

EXHIBIT A



## City of Freeport Purchasing Policy

Approved  
December 19, 2022

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## Section 1: Purchasing Policies, Objectives, and Ethics

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### A. Purchasing Policy

The procedures listed below provide an outline of the overall purchasing process.

It is the policy of the City to assure fair competitive access to governmental procurement by responsible vendors/contractors and to conduct business activities in such a manner as to foster public confidence in the integrity of the City.

Therefore, regardless of the expenditure it is the policy of the City to garner competition that produces the highest quality goods at the lowest possible price regardless of whether the item or service is subject to bid.

### B. Purchasing Objectives

These policies are intended to:

- Ensure that the City acquires, stores, disburses, utilizes and disposes of goods and services uniformly and economically
- Provide the City with quality products and services at the best possible price
- Ensure that the City abides by the City’s Charter and its adopted annual budget
- Help all departments understand and use established purchasing procedures and abide by applicable state and federal laws
- Help all departments in meeting the procurement needs of the City
- Encourage participation of small and minority businesses, women's business enterprises, and labor surplus area firms.

### C. Legal Authority

The City has attempted to incorporate local, state and federal laws into this manual. The City, however, does not warrant that these policies include all such laws. Local, state and federal laws will prevail over these rules where applicable.

*Texas Local Government Code 252.002 (Municipal Charter controls in case of conflict)*

Legal requirements which affect the acquisition of goods and services include the following:

- *Texas Local Government Code, Chapter 252* requires that before a municipality may enter into a contract, except for those items exempted under *Chapter 252.022* or other law, that requires an expenditure of more than **\$50,000.00** from one or more municipal funds, the municipality must comply with the procedure prescribed as appropriate therein for competitive sealed bidding or competitive sealed proposals.
- *Texas Local Government Code, Chapter 171* requires local government officials to disclose conflicts of interest and sets forth rules that require officials to abstain where they are in a position to vote or make a decision on any matter involving a business entity or real property for which they have an interest in.

- *Texas Government Code Title 10, Chapter 2254*, also known as the Professional Services Act, governs the local government procurement of various professional services. *Chapter 2254* prohibits the procurement selection of architects or engineers based on bid price and requires government entities to first select the most qualified provider based on demonstrated competence and qualifications, and then attempt to negotiate with that provider a contract at a fair and reasonable price.
- *The State of Texas Engineering Practice Act, Chapter 1001, Texas Occupations Code*, states that a registered professional engineer must be hired to prepare plans, specifications, and estimates for any public works activities in accordance with this Act. The engineer must directly supervise the project in order to ensure the public health, safety, and welfare.

#### D. Disclosure of Certain Relationships

The Texas Local Government Code, Chapter 176 requires a vendor that wishes to conduct business or be considered for business with the City of Freeport, Texas to file a conflict of interest questionnaire. The Disclosure Act applies to all persons or businesses who conduct business with the City, including those who submit bids on city contracts, make purchases of surplus city property, or participate in any other purchase or sales transactions with a city.

Vendors or respondents who meet the following criteria must fill out a conflict of interest questionnaire no later than the 7th day after the person begins contract discussions or negotiations with the City or submits to the City an application, response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with the City:

A vendor or respondent that:

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

#### E. Certificate of Interested Parties (Form 1295)

*Section 2252.908 of the Texas Government Code* states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million.

A business entity must enter the required information on Form 1295 online at <https://www.ethics.state.tx.us/File/> and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the business entity must sign the printed copy of the form and have the form notarized. The completed Form 1295 with the certification of filing must be filed with City.

#### F. Purchasing Ethics

The City wants to promote and protect its governmental integrity. The purpose of this section is to provide guidance to all City employees involved in the procurement process so that they may conduct

themselves in a manner that is compatible with the best interest of the City. For more guidance regarding the City's Code of Ethics, please refer to the City's Ethics Policy found under Title IX of the Code of Ordinances, Chapter 100.

The employees of the City responsible for purchasing shall:

- Purchase the proper goods or services to address the City's needs
- Get the best possible price for goods or services
- Have goods or services available when and where the City needs it
- Assure a continuing supply of needed goods and services
- Guard against misappropriation of City funds
- Facilitate cooperation with other governmental units
- Maximize competition from responsible bidders
- Safeguard public funds and receive the best value for the public dollar
- Never use public spending to enrich elected officials or City employees
- Never make purchases for personal use in the City's name
- Ensure all procurement transactions will be conducted in a manner providing full and open competition:
  - No unreasonable requirements are placed on firms in order for them to qualify.
  - No unnecessary experience or excessive bonding required.
  - Noncompetitive pricing practices between firms or between affiliated companies is disallowed.
  - Noncompetitive contracts are disallowed except for when there is an approved exception.
  - No organizational conflicts of interest.
  - If a "brand name" product is specified, an equal or like product is acceptable.
  - A vendor that intends to respond to the Request for Proposals, Request for Qualifications and/or Invitation for Bid may not participate in the development or drafting of specifications, requirements, statements of work, or invitations for bids or requests for proposals, including, but not limited to, the development of the scoring criteria, the final selection of firms to be contacted, or the scoring of proposals.
- Ensure all procurement transactions shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.
- Ensure all procurement transactions shall identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals
- If a prequalified list when acquiring goods or services is used, the City will ensure the list is updated regularly, provides enough qualified sources to ensure maximum open and free competition.
- Ensure all procurement transactions must conform to applicable local, state, and federal laws and regulations.

**Perception is Everything.** Even if a procurement decision is sound, the method determination should be documented and will be open to public inspection. If a decision is perceived to be less than fair to all competitors, then the perception becomes the reality to the unsuccessful bidders. And, if the opinion is that the City has "favorite companies we always do business with", our job is to set the record straight

with all who may have this complaint. It is important that awards are made based on competition and/or best value for the City, that the reason(s) for those awards are documented and defensible, and that a decision is based on fact and in the best interest of the City.

#### **G. Participating in Procurements with Family or Friends**

It shall be a breach of ethics for any employee of the City of Freeport to participate directly or indirectly in procurement for the City of Freeport when the employee knows that:

- The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement.
- A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
- Any other person, business or organization with which the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

#### **H. Gratuities**

It shall be a violation of city employment to offer, give or agree to give any employee of the City of Freeport, or for any employee of the City of Freeport to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or sub-contract, or to any solicitation or proposal therefore pending before the City of Freeport.

#### **I. Kickbacks**

It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a vendor/subcontractor under a contract to the prime vendor/contractor or higher tier subcontractor for any contract for the City of Freeport, or any person associated therewith, as an inducement for the award of a sub-contract or order.

#### **J. Confidential Information**

It shall be a violation of City policy for any employee of the City of Freeport knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any person.

#### **K. Purchase of Materials, Equipment, And Supplies for Personal Use**

No employee may purchase City property for his/her own personal use unless it is purchased through the City's public auction or through the sealed bid procedures of the City. This includes new and used equipment, materials or supplies.

#### **L. Private Purchases Through City Facilities**

No employee may use the purchasing power of the City of Freeport to make a private purchase. In addition, employees should not have private purchases sent to the City to be paid for by the employee.

### M. Tax Exempt Status

The City of Freeport is exempt from Federal, State, and Local taxes except in certain prescribed cases. An exemption certificate is available from the Finance Department and will be furnished to any of the City's suppliers upon request. Employees making purchases for the City out of personal funds will not be reimbursed for sales tax paid.

### N. Tax Exempt Status for Purchase of Personal Property

Employees may not use the City's tax-exempt status for purchases of personal property. Anyone avoiding payment of sales tax by using this exemption may be liable for prosecution under Texas Penal Code, Chapter 39.

### O. Definitions

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

**Appropriated** – The City Council appropriates funds through the adoption of the annual budget and subsequent amendments. Appropriated funds are funds that are able to be used for the purchase of goods and services, another way of saying this would be to say funds are budgeted and authorized for the intended purchase.

**Award** - Approval by the City Council, City Manager, Financial Director or their designee, under whose authority a purchase order is issued.

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

- the purchase price;
- the reputation of the bidder and of the bidder's goods or services;
- the quality of the bidder's goods or services;
- the extent to which the goods or services meet the City's needs;
- the bidder's past relationship with the City;
- the impact on the ability of the City to comply with laws and rules relating to contracting with;
- historically underutilized businesses and non-profit organizations employing persons with disabilities;
- the total long-term cost to the City to acquire the bidder's goods or services, and
- any relevant criteria specifically listed in the request for bids or proposals.

**Bid advertisement** - A public notice put in a newspaper of general circulation, containing information about an Invitation for Bid or a Request for Proposal.

**Bid list** - A list of vendors who have indicated in writing an interest in submitting bids for particular categories of goods and services. This list is a compilation of recommended vendors from the department and a database of vendors maintained by Purchasing.



**Blanket Purchase Order** – A blanket purchase order is an open purchasing agreement between the City and a vendor to provide multiple purchases under a single Purchase Order number when the exact quantities are unknown.

**Bonds:**

- **Bid Bond** - A bond required of a contractor that ensures that the contractor will enter into the contract for which he has submitted a formal written bid and/or proposal.
- **Payment Bond** - A bond required of the contractor that ensures that all suppliers and subcontractors of the contractor will be paid for work and/or material supplied in the course of the contract.
- **Performance Bond** - A bond required of the contractor that guarantees vendor performance during the execution of the contract.

**Capital equipment** – Property with a useful life of at least two years and a purchase cost of at least \$5,000.

**Check Request** – Prescribed stamp/form for requesting payment to a vendor for purchase of less than \$3,000. The Department Head and/or their designee must sign this form.

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

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

**Component purchases** – Purchases of component parts that in normal purchasing practices would be purchased in one purchase.

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

**Contract** - An agreement between the City and a Supplier to furnish supplies and/or services over a designated period of time, during which purchases are made of the commodity specified.

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

**Delivery date** – The date by which goods or services are needed.

**Emergency** – Purchases that are made to meet a critical, unforeseen need of the City, where the City's ability to serve the public would be impaired if purchase is not made immediately. Emergency purchases are exempt from standard purchasing procedures and must qualify for exemption as outlined in *Texas Local Government Code 252.022*.

**Encumbrance** - The process wherein the City reserves funds for the purchase of supplies, goods, services, and equipment in one budgetary-accounting period, and pays for the purchase in another budgetary-accounting period.

**Expedite** – When the purchasing process is accelerated through normal procedures in order to prevent work stoppage or loss of government's money.

**FOB destination point** – Free on Board (FOB); the vendor pays freight charges to the destination; title to goods passes to buyer at his receiving dock; freight claims must be filed and handled by the seller.

**FOB shipping point** – Free on Board (FOB); shipment becomes ‘collect’ from seller’s shipping dock; freight charges may be prepaid and added to the invoice; City pays freight charges; title to goods passes to buyer at the shipping dock of seller; freight claims must be filed and handled by buyer.

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

**Invitation to Bid** – This is a formal written document that requests from bidders a firm price and delivery details for specified merchandise listed on a purchase requisition. An Invitation to Bid is always required when the anticipated level of expenditure will be greater than \$50,000.

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

**Personal Services** - Services provided to the City personally by a particular individual. Any contribution of machinery and equipment compared to total cost must be substantially less than the contribution of wages.

**Planning Services** - Services primarily intended to guide the City to ensure the orderly and coordinated development of land areas.

**Professional Services** – services as defined by state law: accounting; architecture; landscape architecture; land surveying; medicine; optometry; professional engineering; real estate appraising; professional nursing; or services provided in connection with the professional employment or practice of a person who is licensed or registered as: a certified public accountant; an architect; a landscape architect; a land surveyor; a physician, including a surgeon; an optometrist; a professional engineer; a state certified or state licensed real estate appraiser; or a registered nurse.

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

**Purchasing** - The act, function, and responsibility for the acquisition of goods and services.

**Purchase order** - A formal, binding, legal agreement issued by the City's Purchasing Coordinator. A purchase order is requested by a departmental requisition that details the merchandise or services required. When accepted by a vendor without qualifications within a specified time period, the agreement becomes a contract. A Purchase Order grants the vendor the authority to deliver the goods or services and invoice for the same. It is the City's commitment to accept the goods or services and pay for them at the agreed price.

**Purchase Requisition Form** – Prescribed form filled out by departments at the same time the purchase order is entered into the financial software for approval. This form must be signed by the Department Head and submitted to the Finance Department as backup for the purchase order.

**Request for Proposal** - A formal written document requesting that potential vendors make an offer for services to the City. The Request for Proposal method of procurement may be used for goods or services including high technology and insurance when it is determined that the proposal process provides the best value to the City. When the RFP is used for the selection of professional services as allowed in the Local Government Code 252.022(a)(4), the City shall comply with Local Government Code 2254.003 in the procurement of these services. The City shall not award a contract for these

services based on competitive bids but shall make the selection and award on the basis of demonstrated competence and qualifications for a fair and reasonable price. Fees must be consistent with and not higher than the recommended practices and fees published by the applicable professional associations and may not exceed any maximum(s) provided by law.

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

**Reverse Auction** - Single or multiple-item, open, descending-price auction. The initiator specifies the opening bid price and bid decrement. Each bidder submits a successively lower bid and at the end of the auction, bidders with the lowest bid win. Each winning bidder sells at a price equal to the bid he/she made.

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

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

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

**Sole source** – Purchases of goods or services that are available from only one supplier. There may be just one vendor because of patents or copyrights, or simply because the vendor is the only one that supplies the good or service. These purchases are exempt from the standard bidding requirement and must qualify as outlined in *Local Government Code 252.022*.

**Specifications** - Statements containing a detailed description of the terms of the contract, as well as specific details for the goods and/or services. The details or specifications should be descriptive, but not restrictive.

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

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

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## Section 2: Purchasing Process

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### A. Delegation of Purchasing Authority

The City Manager as authorized by the City Council of the City of Freeport has delegated to Department Heads and their designees the authority to procure materials and services for the City that are within the guidelines set-forth by this procurement policy. Department purchasing authority is limited to a single purchase of less than \$1,000.

A City Contract is always required when an on-site service is to be rendered to the City. Retroactive (after the fact) contracts are not acceptable. Only the City Council, the City Manager and Finance Director (within his/her purchasing limitations) are vested with authority to contract for the City of Freeport. The Finance Director may approve the purchase of goods or services that have been budgeted and are valued at less than \$10,000, without prior approval of the City Council or City Manager.

The City Manager may approve the purchase of goods or services that have been budgeted and are valued at less than \$50,000 without prior City Council approval. No contract or purchase order will be binding upon the City unless authorized by the City Council, City Manager, or Finance Director, as applicable, and unless the City Manager and/or Finance Director certifies that there is to the credit of the City office or department a sufficient appropriation and unencumbered balance to pay for the goods and/or services for which the contract or purchase order is to be issued. The City's purchase of goods and services shall be made according to a requisition from the Department Head whose budget or other approved appropriation source will be charged for the purchase. Any City personnel who authorize or attempt to authorize a purchase order without proper approvals will be subject to disciplinary action.

The Finance Department is designated as the Purchasing Office for the City within certain limitations. The primary responsibility of the Purchasing Office is to procure the best goods and services in a timely manner at the lowest possible cost to the City and to ensure that purchasing is conducted with strict adherence to applicable federal, state and local laws as well as this manual. This purpose is accomplished through updating of purchasing data, training/education of personnel and responsiveness to new techniques. The Finance Department will coordinate purchasing activities with the user department. The Finance Director will conduct random internal audits of departmental purchasing.

### B. Total Dollar Limits/Approval Requirements

The purchasing limits stated herein assume that prior to purchase or request to purchase, the Department Head and/or their designee has verified sufficient funds are available in the budget line item affected. This is verified through the purchase order (encumbrance) process approved by the Finance Department. Purchase orders must be issued before purchase of goods or services.

The following standard approval route applies to All City Departments.

Total Amount of Request*	Type of Form Required	Type of Bid/Quotes Required	Department Head or Designee Approval Required	Finance Director Approval Required	City Manager Approval Required	City Council Approval Required
< \$2,999	Check Request	Not Required	◆			
3,000 to \$4,999.99	Purchase* Order	3 Quotes	◆	◆	*If not low bid	
\$5,000 to \$49,999.99	Purchase* Order	3 Written Bids/Quotes	◆	◆	◆	*If not low bid
\$50,000 and above	Purchase* Order	Sealed Bids	◆	◆	◆	◆

\* A Purchase Order is not required for recurring payments on annual contracts, that have already been procured in accordance with this policy, in which the quantities are unknown. Examples include but are not limited to utilities, phone, insurance premiums, fuel, etc. These payments should be paid following verification of quantity and contract compliance. If applicable, a Blanket Purchase Order may be set up for these vendors. A Purchase Order is required for recurring payments on annual contracts in which the exact amount is known (ex. janitorial services).

**C. Purchases of Less Than \$3,000**

Purchases of less than \$3,000 do not require competitive bidding. Department Heads or their approved designees may, without prior approval of the Finance Director or City Manager make purchases of less than \$3,000.

Department Head shall authorize an invoice for payment and forward a check request to the Finance Department.

**D. Purchases of \$3,000 to \$4,999.99**

Purchases between the amounts of \$3,000 and \$4,999.99 will require a purchase order form with at least three verbal quotes. The requesting department shall solicit at least one quotation from a competent vendor. Telephone, fax, and e-mail quotations are acceptable.

**E. Purchases of \$5,000 to Less Than \$50,000**

Purchases of \$5,000 to less than \$50,000 will require a purchase order form with at least three quotes unless and interlocal contract or cooperative purchasing is utilized. The Department Head must contact at least two (2) Historically Underutilized Businesses (HUB) on a rotating basis based on information provided by the comptroller pursuant to Chapter 2161, Government Code unless the list fails to identify a HUB that provides similar goods or services in Brazoria County, as authorized by

the *Texas Local Government Code, Chapter 252.0215*. If the Department Head proposes to award the contract to a person or entity other than the apparent lowest quote, the Department Head shall obtain the prior written approval of the City Manager.

If a purchase is \$3,000 or greater, the Department Head must submit approval prior to purchase in the form of a purchase requisition/purchase order to the Finance Department. Department Heads or their approved designees may authorize the invoice for payment once the City receives the items.

#### **F. Purchases of \$50,000 or More**

City Council shall approve in advance all expenditures for \$50,000 or more. Except as provided in the *General Exemptions Section 252.022 of the Texas Local Government Code*, the City must issue a competitive sealed bid or competitive sealed proposal as authorized by *Texas Local Government Code Chapter 252* and award the bid to the lowest responsible bidder.

The user department shall be responsible for the preparation of specifications for any formal bids for goods, services, or contractual needs. Formal bids shall include legal advertising, invitations to bids, pre-bid conferences (as necessary), documented bid openings and official bid tabulations. All bids must be awarded by City Council. The goods and/or services may be acquired by the issuance of a purchase order or execution of a contract.

Bid notices shall indicate when and where bids will be opened; be published in the official newspaper of the City once a week for two consecutive weeks beginning at least fourteen days before the bid opening; shall be published in a form approved by the City Secretary.

#### **G. General Purchasing Provisions**

General Rules Applicable to All Contracts

- a. Each Department Head is responsible for:
  - Coordinating with the Finance Department to establish and maintain a list of vendors
  - Establishing clear, nonrestrictive bid specifications
  - Receiving and inspecting all deliveries to ensure that the goods and/or services comply with the bid or proposal specifications.
- b. The City Secretary is responsible for maintaining bids or proposals and related information according to the City's Records Management Program. Unless otherwise specified by state law, records related to bids or proposals (including purchase orders, invitations to bid, and bid tally sheets) are public records.
- c. The Department Head shall charge a purchase to the appropriate account number regardless if the account contains available budgeted funds. Overrun line items shall require a budget amendment.

#### **H. Prompt Payment Act**

*Texas Government Code, Chapter 2251*, commonly known as the Texas Prompt Payment Act, generally requires that the City pay bills not later than 30 days after the goods and services are received, or the date the invoice is received, whichever is later. Each Department Head shall submit to the Finance Department any bill or invoice within 15 calendar days of receipt.

### I. Consideration of The Location of a Bidder's Principal Place of Business

In purchasing under this title any real or personal property that is not affixed to real property, if a local government receives one or more bids from a bidder whose principal place of business is in the local government area and whose bid is within 3% of the lowest bid price received by the local government from a bidder who is not a resident of the local government area, the local government may enter into a contract with:

the lowest bidder; or the bidder whose principal place of business is in the local government area if the governing body of the local government determines, in writing, that the local bidder offers the local government the best combination of contract price and additional economic development opportunities for the local government area created by the contract award, including the employment of residents of the local government area and increased tax revenues to the local government. This does not prohibit a Council from rejecting all bids.

*Texas Local Government Code 271.905*

### J. Preference for Recycled Products

The City encourages the use of recycled products and products that may be recycled or reused. The City will give preference to products made of recycled materials if the products meet applicable specifications as to quantity and quality. *Texas Health and Safety Code 361.426*

The Finance Director may review procurements for the purchase of goods, supplies, equipment, and materials to:

- Eliminate procedures and specifications that explicitly discriminate against products made of recycled materials
- Encourage the use of products made of recycled materials
- Ensure to the most economically feasible extent that the City purchases products that may be recycled when they have served their intended use

### K. Municipal Contracts

Annual Contracts - The City may use an annual fixed price contract to obtain required goods or services from a chosen vendor for a specified time period. These contracts eliminate the necessity of bidding commodities each time they are needed. Annual contracts in which the quantities are pre-determined require a purchase order.

#### Contracts Requiring Issuance of Debt, Certificates of Obligation or Lease-Purchase Agreements

If the City Manager, or a Department Head intends to finance a contract for goods or services through issuance of bonds, debt, certificates of obligation (CO), certificates of participation, tax anticipation notes, lease-purchase agreements, or any other means, then the City Manager or Department Head must, before soliciting bids, receive approval from the City Attorney and City Council for such financial arrangements.

*Texas Local Government Code Chapter 271*

### L. Procedures for Federal Grants

#### Procurement Cycle Steps

- Need Defined— The City of Freeport, TX submits request and specifications. Purchaser reviews



request and specifications for unnecessary or duplicative items in accordance with 2 CFR 200.318 (d).

- Procurement Method Selected—Based on type and estimated cost of good/service as well as purchasing authority, purchaser determines the procurement method that will result in a best value acquisition for the City of Freeport.
- Solicitation—City of Freeport creates the appropriate solicitation document, with terms and conditions and evaluation criteria clearly defined, and notifies vendor sources for an informal or formal bid process.
- Receipt of Bids and Responses to Solicitation—Vendors submit their response to the solicitation.
- Evaluation and Awards—City of Freeport review the responses from vendors, determine compliance with the solicitation and make an award recommendation based on the pre-defined best value criteria.

The City of Freeport follows the procurement standards in 2 CFR 200.317 – 2CFR 200.327 and Appendix II to Part 200 for procurement actions to be funded with Federal funds. All attempts are made to adhere to these policies and procedures and updates are made as needed. The entirety of the language found in 2 CFR 200.317 – 2 CFR 200.327 may not be applicable in all instances, programs, and/or situations. This document contains the most current 2 CFR 200.317 – 2 CFR 200.327 language available at the adoption of these policies and procedures.

### **§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.

### **§200.318 General procurement standards.**

(a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§200.317 through 200.327.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or



agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also §200.214.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following:

Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

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

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

[85 FR 49543, Aug. 13, 2020, as amended at 86 FR 10440, Feb. 22, 2021]

### **§200.319 Competition.**

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

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

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive contracts to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

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

(7) Any arbitrary action in the procurement process.

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

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

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

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

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

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

### **§200.320 Methods of procurement to be followed.**

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

(a) *Informal procurement methods.* When the value of the procurement for property or services under a Federal award does not exceed the *simplified acquisition threshold (SAT)*, as defined in §200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

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

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

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

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

(A) A qualification as a low-risk auditee, in accordance with the criteria in §200.520 for the most recent audit;

(B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,

(C) For public institutions, a higher threshold consistent with State law.

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

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

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

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

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

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

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

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

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

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

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

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

(C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(2) *Proposals*. A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and

(iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.

(c) *Noncompetitive procurement*. There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

(1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);

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

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

(4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or

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

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

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

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

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

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

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

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

**§200.322 Domestic preferences for procurements.**

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but

not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

### **§200.323 Procurement of recovered materials.**

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



**§200.324 Contract cost and price.**

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

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

**§200.325 Federal awarding agency or pass-through entity review.**

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

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

#### **§200.326 Bonding requirements.**

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

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

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by

law of all persons supplying labor and material in the execution of the work provided for in the contract.

**§200.327 Contract provisions.**

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

**M. Construction Projects**

If the contract is for the construction of public works, the following is required for bidding:

- a. Prepare plans and specifications in conjunction with bidding and contract documents:
  - The proposed specifications shall include workers' compensation requirements. *Texas Labor Code 406.096*
  - If the proposed project includes excavation work, then the proposed specifications shall include excavation requirements and pay items. *Texas Health and Safety Code 756.023*
  - The proposed specifications shall include bonding requirements. *Texas Local Government Code Chapter 252.044; also, Texas Government Code Chapter 2253*
  - The proposed specifications shall include prevailing wage rate schedules. *Texas Government Code Chapter 2258*
- b. Sealed plans and specifications.
- c. Line items with estimated quantities and price estimate.

*Texas Local Government Code Chapter 252.044; also, Texas Government Code Chapter 2253*

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### Section 3: Exemptions to Competitive Bidding

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Chapter 252.022 of the State of Texas Local Government Code allows certain exemptions to the Competitive Bids process. **The following are the exemptions allowed:**

1. A procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality;
2. A procurement necessary to preserve or protect the public health or safety of the municipality's residents;
3. A procurement necessary because of unforeseen damage to public machinery, equipment, or other property;
4. A procurement for personal, professional or planning services;
5. A procurement for work that is performed and paid for by the day as the work progresses;
6. A purchase of land or a right-of-way;
7. A procurement of items that are available from only one source, including:
  - a. items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies;
  - b. films, manuscripts, or books;
  - c. gas, water, and other utility services;
  - d. captive replacement parts or components for equipment;
  - e. books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and
  - f. management services provided by a non-profit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits;
8. A purchase of rare book, papers, and other library materials for a public library;
9. Paving drainage, street widening, and other public improvements, or related matters if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements;
10. A public improvement project, already in progress, authorized by the voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes authorized by the voters;
11. A payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212;
12. Personal property sold:
  - a. at an auction by a state licensed auctioneer;

- b. at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code;
  - c. by a political subdivision of this state, a state agency of this state, or an entity of the federal government;
  - d. under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391;
13. Services performed by blind or severely disable person;
14. Goods purchased by a municipality for subsequent retail sale by the municipality;
15. Electricity; or
16. Advertising, other than legal notices.

#### A. High Technology Procurement

High technology procurement means the procurement of equipment, goods, or services of a highly technical nature including:

- a. data processing equipment and software and firmware used in conjunction with data processing equipment;
- b. telecommunications equipment and radio and microwave systems;
- c. electronic distributed control systems, including building energy management systems; and
- d. technical services related to those items.

The City may utilize a request for proposals to procure high technology products and services. Requests for proposals are similar to competitive bids. Prior to utilizing a request for proposal, a Departmental Director must receive approval from the City Manager. The Department shall write specifications using performance standards rather than a written description of the good or service. The specifications shall also list the factors by which the City will judge the proposal, and the weight assigned to each factor.

1. Vendors must submit proposals of their own design for a system to satisfy the requirement set forth in the proposal. Proposals may incorporate entirely different hardware or services to accomplish the same performance.
2. After the City receives the proposals, the Department Head may enter into negotiations with as many vendors as have submitted feasible proposals to arrive at the best possible proposal.

*Texas Local Government Code 252.001(4); 252.021(c)*

#### B. Emergency Services

An emergency is an unforeseen situation that adversely and unduly affects the life, health, or convenience of the citizens of the City, or a circumstance that would cause a loss to the City (such as an inordinate amount of down time).

*Texas Local Government Code 252.022 (1), (2) & (3)*

In an emergency, the Department Head may proceed with an emergency acquisition. If the cost is \$3,000 or more, the Department Head shall send a confirming requisition (including a brief

explanation of the purchase) and invoices to the Finance Department and City Manager as soon as possible. The Finance Department will then assign a purchase order number and advise the user department to forward that number to the appropriate vendor.

### C. Professional Services

Professional services mean services within the scope of the practice, as defined by state law, of accounting, architecture, land surveying, medicine, optometry, professional engineering, or real estate appraisers. The City may not select a provider of professional services or a group or association of providers or award a contract for services based on competitive bids submitted for a contract or services, but shall make the selection and award:

- a. based on demonstrated competence and qualifications to perform the services; and
- b. a fair and reasonable price.

Professional contract fees:

- a. must be consistent with and not higher than the recommended practices and fees published by the applicable professional associations; and
- b. may not exceed any maximum provided by law.

*Texas Government Code §2254.002, §2254.003*

The City shall first select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications and negotiate with that contract provider a fair and reasonable price.

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

The City will continue contract selection and negotiations with providers until the City enters into a contract. The City Manager and/or the appropriate Department Head will execute contracts for the City.

### D. Work That Is Performed and Paid for By the Day as The Work Progresses

If the City hires a contractor for a project on a daily basis and pays for work daily as the work progresses, the procurement of services is exempt from competitive bidding requirements.

### E. Purchase of Rare Books, Papers, And Other Library Materials for A Public Library

Competitive bidding provisions do not apply to the purchase of rare books, however, books available from more than one jobber or source must be purchased using the regular purchasing process.

### F. Developer Participation Contracts

The City Council must approve Developer Participation Contracts over \$3,000 in advance. *Texas Local Government Code 212.071*

## G. Interlocal Contracts and Cooperative Purchasing

The City Council must approve interlocal contracts or agreements with other political subdivisions of this state, a state agency of this state or an entity of the federal government administered by a regional planning commission.

The Department Heads will prepare appropriate documentation for purchase orders as needed or required by a particular COOP. The department will receive related paperwork supporting the purchase. The authorization for payment shall include the appropriate signatures and include contract numbers.

The City of Freeport may satisfy the competitive bid requirement of state law by purchasing goods and services through any of the following, including but not limited to:

- a. The Texas Building and Procurement Commission
- b. The Houston-Galveston Area Council Cooperative Purchasing Program (H-GAC Buy)
- c. The Texas Local Government Purchasing Cooperative (BuyBoard)
- d. The National Intergovernmental Purchasing Alliance Company, a Delaware corporation d/b/a OMNIA Partners, Public Sector and/or Communities Program Management, LLC, a California limited liability company d/b/a U.S. Communities (collectively, "OMNIA Partners, Public Sector")
- e. An interlocal agreement with another governmental entity that has complied with state law purchasing requirements
- f. Texas Procurement Center
- g. Any other agency or entity that state law provides will satisfy the competitive bid requirements

*Texas Local Government Code Chapter 271; also, Texas Government Code Chapter 791*

## H. Media Advertising

A purchase order or quotation form is not required for advertising in the City Official Public Newspaper. The invoice shall be authorized for payment by the Department Head and forwarded to the Finance Department. *Texas Government Code 2051.041*



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## Section 4: Credit Card/Procurement Card Purchases

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The Procurement Card (hereinafter “P-Card”) is a purchasing tool which offers an alternative to the traditional purchase order process. Additionally, the timelines established by this policy allow the City to take full advantage of the cash rebate incentive offered by the issuing financial institution on P-Card purchases.

The City of Freeport established the P-Card Program as part of an effort to extend trust downward into the organization and to increase operational efficiency. As such, employees have a responsibility to adhere to this policy. Having a City of Freeport P-Card is a privilege, not a right.

The P-Card is issued to individual employees only. No other person is permitted to use another employee’s P-Card. As a Cardholder, the employee is responsible for the appropriate use of City funds and is responsible for all charges made with the card. Although the P-Card is issued to the employee, it remains City property and may be rescinded at any time.

Personal charges shall not be made on the card. Improper use of the card may be considered misappropriation of City funds, which may result in disciplinary action, up to and including termination and criminal prosecution.

Cardholders must comply with internal control procedures in order to protect the City’s assets. These procedures include, but are not limited to keeping itemized receipts, reconciling transactions, reviewing monthly statements and following proper security measures. A Cardholder must surrender his/her card upon termination of employment. All purchasing policies and procedures must be followed when using the P-Card.

It is the expectation of the City that departments seek information from multiple vendors to ensure that the best value and price are obtained for all P-Card purchases. The following procedures outline appropriate P-Card use.

### A. Program Administration

1. The Finance Department is responsible for the day to day management of the P-Card program.
2. The designated Program Administrator acts as the City’s point of control for the P-Card program, monitors all usage of the P-Card, and is the point of contact for any Cardholder questions or problems.
3. The Program Administrator has the authority, with the approval of the Finance Director, to cancel or suspend a P-Card for any employee at any time for reasons as stated in this policy.

**B. P-Card Issuance & Transaction / Monthly Limits**

1. When P-Cards are requested for new users, the Department Head will be able to designate an “Administrative Designee.” This employee is responsible for managing the reconciliation of the Cardholder’s P-Card (e.g. an Executive Assistant).
2. Cardholder standard expenditure limits are as follows:

<b>Cardholder Class</b>	<b>Per/Single Transaction</b>	<b>Per Month</b>
<b>Individuals</b>	\$999.99	\$10,000
<b>City Manager</b>	\$2,999.99	\$10,000
<b>Mayor</b>	\$2,999.99	\$10,000
<b>Finance Department</b>	\$15,000*	\$100,000*

*\* To be used for payment of bills only per authorization by the Finance Director.*

3. Department Heads may request lower limits. Higher limits or a different Cardholder Class may be requested to accommodate the employee’s job function and may be considered with documentation to justify the request or change. The request must be approved by the Department Head, Finance Director and City Manager. (Note: Request for a one-time increase in single or monthly transaction limits may be made by the P-Card holder and approved by Finance. It is the Cardholder’s responsibility to inform their Department Head of the increase.)

**C. Department P-Cards**

Department P-Cards may be issued in the name of an individual department. These cards would be kept in the Purchasing Office until such time as they would be needed by the department for an emergency related issue. Department Cards must be requested in the same manner as a standard P-Card and released for use only after Purchasing receives notice from the City Manager allowing the use of the card

**D. Finance Department P-Card**

A P-Card will be issued and signed out to an individual within Finance for payment of certain invoices that the city receives during the course of business with the sole purpose of receiving additional cash rebate incentives from the P-Card program.

The individual to which the P-Card is signed out will be the custodian of the P-Card and will have the sole responsibility within Finance for maintaining the P-Card and adhering to the requirements of this Policy during the custodial time period.

## E. P-Card Usage Guidelines

### 1. P-Card Basics

- a. If the monthly limit is reached, Cardholders must utilize the traditional purchase order process, or the Cardholder may request (by email with a copy to the Cardholder's supervisor) a temporary increase in the monthly transaction limits from the Program Administrator. If Cardholder is at the place of business and needs to increase the single transaction limits on their P-Card, they must call the designated P-Card Administrator and make the request. Any requests granted will only be done if they fall within the standard allowable limits as set forth in this policy. An email will be generated to the Cardholder and appropriate Supervisor confirming the telephone conversation and the action taken.
- b. The Cardholder shall not use the P-Card to circumvent any other established City policy, i.e. splitting a \$3,000.00 transaction to two transactions of \$1,500.
- c. The Cardholder is responsible for all charges made with the P-Card.
- d. Cardholders must comply with internal control procedures in order to protect the City's assets. These procedures include, but are not limited to keeping itemized receipts, reconciling transactions, reviewing monthly statements and following proper security measures.
- e. The employee is to use the P-Card only for the types of purchases described in this policy and failure to do so may result in disciplinary action up to and including termination and/or criminal prosecution.
- f. P-Card limits may also be raised in the event of an emergency at the sole discretion of the City Manager.

### 2. Acceptable Purchases on P-Card (Examples – but not limited to)

- a. Subscriptions and books
- b. Seminars, training, membership dues, registration
- c. Catering and delivery services
- d. Off-site Required maintenance/repairs for which no contract required
- e. On-site maintenance/repairs under \$500 total cost for which no contract required
- f. Over-the-counter retail purchases
- g. Travel related purchases (Note: When traveling, food is best paid by per diem.)
- h. Computer peripherals (through IT only)
- i. Software under \$500.00 (no license agreements) (through IT only)
- j. Business related meals with documentation of meeting subject and attendees
- k. Fuel (for City vehicles only when traveling outside City or motorcycle officers)
- l. Rentals (on case by case basis and only with approval of Finance Director)

### 3. Prohibited P-Card Uses (Examples – but not limited to)

Purchases of restricted items listed below and purchases of \$3,000 or more must continue to be processed in accordance with established purchasing guidelines.

The procurement P-Card is NOT to be used for the following:

- a. Purchase of capital equipment
- b. Purchase utilizing Grant funds
- c. Capital projects
- d. Onsite contractual services over \$500 (contract / PO needed)
- e. Alcoholic beverages (except where otherwise permitted by policy)
- f. Cash advances/travelers checks/gift cards
- g. Separate, sequential, and component purchases or any transaction made with intent to circumvent City Purchasing Policy
- h. Spouse/Family expenses incurred while traveling
- i. Purchases made with vendors not located in the U.S. (except where previously approved)
- j. Items for personal use
- k. Fines of any kind
- l. Maintenance agreements

### 4. Proof of Purchase - Documentation

- a. Adequate documentation, including original itemized receipts must be maintained to record the transaction and support the legitimate business purpose of all transactions made with the P-Card.
- b. Original documentation must be retained by Cardholder until attached to the Monthly Statement showing the Cardholder purchases.

### 5. Sales Tax

- a. The City is tax exempt. Cardholders are responsible for ensuring the merchant does not include sales tax in the transaction.
- b. *The Exception is tax paid to most restaurants, hotels, airlines, and other travel related merchants. Cities are not exempt from hotel tax and certain other federal and state taxes that are not the standard sales tax. (Note: When traveling, food is best paid by per diem and no receipt is needed.)***
- c. If tax is included, the Cardholder will immediately be responsible for ensuring that the merchant or the cardholder reimburses the tax amount to the City.
- d. Cardholders will be provided a copy of the City's tax exemption certificate upon request.

### F. Monthly Reconciliation Process

1. Purchasing will notify Cardholders and make available monthly account statements available.

2. Reconciled statements are due back to Purchasing within five (5) business days from the receipt of the statement notification email.
3. To complete the reconciliation process, the following steps must be completed:
  - a. Itemized receipts (generally including purchase date, vendor name, item description, quantity, unit price, and total charge), with the account number and purpose of the purchase written on the sheet to which they are attached, are to be attached in the same order as the listed transactions appear on the monthly statement.
  - b. For meals, per the IRS and the City's auditor, all meals between employees or with staff for any reason must document the names of all attendees. See specific requirements and examples below:
    - Business Meals between Staff – Required Information: Names of staff attending, purpose of meeting, where, when.
    - Training with Staff – Required Information: Names of all attending the training, purpose of the training, where and when the training was held.
    - Meetings and Business Meals – Required Information: Names of all staff attending, names of any other person(s) in attendance, purpose of meeting or business meal, where and when.

Exceptions:

- Meetings with Staff, Consultant and External Committee Members or any combination of this: Name of all staff present, name of any/all consultants, engineers, architects, etc., present, name of the committee only (if applicable, e.g. EDC Board, Planning & Zoning Committee, etc.), and the agenda stating the purpose of the meeting.
  - Meals Provided for "Events" require just the explanation of the "event", when and where and a brief description of who was present (e.g. food for Police promotional ceremony).
- c. For credits, a print screen will be accepted as backup documentation, but receipts are best, if available. Credits must be explained and charged back to original account.
  - d. For "In and Out" transactions (i.e. transactions made in error and credited back within the same day), print screens will be accepted as backup documentation but receipts are best, if available. Such transactions must be explained, charged and credited to the same account and approved electronically.
  - e. For sales tax, charges must be either refunded by credit to the P-Card or reimbursed to the City – proof of reimbursement to the City must be attached to the P-Card statement.
  - f. For tips in excess of 20%, charges must be refunded to the City and proof of reimbursement to the City must be attached to the P-Card statement.

- g. For missing receipts, the Cardholder must attach to the P-Card statement a written memo signed by the Cardholder's Supervisor explaining the purchase transaction and listing the amount.
4. The Cardholder and the Cardholder's Supervisor (or above) must sign each statement, with a legible printed name written below the signature.
5. Signing the Cardholder's statement is verifying all transactions listed were made in compliance with this and all other city policies.
6. Failure to provide Purchasing with proper documentation and timely reconciliation will be considered an administrative violation of the Policy and subject to P-Card suspension and/or revocation.

## **G. Receipt of Goods & Payment / Dispute of Charges**

### **1. Receipt of Goods & Services/Returning Item(s)**

- a. The Cardholder is responsible for ensuring receipt of goods and services and for any follow up with the vendor to resolve any delivery problems, discrepancies or damaged goods.
- b. Returning Item(s): Items should be returned directly to the vendor by whichever means the vendor requires. The Cardholder is responsible for verifying proper credit is posted for any returned items. Cash refunds are not allowed.

### **2. Payment**

- a. The City is fully responsible for P-Card payment and liability. The P-Card will not, in any way, affect the employee's personal credit.

### **3. Unauthorized Purchases and Fraudulent Charges**

- a. All unauthorized purchases must be resolved in an appropriate method so the City does not bear the cost of the purchase. Such purchases will be handled and resolved in accordance with the following procedure:
  - i. Cardholder will return the unauthorized item to the merchant for credit on the P-Card account and submit the itemized credit receipt as part of a monthly statement remittance.
  - ii. If the item cannot be returned, the Cardholder will be required to submit payment for the full amount of the purchase.
  - iii. In addition, an unauthorized purchase may subject the Cardholder to lower P-Card limits, disciplinary action, and/or revocation of P-Card privileges.
  - iv. Any fraudulent charges should be reported immediately. The P-Card will be cancelled by the issuing bank and a new card will be issued. The cardholder will not have access to P-Card privileges until a new card has been received.

### **4. Discrepancies and Dispute Procedures**

- a. The Cardholder is responsible for correcting any erroneous charges, disputed items, or returns. Disputed charges can result from failure to receive goods or services, fraud or

misuse, altered charges, defective merchandise, incorrect amounts, duplicate charges, credits not processed, sales tax charged, etc.

- b. The Cardholder's first step in resolving an erroneous charge is to contact the vendor. (Note: By law, vendors are not permitted to bill a P-Card for purchases until the items have been shipped. Hotels may bill for first night.)

## H. Cancellation & Renewal Of P-Cards

### 1. Lost or Stolen P-Cards

- a. It is the responsibility of the Cardholder to immediately report a lost or stolen P-Card.

### 2. Termination, Resignation or Re-assignment

- a. Upon notice of termination or resignation, it is the responsibility of the Supervisor and Human Resources to notify Finance immediately. In addition, the supervisor must retrieve the P-Card at such time and return to Finance.
  - i. The Cardholder is responsible for submitting all receipts to the Supervisor.
  - ii. The Cardholder's P-Card will be disabled on the date of resignation or notification of retirement, not the last day of employment.
  - iii. The Supervisor or designee is responsible for submitting the monthly statement with all receipts on time.
- b. Upon notice of staff re-assignment within the City, it is the responsibility of the Supervisor and Human Resources to notify Finance immediately. Finance will review specific P-Card requirements for that person and after discussion with the new supervisor, the P-Card may be cancelled, suspended, limits changed to reflect new responsibilities or MCC codes adjusted.

### 3. Renewal of Existing P-Cards

- a. Approximately 30 days prior to the expiration date of the card, the bank will automatically send a new card to Finance. Finance will notify Cardholders when the cards are ready to be picked up. Cardholders must turn in their old card to Purchasing in order to receive their new card. New cards must be picked up in person by the Cardholder.

## I. Accountability

The cardholders and their appropriate supervisors are responsible for ensuring that this policy and procedure is adhered to. The Finance Department is responsible for monitoring and enforcement.

As a public entity, the City is expected to be able to demonstrate to the public that it has spent tax dollars wisely. All participants in the P-Card program are responsible for ensuring purchases made with the card will withstand the scrutiny of the press, public and internal audits. Therefore, Finance may conduct audits of all P-Card statements and review for the following:

### 1. Personal Misuse:

- a. Personal misuse includes the following:
  - i. Purchases of prohibited items

- ii. Assignment, transfer, or “loaning” of an individual card to an unauthorized person,
  - iii. Use of a P-Card by a suspended or terminated employee, and
- b. When personal misuse is suspected, the Cardholder will immediately be notified by email their supervisor and Department Head will be copied.
- c. If Finance does not receive a response with one (1) business day, the card will be suspended and changed to reflect a zero-transaction limit and an email sent to the Cardholder, their supervisor, and Department Head.
- d. Based on the severity of the misuse, disciplinary measures – to be decided by the Department Head and City Manager – may include personnel action up to and including termination and legal action.

## **2. Administrative Infractions:**

- a. Administrative infractions include the following violations related to the lack of proper and timely reconciliation of individual Cardholder accounts:
  - i. Transaction Missing Electronic Approval,
  - ii. Late Submittal of Monthly Reconciliation,
  - iii. Missing Itemized Receipt
  - iv. Missing Detailed Information
  - v. Transactions Including Sales Tax
  - vi. Transactions Including Tip Changes in Excess of 20% of the total bill.
- b. When administrative infractions occur, the Purchasing Office will email the Cardholder (and person designated as being responsible for compiling the Cardholder’s monthly reconciliations), with a copy to their supervisor and Department Head in order to resolve the discrepancy prior to authorizing payment of the charge to the bank.
  - i. If the same infraction occurs three months in a row, the ACM will be notified and the Program Administrator will recommend and discuss with their ACM if any further action should be taken.
- c. Training will be provided to all P-Card users and administrative designees with the distribution of new P-Cards. Any administrative designee with an infraction within the first three months of use will be required to repeat the training.

## **3. Policy Violations:**

- a. When violations are found, the Finance will email the Cardholder, with a copy to their supervisor and Department Head.
- b. The Purchasing Office will work with the Department Head to resolve the issue prior to payment of the transaction being authorized. In cases where policy exceptions are granted, a memo signed by the City Manager will be required.
- c. Personal charges shall not be made on the card. Improper use of the card may be consider misappropriation of City funds, which may result in disciplinary action, up to and including termination and criminal prosecution.



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## Section 5: Disposal of City Property

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### A. Property Disposal

Sometimes City property may outlive its usefulness and become unserviceable or obsolete. Before a department removes any property from service, the Department Head shall first determine if it can be transferred to another user department for continued service. If it is determined that a property item is no longer serviceable to the City, the Director shall request permission from the City Manager to dispose of the item.

Items may be disposed of by one of the following methods:

- Public auction
- Trade-in on new equipment
- Sealed bids
- Scrap material
- Destruction as unsalvageable
- Negotiated price by Council

In addition to the methods of disposal as listed above, the city may contract to convey property either to another governmental entity or a non-profit corporation in accordance with law providing that such entity or corporation agrees to use such equipment for public purpose.

The condition of the item to be salvaged or surpluses shall dictate the most advantageous method of disposal.

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## Section 6: Electronic Procurement

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*Chapter 252.0415(a) of the State of Texas Local Government Code* allows for the receipt of bids or proposals through electronic transmission, provided the following rules ensure the identification, security, and confidentiality of the electronic bids or proposals. All electronic bids or proposals must remain effectively unopened until the proper time.

### A. Identification

Invitations to Bid, Requests for Proposals, Request for Qualifications and Requests for Applications will be advertised and issued in the manner prescribed by law and the City's Purchasing Policy. A notification will be added to bid terms and conditions stating vendors should submit responses electronically through the City's website and/or third-party service provider's website at the appropriate electronic address listed. Such responses shall be accessible only by a designated City employee with a password for such address and documentation of the time of access shall be maintained.

### B. Security

At the specified bid closing time, a designated City employee will open all bids and the bid tabulation summary assembled from the City's website and/or by a third-party service provider's website. **By law a bid that is submitted non-electronically will be accepted and then entered electronically by a designated City employee after bid opening** as stated in the bid or proposal document terms and conditions.

### C. Confidentiality

A designated City employee will read aloud all bid responses received by closing time and date to any interested parties present at the bid opening. After the tabulation of bids or proposals, City shall will post bid tabulations electronically on the City's website and/or a third-party service provider's website with a qualifying statement: "The tabulation listing of a bid should not be construed as a comment on its responsiveness or an indication that the City accepts such bid as responsive. After evaluating bids, proposals, applications, and statements of qualifications the City will post tabulations and award information, once available, online through the City's website and/or service provider's website."