process in which the City prescribes both the specifications and solution to its own needs and vendors replicate the City's specifications and solution in the bids that they submit, the RFP process contemplates that vendors will propose their own comprehensive and innovative solutions to the City's needs described in the RFP.

Proposals are opened on the scheduled day and time and only the names of the proposers are revealed to those present. Pricing is not revealed at this time. Recommendations for award are made by a multi-functional selection committee who determine which proposal is in the best interest of the City based on the evaluation criteria defined in the RFP. This process results in a contract with monitoring and reporting.

City Term Contracts

City term contracts are developed to consolidate the needs of several departments, to standardize, to combine usage for lower prices and to facilitate the purchase process of items of common demand. The solicitation document will contain, whenever possible, nonbinding estimates of total usage by the user agencies. The successful bidder will be issued a Notice of Award by the Director of Purchasing or Designee. Contracts are usually in effect for an initial 12 month period and may have additional 12 month renewal options, which may be exercised if determined to be in the best interest of the City. The shipment of supplies, materials or equipment is authorized by the issuance of purchase orders as releases against the contract. When an item is available on contract, all City departments are required to purchase from the contract unless approval is obtained from the Director of Purchasing to go off contract.

Purchasing Card Program

A procurement program has been developed to streamline requisitioning, purchasing, receiving and payment processing for low to moderate value (\$2,500.00 or less) City purchases. When placing an order, City employees use their purchasing card in lieu of an on-line requisition.

Emergency Purchases

An emergency condition is a situation which occurs as the result of unforeseeable circumstances and may require an immediate response to avert an actual or potential public threat. If a situation arises in which compliance with normal procurement practice is impracticable or contrary to the public interest an emergency purchase may be warranted to prevent a hazard to life, health, safety, welfare, property or to avoid undue additional cost to the City. All procurements conducted as emergencies should be made as competitive as possible under the circumstances and emergency purchases of goods or services should not exceed the scope or duration of the emergency.

4. PROCUREMENT CYCLE

The procurement cycle begins by defining the end user's need for a commodity or service and typically ends with the disposal process. The procurement cycle consists of the following:

- Need Defined
- Procurement Method Selected
- Solicitation

- Receipt of Bids
- Evaluation & Awards
- Inspection & Acceptance
- Contract Administration
- Payment
- Disposal of Property

Need is Defined

When a City government end user recognizes the need for a commodity or service, they communicate that need to the purchasing staff (designated purchaser). The most common document used to identify the need is a purchase requisition. The requisition should include the specifications of the commodity or service that an end user seeks to procure.

Specifications

A specification is a detailed description of a product or service that a user seeks to procure, and consequently, a description of what a bidder must offer to be considered for an award. Specifications are the primary means of communication between an agency and a vendor.

Specifications control the following procurement aspects:

- Functional need being addressed,
- The quality of the product,
- Suitability of the product or service for the job,
- The method of evaluation used in making an award.

Note: A bidder or contract participant may provide free technical assistance to a department in developing specifications. However, a department may not accept a bid or award a contract to a vendor who received compensation from the City to participate in the preparation of the specifications or Statement of Work on which the bid or contract is based. Care must be taken in the development and acceptance of specifications to insure allowance for full and open competition and non-restrictive participation.

Procurement Method Selected

The next step to the Procurement Cycle is selecting the procurement method to be used. The purchasing department identifies the appropriate procurement method based on specifications, including delivery requirements and estimated costs.

Solicitation Process

It is the policy of the City to provide every vendor an equal opportunity to submit responses on City procurement solicitations. The method of solicitation depends on the estimated value of the solicitation, the particular products or services to be purchased and what methods are most advantageous to the City.

Solicitation Documents

Request for Qualifications (RFQ), Invitation for Bids (IFB), and Request for Proposals (RFP) are used by the City to solicit responses from suppliers to sell goods or services and should not be construed as an order by the City to make any purchase. A Request for Information (RFI) is used to obtain information from the vendor community that may or may not be used to develop a solicitation document at a later date. To be responsive, vendors should always review instructions, the terms and conditions of the solicitation document and include all information and signatures as required. The bid or proposal must be returned to the address listed in the solicitation document by the time and date indicated for the bid opening or proposal deadline. If you have any questions, contact the Purchasing Department at 806/378-3028 or by email at purchasing2@amarillo.gov prior to bid opening.

Occasionally, the City may utilize the assistance of a consultant in the development of a solicitation document. These consultants are obtained either through a standing consultant contract or through a competitive bid process. The consultants who participate in this process will be required to prepare and submit a nondisclosure statement regarding this procurement. Any consultant who assists in the development of a solicitation document will be prohibited from submitting a bid/proposal in response to that solicitation or from otherwise performing work on any contract directly resulting from that particular solicitation document, unless the City expressly waives the restriction in writing. Vendors who respond to RFI's may respond to any solicitations resulting from the RFI.

Advertising Requirements

A procurement that is estimated to exceed \$50,000.00 in value, without regard to the source of funds the City will use for the procurement, must be advertised in a public posting. The City of Amarillo posts notices on the City's website www.amarillo.gov and in the Amarillo Globe News' Legal Notices section every Monday.

Notices for procurement contract opportunities must be posted for the latest of 14 calendar days after the date the notice is first posted; the date the City will no longer accept bids, proposals, or other applicable expressions of interest for the procurement.

A contract or procurement award is void if made by the City in violation of the applicable minimum required posting time.

Bid Preparation Expense

Any expense relating to the submission of a response is the sole responsibility of the vendor. The City will not reimburse vendors for any cost related to bid preparation and/or submission.

Addendums

Should an addition or correction become necessary after a solicitation is issued, an addendum relating the necessary information will be provided to all bidders on record with the City as having received a copy of the initial bid solicitation. Bidders are required to acknowledge the addendum by returning it with the bid or by physically noting the change or addition on the bid.

Withdrawal of Bids

A written request for the withdrawal of a bid or any part thereof will be granted if the request is received prior to the specified time of opening.

Cash Discount for Prompt Payment

If a cash discount for prompt payment is offered, it must be shown in the space provided on the bid form.

Price Escalation

Bid prices which are subject to unlimited escalation will not be considered.

New Products

Unless specifically called for in the solicitation, all products for purchase must be new, never previously used, and contain the original packaging. No remanufactured, demonstrator, irregular, or otherwise used product will be considered for purchase unless otherwise specified in the solicitation. The manufacturer's standard warranty will apply unless otherwise specified in the solicitation.

Brand Names

When brand names are specified, bids on alternate brands will be considered if they otherwise meet specification requirements. Any catalog number and/or brand name used in an IFB is descriptive only (not restrictive) and is used to indicate type and quality desired. If bidding other than the referenced example, the bidder must show the manufacturer, brand or trade name, model number, and provide a full description of the product offered. Submission of illustrations and brochures containing specifications is encouraged to adequately describe the product being offered.

Samples

The City will request samples when essential to the assessment of product quality during bid evaluation. Each sample should be marked with the bidder's name, address, bid opening date and contract number. Do not attach samples to the bid pages.

Taxes

Vendors are responsible for including all applicable taxes in the bid price. The City is exempt from all state and local sales as well as use taxes.

Bid Bonds

A bid bond may be required. A bid bond is a deposit required of bidders to protect the City in the event a low bidder attempts to withdraw its bid or otherwise fails to enter into a contract with the City. When a bid bond is required, the amount will be stated in the solicitation as a set amount or as a percentage of the total bid amount. Bid bonds must accompany the bid. A bid bond, cashier's check, or certified check is acceptable made payable to the City of Amarillo. Bid Bonds or checks are returned to the bidders after the award is made.

Performance Bonds

A performance bond may be required. A performance bond is a deposit, pledge, or contract of guaranty supplied by a successful bidder which protects the City against loss due to the bidder's failure to pay material suppliers and subcontractors. When required, the amount of the performance bond will be stated in the solicitation as "equal to" or as a "percentage of the contract sum". The successful bidder will be notified by letter to secure a performance bond according to the solicitation requirements. The bond must be received within the time specified by the date of notification. If the bond is not received within this time period, the Director of Purchasing reserves the right to award to the next acceptable low bidder, or to reject all bids and rebid, whichever is in the interest of the City.

Payment Bonds

A payment bond may be required. A payment bond is a deposit, pledge, or contract of guaranty that is supplied by a successful bidder which protects the City against loss due to the bidder's failure for payment of all obligations arising in the form the owner prescribes and with such securities as the owner may approve. When required, the amount of the payment bond will be stated in the solicitation as "equal to" or as a "percentage of the contract sum". The successful bidder will be notified by letter to secure a payment bond according to the solicitation requirements. The bond must be received within the time specified by the date of notification. If the bond is not received within this time period, the Director of Purchasing reserves the right to award to the next acceptable low bidder, or to reject all bids and rebid, whichever is in the interest of the City.

Maintenance Bonds

Contractor shall provide a bond on the Owner's standard one-year maintenance bond form, providing for Contractor's correction, replacement, or restoration of any portion of the work which is found to be not in compliance with requirements of the Contract during period following Final Completion of the completed Project.

Maintenance bond is to be equal in value to 100% of the Contract amount.

Receipt of Bids

Late Bids

A bid received after the date and time established by the bid invitation is a late bid and will not be considered under any circumstances. The official clock is in the Purchasing department. All bids must be in the possession of the Purchasing department as well as having a date and time stamp not later than the posted bid opening. Late bids will be returned unopened to the vendor.

Unsigned Bids

Bids will be checked for signature prior to tabulation. Bids without a signature will be disqualified as technically non-responsive and NOT considered valid for tabulation. Any unsigned bids will be notated on the tabulation sheet as "UNSIGNED" in red ink and attached to the file. These bids will be reflected as "unsigned" in the comment area of the tabulation sheet. They will be kept with the main file and not returned to the bidder.

Bid Openings

In Texas, the terms "bid opening" and "closing date" are used synonymously. The date, time, and physical location of bid opening shall be stated clearly on the IFB. All bid openings shall be open to the public. The requirement for public opening of bids is a statement of openness to reduce the possibilities of collusion and favoritism as well as foster public confidence in the ordering entity. Bid opening dates may be changed and bid openings rescheduled if bidders are properly notified in advance by a formal solicitation addendum of the new opening date. If a bid opening is canceled, all bidders are properly notified. All bid tabulation files shall be available for public inspection within two business days of bid opening. Bid tabulations may be reviewed by any interested person in our office during regular working hours or may be requested by email to purchasing2@amarillo.gov. A Bid Recap is posted on the City of Amarillo website within one business day of bid opening. It can be found at www.amarillo.gov and go to *Departments, Purchasing, Bid Information* and then *Bid Recaps*.

The bid opening will normally consist of announcing information to include the bid number and title, the name of each bidder, receipt of addendums and bids (if applicable) and the bid total. The Purchasing staff does not determine whether a bid meets bid specifications at the time of bid opening. This is done in the evaluation process. Bidders will be advised to submit any concerns in writing to the Director of Purchasing.

Receipt of Proposals

The date, time and place for receiving the proposals is indicated on the RFP cover. The proposal will only be considered if it is received before the date/time and place scheduled for receipt.

Agency staff will read ONLY the names of the companies who have submitted a response to the RFP. No further information is revealed at that time as contents of offers must remain confidential until date of contract.

Evaluation and Awards

After IFBs are opened and tabulated, the bid is evaluated for compliance with the terms, conditions, and specifications contained in the solicitation.

Award(s) are made on competitive sealed bids (IFB) to the lowest responsive and responsible bidder(s) whose bid meets the requirements and criteria set forth in the solicitation.

After proposals are opened, they are evaluated by a committee. Each member scores proposals independently and the committee meets to arrive at a consensus scoring.

Awards are made on Requests for Proposal (RFP) to the offeror whose proposal conforms to the RFP and will be the most advantageous to the state, considering price and other evaluation factors set forth in the RFP.

The City reserves the right to make an award on the basis of low line item bid, low total of line items, or in any combination that will serve the best interests of the City. The City also reserves the right to accept or reject any and all bids or parts of bids and to waive any formalities and technicalities, and/or make an award in the best interest of the City.

Responsive Bidder

A responsive bidder is a person who has submitted a bid which conforms in all substantive respects to the Invitation for Bids including the specifications, signing the bid, bonding requirements, deliver time, license requirements, product testing, insurance and/or samples and any other requirements of the IFB.

Responsible Bidder

A responsible bidder is a person who has the capability, integrity, and reliability in all respects to perform the contract requirements which will assure good faith performance. Some of the responsible indicators are the ability to perform, available inventory, staff and technical support, equipment, financial capabilities, and prior contract performance.

Mistakes in Bids

A bid price may not be altered or amended after bids are opened except to correct mathematical errors in extension. No increase in price will be considered after a bid is opened. In case of discrepancy between unit price and the extension, the unit price will be taken.

A bid containing a self-evident error may be withdrawn by the bidder prior to an award. The Director of Purchasing will be responsible for determining possible consequences of withdrawing a bid.

The City will not be bound by any communication with bidders other than the IFB, and any written addendums issued by the City. Any verbal communication is not legally binding.

Reciprocity (Applies to non-Texas Resident Bidders)

The City of Amarillo may not award a contract for general construction, improvements, services, or public works projects or purchases of supplies, materials, or equipment to a nonresident bidder unless the nonresident's bid is lower than the lowest bid submitted by a responsible Texas resident bidder by the same amount that a Texas resident bidder would be required to underbid a nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located. This subsection does not apply to a contract involving federal funds.

Rejection of Bids/Cancellation of Solicitation

Solicitations may be cancelled in whole or in part when the Director of Purchasing determines in writing that such action is in the City's best interest.

Contract Administration

Conflict of Interest Reporting

Per the terms of Chapter 176 of the Local Government Code, should any vendor be awarded all or any part of the goods or services on a Bid or Proposal, then it is the vendor's sole responsibility to provide the City of Amarillo, with an updated Conflict of Interest Questionnaire, Form CIQ. The vendor must file the updated form within 7 days after learning that a prior filing (if any) is no longer accurate. This form and the names of the City Council Members, Mayor, City Manager, Deputy City Manager and Assistant City Managers is available on the City's website located at www.amarillo.gov, *Departments, Purchasing, Vendor Questionnaire, CIQ Information Sheet.*

Receipt of Purchase Order or Notice of Award – Authority to Ship

Successful bidders/offerors will receive either a notice of award or a purchase order from the City. The purchase order or notice of award will include the terms, conditions and specifications to which the vendor must comply in fulfilling its obligations to the City as well as any vendor exceptions accepted by the City.

The receipt of a purchase order for a one time open market purchase authorizes shipment in accordance with its terms. However, the receipt of a notice of award establishing a term contract does not authorize any shipment. Shipment against term contracts is authorized by the receipt of a purchase order. The purchase order number, or contract number, must be shown on all bills of lading, packing slips, back orders,

invoices and other transactional documents. Blanket open market purchase orders are established on an as-needed basis for a product or service for which the procuring agency has a repetitive need. No quantities are guaranteed. This type of order allows the agency to avoid large inventories and the expense of issuing frequent purchase orders. For these orders, the vendor does not ship products or perform services until the City authorizes the vendor in writing.

Back Orders

If it is necessary for a vendor to back order any item, the vendor should notify the City immediately and advise as to the expected shipment or delivery date. Items on back order can create late delivery dates and it is extremely important to notify the City once a need for a back order exists. Prompt communication with the City shows intent to provide good customer service and possibly prevents negative reports. Continued necessity to back order may also be deemed a breach of contract.

Substitutions

Substitution is the shipment of an item that does not conform strictly to the purchase order specifications, including any brand and/or model number specified. Any substitution must be approved in writing by the City prior to delivery. Proposed substitutions must meet and/or exceed the original advertised specifications, be of equal quality and type, and be offered at the same or lower price. The City's refusal to accept a substitution does not relieve the vendor of its obligation to provide the item(s) called for in the contract.

Loss or Damage in Transit/Freight

For all purchase orders or contracts designated "F.O.B. Destination", delivery of goods by a common carrier does not constitute delivery to the City, and the risk of loss will remain with the vendor until actual delivery to the City. Any claim for loss or damage incurred during the delivery shall be made by the vendor directly to the carrier. The City will note all damage incurred in transit on the freight bill and will notify the vendor who is expected to make immediate replacement of the damaged merchandise. If damage is to a small quantity only and the City will not be inconvenienced because of the shortage, the vendor may, with the written consent of the City, deduct the amount of damage or loss from their invoice to the City lieu of replacement.

Delivery Time

The successful bidder/offeror should maintain or have available an inventory sufficient to make delivery within the time stated, or take necessary measures to ensure that delivery will be made in accordance with the contract. Failure to deliver in accordance with the contract may result in the vendor being declared in default.

Cancellation of Contract Orders

Orders are cancelled in writing by the City. Orders may be cancelled without the consent of the vendor for failure to meet contractual obligations. If cancellation is requested by

the City for some other reason, through no fault of the vendor, the vendor's permission to cancel is required. All correspondence from the vendor pertaining to the cancellation of an order is to be addressed to the City Director of Purchasing.

If the return or cancellation is required through no fault of the vendor, the vendor may request a reasonable restocking charges of 15% or less (plus freight) of the original cost of the materials as reasonable.

Cancellation of Contract

The City reserves the exclusive right to cancel a contract either in whole or in part for convenience without damage or liability to vendor. Abandonment of a contract by a vendor for any reason without notification and approval of the City subjects the vendor to damages and all legal remedies available to the City.

Damages for Failure to Perform

A vendor who fails to perform as required under a contract shall be liable for actual damages and costs incurred by the City. If any merchandise delivered under a contract has been used or consumed by the City and on testing is found not to comply with specifications, no payment may be approved by the City for such merchandise until the amount of actual damages incurred has been determined. A vendor who fails to pay damages assessed by the City may not be awarded additional contracts until such damages have been paid or the matter has been otherwise resolved. The City shall seek to collect damages by following the procedures established by the City. If a vendor is in default on an order, the City reserves the right to purchase the item in default and charge the increase in price, if any, and the cost of handling to the vendor. Failure to pay a damage assessment is cause for contract cancellation and/or placement on the City's Excluded Parties List.

Debarment of Bidder Policy

Statement of Purpose

It is the City of Amarillo policy to only accept bids or responses to requests for proposals or qualifications from, only award contracts to, and consent to subcontractors, or do business in any other way, with responsible persons. Debarment and suspension are discretionary actions that are appropriate means to protect the City by ensuring that the City only has contractual relationships with responsible persons. The serious nature of debarment and suspension requires that these sanctions be imposed not as punishment, but in order to protect the integrity of the City's procurement practices and public confidence in its fiscal responsibility.

Definitions

"Affiliate" means a person or business entity who:

- a. is the assignee, successor, subsidiary, or parent company, of another person or business entity; or,

- b. is a controlling stockholder; member; owner; partner; officer; director; or, employee of a business entity; or,
- c. has the same or similar management of the debarred or suspended person or business entity; or,
- d. directly or indirectly controls, or has the power to control, another person or business entity, or is directly or indirectly controlled by another person or business entity. Indicia of control include but are not limited to: interlocking management, directorship, membership, partnership, or ownership; identity of interests among relatives; shared facilities, equipment, or employees; creation of a business entity soon after the debarment, suspension, or proposed debarment of a person or business entity which has the same or similar management, directors, owners, partner, or principal employees as the contractor that was debarred, suspended or proposed for debarment.

“Bid” for purposes of this policy, the term is used as a noun and verb, broadly, to mean and include any bid, proposal, qualification or other document submitted to City in response to a solicitation or request for the purpose of being considered or selected for the award of a contract with the City for the provision of any construction, goods, commodities, services, or labor.

“Bidder” for purposes of this policy, the term is used broadly to mean and include any person or business entity who has submitted a bid, proposal, qualification or other document responsive to a solicitation or request, whereby one seeks award of a contract with the City

“Business entity” means and includes any form of lawful legal entity recognized by Texas law, which includes but is not limited to: sole proprietorship, partnership, joint venture, association, corporation (for profit and non-profit), limited partnership, limited liability company, limited liability partnership, limited liability professional partnership.

“City Manager” means the City Manager of the City of Amarillo or designee.

“Contract” means any written agreement between the City and another person or business entity. It also includes a City-issued purchase order, invoice or other form of agreement for the purchase of services or goods.

“Controlling stockholder” means a stockholder who:

- a. owns more than 25% of the voting stock of a corporation; or,
- b. notwithstanding the number of shares that the stockholder owns, has the power to direct or control the direction of the management or policies of a corporation.

“Debar” or “Debarment” means the disqualification of a person or business entity, for a specified period of time, from directly or indirectly:

- a. submitting responses to City's requests for bids, proposals or qualifications; or,
- b. being awarded a Contract; or,

- c. executing a contract with the City; or
- d. indirectly participating in a City contract as a subcontractor, material supplier, or employee of a prime contractor or another subcontractor for work on a City contract; or
- e. conducting business with the City as an employee, agent, or representative of another person or business entity.

“Director of Purchasing “ means the City employee in charge of the City of Amarillo Purchasing Department.

“Board” or “Debarment Review Board” means a board established by the City to take evidence, and to make determinations about debarments for the City. The Board will consist of members appointed by the City Manager.

“Indictment” means and includes any formal accusation of a criminal offense by a prosecutor and includes misdemeanor information, for other than a traffic citation or summons.

“Management” means and includes officer, director, partner, owner, general partner, manager, foreman, supervisor, or other individual or entity responsible for some or all of the finances, operations, policies, or practices of a person or business entity.

“Person” means an individual, company, firm, association, corporation, partnership or other business entity recognized by Texas law. In addition, if a person is a business entity rather than a natural person, then it includes individuals who constitute the person's management. It also includes affiliates and any individual or other legal entity that:

- a. Directly or indirectly (e.g. through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a contract, or a subcontract under a City contract; or
- b. conducts business, or reasonably may be expected to conduct business, with the City as an agent or representative of another person.

“Preponderance of the evidence” means proof that leads to the conclusion that the fact at issue is more probably true than not.

“Prime contractor” means a person who enters a contract directly with the City.

“Relative” means:

- a. an individual related by consanguinity (blood) within the second degree as determined by the common law; or,
- b. a spouse; or,
- c. an individual related to a spouse within the second degree as determined by the common law; or,

- d. an individual in an adoptive relationship within the second degree as determined by the common law; or
- e. any individual considered to be “family” in commonly understood terms of the word.

“Subcontractor” means:

- a. a person who contracts directly with a prime contractor but not directly with the City; or,
- b. any person under contract with a prime contractor or another subcontractor to provide any service, materials, labor or otherwise perform on a contract.

“Suspend” or “Suspension” means the debarment of a person for a temporary period of time pending the outcome of some stated future occurrence, including but not limited to, an indictment, any proceedings before a Debarment Review Board, or a legal proceeding.

“Willful failure to cooperate” means:

- a. intentionally failed or refused to attend a hearing and/or give testimony, or
- b. intentionally failed or refused to provide documents, books, papers, or other information upon request of the City Manager or the Debarment Review Board.

Grounds for Debarment of Person and Affiliate

A person may be disbarred by the City for any of these several reasons for a period of five years:

- a. A final criminal conviction, including a plea of nolo contendere, deferred adjudication, pretrial diversion or a final unappealable civil judgment for any of the grounds listed in subsections (1)-(3) just below constitutes grounds for debarment for a period of five years from date of occurrence of the judicial actions stated above:
 - i. under any state or federal statute or municipal ordinance for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records, receiving stolen property or any offense indicating a lack of business integrity or business honesty which affects the person's or its affiliate's responsibility; or
 - ii. for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract; or,
 - iii. for a conviction under federal or state antitrust statutes involving public contracts or the submission of offers or bid proposals,
- b. Commission of any of any offense, taking of any action or failing to take an action, which indicates a lack of business integrity and which could directly affect the reliability and credibility of performance by the person on future contracts with the City.

- c. Colluding with another person or persons in the submission of a bid or for the purpose of preventing any other bid being made.
- d. Commission of any corrupt practice in bidding for or in any way seeking award of any contract, including, but not limited to, a contract with the City.
- e. Establishment or operation of a business in a manner designed to evade the application of this Policy or to defeat the purpose of this Policy.

A person may be disbarred by the City for any of the following acts or omissions for a period of not less than one year and up to and including three years:

- a. Failure, refusal, or inability to properly or timely perform or complete contract work or warranty performance for the City on any contract or subcontract; or
- b. Failure, refusal, or inability to honor or observe contractual obligations or legal requirements pertaining to a contract or subcontract for the City; or,
- c. Use of substandard materials, or the failure, refusal or inability to furnish or install materials in accordance with contract requirements, even if the discovery of the defect is subsequent to acceptance of the project and expiration of the warranty thereof by the City; or
- d. Willful failure to cooperate in the investigation or hearing of any proposed debarment by the City; or
- e. Performing, or failing, refusing or inability to perform, a contract in such a way that environmental damage results, or a violation of environmental laws or permits is committed; or
- f. Failure, refusal, or inability to pay or abide by prevailing wage, rates and hours laws or practices, unlawful discrimination in employment, or failure, refusal, or inability to take corrective action for such, after notice by the City or any other governmental entity; or
- g. Failure, refusal, or inability to timely submit bond, contract documents, insurance documents or any other item required by bid, request, or contract; or
- h. Providing false or misleading information (by act or omission) as part of any prequalification statement, bid or contract, and also including but not limited to, financial statements, product descriptions, billings, or invoices to the City; or
- i. Failure, refusal, or inability to timely pay undisputed bills or invoices from suppliers or subcontractors; or
- j. Debarment by any other federal, state or local governmental entity; or
- k. Failure, refusal, or inability to defend, indemnify and hold the City harmless pursuant to a contractual obligation after being requested to do so by the City; or
- l. Failure, refusal, or inability to maintain required insurance coverage, bond, letter of credit, or other form of security required to be maintained in effect before, during, or after the term of any contract with the City; or
- m. Any other good cause that the City, in its sole discretion, deems so serious or of such a nature that it affects the ability of the person to properly or timely perform a contract or subcontract.

Debarment Review Board Procedures

Any City department may request the City Manager to consider debarment or suspension of a person or business entity. Upon receipt of a request for debarment from a City department, the City Manager shall convene a Debarment Review Board and review the allegations and determine whether a person or business entity should be debarred. The City Manager shall appoint three individuals to serve on each Board. These individuals shall be unbiased City employees, meaning that they have not participated in the decision to request the debarment nor are subject to the authority, direction or discretion of employees who have participated in such request. The Board shall follow procedures set forth in this Policy and shall make decisions based on evidence provided. The Board's scope of authority and duties are as follows:

- a. The Board will gather and review all relevant data to determine whether adequate evidence exists in support of the request for debarment. If the Board finds that the data reviewed does not support the request for debarment the Board will forward its findings to the Department that initiated the request and to the City Manager and debarment proceedings will end.
- b. If the Board finds that adequate evidence exists to support the request for debarment, the Board shall notify the person or business entity in writing of: (i) the proposed debarment; (ii) the length of time of the proposed debarment; (iii) a detailed summary of the evidence upon which the proposed suspension and/or debarment is based such that the person or business entity is on fair notice of the reason(s) for the action; (iv) that a final determination of debarment will be made after ten days from date of the notice, unless the person or business entity submits a written response during that time opposing the debarment by stating specific evidence that raises a genuine dispute as to the facts or law on which the proposed debarment is based. If applicable, the notice shall also state that the person or business entity has been temporarily suspended pending final determination.
- c. The failure to file a written response within the time allowed shall be deemed an admission of the allegations set forth in the notice and debarment shall be imposed with no further recourse by the person or business entity.
- d. If a person or business entity timely files written opposition, the Board shall review the response and determine that either: the response fails to raise a genuine dispute as to the facts or law and impose the debarment; cancel the proposed debarment; request further information from the person or the involved City department; or determine that the response raises a genuine dispute and schedule a hearing. If a hearing is required, then it shall be as informal in nature as is compatible with the requirement that a just determination be made. Each side shall in turn present its information, examine and cross-examine witnesses, and argue their position. The City shall have the burden of proof by a preponderance of the evidence, with the right to open and close both the evidence and argument.
- e. The Board shall issue a written decision either sustaining the debarment, or modifying the time period, or cancelling the debarment, within seven business days after the later of receipt of the response in opposition, after receipt of any additional information requested, or after conclusion of a hearing if one is held. The

written decision shall contain a summary of the evidence supporting the Board's decision. The decision must be delivered to the debarred party in the same manner that notice is served.

- f. A debarment shall run from the date of the Board decision or from the date of temporary suspension if such was imposed.
- g. Decisions of the Board are final except as may be appealed, as provided for below.

Temporary suspension

If the Board reports to the City Manager that adequate evidence exists to support the request for debarment, and the City Manager determines that there are specific valid and urgent reasons for the person or business entity to be immediately temporarily suspended pending the debarment process, then such finding and suspension shall be included with the notice to the person or business entity. In the event that the basis for debarment is an indictment, then temporary suspension shall be automatically implemented without a determination by the City Manager and remain in effect until such time as the indictment has been disposed of (including a plea of no contest, dismissal, conviction, deferred adjudication or pretrial diversion), at which time the matter will be reviewed for debarment by the Board. Prior to the Board's review of an indictment after disposition, the person or business entity involved shall again be given notice and the opportunity to oppose any debarment. The fact that the indictment is dismissed or the subject of deferred adjudication or pretrial diversion does not prejudice the right of the City to proceed with debarment. However, if the person or business entity is found not guilty, then further debarment proceedings will be cancelled and the suspension will be lifted.

Appeals to City Manager from Certain Decisions of Debarment Hearing Board

- a. If the Board has made a determination to debar a person or business entity, that person or business entity may appeal such decision to the City Manager in accordance with procedures set forth here.
- b. A person or business must appeal by filing the appeal no later than close of business on the fifth business days after the date the notice of the Board's debarment decision is delivered according to this policy. The appeal shall be in writing and set forth in detail each and all of the separate reasons (factual and legal) why the person or business entity disagrees with the decision. The person shall file the notice with the City Secretary who shall promptly provide it to the City Manager.
- c. The filing of a request for appeal shall not stay the Debarment decision of the Board.
- d. No new evidence may be submitted in an appeal.
- e. Within ten business days after receipt of the notice of appeal, the City Manager shall issue a written decision upholding, reversing, or modifying the debarment. The written decision will be provided to the appealing party, the Board, and the Director of Purchasing.

Notices

- a. Whenever any notice is required to be delivered under this Policy, the notice shall be delivered by any of the following methods. Service is effective as described herein:

- i. Personal delivery accomplished via hand, fax, or email at the number or address stated in the bid or contract documents or most recently amended contact information provided by the person or business entity. When accomplished by the means listed in this subsection, service is deemed effective on the date of delivery;
 - ii. Certified mail, postage prepaid, return receipt requested. Simultaneously, the same notice may be sent by regular mail. If certified mail is returned unsigned, then delivery shall be deemed effective pursuant to regular mail, provided the notice that was sent by regular mail is not returned. When accomplished by the means listed in this subsection, service is deemed effective on the date of mailing; or
 - iii. Publication in a newspaper of daily and general circulation in Amarillo Texas. When accomplished by the means listed in this subsection, service is deemed effective on the first date of publication.
- b. Proof of delivery of notice may be offered by the testimony or certificate of any disinterested employee or agent of the City, over the age of eighteen years, concerning the fact of delivery in accordance with this policy. The failure of a person or business entity to actually or timely receive a notice that is served in accordance with this section shall not affect the validity of a debarment proceeding.

Creation of List of Debarred and Suspended Persons

- a. The Director of Purchasing shall create and maintain a list of persons and business entities that have been debarred or suspended in accordance with this Policy. For each debarred or suspended person or business entity, the list shall state the person's or business entity's name and address, and the dates of commencement and expiration of the debarment or suspension.
- b. The Director of Purchasing shall establish procedures to ensure that no City department does business with persons or business entities that have been debarred or suspended.

Effect of Debarment or Suspension

- a. Persons or business entities that have been debarred or suspended are excluded from directly or indirectly (e.g., through an affiliate or as agent for another person) during the term of debarment or suspension:
 - i. preparing or submitting responses to City's requests for bids, proposals or qualifications;
 - ii. being awarded a City contract;
 - iii. executing a contract with the City;
 - iv. participating in a City contract as a subcontractor, material supplier, or employee of a prime contractor or another subcontractor performing work on a City contract; and
 - v. conducting business with the City as an employee, agent, or representative of another person or business entity.

- b. A prime contractor who shall knowingly employ, subcontract with, or purchase materials or services for work on any City contract, from a debarred or suspended person or business entity, shall be debarred.
- c. When a suspended or debarred person or business entity sells or otherwise transfers its business to a relative, affiliate, or to any other person or business entity over whose actions the suspended debarred person or business entity exercises substantial influence or control, then that relative, affiliate or other person or business entity is automatically suspended or debarred or proposed for debarment to the same extent as the seller or transferor is debarred, suspended, or proposed for debarment.

Effect of Debarment or Suspension on an Affiliate

- a. If the City determines that a person or business entity is an affiliate of a person or business entity that is debarred, suspended or proposed for debarment, then the affiliate is debarred or suspended to the same extent as the person or business entity that is debarred, suspended or proposed for debarment.
- b. The affiliate debarred under (a) above may request a review of the decision by submitting a written request to the City Manager who shall appoint a Debarment Review Board in accordance with this policy.
- c. The filing of a request for review shall not stay the debarment of the affiliate while the review and any appeal is pending.

Effect of Debarment or Suspension on Existing Contracts

- a. Except as otherwise provided in this section and notwithstanding the debarment, suspension, or proposed debarment, of a person or business entity, the City may continue contracts or subcontracts it has with that person or business entity that are in existence at the time if such is deemed by the City Manager to be in the City's best interests at that time.
- b. If the basis of a person's debarment or suspension is so serious that the City Manager believes that termination or suspension of contracts or subcontracts with the City that are in existence at the time the person or business entity is debarred or suspended is in the best interests of the City, the City Manager may do so after consultation with the City Attorney to ensure the lawful manner and means for the proposed action.
- c. The City shall not renew or otherwise extend the duration of current contracts, or consent to subcontracts, with debarred or suspended persons or business entities, unless the City Manager finds compelling reason(s) for renewal or extension.

Liability for Increased Costs

Any person or business entity who enters a contract with the City, either directly as a prime contractor or indirectly as a subcontractor, vendor, employee, or in other capacity during a period of suspension or debarment imposed upon that person or business entity, shall be liable to the City for any increased costs incurred as a result of replacing the debarred or suspended person, business entity, or other affiliate, relative, or other person by whom the suspended or debarred person or business entity obtained further work or funds directly or indirectly from the City.

Agreement Not to Bid in Lieu of One Year Debarment

The City may, but is not required to, offer a person or business entity the opportunity to execute a written agreement not to bid for an agreed period of time, in lieu of the City's pursuing a debarment under this Policy. By executing such an agreement, the person or business entity shall consent to waive a debarment review and the agreement will not constitute a debarment.

Contractual

When the City issues any request or solicitation for bids, proposals, qualifications, or otherwise contracts with a person or business entity, and makes specific mention of this policy, then the terms of this policy become contractual and a material part of such bid, proposal, or contract.

No Award

Any contracting entity or any principals of contracting entities that are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State or Local Government entity shall be considered ineligible to be awarded a contract by the City of Amarillo. Prior to award of any contract over \$10,000.00, the City checks the System of Award Management to confirm there are no federal exclusions and requires a signed "No Award to Debarred or Suspended Vendor's Assurance".

Vendor Invoices

The vendor is required to submit all the necessary data on the invoice to the City of Amarillo Purchasing Department in order to expedite the payment. To receive payment, vendors must submit an invoice to the City for the goods or services. The invoice should reference the purchase order number.

Payments

Payments will be made upon completion and acceptance of purchase order or per terms of the contract.

5. CHECKLIST FOR BIDDERS

Below is a checklist to use when preparing a responsive bid. This list contains common errors made by bidders when responding to bid invitations. The following should help you prepare and submit Invitation for Bid documents to the City:

- a. Sign the bid! Bids must be signed by an individual authorized to bind the company in order to be considered. Please remember, when you sign the signature page, you are agreeing to the general conditions, specifications, certifications and other documents of this solicitation. Therefore, bidders should thoroughly read and understand all bid documents in the solicitation.
- b. Ensure that all bids are submitted prior to the due date and time indicated in the Invitation for Bid for the bid opening. If you use an expedited mail service such as Federal Express, UPS, etc., you still must ensure that the bids arrive prior to the bid

- opening. Mail is picked up from our Post Office Box each morning Monday through Friday (except Holidays). Late bids, even one minute late, will not be accepted.
- c. Label the bid envelope to indicate a bid is enclosed, the bid number, opening date, and bidder's name.
 - d. If submitting more than one bid, please include only one bid per envelope.
 - e. Bids must be submitted on the sheets provided in the Invitation for Bids. Bids submitted on any other form will not be considered.
 - f. Indicate brand name, model and number when requested. If you would like to bid more than one brand and model, please submit a separate bid for each. Any alternatives must meet or exceed the minimum specifications outlined in the solicitation for bids.
 - g. Clearly detail in writing any deviation from or exception taken to the stated specifications.
 - h. Indicate delivery terms and shipment information on the signature page, or where requested. Bids other than "F.O.B. destination" will be rejected.
 - i. Indicate the unit prices, extensions and total bid in the spaces provided. Prices should be typed or written in ink. Corrections, erasures and clarifications of pricing information should be initialed by the individual signing the bid. In case of discrepancy between unit price and the extension, the unit price will be used.
 - j. The City is exempt from Federal Excise and State Taxes. Do not include tax in your bid price or invoice. The Purchase Order issued to the successful bidder contains the required statute to be filed as a tax exemption certificate.
 - k. Do not add any additional contractual or payment terms and conditions. Terms of the award will be those listed in the Invitation for Bids, the resulting Purchase Order, and associated rules and laws.
 - l. Bidders must acknowledge receipt of all addendums by acknowledging on the bid form where provided and/or by signing and returning the signature page of the addendum. All addendums must be acknowledged/received by the bid opening date and time in order for the bid to be considered.

6. HISTORICALLY UNDERUTILIZED BUSINESSES (HUB) PROGRAM

A "Historically Underutilized Business" (HUB) is an entity with its principal place of business in Texas and at least 51% of the business is owned, operated and actively controlled and managed by a minority or woman who resides in Texas.

For expenditures of more than \$3,000 but less than \$50,000, the City contacts at least two HUB's from a list to be provided by the State of Texas Purchasing and General Services Commission. If the list does not identify a HUB in the county in which the City is situated, the City is exempt from this requirement.

Be aware that State Law does contain exceptions to the bid requirement, for example: emergency purchases, bonafide purchases related to the health and safety of the citizens of

the City and alternative purchasing methods such as purchasing through interlocal agreements, state contracts, etc.

7. RECYCLED CONTENT PRODUCTS

The City of Amarillo encourages the use of products made of recycled materials and shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality. Recycled products should be clearly noted on the provided bid documents in order for the preference to be considered. Certification must also be included that shows the item(s) are made of recycled materials. The City of Amarillo will be the sole judge in determining product preference application.

8. VENDOR PROTESTS AND APPEALS

The purpose of the bid protest procedures is to protect the public interest in the purchasing process. This Section is intended to give bidders/proposers who feel they have been aggrieved in connection with the solicitation, evaluation, or award of a contract the opportunity to protest. It is the intent of the City that this policy applies to all Invitation for bids, Request for Proposals, Request for Qualifications, and any other solicitation process used by the City. The City's objective is to resolve protests as soon as practical. This policy supersedes all prior City of Amarillo Protest of Contract Award policies.

- a. A bidder/proposer who is not selected for contract award may protest the award of a contract to another by submitting a written protest.
 - i. For contracts awarded pursuant to an invitation to bid, the protest must be received by the City's Purchasing Department no later than 5:00 p.m. on the fifth business day after the date of the public bid opening and reading with announcement of the apparent low bid.
 - ii. For contracts awarded pursuant to a request for proposal, the protest must be received by the City's Purchasing Department no later than 5:00 p.m. on the fifth business day after the City notifies the proposers of the apparent winning proposal.
 - iii. If a bid or proposal is rejected as non-responsive, the protest must be received by the City's Purchasing Department no later than 5:00 p.m. on the fifth business day after the City notifies the bidder/proposer that the bid or proposal is being rejected.
 - iv. If a bidder/proposer is denied the award of a contract because the bidder/proposer is not considered to be responsible, the protest must be received by the City's Purchasing Department no later than the fifth business day after the City notifies the bidder/proposer that it is deemed to be not a responsible party.
- b. Notices. Any and all of the several types of notices that are required or allowed by this policy shall be given and effective as follows: by any reasonable means, including but not limited to U.S. mail, electronic mail (e-mail), facsimile, automated phone message or internet posting on the City's website. The effective date of

notice by mail is the date that the notice is deposited in the mail. The effective date of all other means of notice is the date it is transmitted or posted.

- c. The protest must be identified as a "bid/proposal protest" in the subject line or title of the document, must include the bid/proposal number, must be sworn to and shall precisely state each and all legal and factual grounds claimed as a basis for the protest. Only protests alleging issues concerning a matter of bias, discrimination or conflict of interest, errors in computing scores, and/or non-compliance with procedures required by law or City policy will be considered. Additionally the protest must include copies of relevant documents and a statement of the relief sought. Grounds not raised in the written protest are deemed waived by the bidder/proposer.
- d. The City shall not award the contract being protested until after the City Director of Purchasing issues a written decision on the protest unless the Director of Purchasing makes a written determination that the contract must be awarded without further delay to protect the interests of the City. A decision and written response to the protest will be made by the Director of Purchasing, in consultation with the City department requesting the contract and the City Attorney Office, within ten (10) calendar days after receipt of the protest, unless Director of Purchasing extends the time by written notice to protester within said ten day period. The decision of the Director of Purchasing shall:
 - i. Find the protest lacking in merit and uphold the City action; or
 - ii. Find only immaterial or harmless errors, or waivable technicalities, formalities, or irregularities, in the City's solicitation, selection and award, and reject the protest; or
 - iii. Find merit in the protest and proceed with appropriate action, which may include, but is not limited to, disqualification or rejection of certain bids/proposals, rejecting all bids, re-tabulating proposals, or other appropriate remedy.
- e. The decision of the Director of Purchasing may be appealed to the City Manager by filing a written notice of appeal with the City Secretary within five business days after the Director of Purchasing gives notice to the protester of the decision. The scope of the appeal will be limited to a review of the Director of Purchasing's decision based on the legal and factual grounds alleged by the protester and considered by the Director of Purchasing. No new grounds for protest can be raised in the appeal. The City Manager or designee will respond in writing within ten (10) calendar days after receipt of the notice of appeal unless the time is extended in the same manner as provided in Section (d) above. The written decision of the City Manager or designee shall be final and exhausts the protester's administrative remedies.

- f. In the event that a protest is upheld by the Director of Purchasing or the City Manager and a contract has been awarded prior to the decision, the decision may declare the awarded contract void and the contract will be re-awarded in accordance with the decision, unless the decision is to reject all bids or proposals. In the event an awarded contract is voided, the contractor will be entitled to payment for any services or product provided prior to the contractor's receipt of notice voiding the contract. Every party awarded any contract accepts such with knowledge that such contract is subject to the appeal period(s) and rights described in this policy.
- g. Nothing herein is intended to prevent the protesting party from withdrawing the protest at any time prior to the Director of Purchasing or City Manager issuing a written decision.
- h. The procedure and time limits set forth in this policy are mandatory and are the bidder's/proposers sole and exclusive remedy. Failure to comply with these procedures and time limits shall constitute a waiver of any right to further pursue a protest.
- i. The bidder's/proposer's filing of a protest shall not preclude the City from rejecting all bids or proposals and re-advertising. Rejecting all bids or proposals shall render a protest moot and terminate all protest proceedings.
- j. The Purchasing Department shall maintain all documentation relevant to the bid/proposal that is the subject of protest and appeal for a minimum period of four years after the date of events identified in Sections (a)(1)-(3).