CITY OF HOUSTON

PROCUREMENT MANUAL

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Procurement Manual

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A Message from the Mayor

October 2012

In the spring of 2012, I appointed a Task Force to review the City of Houston's procurement processes. As the fourth-largest city in the nation, Houston is a major player in the local economy, and it is essential that we continue to conduct our purchases in a consistent, sound, and ethical manner, while keeping the public's best interest in mind.

The work of the Task Force resulted in the City's first Procurement Manual, a primary reference for purchasing staff and a resource for anyone who is interested in doing business with the City. This manual demonstrates the ongoing commitment of the City to standardize its procurement procedures by:

- Ensuring consistency in procurement practices across departments.
- Providing for increased public confidence in our purchasing procedures.
- Ensuring fair and equitable treatment of everyone who deals with the City procurement process.
- Fostering effective public competition.
- Maximizing the value of the public funds by obtaining goods and services for the City to better to serve our taxpayers.
- Safeguarding quality and integrity in City procurement.

This manual will be a "living" document and will be updated as laws at all levels of government evolve and whenever City procedures change. I encourage you to review the manual and use it for future reference. I would also like to personally thank the Task Force members for their efforts:

Council Member Clarence "C.O." Bradford (Chair of the Task Force), David M. Feldman, Dan Krueger, Alfred J. Moran, Mario Diaz, Joseph Fenninger, Calvin Wells, Carolyn Hanahan, and Martin Buzak.

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Chapter 1

1. City of Houston Contracting

The Purpose of this Manual

As caretakers of the public trust and guardians of taxpayer dollars, all departments of the City of Houston hold particular responsibility for conducting procurements in a deliberate, fair and ethical manner. The goals of the City when making purchases are to:

- Purchase the proper good or service to meet the needs of the City;
- Get the best possible price for the good or service;
- Get the best value for public dollars expended;
- Have the good or service available where and when it is needed;
- Ensure a continuing supply of needed goods and services;
- Allow responsible bidders a fair opportunity to compete for the government's business, through statutory requirements for competitive bids and proposals combined with the City's purchasing procedures;
- Provide minority and women-owned businesses an opportunity in the contract award process; and
- Stimulate the local economy and job market by allowing local businesses an opportunity to compete in the City contract award process.

A program's effectiveness depends on good and sound management principles. Recognized purchasing principles can be applied to any purchasing program to make it operate to the best advantage of the City. Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they must conduct themselves in a manner that fosters public confidence in the City of Houston.

The purpose of the *City of Houston Procurement Manual* is to provide a resource of procurement best practices for City of Houston departments so that they may buy goods and services for the City in accordance with these principles.

General Comment on the Structure of this Manual

Where this Manual refers to the City Purchasing Agent, that title may be construed as Department Director or his or her designee, where appropriate – based on the nature of the solicitation or on the limits of the City Purchasing Agent's or Department Director's authority as established by City ordinance.

Occasionally this Manual refers to a "selection committee" or an "evaluation committee" as conducting negotiations on behalf of the City. These terms are to be construed loosely to allow the directors of City departments maximum flexibility in negotiating with selected proposers.

Finally, while this Manual is intended to reflect the basic procedures and practices of all City departments, it does not supersede existing City policy at this time. Administrative Procedures and Executive Orders relating to City procurement are attached to and incorporated into this Manual as Exhibits. If certain departments have procedures unique to their operations, such procedures are attached to and incorporated into this Manual as Appendices. The responsibility for drafting and maintaining Appendices rests with individual departments.

Overview of Purchasing Authority

Texas law provides that a city may enter into a contract for the expenditure of more than $50,000 only if it complies with certain procurement procedures.[1] The options include competitive sealed bidding, competitive sealed proposals, Interlocal agreements, and other more specialized mechanisms. This Manual discusses these procurement methods in detail.

Texas state law does, however, provide a number of exceptions to procurement requirements. For example, the Professional Services Procurement Act sets out a special process for selecting architects, engineers, and land surveyors.[2] As another example, a competitive process is not required when health or safety issues are involved.[3] These and additional exceptions will also be discussed.

This Manual also discusses guidelines for purchases under $50,000 as well as those subject to competitive procurement exceptions. Although Texas state law does not mandate a set process for these types of procurements, good governance still requires the City to obtain the best price and best value possible while conducting the procurement in a deliberate and ethical manner.

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[1] Tex. Local Gov't Code § 252.021.

[2] Tex. Gov't Code Ch. 2254.

[3] Tex. Local Gov't Code § 252.022(a)(2).

Contracting Ethics

The competitive nature of the public purchasing arena and the expenditure of significant amounts of public funds require strong ethical standards at all levels of the purchasing function. Purchasing personnel and City departmental staff face the challenging task of developing good vendor relations and encouraging vendor competition while avoiding even the appearance of favoritism or other ethical misconduct.

Circumventing Procurement Laws

City procurements are governed by state and federal law, as well as the City Code of Ordinances. There are criminal penalties associated with attempts to avoid compliance with the state procurement laws, as detailed here.[4]

Sequential purchasing of the same items or type of items over the course of a fiscal year may exceed the state competitive procurement requirements. Although some sequential purchasing is intentional, it usually results from needs that could not be anticipated. It may also result from lack of centralization of the purchasing function.[5]

Component purchasing usually is an attempt to circumvent bid or proposal laws or other requirements by buying an item through the issuance of multiple purchase orders for the component parts of the item versus issuing a single purchase order for the entire item. Repeated purchases of additional optional equipment or parts after an initial purchase may create the perception of component purchasing.[6]

***Sequential purchase orders*:** If items or services would be bought from the same provider in a single purchase under normal purchasing procedure, the purchases may not be made under separate purchase orders to avoid the need for council approval. For example, it is not consistent with the City charter to issue a $50,000 purchase order to the ABC Consulting Company to perform a study of fleet management in the police department and a subsequent purchase order for an amount under $50,000 to the same company to do a study of fleet management in the solid waste department. Nor can a department issue a $50,000 purchase order to a software vendor to buy Phase I of a document management system and a subsequent $50,000 purchase order to buy Phase II of the same system from the same vendor. In each of the examples, it would be necessary to go to council for approval of the second purchase order. If there is any doubt about whether

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[4] *See* Tex. Local Gov't Code § 252.062 for criminal penalties.

[5] Tex. Local Gov't Code § 252.001(7).

[6] Tex. Local Gov't Code § 252.001(2).

council approval is needed for a subsequent purchase order, employees should consult the City Attorney's Office.

Conflicts of Interest

All City employees, but particularly procurement personnel, should be familiar with Chapters 15 and 18 of the Code of Ordinances, because the City imposes higher standards on City employees than required by Texas law.

In this regard, City employees may not[7]:

1. Participate in or work on a contract knowing that the employee or a member of the employee's immediate family has an actual or potential financial interest in the contract. Such participation could include taking action as an employee through decision, approval, disapproval, recommendation, giving advice, investigation or similar action in connection with the contracting opportunity.

   Note: Exceptions are made for City employees who teach golf or tennis lessons at City parks outside their regular working hours.

2. Own more than one percent of a firm, partnership or corporation that bids on or is awarded any contract being let by the City, or to have a pencuniary interest, directly or indirectly, in any contract let by the City, or in any work done by the City.

3. Solicit or accept anything of value from an actual or potential vendor.

4. Be employed by, or agree to work for, a vendor or potential vendor.

5. Knowingly disclose confidential information for personal gain.

What happens when a violation of conflicts rules occurs?

When an actual or potential violation of any of these standards is discovered, the person involved shall promptly file a written statement concerning the matter with an appropriate supervisor. The person may also request written instructions and disposition of the matter. If an actual violation occurs or is not disclosed and remedied, the employee involved may be reprimanded, suspended, or dismissed. The vendor or potential vendor may be barred from receiving future contracts and have an existing contract canceled.[8]

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[7] Houston Code of Ordinances § 15-1.

[8] Houston Code of Ordinances § 18-3.

In addition to the restrictions on contracting with the City, City employees are prohibited from soliciting, demanding, accepting or agreeing to accept from another person a gratuity or an offer of employment in connection with any procurement decision. Similarly, City employees are prohibited from accepting any payment or offer of employment made by or on behalf of a subcontractor as an inducement for the award of a subcontract or order. Finally, employees may not knowingly use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any person.

Conflicts Disclosure Statements

In 2005, the legislature enacted Chapter 176 of the Texas Local Government Code that requires vendors to disclose any "conflicts" they may have with elected officials, such as the Mayor and Council Members.

The law applies to all vendors, meaning any person who seeks to enter into a contract with the City, and agents of the vendor. The law does not impose a prohibition against doing business with the City; instead, it requires disclosure of relationships the vendor may have with elected officials, as identified above.

What information must vendors share?

A vendor must disclose if the vendor has an employment or business relationship with an elected official that results in the elected official receiving more than $2,500 in the preceding twelve months or has given an official or an official's family member one or more gifts totaling more than $250 in the preceding twelve months.

As part of a procurement package, vendors must file a questionnaire not later than the seventh business day after (1) the date the vendor begins discussions or negotiations to enter into a contract with the City or submits a bid or proposal; or (2) the date the vendor becomes aware of a relationship or gives a gift to an officer or officer's family member.[9]

Elected City officials are subject to additional ethical rules that are beyond the scope of this Manual. For more information and guidance, elected officials are encouraged to contact the Office of the City Attorney.

[9] Tex. Loc. Gov't Code Ch. 176.

Chapter

2

2. Service and Supply Contracts, Generally

Getting Started

The first step in any procurement is to determine the need for particular goods or services. Researching the market is often essential, and City employees may find an ongoing effort to collect market information to be worthwhile. City employees should consider contacting their counterparts in local jurisdictions or other professional associations. As part of regular business practices, City employees should determine whether prices are temporarily high or low so that they can adjust their purchase quantities accordingly. Additionally, it may be cost-effective to hire a nonbiased consultant to identify specific contract requirements. All of these suggestions are to be considered within each department's individual purchasing practices.

The purpose of this chapter is to outline general steps that all City employees involved in the purchasing function should consider when buying goods and services.

Determining Need

The Strategic Purchasing Division ("SPD") of the City's Administration and Regulatory Affairs Department may award "blanket contracts" for standard items such as office supplies, which are used by many different departments. Under a blanket contract, each department can obtain supplies as needed, taking advantage of the lower prices obtained through bulk purchasing. As a rule, the City realizes savings by purchasing in larger volumes.

To realize the benefits of volume purchasing, City employees are encouraged to review their purchasing needs over a period of time and identify the amount of supplies or services needed. Individual solicitations may allow for delivery and payments to be made on an installment basis throughout the contract term. Employees should consider purchases in prior years and any special or unusual needs that may be expected to arise during the period for which the purchase is made. Whenever feasible, employees should combine like items or services into one contract.

Collective purchasing also ought to be considered. Collective purchasing means that two or more jurisdictions purchase supplies or services from a contract that has been procured by a lead jurisdiction. Each participant in a collective purchase must comply with its own local rules – *i.e.*, executive orders, charters, by-laws or ordinances – when those rules set stricter requirements, such as a requirement for a written contract over a certain dollar threshold.

Writing a Purchase Description

Once department personnel have determined a need, they must then convey that need to potential vendors in such detail as to ensure that the City of Houston receives responsive quotes, bids, or proposals that can be priced and compared in a fair manner. A sufficient purchase description may require only a few words for each item. For more complex procurements, the purchase description will include more detailed specifications that may include parameters such as size, dimensions, quality, performance, warranties, installation, and terms.

A purchase description may also include a "scope of services" that details specific services, including the work products or deliverables to be produced under the contract.[10] An inadequate purchase description renders effective competition impossible because potential vendors will not know what the City is seeking and will be unable to offer a reliable price. Vague purchase descriptions often result in vendor protests and cancelled procurements. If the City does award a contract

[10] *See also* Chapter 5, "Scope of Work".

using a vague purchase description, it may end up paying for supplies or services it does not need, and City purchasing employees are likely to have disputes with vendors over what the contract does or does not require. City purchasing employees are encouraged to use purchase descriptions that others have used successfully and – in consultation with the Office of the City Attorney, if needed – adapt those to their needs.

Components of a Purchase Description

At a minimum, the following are the elements of any good purchase description:

- A list and description of each supply or service in sufficient detail for all vendors to understand what the City department needs. Relevant sample documents may be appended to the purchase description; alternatively, vendors should be instructed how to obtain or review such documents. When purchasing a service, employees should clearly specify the service or services vendors will be required to perform and the documents, reports, and materials they must deliver.

- The quantity of each supply or service needed and whether the quantity shown is the actual amount or an estimate. Vendors need this information to judge whether they can handle the contract and to submit accurate prices.

- The timeline for which each supply or service is needed. The exact schedule, or an approximate schedule, with a statement that it is subject to minor adjustment, should be included in the purchase description.

- The delivery terms, if known.

Preparing Contract Terms and Conditions

City purchasing personnel must develop the contract terms and conditions prior to soliciting bids or proposals because all contractual terms and conditions applicable to the procurement must be included in an **Invitation to Bid** ("ITB") or a **Request for Proposal** ("RFP"). Both ITBs and RFPs – along with other methods of procurement – are discussed in detail later in this Manual.

It is strongly recommended that City purchasing employees consult first with the Office of the City Attorney to develop standard contract terms and conditions. In preparing the contract, purchasing employees may find a checklist useful.

Contract Duration and Options for Renewal, Extension, or Purchase

Purchasing personnel must also determine the contract term that best suits the City's needs. As employees make this determination, they should keep in mind that both short-term and long-term contracts involve tradeoffs.

When considering the term of the contract, purchasing personnel should consider whether to provide for any renewal, extension, or purchase options. The City may not exercise a renewal, extension, or purchase option unless the option terms were included in the original solicitation and incorporated into the executed contract and unless the contract provides the City with sole discretion – that is, without the vendor's consent – to exercise the option.

Estimating the Dollar Value of a Contract

For most contracts, the dollar value of the contract will be based on the total contract cost. For a contract that includes options to renew or extend the contract, the specific procedures used will depend on the dollar value over the entire contract term, including the value of any options to renew or extend the contract. Thus, the value of a two-year contract with a one-year renewal option would be the cost of the base years plus the cost of the option year.

Selecting the Appropriate Procurement Method

If the estimate of the contract value is $50,000 or more, purchasing employees must decide whether to solicit bids using an ITB or solicit proposals using an RFP. Under both processes, the City may award the contract to a responsible vendor that submits a responsive bid or proposal.

The ITB and RFP processes differ in some important ways. ITB is the basic method for procuring supplies or services with a contract value of $50,000 or more. Generally, when departments use the ITB process, the City will award the contract to the vendor that meets all of the City's quality requirements and offers the lowest price.

The RFP process permits purchasing personnel to weigh the relative merits of proposals submitted by competing vendors that also meet the City's quality requirements. The City awards the contract to the vendor submitting the most advantageous proposal, taking into consideration the proposals' relative merits and prices. Unlike the ITB process, the RFP process may not always result in selection of the vendor offering the lowest price.

Appointing an Evaluation Committee

When a City department director selects individuals to form an evaluation committee for a particular procurement, he or she should do so with the following general factors in mind:

- The relevance of the individual's education and experience to the subject matter of the solicitation;
- The possibility that a superior could directly or indirectly influence the manner in which a subordinate may vote;
- The amount of time the individual would potentially be able to dedicate to the task relative to the amount of time needed to complete it; and
- The possibility of any conflicts of interest with respect to the individual's relationship to potential vendors. The individual must have the ability to maintain total impartiality throughout the selection process, as well as to focus on the best interests of the City and not merely his or her own departments or individual perspectives.

Evaluation Committee Members

Serving on an evaluation committee is a **commitment**.

Serving as a member of an evaluation committee means that an individual will be entrusted with a great deal of responsibility on behalf of the City of Houston to conscientiously evaluate the submitted proposals within the guidelines identified below. Evaluation committee members are frequently required to devote considerable time reading proposals, making site visits to vendors' or references' places of business, meeting to discuss proposals with other evaluators, and engaging vendors in oral discussions. Acceptance of an invitation to serve on an evaluation committee should be construed as a commitment, within reasonable limits, to expend the time necessary to complete the **entire** process and to perform a thorough evaluation.

Duties and Responsibilities of Evaluation Committee Members

Evaluation committee members must perform their evaluations to the best of their abilities without prejudice or bias. They must keep all information contained in proposals or obtained during the evaluation process confidential, to the extent allowed by law. Furthermore, they must render a fair and impartial evaluation based exclusively upon:

- The evaluation criteria contained in the RFP;
- The contents of the vendors' proposal;

- Information gained from clarification of proposals;
- Oral presentations;
- Discussions with vendors; or
- Other legitimate sources of reference.

If, upon receipt of the vendors' proposals, committee members find that a conflict of interest may exist, they should report it immediately to the procurement officer of record and to the chairperson of the evaluation committee.

If a situation arises where it is necessary for a committee member to recuse him- or herself, the procurement officer of record will determine if that person must be replaced or if the committee may proceed with the remaining members to complete the evaluation and make a recommendation.

Note: If a City employee is a supervisor of another City employee, the supervisor may serve as the committee chairperson only if the supervisor does not cast a vote and does not attempt to influence the scoring of his or her subordinate.

Committee meetings Committee members are to attend all meetings of the committee. At the first committee meeting a timeline is typically established for the entire evaluation. This should include the number and dates of future meetings, if and when oral presentations will be held, and where the meetings will take place. It is the responsibility of the individual members to arrange their work schedules to allow for full and complete participation.

Understanding solicitation documents Committee members must read the RFP and acquaint themselves with the nature of the requested goods or services. If a committee member needs to make notations, he or she must do so directly on the evaluation forms provided. These evaluation forms, with any written comments, become a permanent part of the documentation of the procurement. In some instances these forms – together with evaluator's notes – may be made available to a protesting vendor or its attorney or to any member of the public who makes a request under the Texas Public Information Act. Therefore, notes should be factual, non-inflammatory and should contain neither offensive nor inappropriate remarks. Any questions should be directed to the procurement officer of record or to the chairperson of the committee.

Notes are to be consistent with the final overall ranking of all vendors. There should be a note for each significant area in which a vendor is either weak or strong. Frequently, a new evaluation form will be completed after oral discussions or revised submissions. Although each set of evaluation forms is retained in the permanent procurement file, only the final one should be used for the final evaluation and ranking.

Identifying problems with a proposal Committee members should strive to identify deficiencies or problems with each proposal. Vendors responding to an RFP in which proposals are deemed to be reasonably likely to be selected for award of the contract, or potentially so, typically will be informed of problem areas identified by the committee and given an opportunity to resolve them.

Discussion at committee meetings Committee members are encouraged to openly discuss their findings on each proposal at the scheduled evaluation committee meetings. They should also freely discuss factors that might influence their evaluations, such as previous experience with a vendor. Committee members should seek clarification from the procurement officer of record as to whether factors that influenced them are proper to use or might be inappropriate.

Oral presentations Potential vendors may provide oral presentations to the committee. The duration of such presentations is pre-determined by the committee and all committee members must attend them, if possible. Members should – to the best of their abilities – ask questions regarding parts of proposals needing explanation or clarification or regarding those sections of a proposal that may have deficiencies that the potential vendor could cure.

Best and Final Offers The committee must determine if a technical or financial Best and Final Offer ("BAFO") is appropriate for a given solicitation. BAFOs will be explained in greater detail in Chapter 5.

Committee recommendation With the assistance of the entire committee, the committee chairperson must make a recommendation to the procurement officer of record. This recommendation consists of:

- The acceptability or unacceptability of each vendor;
- The technical and financial ranking of each acceptable vendor;
- The combined final ranking of the vendors; and
- A detailed rationale explaining why the recommended vendor is the most advantageous.

Bidder debriefing The committee chairperson and procurement officer of record routinely attend debriefings but they may need to meet with committee members and review notes prior to the actual debriefing.

Bid protests It is possible that after a vendor has been recommended for award, the committee members may be called upon to help the procurement officer of record respond to a protest. Bid protests and their procedures are detailed in Chapter 8.

Quiet Period / No Contact

Starting on the date a solicitation is issued and expiring on the date the City Secretary publicly posts notice of any City Council agenda containing the applicable award ("Quiet Period"), actual and prospective respondents or bidders (including their representatives or persons acting on their behalf) are prohibited from contacting members of City Council or any City employees other than the contracting officer, in any manner regarding the issued RFP or ITB. Actual and prospective respondents or bidders include those respondents or bidders who have received notice that they have not been chosen as finalists for any solicitation. Actual and prospective respondents or bidders (including their representatives or persons acting on their behalf) are expressly prohibited from offering, presenting or promising gratuities, favors, or anything of value to any member of an evaluation committee or any appointed or elected official or employee of the City of Houston, their families or staff members.

Notwithstanding the foregoing, the following types of communication only are exempt and shall be permitted by respondents and bidders during the Quiet Period:

1. Respondent's formal response to the RFP;
2. Communications publically made during the official pre-bid conference;
3. Written requests for clarification during the period officially designated for such purpose by the contracting officer; and
4. Communications during an oral interview, scheduled at the request of and for the benefit of the City's evaluation committee, if any.

During the Quiet Period, the contracting officer shall serve as the sole point of contact for any actual or prospective respondents. Nothing in this section shall prevent the respondent from making public statements to the City Council after the Quiet Period.

As part of their bid or RFP responses, respondents or bidders shall attest that they understand and agree not to contact any members of City Council or City employees—other than the contracting officer—during the Quiet Period and acknowledge that any such contact shall be grounds for disqualification from the bid or RFP process.

Sample Solicitation Language

NO CONTACT PERIOD

Neither bidder(s) nor any person acting on bidder(s)'s behalf shall attempt to influence the outcome of the award by the offer, presentation or promise of gratuities, favors, or anything of value to any appointed or elected official or

employee of the City of Houston, their families or staff members. All inquiries regarding the solicitation are to be directed to the designated City Representative identified on the first page of the solicitation. Upon issuance of the solicitation through the pre-award phase and up to the award, aside from bidder's formal response to the solicitation, communications publicly made during the official pre-bid conference, written requests for clarification during the period officially designated for such purpose by the City Representative, neither bidder(s) nor persons acting on their behalf shall communicate with any appointed or elected official or employee of the City of Houston, their families or staff through written or oral means in an attempt to persuade or influence the outcome of the award or to obtain or deliver information intended to or which could reasonably result in an advantage to any bidder. However, nothing in this paragraph shall prevent a bidder from making public statements to the City Council convened for a regularly scheduled session after the official selection has been made and placed on the City Council agenda for action.

Chapter

3

3. Purchases of $50,000 and Under

Bidding limits are established by law to ensure that sizable purchases are subjected to fair competition among available, responsible contractors and suppliers and that the City obtains the best value possible. Even though certain purchases may be exempt from the statutory or local ordinance requirements for bids[11], there still should be adequate controls and competition. Several categories of purchases are exempted from the bidding process. This chapter describes these categories of purchases.

[11] Tex. Local Gov't Code §§252.021(a); 271.024

Purchases under the Bid Limit ($50,000)

If the expenditure for a purchase is for less than $50,000 ("bid limit"), the City may proceed in one of three ways:

1. **Sealed bid**. If the amount of the purchase is nearly $50,000, the City may still ask for a sealed bid. This approach offers a number of advantages. For example, if later purchases cause the total purchase price to exceed the bid limit, the competitive bidding requirement is satisfied. Provisions allowing later purchases on the same terms might be written into the original contract. In addition, bids may be more competitive with a sealed bid. Another advantage is that conflicts of interest between the contractor/supplier and the purchasing office, governing body or departments of the City are minimized.

2. **Price quotations**. If a bid is not going to be sought, price quotations should be solicited from three or more contractors/suppliers to ensure the price is fair. The quotations may be in writing or by telephone for less expensive items. The procurement officer may negotiate price and conditions, as appropriate.

3. **Non-competitive purchase**. If the price is less than $3,000, the purchase may be made on a non-competitive basis from the contractor/supplier that is most convenient, without contacting other contractors/suppliers.

Obtaining Price Quotations

Price quotations obtained in writing may be used to negotiate non-bid purchases. After the contractor/supplier is selected, the procedures are identical to those used for purchasing competitively bid items. Procedures should be in place to ensure that the user department is not splitting orders to avoid the limit for competitive bids. For any purchase that costs less than $50,000, the following procedures should be used.

Price quotations should be obtained from a sufficient number (three or more) of contractors/suppliers to ensure competition. The required number may be established by an office procedure, or based on the procurement officer's professional judgment.

Purchases between $3,000 and the Bid Limit

On receiving a requisition for a purchase below bid limits, but for more than $3,000, the Departmental Purchasing Unit ("DPU") or Strategic Purchasing Division ("SPD") must consult a source list for reliable contractors/suppliers. The

City must contact at least three Minority/Women Owned Business Enterprises ("M/WBE") on a rotating basis, based on information provided by the Office of Business Opportunity ("OBO").[12]

Written requests for quotes must be sent to at least three contractors/suppliers; at least three should be M/WBEs, if available. The request for quotes should be on a standard form. It should contain at least the following information:

- Name and address of contractor/supplier;
- Description of item;
- Quantity required;
- Last date quotations accepted;
- Approximate date delivery is required; and
- Terms and conditions of purchase.

The standard form should request certain specific information, such as total or unit price and the dates the quoted price will be effective. The request for price quotations should require that the quoted price be honored during the stated period.

Purchases of Less than $3,000

After receiving a requisition for a purchase of less than $3,000, the purchasing department should consult the Vendor Master File or M/WBE Directory for reliable contractors/suppliers providing the desired materials and supplies.

Written requests for price quotations should be made to M/WBE contractors/suppliers as well. The list of contractors/suppliers should be rotated so that all listed contractors/suppliers are contacted an approximately equal number of times. For price quotations, certain information should be provided to the contractor/supplier, including:

- Description of the item or services;
- Number of items required;
- Date delivery is required; and
- The terms and conditions of purchase.

For a written request, certain specific information should be obtained from each contractor/supplier and recorded in writing, such as:

- Name and address of the contractor/supplier;
- Total or unit price;

[12] Tex. Local Gov't Code §252.0215

- Date through which quoted price will be effective;
- Name of the representative giving the quote; and
- Product offered if different from the product requested.

Selecting the Contractor or Supplier

After price quotations are taken, a contractor/supplier is selected. The selection is based on several factors, including:

- **Price**. If other factors are equal, the lowest price should be taken;
- **Quality of good or service**. If more than one contractor/supplier can deliver at an acceptable price, the relative quality of each should be considered;
- **Reliability of the contractor/supplier**. This factor is based on past performance as documented in the contractor/supplier file;
- **Ability to provide service for the item** (if applicable); and
- **Mandatory contacting of M/WBEs** (by the City) for purchases between $3,000 and the statutory bid limit, but they are treated equally for award purposes.

To search the Office of Business Opportunity's most recent master list of certified M/WBEs, see: https://houston.mwdbe.com/FrontEnd/VendorSearchPublic.asp.

Making the Purchase

After price quotations are obtained, the City purchasing office selects a contractor/supplier and makes the purchase. All purchases below the bid limit are processed similarly.

Price quotations are tabulated on a summary sheet. The sheet should include:

- Contractor/supplier name;
- Quoted price;
- Information relating to the contractor/supplier's reliability and past performance; and
- The purchasing department's evaluation of the quality of the product, if known.

The lowest and best offer meeting specifications should be accepted based on price, reliability of the contractor/supplier and quality of the product. M/WBEs must be contacted when required by the City, but are treated equally when awards are made.

Blanket Purchasing Agreements

Blanket purchasing agreements ("BPAs") are agreements with contractors/suppliers that allow small purchases by individual departments without going through the normal purchasing procedures. For example, establishing a BPA with an automobile parts supplier for the City's Fleet Management Department allows for the quick and efficient purchase when a needed part or supply is not in stock. BPAs also reduce administrative costs for small purchases by eliminating the need for multiple requisitions and purchase orders.

When a department requests a BPA, it is handled like any other purchase. The requisition requires the proper approvals. When the BPA is issued, the purchase order should be encumbered for the full amount of the BPA limit. On approval of the department's manager/supervisor, the needed part is purchased from the contractor/supplier. Invoices are retained and purchases are logged in a manner prescribed by the purchasing office.

PCards

PCards are a convenient way for City departments to make incidental purchases of supplies and services in amounts that will not reach the bid limit within the fiscal year.

Each user department will establish spending limits for an individual PCard. The maximum amount of a single transaction may not exceed $3,000 and the monthly maximum may not exceed $10,000. Under no circumstances will limits exceed the limits defined in the Charter and ordinances of the City of Houston, the procurement laws of the State of Texas, and City of Houston Administrative Procedure 5-2.[13]

The City Purchasing Agent will review and approve departmental requests for the assignment of a PCard restricted to a specific contract. With the prior written consent of the City Purchasing Agent, monthly spending limits may be above the maximum single/monthly spending limits of $3,000 and $10,000 set for individual PCards.

The City Purchasing Agent may authorize PCardholders to make purchases beyond their authorized single/monthly transaction limits, and the formal bid limit established by the State of Texas, during incidents which may include, but are not limited to: emergency preparedness, inclement weather, disasters and any other conditions that may affect the health and safety of the citizens of Houston.

[13] City of Houston Executive Order No. 1-42

Purchases that May be Made with a PCard

PCards may be used to purchase goods or services not prohibited by policy approved by the Mayor or any ordinance of the City of Houston. The total purchased with the PCard must not exceed the limits associated with each PCard. Authorization to utilize a PCard for travel must be obtained under separate authority.

Purchases that May Not be Made with a PCard

- Cash advances;
- Restocking inventory;
- Personal expenditures;
- Furniture;
- Food/Travel (exception: prior written approval by Mayor's Office);
- Technology (exception: prior written approval by Departmental Chief Technology Officer); and
- Sales Tax (exception: rental equipment where State law does not exempt local governments).

Individual Responsibility

PCardholders are responsible for the security of their cards; the cards should be treated with the same level of care individuals would use with their own personal credit or debit cards. Unsolicited requests for account information should be verified prior to releasing any information.

In addition to securing the card, PCardholders must retain receipts for all purchases.

If a receipt is lost, PCardholders must obtain a copy at their own expense from the bank or supplier. Faxed or computer-generated invoices will be acceptable. The first eight digits of the account number should be blocked from any receipt showing the entire 16-digit account number.

Declined Transactions

Occasionally a supplier will receive a "decline" response from the bank after attempting to complete a PCard transaction. The decline could be for multiple reasons: purchase exceeds spending limits (monthly remaining limit and/or single transaction limit), incorrect expiration date, billing address or purchase outside assigned spending profile. The PCardholder will contact the bank to determine the reason(s) for the decline. If the purchase is a one-time event, the PCardholder will contact the PCard Coordinator for resolution if the transaction is declined,

and provide him or her with the following information: reason for decline, account number, and the PCardholder's name.

Using a PCard

A need to use a PCard is established when the purchase of contract or non-contract goods and/or services is for official City business. Once issued, the PCardholder will ensure that the use of the PCard does not violate established City spending limits.

Before using the PCard, a PCardholder will determine if the required item is available from a City warehouse or storeroom. If it is not, the PCardholder shall follow these procedures:

- The PCardholder will identify if the item is a contract purchase and report the purchase to the appropriate PCard Coordinator.

- Adherence to the insurance and drug policies is applicable to all non-contract purchases, which require the contractor/supplier to perform work on City property, deliver goods or repair or maintain equipment. Technology, furniture and chemical-related purchases must be made according to the appropriate policies governing each.

- Whenever possible, PCardholders should make purchases from suppliers certified as M/WBEs by the City of Houston.

- PCardholders must ensure sales tax is not included in the total price.

- PCardholders most note on the receipt the purpose of the purchase and retain the receipt, attach it to their Monthly PCardholder Statement, and then forward it to their Approving Manager/Supervisor for review and subsequent submittal to their departmental PCard Coordinator. All receipts and supporting documentation will be kept in the department's cardholder files. It is permissible to include the reason for purchase, "business purpose" on the Monthly PCardholder Statement.

Returns of Items Purchased with a PCard

When the merchandise that was purchased with the PCard is returned to the supplier, the PCardholder is responsible for obtaining a credit memo from a supplier. The credited amount will be applied to the PCardholder's account. **Cash refunds are prohibited**.

Monthly Bank Statements and Reports

Each department will receive its individual Monthly PCardholder statements and a Transaction Summary Report. PCardholders must reconcile their PCard charges within ten working days of the date these documents are received. Once the reconciliation is process is complete, the department's PCard Coordinator will sign the Transaction Summary Report and forward it to the Purchasing Card Program Administrator. **Failure to meet timely submission requirements from PCardholders to the Purchasing Card Program Administrator may cause suspension or cancellation of PCards**. The PCard Program Administrator sets the cardholder statement due date with the department PCard Coordinators and may delay the monthly statement deadline based on holidays or operational requirements.

The PCard Program Administrator will forward a copy of Transaction Summary Reports to the Controller's Office for reconciliation against the monthly payment due upon request. If a PCardholder is not at work, the PCardholder's manager/supervisor may complete and sign the Monthly Statement on behalf of the PCardholder. This same principle applies to a department PCard Coordinator who may review and sign for their approving manager/supervisor. The statement must have a minimum of two signature levels, one for preparation and the other for review/approval.

Records Management

Departmental PCard Coordinators are required to maintain records of PCard transactions, purchase documents and reconciliations. Records should be kept by billing cycle. Records are considered accounts payable transactions and should be maintained in accordance with the established guidelines and policies for such documents. Documents should be destroyed through the appropriate contract source when archival period requirements have been satisfied.

Lost or Stolen PCards

When a PCard has been lost or stolen, the PCardholder must contact the bank by calling the bank's 1-800 number. In the event that the PCardholder is unsuccessful in contacting the bank, the City's PCard help line (832-393-8775) should be called and a member of the PCard staff will contact the bank to cancel the card.

It is imperative that lost or stolen PCards be cancelled immediately given the fact that the City's liability for lost or stolen cards is not capped. The City is liable for all charges until the card is reported lost or stolen. Thus, the PCardholder to whom the PCard is issued will be responsible for all

charges made against the PCard from the time it is lost or stolen and until the bank is notified.

Unauthorized Use of a PCard

Purchases that a department's management or the PCard Administrator deem inappropriate as outlined herein will be referred back to the PCardholder for justification. If unauthorized charges appear in a PCardholder's Monthly Statement:

- The PCard Administrator must investigate all circumstances surrounding the alleged misuse of a PCard and in such cases where there is evidence substantiating a procedure or policy violation, refer that information to the appropriate authority for investigations and/or disciplinary action.

- In those cases where there is evidence of negligence in the use of a PCard but no fraudulent acts have been committed, the PCardholder must surrender the PCard, and all further privileges will be revoked for a period of time established by the City Purchasing Agent.

Any employee having knowledge of violations of this procedure or any other procedure or policy governing the use of a PCard shall immediately report such violations to the PCard Program Administrator.

PCardholders suspected or accused of fraud, theft, or misuse will have their PCards suspended or terminated. Further, appropriate disciplinary action will be taken against the employee in accordance with City policies and procedures.

Disputed PCard Purchases

PCardholders are responsible for immediately resolving any disputes between themselves and a supplier on item(s) they have purchased. Failure to do so will result in an authorized purchase, and the charge(s) being expensed to a department's cost center, even if it is an incorrect charge.

If an item was returned for credit after the billing cycle has closed, the current statement will not be used to dispute charges.

Charges on the current statement should not be disputed if an item was returned for credit after the billing cycle is closed. The credit should appear on the next statement, and the PCardholder will annotate on the current statement that there is a disputed charge.

Revocation of PCard Use

The use of a PCard will be revoked when:

1. A departmental PCard Coordinator and/or a PCardholder's supervisor or manager issues a request to the PCard Administrator;

2. A PCardholder violates the approved policies and procedures regarding the use of PCards; or

3. A PCardholder is no longer employed by the City of Houston.

Individual departments are responsible for any charges incurred by an employee who no longer works for their department, if the delay to cancel the use of the PCard is a result of the department's actions.

Chapter

4

4. Service and Supply Contracts of More than $50,000: Formal Sealed Bids

What are formal sealed bids?

The use of formal sealed bids is a method of contracting for goods and nonprofessional services that employs competitive bids, public opening of bids, and awards. The City solicits formal sealed bids using an Invitation to Bid for contracts over $50,000. The purpose of this chapter is to explain the laws, policies and procedures underlying the formal sealed bid process.

Most formal bids are awarded on the basis of lowest responsible bid.[14] Variations on formal bids include reverse auction and best value procurement.[15] Best value procurement allows for the award decision to be determined by factors other than price. Both of these approaches follow the standard notifications process but vary in the way the award is decided.[16]

Prior to issuing a public bid invitation estimated to be in excess of $100,000, the Department Director reviews and researches each invitation to determine subcontracting possibilities. When it is evident there is M/WBE subcontracting potential, a goal is assigned to give certified M/WBE suppliers additional opportunity to participate in City business.[17]

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[14] Tex. Loc. Gov't Code § 252.043.

[15] Tex. Loc. Gov't Code § 271.906.

[16] Tex. Loc. Gov't Code § 252.041.

[17] Houston Code of Ordinances § 15-83.

Elements of Formal Sealed Bids

Formal sealed bidding is to be used when the conditions in Chapter 252 of the Texas Local Government Code are applicable and when the City will award a contract to the lowest responsive and responsible bidder whose bid meets the terms and specifications of the ITB.

Firm-fixed-price contracts are used when the method of contracting is sealed bidding, except that fixed-price contracts with economic price adjustment clauses may be used when some flexibility is necessary and feasible. Such clauses must afford all bidders an equal opportunity to bid.

When using sealed bidding as a procurement method, the following steps are typically involved:

- Preparing the ITB;
- Advertising and publicizing the ITB;
- Receiving submissions of bids;
- Evaluating the bids; and
- Awarding the contract.

Each step will be explored more fully in this chapter.

Preparing the ITB

Invitations to Bid must describe the requirements of the City department clearly, accurately, and completely. Unnecessarily restrictive specifications or requirements that might unduly limit the number of bidders are prohibited.[18] No department may write specifications in such a limited way that they would be suited to only one vendor. The ITB includes all documents (whether attached or incorporated by reference) that are furnished to prospective bidders for the purpose of submitting a bid.

Reasonable bidding time: Factors to consider

In cases of limited bidding time, some potential vendors may be precluded from bidding and others may be forced to include amounts for contingencies that, with additional time, could have been eliminated. To avoid restricting competition or paying higher-than necessary prices, City purchasing personnel should give consideration to such factors as the following in establishing a reasonable bidding time:

[18] *Texas Highway Commission v. Texas Association of Steel Importers*, 372 S.W.2d 527 (Tex. 1963).

- Degree of urgency;
- Complexity of requirement;
- Anticipated extent of subcontracting;
- Whether use was made of pre-solicitation notices;
- Geographic distribution of bidders; and
- Normal transmittal time for both invitations and bids.

Final review of the ITB

Each ITB must be thoroughly reviewed before issuance to detect and correct discrepancies or ambiguities that could limit competition or result in the receipt of nonresponsive bids. The Strategic Purchasing Division, DPUs, and departmental Subject Matter Experts ("SMEs") are responsible for reviewing the ITB documents.

Advertising and Publicizing the ITB

Section 252.041 of the Texas Local Government Code sets forth the general rules for solicitation of bids. A reasonable time for prospective bidders to prepare and submit bids shall be allowed in all ITBs, consistent with meeting the needs of the City. A bidding time – that is, the time between issuance of the solicitation and the opening of bids – of at least 14 calendar days before the date set to publicly open the bids and read them aloud is appropriate. Additionally, public notices of the ITB must be published at least once a week for two consecutive weeks in a newspaper of general circulation within the City of Houston metropolitan area.

Information concerning an ITB must not be released outside the City (as a governmental entity) before the ITB's first newspaper publication date. Within the City, such information should be restricted to those having a legitimate interest. This is so one prospective bidder is not given an unfair advantage over another.

For Solicitations involving the Strategic Purchasing Department

After a solicitation opens, discussions with prospective bidders about technical questions or other information concerning the ITB shall be conducted through the City Purchasing Agent only. No other City personnel shall furnish any information (with the exception of providing a verbal response to a question at the pre-bid conference) to a prospective bidder that alone or together with other information may afford an advantage over others. Additionally, general information or written questions and responses that would not be prejudicial to other prospective bidders may be furnished by the City Purchasing Agent to all prospective bidders via Letter of Clarification ("LOC") postings. Such requests may include: explanations of a particular contract clause or a particular condition of the schedule in the ITB, clarifications or revisions to

technical specifications or other necessary data required in order for potential bidders to submit a bid.

Record-Keeping

For each ITB the following information will be maintained to show the distribution that was made: the date the ITB was issued, along with the names and e-mail addresses of prospective bidders who requested to be alerted about the ITB; and the names and e-mail addresses of all prospective bidders who download a copy of the ITB, which will all be made a part of the ITB record.

The Pre-Bid Conference

A pre-bid conference may be used as a means of briefing prospective bidders and explaining specifications and requirements to prospective bidders as early as possible after the ITB has been issued, but *before* the bids are to be opened. It shall never be used as a substitute for amending a defective or ambiguous ITB. Additionally, verbal responses to questions asked about the ITB shall not supersede written material. All changes to the ITB must be revised in writing via Letters of Clarification.

Letters of Clarification

If it becomes necessary to make changes in quantity, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous invitation, such changes shall be accomplished by a Letter of Clarification to the ITB. LOCs shall be posted to the SPD E-Bid system before the date and time for bid opening and to everyone to whom invitations have been furnished.[19]

Before issuing a LOC to an ITB, the period of time remaining until bid opening and the need to extend this period shall be considered. All prospective bidders shall be notified of any extension of time via LOC.

All written questions from prospective bidders concerning an ITB will be answered by SPD, DPUs and SMEs, and the City's responses shall be furnished to all other prospective bidders via a LOC. No award shall be made on the ITB unless such LOC has been issued in sufficient time to permit all prospective bidders the opportunity to consider such information in submitting or modifying their bids.

[19] City departments may post LOCs in alternative places, depending on the nature of the solicitation. For example, the Department of Public Works and Engineering solicits for construction at http://bidsets.publicworks.houstontx.gov.

Cancellation of ITBs before Bid Opening

The cancellation of an ITB usually involves a loss of time, effort, and money for the City and prospective bidders. ITBs should not be cancelled unless a cancellation is clearly in the public's best interest – that is, where there is no longer a requirement for the supplies or services, or where LOCs to the ITB would be of such magnitude that a new ITB is desirable.

When an ITB is cancelled, bids that have been received must be returned unopened to the bidders along with the bid bond, if any, the notice of cancellation submitted to the City Secretary Office and a general notice of cancellation posted electronically to the SPD E-bid system.

The notice of cancellation shall: (1) identify the invitation to bids by number and description of services, (2) briefly explain the reason the invitation is being cancelled, and (3) where appropriate, assure prospective bidders that they will be given an opportunity to bid on any re-solicitation of bids or any future requirements for the type of supplies or services involved.

Submission of Bids

To be considered for contract award, a bid must be responsive – that is, it must comply in all material respects with the ITB. Such compliance enables bidders to stand on an equal footing. It also maintains the integrity of the sealed bidding process. The City will not consider facsimile bids or bids submitted by electronic mail. Bids should be filled out, executed, and submitted in accordance with the instructions in the ITB. Bidders must submit their bids so that they will be received in the office designated in the ITB not later than the exact date and time set for opening of bids.

Bidders must submit sealed bids to be opened at the time and place stated in the ITB solicitation for the public opening of bids. After that specified date and time, no further bids will be accepted. The accepted bids will be opened and read aloud at the specified date, time and place.

Modification and Withdrawal of Bids

Bids may be modified or withdrawn by any method authorized by the solicitation, if notice is received in the office designated in the solicitation not later than the exact time set for opening of bids. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening of bids, the identity of the person requesting withdrawal is established and that person signs a receipt for the bid.

Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the City Secretary's Office by the time specified in the ITB. Bidders may use any transmission method authorized by the ITB (*e.g.,* regular mail, courier services, or hand delivery). If bidders submit bids by U.S. mail, they should allow for extra time for the bid to be delivered to the specific City location from the City's central mailroom.

Any bid, modification, or withdrawal of a bid received by the City Secretary's Office after the exact time specified for receipt of bids is "late" and will not be considered, unless the City Purchasing Agent determines that accepting the late bid would not unduly delay the acquisition; and:

1. If it was transmitted through regular mail or courier service and was received at the City's mailroom not later than 5:00 p.m. one working day prior to the date specified for receipt of bids; or

2. There is acceptable evidence to establish that it was received at the City Secretary's Office and was under the City Secretary's Office's control prior to the time set for receipt of bids.

Acceptable evidence to establish the time of receipt at the City Secretary's Office includes the time/date stamp of the City on the bid wrapper or other documentary evidence of receipt maintained by the City Secretary's Office.

If an emergency or unanticipated event – including but not limited to fire, threats or acts of terrorism, natural disasters, City strikes or SPD E-bid equipment blackout or malfunction when bids are due – occurs such that normal City processes are so disrupted that bids cannot be received at the City Secretary's Office by the exact time specified in the ITB and urgent City requirements preclude amending the bid opening date, the time specified for receipt of bids will be deemed to be extended to the same day and time of day specified in the ITB one week later on which normal City processes can resume. If the following week day falls upon a City holiday, the ITB shall be extended to a new date via a Letter of Clarification.

The City Secretary must promptly notify any bidder if its bid, modification, or withdrawal was received late and must inform the bidder whether its bid will be considered.

Opening of Bids

All bids (including modifications) received before the time set for the opening of bids shall be kept secure. The bids shall not be opened or viewed and shall remain in a secured or restricted-access room. If an ITB is cancelled, bids shall be returned to the bidders. Before bid opening,

information concerning the identity and number of bids received shall be made available only to City department employees. Such disclosure shall be only on a "need to know" basis.

Envelopes or boxes marked as bids but not identifying the bidder or the solicitation may be opened solely for the purpose of identification, and then only by a City employee designated for this purpose. If a sealed bid is opened by mistake (*e.g.,* because it is not marked as being a bid), the envelope shall be signed by the opener, whose position shall also be written on it, and delivered to the designated City employee. This designated employee shall immediately write on the envelope or box (1) an explanation of the opening, (2) the date and time opened, and (3) the ITB's number, and shall sign the envelope or box. The designated employee shall then immediately reseal the envelope or box.

When the time set for opening bids has arrived, the City Secretary shall (1) personally and publicly open all bids received before that time, (2) read the bids aloud to the persons present, and (3) if practical, have the bids recorded. The original of each bid shall be carefully safeguarded, particularly until the abstract of bids has been made and its accuracy verified. The City Secretary may delegate performance of this procedure to a designee so long as the City Secretary remains fully responsible for the actions of the designee.[20]

Examination of bids by interested persons shall be permitted if it does not interfere unduly with the conduct of City business. Original bids shall not be allowed to pass out of the hands of the City Secretary unless a duplicate bid is not available for public inspection. The original bid may be examined by the public only under the immediate supervision of a City employee and under conditions that preclude possibility of a substitution, addition, deletion, or alteration in the bid.

Postponement of Bid Openings

The City Purchasing Agent or department director may postpone or extend a bid opening by means of a Letter of Clarification if he or she has reason to believe that the bids of an important segment of bidders have been delayed in the communications system specified for transmission of bids, or for causes beyond their or the City's control and without their or the City's fault or negligence such as emergencies or unanticipated events.

The City Purchasing Agent will post the determination to postpone a bid opening to the SPD E-bid system and in the City Secretary's Office ***before*** the date of the originally scheduled bid opening. If practical, the delay should be communicated to prospective bidders who are likely to attend the scheduled bid opening.

[20] Houston Code of Ordinances § 15-3.

Rejection of all Bids after Bid Opening

Preservation of the integrity of the competitive bid process dictates that, after bids have been opened, award must be made to the lowest responsive and responsible bidder who submitted a bid, unless there is a reason to reject all bids and cancel the ITB.

Every effort shall be made to anticipate changes in a requirement before the date of opening and to notify all prospective bidders of any resulting modification or cancellation. This will permit bidders to change their bids and prevent unnecessary exposure of bid prices.

When it is determined before award but after opening that the ITB requirements have not been met, the ITB shall be cancelled.

ITBs may be cancelled and all bids rejected before award but after opening when the appropriate department director or the City Purchasing Agent determines in writing that:

1. Inadequate or ambiguous specifications were cited in the ITB; or
2. Specifications have been revised so significantly that a new ITB is in order; or
3. The supplies or services being contracted for are no longer required; or
4. The ITB did not provide for consideration of all factors of cost to the City; or
5. The needs of the City can be satisfied by a less expensive article differing from that for which the bids were invited; or
6. All otherwise acceptable bids received are at unreasonable prices and exceed the department's estimated costs, and the department determines that the bids appear to be excessive, or only one bid is received and SPD and the DPU cannot determine the reasonableness of the bid price; or
7. The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
8. No responsive bid has been received from a responsible bidder; or
9. A cost comparison indicates that performance by City employees is more economically feasible; or
10. For other reasons, cancellation is clearly in the City's best interest.[21]

Should administrative difficulties be encountered after bid opening that may delay contract award beyond bidders' acceptance periods, the lowest bidder should be requested, before expiration of its bid, to extend in writing the bid acceptance period (with consent of sureties, if any) in order to avoid the need for resoliciting. If the low bidder refuses to do so, all bids must be rejected and the bid readvertised.

[21] See Houston Code of Ordinances § 15-46 for detailed reasons for rejecting all bids.

Rejections of Bids

A bid that fails to conform to the essential requirements of the ITB shall be rejected.

A bid that fails to conform to the delivery schedule or permissible alternates stated in the ITB shall be rejected.

A bid shall be rejected when the bidder makes exceptions or imposes conditions that would modify requirements of the ITB or limit the bidder's liability to the City, since to allow the bidder to impose such conditions would be prejudicial to other bidders.

A low bidder may be requested to delete objectionable conditions from a bid provided the conditions do not concern the substance – as distinguished from the form – of the bid, or work an injustice on other bidders. A condition concerns the substance of a bid where it affects price, quantity, quality, or delivery of the items offered.

A bid may be rejected if the prices for any line items or sub-line items are materially unbalanced.

Bids received from any person or concern that is suspended, debarred, proposed for debarment or declared ineligible as of the bid opening date shall be rejected unless a department director can make a determination that such a bid should not be rejected.

Low bids received from bidders determined to be not responsible shall be rejected.

When a bid bond or guarantee is required and a bidder fails to furnish the bond or guarantee in accordance with the requirements of the ITB, the bid shall be rejected.

The originals of all rejected bids, and any written findings with respect to such rejections, shall be preserved with the papers relating to the acquisition.

After submitting a bid, if all of a bidder's assets or that part related to the bid are transferred during the period between the bid opening and the award, the transferee may not be able to take over the bid. Accordingly, the City Purchasing Agent shall reject the bid unless the transfer is effected by merger or operation of law.

Notice to Bidders of Rejection of all Bids

When it is determined necessary to reject all bids, the City Purchasing Agent or department director shall notify the City Secretary in writing that all bids have been rejected and shall state the reason for such action. Additionally, SPD will post an electronic general notice of rejection of all bids to the SPD E-bid system, which will notify each bidder that all bids have been rejected and will state the reason for such action.

Evaluation of Bids

The City Purchasing Agent will review bids to determine the lowest responsive and responsible bidder.

Unless the solicitation provides otherwise, a bid may be responsive notwithstanding that the bidder specifies that award will be accepted only on all, or a specified group, of the items. Bidders shall not be permitted to withdraw or modify "all or none" qualifications after bid opening since such qualifications are substantive and affect the rights of other bidders.

Minor Informalities or Irregularities in Bids

A minor informality or irregularity is one that is merely a matter of form and not of substance. It also pertains to some immaterial defect in a bid or variation of a bid from the exact requirements of the ITB that can be corrected or waived without being prejudicial to other bidders. The defect or variation is immaterial when the effect on price, quantity, quality, or delivery is negligible when contrasted with the total cost or scope of the supplies or services being acquired. The City Purchasing Agent may either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive the deficiency, whichever is to the advantage of the City.[22]

Examples of minor informalities or irregularities include failure of a bidder to:

1. Return the number of duplicate copies of signed bids required by the ITB;
2. Furnish all required forms and documents as indicated in the ITB, with the exception to the ITB signature page and bid price; or

[22] *Spawglass Construction v. City of Houston*, 974 S.W.2d 876 (Tx. App. - Houston [14th Dist.] 1998), pet. denied.

3. Sign its bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid (such as the submission of a bid bond or other guarantee);

Mistakes in Bids

Under the current bid law, mistakes in bids may not be corrected after they are opened. If a mistake is purely clerical and would work a clear hardship, a bidder may withdraw its bid. The only exception is when a bidder incorrectly calculates a total price based on unit price times estimated quantity. In such a case, the unit price will be presumed to be the correct price and the total price may be recalculated.[23]

Contract Award

After bids are publicly opened and reviewed by SPD, DPUs and SMEs, the appropriate City department director will make an award recommendation to the lowest responsive and responsible bidder. City Council may approve and make the award to the recommended bidder or it may reject all bids.

The City Council makes a contract award (1) by written ordinance or motion, (2) within the time for acceptance specified in the ITB or an extension, and (3) to that responsible bidder whose bid conforms to the ITB. A contract is awarded only after City Council approves the award and the City Controller has countersigned the contract – or, in the case of purchase orders, when the purchase order is issued. Award shall be made by mailing or otherwise furnishing a properly executed award document to the successful bidder. When more than one award results from any single ITB, separate award documents shall be suitably numbered and executed.

If less than three bids have been received, the City Purchasing Agent must examine the situation to ascertain the reasons for the small number of responses. Award shall be made notwithstanding the limited number of bids, but the City Purchasing Agent shall initiate – if appropriate – corrective action to increase competition in future solicitations for the same or similar items.

When an award is made to a bidder for less than all of the items that may be awarded to that bidder and additional items are being withheld for subsequent award, the award shall state that the City may make subsequent awards on those additional items within the bid acceptance period.

[23] Tex. Local Gov't Code § 252.034(g).

Responsible Bidder – Reasonableness of Price

The City Purchasing Agent must determine that a prospective contractor is responsible and that the prices offered are reasonable before awarding the contract. He or she may use price analysis techniques as guidelines in determining responsibility. If the price is unreasonable, the City Purchasing Agent must recommend rejecting all bids.

Equal Low Bids

Contracts shall be awarded in the following order of priority when two or more low bids are equal in all respects:

1. City or local business entities; followed by[24]
2. State of Texas business entities; followed by[25]
3. All other business entities.

If two or more bidders still remain equally eligible after application, award shall be made by the City Secretary's drawing lots limited to those bidders. If time permits, the bidders involved shall be given an opportunity to attend the drawing. The drawing shall be witnessed by at least three persons, and the contract file shall contain the names and addresses of the witnesses and the person supervising the drawing.

When an award is made by drawing by lot after receipt of equal low bids, the City Purchasing Agent shall describe how the tie was broken by providing a written statement that the contract award was made in accordance with the circumstances justifying the priority used to break the tie or select bids for a drawing by lot.

Notification of Award

When SPD is involved in the procurement, the City Purchasing Agent shall, at a minimum, post electronically in writing a "Notification of Award" to SPD's E-bid website to inform each unsuccessful bidder of the City's award decision within ten days after award approval. All bidders will be deemed to have notice of the bid award once the Notification of Award has been posted. "Day", for purposes of the notification process, means a calendar day, except that the period will run until a day that is not a Saturday, Sunday, or City holiday.

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[24] Houston Code of Ordinances § 15-178.

[25] Tex. Local Gov't Code § 271.901.

All unsuccessful bidders and inquiring entities may review the contracts, including terms, conditions, scopes of work, specifications and pricing.

After the award, a department shall make preparations to move forward, but a notice to proceed may not be issued until at least 10 calendar days after the date of City Council's final action. [*See* Chapter 8, Resolving Bid Protests.]

Best Value Bids

Best value bidding is a combination of competitive procedures designed to obtain the benefits of sealed bidding as well as to establish evaluation selection criteria by using a combination of evaluation factors and approaches. Unless other factors require the use of sealed bidding, a sealed Best Value Bid ("BVB") may be used when low bid is not the sole factor.

This type of procurement involves the submission of sealed priced bids by interested bidders. These sealed priced Best Value Bids are then evaluated by a pre-selected evaluation committee with a minimum of three members. This Best Value Bid evaluation committee is selected in accordance with the principles and guidelines in Chapter 2 for evaluation committee selection.

The evaluation committee then evaluates the bidders using definitive criteria other than the lowest price. The objective in this step is to determine the acceptability of the supplies or services offered and the bidders' experience, qualifications, and expertise.

The Best Value Bid Process

The Best Value Bid process is a sealed bidding process; all sealed bidding procedures are to be used. In addition, the BVB procedure includes:

1. A description of the supplies or services required;
2. Contract general terms and conditions;
3. Evaluation criteria, which may include all or some of the following: cost; reputation of the bidder and of the bidder's goods or services; quality of the bidder's goods or services; the extent to which the bidder's goods and services meet the City's needs; bidders' past relationship and references; bidders' impact on the ability of complying with the laws and rules relating to contracting with historically underutilized businesses; the total long term cost to the City; and other relevant criteria specifically listed in the scope of work/specifications;
4. Hire Houston First preference points; and
5. The location, date and hour, by which the BVB must be received.

Upon receipt of the BVB from the City Secretary, the procurement officer or other appropriate procurement officer shall:

1. Safeguard the BVB against disclosure to unauthorized persons other than the evaluation committee;
2. Conduct BVB responsiveness verification to ensure all required information was provided with the BVB; and
3. Remove any references to price or cost.

The procurement officer shall establish a time period for evaluating the BVB. The period may vary with the complexity and number of Best Value Bids involved. However, the evaluation should be completed in an expeditious manner.

Evaluations shall be based on the criteria in the BVB. The procurement officer will categorize each Best Value Bid as "acceptable"; "reasonably susceptible of being made acceptable"; or "unacceptable". Any bid that modifies or fails to conform to the essential requirements or specifications of the solicitation shall be considered nonresponsive and categorized as unacceptable.

The procurement officer may proceed with step two if, in his or her discretion, there are sufficient acceptable BVBs to ensure adequate competition. If there are not, the procurement officer shall request bidders whose BVBs may be made acceptable to submit additional clarifying or supplementing information. The procurement officer shall identify the nature of the deficiencies in the BVB or the nature of the additional information required.

In initiating requests for clarification or additional information, the procurement officer shall fix an appropriate time for bidders to submit all additional information, and incorporate such additional information as part of their BVBs submitted. Such time may be extended at the discretion of the procurement officer. If the additional information incorporated as part of a BVB within the final time fixed by the procurement officer establishes that the BVB is acceptable, it shall be so categorized. Otherwise, it shall be categorized as unacceptable.

When a BVB is found unacceptable (either initially or after clarification) the procurement officer shall score the evaluation criteria of that BVB with zero or minimal points.

Evaluation of Best Value Bids

Best value considerations should also be included in the evaluation criteria. The lowest cost is not necessarily the best value for all procurements. For example, a commodity or service of higher quality, such as a longer life span, may be a better value and investment for the City of Houston, even if the initial cost is more. Departments need to think strategically when considering their procurement needs and not make the mistake of obtaining only what is necessary to meet the immediate needs of the

department. The considerations should be "What is the desired outcome of the procurement?" and "What is the best way to achieve this outcome?"

For example, in the purchase of a heating and air conditioning unit, departments should consider the total cost of ownership ("TCO") when purchasing these units. The average life span of the unit, electricity consumption, maintenance record of the unit, and parts availability are a few considerations when looking at the TCO. In addition, departments might consider the qualifications and availability of the service technicians and the proposer's performance history.

Some items that may typically be considered under best value include:

- Installation costs;
- Life cycle costs;
- The quality and reliability of the goods and services;
- Delivery terms;
- Past performance;
- Proposer's financial resources;
- Ability to perform;
- Proposer's experience;
- Demonstrated responsibility;
- Proposer's ability to provide reliable maintenance agreements and support;
- The cost of any employee training associated with a purchase;
- The effect of a purchase on department productivity;
- Proposer's past M/WBE performance; or
- Other factors relevant to determining the best value for the City of Houston, in the context of any particular purchase.

Exchanges with Bidders after Receipt of a Best Value Bid

Clarifications and award without bidder discussion

Letters of Clarification are limited exchanges between the City and bidders that may occur when award without discussions is contemplated. If award will be made without conducting discussions, bidders may be given the opportunity to clarify certain aspects of their BVB (*e.g.,* the relevance of the bidder's positive or negative past performance to which the bidder has not previously had an opportunity to respond) or to resolve minor or clerical errors. Award recommendation may be made by the BVB evaluation committee members without engaging in oral discussions with the bidder.

Oral Presentations by Best Value Bidders

Clarifications and award with bidder discussion

Oral presentations by bidders requested by the City may augment written information. Oral presentations may occur at any time in the evaluation process, and are subject to the same restrictions as written information, regarding timing and content. They provide an opportunity for dialogue among the parties. Pre-recorded videotaped presentations that lack real-time interactive dialogue are not considered oral presentations, although they may be included in bidder submissions, when appropriate.

A BVB solicitation may require bidders to submit part of their proposals through oral presentations. Information pertaining to areas such as an bidder's capability, past performance, work plans or approaches, staffing resources, transition plans, or sample tasks (or other types of tests) may be suitable for oral presentations. In considering the costs of oral presentations, the City Purchasing Agent and the BVB evaluation committee should consider alternatives to on-site oral presentations, such as telephone or video conferencing.

When oral presentations are used, the BVB must provide bidders with sufficient information to prepare the presentations. Accordingly, the BVB may describe:

- The types of information to be presented orally and the associated evaluation factors that will be used;
- The qualifications for personnel that will be required to provide the oral presentations;
- The requirements for – and any limitations or prohibitions on – the use of written material or other media to supplement the oral presentations;
- The location, date, and time for the oral presentations;
- The restrictions governing the time permitted for each oral presentation; and
- The scope and content of exchanges that may occur between the City's participants and the bidder's representatives as part of the oral presentations.

Award of Best Value Bid Contract

The procurement officer shall compile total scores based on the individual evaluation committee members' final score matrices. Based on these scores, the BVB evaluation committee selects the highest ranked bidder as the best respondent to the BVB. The appropriate City department director then makes a contract award recommendation. All bidders shall be given notice of the intent to award.

The evaluation committee may make written recommendations to the department directors or the procurement officer to reject all Best Value Bids received in response to a given solicitation, if doing so is in the best interest of the City.

Chapter

5

5. Service and Supply Contracts of More than $50,000: Competitive Requests for Proposals

Cities are authorized to procure certain goods and services by a competitive process known as a Request for Proposals ("RFP"). RFPs are appropriate for procuring high technology goods and services, certain professional services not governed by the Professional Services Procurement Act (engineers and architects) and other goods and services where the best value may not be the cheapest item, but rather a combination of price and other factors as well. RFPs are often used for:

- Data processing equipment and software;
- Telecommunication equipment and radio and microwave systems;
- Electronic distribution control systems, building energy management systems, and technical services related to those items;
- Creation or modification of software systems; and
- Professional services such as software design, consulting services, and other services not covered by the Professional Services Procurement Act (Texas Government Code Chapter 2254).

Note: While most RFPs are handled by SPD, in some cases a department may issue its own RFP. Therefore, this manual provides for a City Representative, who is appointed by the user department, and a Buyer, who is appointed by SPD. In many cases, their duties may be interchangeable.

What Goes into an RFP?

When conducting a procurement by RFP, the department must specify all of the factors, including price, that it will consider in determining which proposal is the best value to the City of Houston. Subjective as well as objective (measurable) criteria may be used to evaluate and select contractors. The element of cost should always be a significant consideration when evaluating proposals.

The RFP process is complex and may take longer than a simple competitive bid selection. Generally, the RFP process includes the following steps:

- Department director identifies a leader for the solicitation ("City Representative")
- Public advertisement of RFP;
- Submission of written proposals;
- Evaluation of written proposals by the City;
- Selection of two or more proposals as most advantageous to the City;
- Oral presentations from selected proposers (optional);
- Invitation to selected proposers to make Best and Final Offer ("BAFO");
- Evaluation of BAFOs;
- Contract negotiations with one or more parties whose BAFOs are selected; and
- Final selection of most advantageous proposal; award of contract by City Council.

Statement of Work ("SOW")

An important part of many RFPs is the Statement of Work, which contains the technical specifications, deliverables and performance requirements of the goods and services to be bought.

The SOW must provide a general description of the following:

- A description of the services/products..
- Specified drawings/schematics, diagrams, if any.
- Pricing methods—unit pricing, time & materials, lump sum, etc.
- Schedule—when deliverables are required.
- Contract term—the approximate contract start and completion dates.
- Level of experience—the level of experience in the type of work to be performed.
- Qualifications—the minimum qualifications required from proposer.

The purpose of writing an SOW is to assure that the proposer delivers what the user wants it to deliver. For this reason, the SOW should specify the performance requirements of the deliverables being requested, not merely describe them. Review of the SOW in the case of a non-routine procurement, such as a custom software program, is advisable.

Note: Occasionally, City departments may enlist a third party to aid in the development of an SOW. As a general rule, such third parties should not be eligible to submit proposals for RFPs for which they assisted in the development of a Statement of Work.

Preparing the RFP

RFPs may be issued by the user department or SPD. This manual uses the term "Buyer" to mean the representative of SPD when it handles the procurement. After receipt of a properly approved department RFP/RFQ form, with a request for a competitive proposal, the Strategic Purchasing Division will analyze the request and determine the appropriate RFP format.

When SPD handles the procurement, the end-user department shall be required to participate in the specification workshop. If the estimated cost of the RFP exceeds $1 million, a department Assistant Director must meet and discuss procurement methodology with the Buyer, who will determine whether using the competitive proposal technique is in the best interest of the City of Houston. The City Purchasing Agent will issue a written decision to the department explaining the reasons for the decision.

The RFP may consist of the many sections listed below; however, the designated City Representative or SPD buyer may delete, add or reorganize these sections to meet the proposal requirements:

- RFP cover page;
- General Information;
- Defined terms;
- Overview of work;
- Instructions for proposing;
- Proposer qualifications;
- Evaluation criteria for award (category scoring criteria only);
- Contract term and/or terms to extend contract;
- Statement of Work;
- Technical specifications, if relevant;
- Engineering standards, drawings and artwork, if relevant;
- Other (department) responsibilities;
- Pricing schedule (price list(s) or line-item pricing, hourly);

- Contingent pricing (overtime and emergency work);
- Shipping and Freight requirements;
- General terms and conditions;
- Sample contract, if appropriate;
- M/WBE requirements;
- General information;
- Packaging requirements;
- Guaranty or warranty;
- Bonding requirements;
- Safety requirements;
- Regulation, license, or permit requirements;
- Attachments;
- Exhibits;
- On-site testing & inspections; and
- Protest procedures.

Structuring the RFP

When developing an RFP, it may be useful to divide its core sections into broad categories:

Cover page

The cover page specifically lists the name of the proposal document, proposal number, proposal opening date, contact name, and instructions to proposers on how to download their RFP.

General Information

The City Representative or Buyer prepares the general instructions to the proposers, including the number of copies of the proposal to provide, the due date and time, and address where proposals are to be mailed or delivered, placing identifying information on the proposal envelope, and the date, time, and location of pre-proposal conference.

Purpose/Overview

This three- to four-sentence paragraph should be limited to a simple statement summarizing the action the City intends to accomplish. For example: "It is the intent of the City of Houston to solicit proposals for (name of department) to provide (description of services/hi-tech products) in accordance with all requirements stated herein…."

Background

Background information should include only information judged necessary to help proposers understand the requirements. A brief narrative describing the historical events leading up to the present time may be appropriate.

Statement of Work

The SOW section of any procurement may be constructed by specifying:

- What the department wants (right materials/services and right quality);
- How many or how much the department wants (right quantity);
- When the department wants what it needs (right time); and
- Where the department wants to receive what it wants (right place).

Proposer Qualifications

This section states the minimum qualifications the City requires from proposers.

Contract Term and/or Contract Extension Option

The contract period or expected completion date is stated here along with any renewal options.

Proposal Contents

This section lists what should be included in the proposal response and the format for submission. If practical, purchasing personnel should provide a proposal checklist for submittal by the proposer.

Contractual Requirements

This section of the RFP is designed primarily for those contract clauses that are not directly related to the SOW, but which are needed to:

- Minimize the risk to the City of Houston;
- Ensure that the City receives what it has bargained for; and
- Ensure clarity of the rights and remedies available to the City of Houston, as well as the proposer.

Such clauses may amend or expand the standard boilerplate clauses contained in the RFP to ensure the proposer meets the user department requirements.

Clauses pertaining to:

- Insurance that the proposer must carry, including any specialized insurance (such as airfield or environmental);
- Liquidated damage provisions;
- Contract changes;
- Contract administration;
- Payment schedules;
- General information in the event the purchase is financed (financial terms and conditions are best included in an attachment to the RFP and referenced here);
- Warranties or guaranties. Include clear standards for the contractual performance or an express warranty describing the objective expectation of performance rather than relying on an implied warranty;
- Bonding requirements. The three most common forms of bonding are proposal bonds [deposits], performance bonds and payment bonds. User departments must advise the proposers in a solicitation if a bond is required, *e.g.*, irrevocable letter of credit or cashier's check. When determining to use a bond, remember that the cost of a bond is passed on to the department by the proposer. Some bonds are required by statute for specific types of procurements. Consult with legal counsel for questions about bonding requirements.

Note regarding RFPs for services: Some solicitations for services may prompt submissions by organizations that support or oppose unionization. In such cases, the RFP should require proposers to submit a plan for maintaining peaceful and harmonious labor relations.

Special Instructions to Proposer

This section tells the proposer what information should be submitted with the proposal and any special conditions related to the competitive proposal process itself. SOW, requirements and contract clauses should not be placed in this section.

Only the word "proposer" should be used to describe the person(s) doing the proposing. Such words as "contractor, vendor, supplier, consultant," etc., should not be used.

Exhibits

This section incorporates only those additional forms necessary for the proposal process, such as pricing, proposed implementation plan, or resume forms.

Attachments

This section of an RFP is used to incorporate information or requirements related to the SOW. Examples are: installation site plans, statistical data, special regulations, City department organizational charts, equipment layout, etc.

Evaluation Criteria for Award

"Best value" criteria should be used in the evaluation section of RFP to state the basis of award for the proposal and to provide guidance to the proposer about how proposals will be evaluated.

The RFP should specify that only the information provided with the proposal, subsequent written clarifications provided in writing to all interested parties, oral presentations, if any, and the proposer's written Best and Final Offer will be used in the evaluation process and award determination. The award criteria section must describe the areas to be evaluated, with related weights given or listed in order of importance.

Advance Planning for the RFP Evaluation Process

As part of the RFP development process, departments must appoint evaluation committee members in accordance with the guidelines set forth in Chapter 2. Also as part of the process, departments should consider what factors will be used to score proposals.

Appointing Evaluation Committee Members

During the development of the RFP, the department director will assign evaluation committee members. The department director shall also designate a Team Leader, who may be the City Representative or the Buyer. The evaluation committee should be composed of a minimum of three individuals who are stakeholders in the final product or service, and/or individuals who have the necessary technical or program expertise.

The committee Team Leader serves as the facilitator and non-voting member. The Team Leader is responsible for identifying individuals to represent the core of evaluation committee members in the areas of:

- Operational evaluation;
- Technical evaluation;
- Financial evaluation; and
- Administrative support.

The evaluation committee should bring together as much knowledge as possible

to ensure the best-qualified proposer is selected. The Team Leader will be responsible for scheduling and inviting the evaluation team members and other personnel to participate in the evaluation process. It should be clear to evaluation team members from the outset that their duties will require significant time and effort.

There is no restriction as to how many people the department may nominate to the evaluation team; however, the recommendation is to enlist three to five individuals possessing expertise for the service/product being acquired. Limiting the number of team members will make the coordination of activities run more smoothly and help ensure the security and integrity of the processes.

The Team Leader should be the primary point of contact for vendors and City staff during the evaluation portion of the RFP.

Scoring Matrix

Collectively, the team will determine how the evaluation of the proposal should be conducted and the method for selecting the most responsive proposer, with consideration to prices and other best evaluation scoring criteria listed in the proposal. Upon discussion with evaluation team members, the Team Leader will assign relative weights to an evaluation-scoring matrix for the significant areas in the RFP prior to going out to proposal.

The scoring matrix is used by the evaluation team to score the individual responses based on the evaluation criteria defined in the solicitation document. The matrix becomes the scoring worksheet to be completed by each evaluation team member. The matrix should be completed prior to publishing the solicitation document because departments may see that additions or revisions are needed when developing the scoring matrix. If time does not permit the scoring matrix to be completed prior to publication, then the matrix must be completed prior to the opening and review of the proposals.

The Team Leader serves as a chairperson and acts as a non-voting member to give guidance on procedural matters when evaluating proposals.

The RFP must advise the proposers of the evaluation criteria, which should reflect the essential qualities or performance requirements necessary to achieve the objectives of the contract and allow the evaluation team to fairly evaluate proposals. The evaluation criteria may take a variety of sources of information into consideration such as the written response, the oral presentation, and conformance to RFP requirements, experience, expertise, qualification proposed strategy and/or equipment. Specific portions of the required response should directly relate to the evaluation criteria. For example, if respondents will be evaluated on past performance, consider including a corresponding questionnaire.

To ensure fairness in evaluation, the evaluation criteria should reflect only those requirements specified in the RFP. The RFP should clearly state the consequences of failing to meet these requirements, such as being disqualified from the RFP process.

Criteria not included in the RFP may not be used in the selection or ranking of a proposal. For example, if respondents receive additional points for possessing a national accreditation, that criterion must be included in the RFP so that proposers know there is an opportunity to score higher by providing these options. Likewise, if this information is not requested in the RFP, proposers who neglect to offer these options cannot be penalized.

At a minimum, the evaluation matrix must include the weight assigned to each criterion. Some departments prefer to give more detailed information as to how each criterion is broken down into smaller units or they may simply include a copy of the evaluation scoring sheets with the RFP. Either approach is acceptable.

When determining the evaluation criteria, the team should also consider the proposal submission requirements associated with each criterion. In the sample criteria listed below, financial stability is a criterion on which the proposers will be evaluated. What information needs to be included in the response in order to effectively evaluate a proposer's financial information, such as audited financial statements, Dunn and Bradstreet numbers, performance standards, etc. Other criteria may include experience, skills, qualifications of company staff, years in business, years of staff experience, certified or licensed employees, or historical performance of performing similar-sized projects.

The table below indicates a sample evaluation criterion:

SAMPLE EVALUATION CRITERIA	**SAMPLE WEIGHT**
COST	40%
PROPOSED SERVICES, INCLUDING WORK PLAN AND METHODOLOGY	40%
EXPERIENCE, SKILLS AND QUALIFICATIONS OF COMPANY & STAFF	15%
FINANCIAL INFORMATION	5%

Cost is typically the most significant evaluation factor. However, there are procurements in which the skills and experience of the contractor or other factors may be more important than cost. For example, if a consultant has to have a specific set of skills, the department may be willing to pay more for these skills. The criteria deemed most important by the department should be assigned a higher weight than the other criteria.

Evaluation of Requests for Proposals

RFP evaluation is an assessment of the proposal itself and of the proposer's ability to perform the prospective contract successfully. The evaluation committee reviews RFPs and then assesses their relative qualities solely on the factors and sub-factors specified in the RFP. Evaluations may be conducted using any rating method or combination of methods, including numerical weights, and ordinal rankings. The relevant strengths, deficiencies, significant weaknesses, and risks supporting bidder's evaluation are documented on the RFP evaluation matrix. Each RFP evaluation shall consist of at a minimum the following criteria:

1. Cost or price evaluation

Normally, competition establishes price reasonableness. Therefore, when contracting on a firm-fixed-price or fixed-price with economic price adjustment basis, comparison of the proposed prices will usually satisfy the requirement to perform a price analysis; therefore, a cost analysis need not be performed. When a cost analysis is required, the Team Leader evaluates cost or price using formulas specific to either low bid or high bid (revenue) solicitations.

2. Experience, Expertise and Qualifications

Experience, expertise and qualifications are one indicator of a proposer's ability to perform a contract successfully. The RFP evaluation committee reviews and determines the relevance of proposers' experience, expertise and qualifications, including the source of the information, context of the data, and general trends in the proposer's past performance. The committee may also take into account past performance information, key personnel who have relevant experience or subcontractors that will perform major or critical aspects of the contract when such information is relevant to the procurement.

3. Proposed Strategy or Operation Plan

The proposed strategy or operation plan reflects those activities and services that are critical to the successful delivery or implementation to address the desired needs of the City. The proposed strategy or operation plan shall provide the detailed attributes – such as project timeline, deliverables, functionality, implementation, software, equipment, training etc. – that thoroughly explain the proposer's intent or solution to meet the City's overall objectives. This proposed strategy or operation plan should allow the evaluation team to understand the proposer's capability and proposed solutions or service level intentions.

Communications with Proposers

The RFP should advise proposers that they must channel all communications concerning the RFP through the City Representative and to no other person or elected official of the City. All communications should be in writing and should be responded to by the City Representative in writing through a letter of clarification with copies to all proposers on the mailing list. Failure to observe this "no-contact" rule, including but not limited to attempts to contact City Council members directly in regard to the RFP, may be justification for rejection of the violator's proposal. [*See* Chapter 2 regarding the City's No Contact Period.]

The Pre-Proposal Conference

Pre-proposal conferences with interested proposers are optional at the choice of the City Representative or Buyer and end users for the purposes of:

- Reviewing the requirements;
- Facilitating a clear understanding; and
- Promoting competition.

Pre-proposal conferences may result in later modifying the RFP if there are special market conditions of which the City may have been unaware. In this event, clarification letters are composed by the City Representative in collaboration with the end-user and then submitted to all proposers prior to the RFP closing date. Those attending the conference are advised that only written modifications (via LOC) are considered alterations to the RFP.

The need for a pre-proposal conference

Prior to the actual conference, the City Representative may wish to meet with the department's points-of-contact via a specification workshop to answer questions and conduct discussions related to the acquisition. The meeting is used to coordinate participation and establish ground rules so that the pre-proposal conference is conducted in an organized, meaningful and professional manner. It is also used to ensure representatives are working together to better serve the City's needs.

The pre-proposal conference is a meeting of potential proposers, the Buyer or designated City Representative and the user department's technical representative(s). The RFP should outline administrative instructions to specify a reasonable conference time to maximize attendance. The appropriate conference date should be within ten days after potential proposers have received their RFP. The administrative point of contact and location of the pre-proposal conference should be included in the RFP cover.

Pre-Proposal Site Visits

Some projects will necessitate a site visit by proposers, such as those with installation requirements. The point of contact for arranging a site visit should be included in the RFP cover. A general site orientation "walk through" may be discussed during the pre-proposal conference with a site visit scheduled that day or at a later date.

Pre-Proposal Conference Preparation

The City Representative or Buyer serves as chairperson during the pre-proposal conference and is primarily responsible for addressing procurement issues related to the purchasing process, including the RFP evaluation and award. The user department should have representatives present to answer technical and site-specific questions. An attendance roster is established at each conference to collect the attendees' names, company represented, and contact information (including e-mail addresses).

The following agenda/guidelines should be discussed:

1. Opening – After calling the conference to order, the City Representative introduces him/herself, covers basic housekeeping rules, lays out the agenda and has everyone introduce themselves.

2. Recording – The City Representative announces administrative information regarding any audio or videotaping of the conference. In addition, attendees are reminded that only a written change via LOC legally binds the RFP.

3 RFP Overview and Review – The City Representative will cover the RFP instructions, general terms and conditions. A department representative will give an overview of the project/scope of work. Review of the RFP itself serves as the focus for the conference. The City Representative reviews the document, page by page, if necessary, permitting proposers an opportunity to ask questions as each page is reviewed. This is imperative for an orderly pre-proposal conference.

   It may not be necessary to read the entire RFP. However, questions concerning the RFP may be requested prior to the pre-proposal conference in order to identify the type of questions that may be asked.

4. Recap and Closing – The City Representative summarizes the key points of the conference.

Note: It is recommended that the pre-proposal conferences be recorded (or detailed notes taken). The recording is a ready reference and checklist if there is a

need to publish addenda.

Simple questions should be answered immediately while others may not be easily answerable. In that event, the City Representative must only give an answer that will withstand rigorous scrutiny after the conference. All relevant questions pertaining to the RFP must be addressed in the subsequent LOC. All proposer inquiries relating to interpretation and technical details of the RFP must be referred to the City Representative.

Attendees may offer some suggestions or objections that may be taken under advisement. The City Representative will make a written response in a timely manner before the scheduled opening. No decision on complicated or sensitive matters should be made in haste at the pre-proposal conference. It may be necessary to further research the matter to provide the correct answer.

Addenda to Requests for Proposals

A Letter of Clarification (LOC) is not generally issued until after the pre-proposal conference. Prior to issuing a LOC, the Buyer or City Representative must consider the time remaining until the RFP opening date. If additional time is needed for the proposer to respond, the letter of clarification is used to extend the due date of the RFP.

The City Representative is responsible for coordinating the subject matter and issuing the LOC:

- All changes must be in writing;
- All LOCs shall be numbered sequentially;
- Interpretations of a material consequence must not be made orally to potential proposers; and
- The LOC must be e-mailed to proposers on the RFP e-mail list and to all pre-proposal conference attendees.

If an LOC is necessary and seven days or less remain before the RFP opening date, the deadline for responding to the RFP should be extended.

Modification and Withdrawal of RFPs

Requests for Proposals may be modified or withdrawn by any method authorized by the solicitation, and in the same manner as set out for the modification and withdrawal of bids set out in Chapter 4.

The Proposal Receipt and Opening

The date, time and place for receiving the proposals are set out on the RFP cover page. The proposal will be considered only if received:

- Before the closing date and time, and
- At the right place designated for receipt.

Departments should allow realistic time frames for this process. The proposal due date is assigned based on the complexity of the RFP. In general, a 30- to 60-day solicitation is considered standard. If a site visit or a pre-proposal conference is required, additional time should be allowed. These considerations are also weighed against the urgency of the department's need for the goods or services sought in the RFP.

After the proposal is received, the City Representative verifies the proposals for the following:

- Completion of all proposal requirements;
- Execution of offer; and
- Mandatory documents.

The official who opens the RFP responses generally reads only the names of the firms who have submitted an RFP if requested by an interested party. No further information is revealed at that time, as contents of offers must remain confidential until date of contract award.

Evaluation and Contract Award

The Team Leader should establish the evaluation agenda. Before the individual evaluations begin, the Team Leader should meet with the evaluation committee to distribute non-disclosure forms, matrices, and proposals and to brief the evaluation committee on the following:

1. Explain. The Team Leader should explain:

a. The evaluation process;
b. Member responsibilities regarding the critical nature of their nondisclosures and the integrity of the evaluation process;
c. That evaluation committee members may communicate with each other about the RFP, but that they should not disclose any information about the process to anyone not a part of the team;
d. The evaluation criteria and the scoring process; and
e. The evaluation matrix to ensure the team understands how the matrix works and how proposals will be evaluated.

2. Establish. The Team Leader should establish:

a. The deadline for completion of evaluations instructing all team members to refer all questions during the evaluation process to the Team Leader;
b. The tabulation of scores; and
c. The principle that individual scores may be classified as a matter of public record, subject to the Texas Public Information Act.

The Team Leader should stress the following points with the team:

- Each member, except for the Team Leader, is a voting member.
- Conclusions are reached independently but team members may discuss issues with each other in arriving at their conclusions.
- An expert in a specific area may be used to help reach a decision.
- Each proposal should be evaluated individually against the requirements of the RFP.
- Members may ask questions if they are unable to find information, do not understand information in a proposal, or require technical assistance from other members.
- After the technical evaluations are completed, all evaluation matrices must be turned in to the Team Leader.

Note: The Team Leader shall remain present during the entire meeting to answer any questions, and to ensure proper procedures are followed. In instances when there are time constraints, remote location positioning of team members, or other unforeseen circumstances, the leader may need to assemble as many available members as possible at one time to evaluate. However, the preferred method is to have all members participating.

Note: Observers may participate as nonvoting members of the evaluation committee. Such individuals may include members of OBO, the Office of the City Attorney, or the private sector. These observers shall provide factual data only and shall not tell committee members how to evaluate.

Team Scoring and Proposal Evaluation

Step 1. The evaluation committee's first task is to eliminate all proposals that are not responsive to the RFP. Non-responsiveness includes failure to meet basic requirements or significant deviations from the terms of the RFP, such as not providing applicable licenses or certifications or not providing critical information that was requested in the RFP. The Team Leader will categorize each proposal as "acceptable"; "reasonably susceptible of being made acceptable"; or "unacceptable". Any bid that modifies or fails to conform to the essential

requirements or specifications of the solicitation shall be considered nonresponsive and categorized as unacceptable.

Step 2. Once the nonresponsive proposals have been eliminated, the team should conduct an independent evaluation. In this phase, committee members should strive to evaluate each proposal by identifying both the strengths and weaknesses of each proposal. Each committee member shall score each proposal accordingly and independently from other committee members' influence. Finally, the committee member will need to document any questions, concerns or pertinent information that they need to discuss with the evaluation team after it reconvenes to discuss the independent scores.

Step 3. Once the independent evaluations have been completed, committee members are encouraged to openly discuss their findings on each proposal at the scheduled evaluation committee meetings. They should also freely discuss factors that might influence their evaluations, such as previous experience with a vendor. Committee members should seek clarification from the Team Leader as to whether factors that influenced them are proper to use or might be inappropriate. Finally, the evaluation team scores are tabulated to determine the highest ranked proposals and to identify the shortlist.

Step 4. Once the shortlist has been identified, the team may invite potential proposers to provide oral presentations to the committee. The duration of such presentations is predetermined by the committee and all committee members must attend them, if possible. Members should – to the best of their abilities – ask questions regarding parts of proposals needing explanation or clarification or regarding those sections of a proposal that may have deficiencies that the potential vendor could cure.

Method of Evaluation

The recommended method for evaluation is to have each committee member conduct an initial independent score and then invite all team members back to discuss their findings. This will facilitate questions by team members to the Team Leader or to the technical experts. While purchasing staff and technical experts may answer technical questions regarding proposals, they should not give personal opinions about a specific proposer. After the proposals are evaluated, the Team Leader will tabulate the score sheets and verify the accuracy of calculations. The calculations are then entered into the final evaluation formula.

If it is apparent that one or more team members' evaluations differ significantly from the majority, the team should discuss the discrepancy to ensure the criteria were clear to all members and that specific information was not overlooked nor misunderstood. Following this discussion, should a team member feel that he or she did not understand the criteria, the proposal requirements, or simply overlooked information that was included in the proposal, the evaluator (through

one's own discretion) may revise his or her evaluation score. The Team Leader must be present during these discussions to ensure that no team member tries to influence the decision of other members. Under no circumstances should any team member attempt to pressure other members to change evaluation scores.

After the Team Leader tabulates the initial scores, the evaluation committee will determine whether it wishes to hear oral presentations, and if so, which proposers should be invited to give oral presentations. The team must determine how the results of the presentations will affect the total evaluation score; they may decide to assign extra points for oral presentations or to establish "oral presentation" as a separate factor to be evaluated after the presentations are made. The Team Leader should notify the proposers who are invited to make oral presentations, making it clear that not all proposers have been selected (if appropriate). If there are particular questions the team would like to see addressed in the oral presentation, the leader should advise proposers of these in advance.

Oral Presentations

Oral presentations are conducted at the option of the department. If conducted, the solicitation document must state when oral presentations or discussions will occur. Oral presentations provide an opportunity for respondents to highlight the strengths and unique aspects of their proposal and to provide answers to questions the department may have regarding the proposal. Demonstrations of product functionality are recommended when appropriate, such as for information technology procurements or solution-based procurements.

The selected proposers should each be given the same amount of time to make their oral presentations to the evaluation team.

Purpose of Oral Presentation

The oral presentation session is designed to:

- Satisfy the department's need for clarification and understanding of the information provided in the proposer's proposal;
- Identify requirements contained in the RFP that should be changed in order to allow viable best and final offers;
- Eliminate requirements that could result in excessive costs. This must be done in an impartial and objective manner;
- Demonstrate the functionality of a product or service; and
- Offer the proposer an opportunity to propose a lower price or better product or service.

During the presentation, evaluation team members may ask questions about the proposal or product. When in person presentations or demonstrations are not possible, the presentation may be made by telephone or on-line conference.

Proposers' References

The Team Leader will review and approve a proposed reference questionnaire. The City Representative shall verify proposer references prior to award. A written questionnaire identifying the questions to be asked is developed, and all follow-up reference checks and responses must be documented in writing. Regardless of the final script that is developed, the same script or format should be used when conducting reference checks. The reason is that the proposers' results can be measured for references. Departments may want to consider using the following statement in the solicitation document in lieu of checking references for all proposers:

> ["*Department Name*" reserves the right to check references prior to award. Any negative responses received may be grounds for disqualification of the proposal.]

By using this clause, departments are not required to check references but may choose to do so. Whether or not to check references as part of the evaluation is at the discretion of the department based on the individual procurement.

Upon completing the reference checks, the buyer or designee signs the documents and reports all findings to the evaluation committee.

Best and Final Offers

After oral presentations, if any, or after original proposals are evaluated, proposers judged by the committee to have made the most advantageous offers may be invited to submit a Best and Final Offer ("BAFO").

The Team Leader shall clearly notify the selected Proposers in writing that they are being invited to submit a BAFO and that they have the opportunity to:

- Modify the initial offer;
- Update or lower pricing based on any changes the department has made; and
- Include any added inducements that will improve the overall score in accordance with the RFP's evaluation plan.

Upon receipt of the BAFOs, the team will revise its original evaluation(s) based on the information submitted in the BAFO and select the top or the top two or more proposers to begin contract negotiation.

Contract Negotiation

A team consisting of the City Representative, as appropriate, selected members of the evaluation committee and a representative of the City Attorney's Office will attempt to negotiate a contract with the top-rated proposer. Negotiations are not limited to a single proposal, and in some cases, the City may conduct negotiations with multiple proposers simultaneously in order to secure the best terms for the City. This process should be limited to significant procurements only.

Notice of Award

The Team Leader shall notify the selected proposers in writing of the negotiations and provide them with the form of contract, which must be approved by the Office of the City Attorney, that they will be expected to sign. After City Council awards a contract, no notice to proceed shall be issued for at least 10 calendar days. [*See* Chapter 8, Resolving Bid Protests.]

Contract File

The designated City Representative prepares a RCA, which identifies the successful proposer and the basis for the award decision. All documentation generated by the team, individual team members' reports, supporting written rationale, and the final recommendation is included in the contract file.

This file becomes a matter of public record, and is open for review by the public and proposers upon final disposition of the contract or purchase order.

Chapter

6

6. Service and Supply Contracts of More than $50,000: Special Cases

This chapter describes certain limited methods for awarding service and supply contracts: emergency procurement, sole source procurements, and procurements through Interlocal agreements and cooperative purchasing agreements.

Emergency Purchases

Emergency purchases are purchases necessary to protect the public health and safety, purchases necessary to relieve the immediate necessity of residents due to calamity, and purchases required because of unforeseen damage to public property. Texas law provides that these types of purchases, even if they are in excess of $50,000, are exempt from procurement law requirements. Though these are regarded as "emergency purchases" none of these exceptions requires that there be an emergency.[26]

The City Charter requires all purchases in excess of $50,000 to be first approved by City Council.[27] There are no exceptions to this rule, even for emergency purchases. However, as a matter of practical necessity, it is sometimes necessary to make a purchase prior to City Council's approval because of a true emergency. In such cases, an Emergency Purchase Order ("EPO") may be authorized by the City Purchasing Agent; however, the vendor is at risk of not getting paid until such time as the expenditure is taken before City Council and approved. It is recommended that the EPO be taken to City Council for approval as soon as possible after the need arises.

Emergency procurements should be made as competitively as possible under the circumstances. A written determination of the basis for the emergency and for the selection of a particular contractor or vendor shall be required prior to issuing an emergency purchase order. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract, and a listing of the item(s) procured under the contract, which shall be reported to the City Council.

Procedure for Making Emergency Purchases

Departments making emergency purchases must adhere to the following procedures:

1. The DPU reviews the justification and verifies that an emergency exists.

2. The DPU prepares a justification letter documenting the nature of the emergency (for example hazard to life, welfare, safety or property) and what caused the emergency. The justification letter must detail the estimated impact or damage (financial or otherwise) that may result from following standard procurement procedures.

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[26] Tex. Local Gov't Code § 252.022(i); *Hoffman v. City of Mt. Pleasant*, 59 S.W.2d 193 (Tex. 1936).

[27] Houston City Charter, Art. II § 19, 19a.

3. The DPU creates and posts a computer requisition, obtains required approvals, and solicits bids, if possible. If solicitation is not possible, the written approval of the single point of contact[28] is required.

4. The DPU submits the requisition form and justification letter to SPD.

5. SPD, in consultation with the Office of the City Attorney, reviews and determines if an emergency is warranted.

6. SPD issues the EPO, forwards a copy to the DPU, and files a copy of the EPO for audit purposes.

7. The DPU forwards a copy of the EPO to the end user and retains a copy.

8. For EPOs equal to or greater than $50,000 and if time permits, SPD shall obtain City Council approval before issuing the EPO. If time does not allow, SPD must obtain City Council approval for such EPOs equal to or greater than $50,000 as soon as possible.

Sole Source Purchases

Sole source purchases are purchases of goods or services that are available from just one vendor. These sorts of purchases are exempt from state bid law requirements.[29] A sole source purchase is not to be used to avoid competition. There are various reasons why the City may from time to time use sole source purchases:

1. There is no other product or service available that can perform equivalent functions to the sole source product or service. For example: even though Gatorade is manufactured by only one company, there are numerous electrolyte replacement drinks that perform the equivalent function. Therefore, Gatorade is not considered a sole source.

2. The product is only available from a regulated or natural monopoly.

3. Maintenance or repair calls by the Original Equipment Manufacturer ("OEM"). No one except the OEM is able to repair or maintain the equipment, and the manufacturer does not have multiple agents to perform these services.

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[28] The City shall have a single point of contact for Emergency Purchase Orders for all vendors.

[29] Tex. Local Gov't Code § 252.022(7).

4. Replacement or spare parts are available only from the OEM, and no other parts will work.

Note: an item that comes from a single manufacturer is not automatically a "sole source" item. Many manufacturers sell their products through distributors. Therefore, even if a purchase is identified as a valid "sole brand" or "sole manufacturer," the DPU should verify whether the manufacturer has multiple distributors. If the manufacturer does have multiple distributors, competition should be sought among the distributors.

Sole source purchases for the City are an exception and must be strictly controlled and carefully documented. It is also important to remember that negotiation should be conducted before agreeing to a sole source purchase because the lack of competition may lead a vendor to charge unreasonably high prices. The DPU should prepare a detailed list of requirements relating to delivery, quality, performance, and other relevant conditions and do everything possible to strengthen the City's bargaining position. In addition to initial procurement costs, post-purchase costs, such as multi-year maintenance contracts, should be considered, including replacement costs or trade-in value.

Procedure for Making Sole Source Purchases

Departments making sole source purchases must adhere to the following procedures:

1. The DPU must first determine whether any functionally equivalent goods or services are exclusively available from only one source by contacting the manufacturer/supplier and conducting thorough independent market research to determine whether other qualified sources capable of satisfying the department's needs exist.

2. If the DPU's research confirms that there is no functionally equivalent item, he or she shall write a memo documenting the research conducted and the conclusion reached. In addition, a letter must be requested from the manufacturer/supplier, stating that the item/service is exclusively available from only one source. The letter must not be dated earlier than 30 days before the DPU's research.

For Sole Source Purchases within the DPU's Spending Authority

The DPU shall complete a sole-source certification form (*see* the Sole Source Certification Form at the end of this chapter) and obtain approval from the Department Director or designee and may then issue the PO.

For Sole Source Purchases above the DPU's Spending Authority but less than $50,000

Once DPU confirms that the item/service is a sole source purchase, the DPU shall forward the requisition, manufacturer's/supplier's letter and a completed sole-source certification form to SPD for approval by the City Purchasing Agent and issuance of a PO.

For Sole Source Purchases above $50,000

Once the DPU confirms that the item/service is a sole source purchase, the DPU shall forward a completed sole-source certification form, Department Director's Justification Letter, the requisition and manufacturer's/supplier's letter to SPD for approval by the City Purchasing Agent. Sole source purchases of $50,000 and above must be approved by City Council prior to issuance of a PO.

Interlocal Agreements

Interlocal agreements permit the City to enter into agreements with other governmental entities in the interest of cooperatively sharing resources for their mutual benefit, pursuant to the Interlocal Cooperation Act.[30] Through Interlocal agreements, the City may contract or agree with another local government inside or outside the state of Texas, including quasi-governmental entities such as a local government corporation that is created and operated to provide one or more governmental functions and services, or with the state or a state agency to purchase goods and any services reasonably required for the installation, operation, or maintenance of the goods.[31]

Generally, Interlocal agreements include authorization by the governing body of each party to the contract, a statement of the purpose, terms, rights and duties of the contracting parties and the specification that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party

Procedure for Purchasing using Interlocal Agreements

Departments that wish to make purchases through Interlocal agreements should follow the following procedures:

1. The DPU identifies the goods or services to be purchased.

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[30] Tex. Gov't Code Ch. 791.

[31] **Note**: The City's Hire Houston First Program should be taken into consideration when procurements are made using an Interlocal agreement.

2. The DPU contacts SPD to determine whether an Interlocal agreement exists between the City and a government agency which includes those goods or services to be purchased.

3. **When an Interlocal agreement already exists:** SPD may issue a PO if the goods or services to be purchased are $50,000 or below. For purchases of more than $50,000, SPD shall seek City Council approval prior to issuing the PO. SPD shall reference the applicable Interlocal agreement in its request to City Council.

4. **When no Interlocal agreement exists:**

   a. SPD, with the assistance of the Office of the City Attorney, drafts an Interlocal agreement between the City and the governmental agency.

   b. The agreed upon Interlocal agreement shall be submitted to City Council for approval. All Interlocal agreements are to be approved by City Council.

   c. Upon receipt of City Council approval, SPD may issue a PO if the goods or services to be purchased are $50,000 or below. For purchases of more than $50,000, SPD shall seek City Council approval prior to issuing the PO. SPD shall reference the applicable Interlocal agreement in its request to City Council.

Cooperative Purchasing Agreements

Under Texas law, the City may participate in a cooperative purchasing program with another local government or a local cooperative organization.[32] Provided the City purchases goods and services in accordance with the cooperative purchasing requirements described below, the City is deemed to have satisfied state bid laws for the purchase of the goods or services.

When the City is participating in a cooperative purchasing program with another participating local government or cooperative purchasing organization, the City is required to:

1. Designate a person to act under the direction of, and on behalf of, the City in all matters relating to the program;

2. Make payments to the other participating local government or a local cooperative organization or directly to a vendor under a contract made under

[32] Tex. Local Gov't Code § 271.102.

the Texas Cooperative Purchasing Program, as provided in the agreement between the participating local governments or between a local government and a local cooperative organization; and

3. Be responsible for a vendor's compliance with provisions relating to the quality of items and terms of delivery, to the extent provided in the agreement between the participating local governments or between a local government and a local cooperative organization.

Procedure for Purchasing using Cooperative Purchase Agreements

Departments that wish to make purchases through a cooperative agreement should adhere to the following procedures:

1. The DPU identifies the goods or services to be purchased.

2. The DPU contacts SPD to ensure that it is buying the good or service at the lowest possible price and determine whether a cooperative agreement exists between the City and a cooperative through which those goods or services may be purchased.

3. If a cooperative agreement already exists, SPD may issue a PO if the goods or services to be purchased are $50,000 or below. For purchases of more than $50,000, SPD shall seek City Council approval prior to issuing the PO. SPD shall reference the applicable cooperative agreement in its request to City Council.

Federally Funded Contracts

When procurement involves the expenditure of federal funds, purchasing shall be conducted in accordance with any applicable federal or state law or regulation. Federal grants typically have specific contract requirements which are outlined in the grant agreement. City purchasing departments are encouraged to ask federal agencies administering the particular grant programs to identify essential and mandatory clauses. The DPU expending the federal funds shall continuously monitor and comply with the timelines and deadlines typically associated with these funds. Additionally, the DPU shall consult the Office of the City Attorney to ensure compliance with any restrictions tied to the federal funds.

Purchasing using U.S. GSA Contracts

The City may also make certain purchases by taking advantage of the U.S. General Services Administration ("GSA") contracts with vendors.[33] The City may purchase supplies and services from two GSA schedules: Schedule 70 (for purchasing information technology supplies and services) and Schedule 84 (supplies and services related to any aspect of law enforcement, security, facility management systems, fire, rescue, special purpose clothing, marine craft, and emergency/disaster response).

The DPU identifies the goods or services sought and the vendor on one of the GSA schedules. DPU, with assistance from SPD, shall attempt to negotiate more favorable terms with the vendor. Once all terms have been agreed to, SPD may issue a PO if the goods or services to be purchased are $50,000 or less. For purchases of more than $50,000, SPD shall seek City Council approval prior to issuing the PO. SPD shall reference the applicable GSA Schedule in its request to City Council.[34]

[33] Tex. Local Gov't Code § 271.103.

[34] Note also that the City Purchasing Agent may use GSA contracts to purchase up to $300,000 of information technology equipment without City Council approval.

Sole Source Certification Form

SOLE SOURCE CERTIFICATION

PART NUMBER	COMMODITY CODE	DESCRIPTION
MFG. NUMBER	VENDOR NAME (ADD MANUFACTURER'S NAME ALSO, IF DIFFERENT)	
VENDOR NUMBER	VENDOR ADDRESS	□ Certified M/WBE □ No M/WBE
VENDOR TELEPHONE	VENDOR CONTACT	

SOLE SOURCE - Procurements where the functional needs of the City can be satisfied by only one source. (Texas Local Government Code Section 252.022; City of Houston, Executive Order 1-8).

Check mark the appropriate reason the above item, material or service has no substitute and can be obtained only from the indicated vendor. Attach letter from the manufacturer, on their letterhead, as backup.

- □ Item is Patented. Vendor has exclusive supplier rights
- □ Item is Copyrighted. Vendor has exclusive supplier rights.
- □ Item is a_____ Book,_____ Manuscript, or _____ Film and is available only from the above Vendor.
- □ Item is a Product/Service provided by a Legal Monopoly.
- □ Item is a Captive Replacement Part and must be ordered because of one of the following reasons. (Check One)
  - □ Use of a generic substitute will void warranty. Vendor is the only local supplier of acceptable parts.
  - □ Captive Replacement parts are available only from the above Vendor who is the original manufacturer of the item being replaced.
  - □ Use of generic substitute parts will require extensive modification of equipment. Modification would not be cost effective. (Attach cost analysis.)
  - □ Above Vendor is the only supplier of the acceptable part.
  - □ Captive replacement parts are available only from the above Vendor who is the sole authorized distributor for the manufacturer and no other Vendor is authorized to sell these items to the City of Houston,

☐ Other

_____

ORIGINATOR'S STATEMENT

I CERTIFY THAT THE ABOVE ITEM, MATERIALS OR SERVICE IS A SOLE SOURCE ITEM FOR THE REASON INDICATED ABOVE.

ORIGINATING DEPT: DIVISION: _____

Originator's Signature:_____ Date: : _____

F&A MATERIALS MANAGEMENT BRANCH Buyer	AUTHORIZED APPROVAL DATE

Chapter

7

7. Construction-Related Contracts

There are five statutory forms of construction-related contracts discussed in this chapter: fixed price low bid contracts, design-build contracts, competitive sealed proposals, construction manager-at-risk contracts, and job order contracts. There is also the option for construction manager as agent contracts, but the City has not used this mechanism so it will not be covered here. This chapter will also cover a few basic construction-related contract provisions governed by statute, including change orders and liquidated damages.

Competitive Sealed Bidding

Competitive Sealed Bidding is one of the quickest and least complicated procurement methods by which the City of Houston contracts for the construction, alteration, rehabilitation, or repair of a facility with a contract value of more than $50,000.[35] The formal bid process generally involves the following steps:

1. An invitation to bid is prepared.
2. The solicitation is advertised for two consecutive weeks[36] and is posted on the City's website.
3. The City Secretary receives the competitive sealed bids. Alternatively, the City can receive bids or proposals by electronic means through the Strategic Purchasing Division.[37]
4. The City Secretary opens and reads the bids in City Council Chambers.[38]
5. The bids are tabulated and each respondent is ranked.
6. The City Council awards the contract (if greater than $50,000) to the proposer that is the lowest responsible bidder or offers the best value.[39]

The ability to conduct contract negotiations does not exist for competitive sealed bids. The contract terms are typically made part of the bid package. The successful respondent is expected to execute the contract without changes.

Competitive Sealed Proposals

Competitive sealed proposals also result in the contract being awarded to the proposal offering the City the best value, except this method allows a degree of contract negotiation prior to contract award. In this procurement method, the City requests proposals, ranks the offerors, negotiates as prescribed, and then contracts with a general contractor for the construction, rehabilitation, alteration, or repair of a facility.[40]

The City selects or designates an architect or engineer to prepare construction documents for the project. The City prepares a request for competitive sealed

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[35] Local Gov't Code § 252.021. If the procurement is for less than $50,000, then it is exempt from these statutory procedural requirements and is considered an informal bid.

[36] Local Gov't Code § 252.041.

[37] Local Gov't Code § 252.0415.

[38] Houston Code of Ordinances § 15-3.

[39] Local Gov't Code §§ 252.043 and 252.0435.

[40] Gov't Code §§ 2267.151 to 2267.155.

proposals that includes construction documents, selection criteria and the weighted value for each criterion, estimated budget, project scope, estimated project completion date, and other information that a contractor may require to respond to the request. The request is advertised.

The City Secretary receives, publicly opens, and reads aloud the names of the offerors and any monetary proposals made. The City Secretary then delivers the proposals to the selection committee, which evaluates and ranks each proposal in relation to the published selection criteria. It must do this no later than 45 days from the date on which the proposals were opened.[41] The selection committee makes a recommendation to the department director based on which proposal offers the best value to the City.

The City attempts to negotiate a contract with the recommended offeror. The City negotiating team and its architect or engineer may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the negotiating team is unable to negotiate a satisfactory contract with the recommended offeror, the team shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

Design-Build Contracts

Design-build is a project delivery method by which the City may contract with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility or an associated structure, including an electrical utility structure. The design-build method can also be used for civil engineering construction projects, (e.g., road, bridge, underground utility, wastewater plant, drainage project) or a building or structure that is incidental to a project that is primarily a civil engineering construction project. However, for these projects a different set of procedures must be followed including the submission of sealed pricing along with the offeror's submission. This chapter will address only the more common application for the construction, rehabilitation, alteration, or repair of a facility or an associated structure.

The director responsible for the procurement should designate an executive as Procurement Executive (or assume that responsibility him- or herself) to conduct the procurement. By Texas Government Code Chapter 2267, the director must also designate an architect or engineer independent of the design-build firm to act as the governmental entity's representative for the duration of the project. The Procurement Executive or other qualified staff engineer may fulfill this

[41] Gov't Code § 2267.154(b).

requirement, or the department may retain a qualified consultant through professional services contract.

The Procurement Executive must ensure that notice has been issued as required by Local Government Code 252.021. The Procurement Executive will assemble or cause to be prepared appropriate project documents, referred to as "bridging documents", that include general and specific information regarding the project site (survey and environmental), project scope (inclusive of design criteria, technical specifications, and/or performance standards to be met), budget, special information and requirements, and selection criteria.

Design-build procurement follows the two-step method, with Request for Qualifications ("RFQ") followed by Request for Proposals followed by contract award. The department director appoints the selection committee. The City issues an RFQ and receives statements of qualifications from prospective design-build firms that present the respondent's experience, technical competence, and capability to perform, the past performance of the firm and members of the firm, and other appropriate factors submitted by the firm in response to the Request for Qualifications, except that cost-related or price-related evaluation factors are not permitted. The City evaluates the respondent's qualifications and qualifies the best qualified respondents (up to five for buildings) to submit technical and cost proposals.

The City's request for technical and cost proposals will include published selection criteria based on best value. The Procurement Executive may coordinate meeting(s) with the firms and subsequently finalize information available and the requirements of the solicitation prior to receiving proposals. Upon receipt, the selection committee shall evaluate the proposals and rank the offerors and select the design-build firm that submits the proposal offering the best value on the basis of the published selection criteria and on its ranking evaluations.

The Procurement Executive negotiates final mutually acceptable contract terms with the selected firm. If such negotiations cannot be successfully concluded, the City shall, formally and in writing, cease all negotiations with that firm and proceed to negotiate with the next firm in the order of the selection ranking until a contract is reached or negotiations with all ranked firms end, or the City cancels the procurement. Ranking of all proposers by the selection committee must be published publically no more than seven days after a contract is awarded.

Construction Manager-at-Risk Contracts

Construction manager-at-risk is a delivery method by which a governmental entity contracts with an architect or engineer for design and construction phase services and contracts separately with a construction manager-at-risk to serve as the general contractor and to provide consultation during

the design and construction, rehabilitation, alteration, or repair of a facility. Under this method of procurement, the contractor assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the City regarding construction during and after the design of the facility. The contracted price may be a guaranteed maximum price.[42]

Selection of the construction manager-at-risk can be a one-step or two-step process. In the two-step process, an RFQ is prepared first. In the one-step process, only an RFP is prepared. If a one-step process is used, the City may request, as part of the offeror's proposal, proposed fees and prices for fulfilling the general conditions. If a two-step process is used, the City may not request fees or prices in step one, but as part of step two, the City may request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and prices for fulfilling the general conditions.

At each step, the City Secretary shall receive, publicly open, and read aloud the names of the offerors. At the appropriate step, the City Secretary shall also read aloud the fees and prices, if any, stated in each proposal as the proposal is opened. The City Secretary then transfers the submissions to the selection committee, which must rank each proposal no later than 45 days from the date they are opened. These rankings must be made public within seven days of the date the contract is awarded.

The selection committee shall recommend the offeror that submits the proposal that offers the best value. It shall first attempt to negotiate a contract with the recommended offeror. If the selection committee is unable to negotiate a satisfactory contract with the selected offeror, then it shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

Once awarded the contract, the construction manager-at-risk shall publicly advertise for bids or proposals and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that it may perform itself. In this manner, the risk of cost overruns or delays is placed on the construction manager-at-risk.

[42] Tex. Gov't Code § 2267.207 *et seq.*

Job Order Contracting

Job order contracting is a procurement method used for maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is of a recurring nature but the delivery times, type, and quantities of work required are indefinite.[43] This method applies only to a facility that is a building, the design and construction of which is governed by accepted building codes, or a structure or land, whether improved or unimproved, that is associated with a building. Indefinite quantities and orders are awarded substantially on the basis of pre-described and pre-priced tasks. The solicitation shall establish the maximum aggregate contract price when advertised. Like the design-build method, the job order method cannot be used for civil engineering construction projects or a building or structure that is incidental to a project that is primarily a civil engineering construction project.

The City must use the competitive sealed proposal method, which requires it to advertise for, receive, and publicly open sealed proposals for job order contracts. The City may require offerors to submit information in addition to rates, including experience, past performance, and proposed personnel and methodology. The City may establish contractual unit prices for a job order contract by, (1) specifying one or more published construction unit price books and the applicable divisions or line items, or (2) providing a list of work items and requiring the offerors to propose one or more coefficients or multipliers to be applied to the price book or pre-priced work items as the price proposal.

The base term for a job order contract may not exceed two years. The governmental entity may renew the contract annually for not more than three additional years. The City may award job order contracts to one or more job order contractors in connection with each solicitation of proposals.

Even if a job order contract is in place and approved by City Council, City Council shall approve each job, task, or purchase order that exceeds the dollar amount approved by City Council for a given department.

Typical Construction Contract Provisions

Construction contracts have many unique contract provisions. However, a few are limited in their application and scope by Texas government contract law.

A "change order" is a document modifying information concerning goods or services, price, or quantities in an existing contract or purchase order after the

[43] Tex. Gov't Code §§ 2267.401 to 2267.411.

performance of the contract has begun. If the Contractor determines that a change in the work or contract price is required, the Contractor may submit an estimate for increases or decreases due to such change. The City shall review the requested change. If the City elects to authorize the change, the City will compute the reduction from or addition to the contract price due to the change and will authorize the change in writing by the issuance of a change order. The contractor will not, and shall not have obligation to, perform any change in the work until a change order has been authorized and issued by the City.

A change order cannot legally increase the original contract price by more than 25%.[44] If it decreases it by 25% or more, the City must obtain the written consent of the contractor. The total contract price may never be increased by a change order unless additional funds are appropriated for that purpose.[45] City Council may delegate authority to an administrative official, typically a director, to approve a change order if the increase or decrease is $50,000 or less.[46] For a public works contract, the delegation may be up to $100,000.[47]

A liquidated damages clause defines the financial damages to be paid by the contractor and is most commonly used in the event the performance is not substantially completed within the time frame required by the contract. Failure to start and complete all work specified within the time allowed shall constitute material breach of contract. The time allowed will be calculated from the date of the Notice to Proceed through the substantial completion or delivery time indicated by the successful contractor on their bid form for the completion work or the delivery of goods specified.

Failure of a contractor to complete the work or deliver the goods within the time allowed will result in damages, and for each consecutive day in excess, the contractor shall pay to the City the specified dollar amount, stated in the contract, per calendar day. The assessment must be reasonably related to the harm suffered by the City, even if the exact harm cannot be calculated with precision. Such amount shall not be construed as a penalty but as a minimum value of liquidated damages that may be deducted from payment due to the contractor if such delay occurs.

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[44] Tex. Local Gov't Code § 252.048(d).

[45] Tex. Local Gov't Code § 252.048(b).

[46] Tex. Local Gov't Code § 252.048(c).

[47] Tex. Local Gov't Code § 252.048(c-1).

Chapter

8

8. Resolving Bid Protests

Responding to an Invitation for Bids or a Request for Proposals requires an entity to expend significant time and effort. As the soliciting entity, the City of Houston must make the effort to respond to all who submit bids/proposals to inform them of the outcome of each solicitation.

Extending this courtesy to vendors/service providers may be helpful in limiting bid protests. In addition, by providing responding entities with full information and explanation regarding its procurement process, the City intends to give the contracting community a fair and open opportunity to compete for City business, consistent with the guidelines set forth in this Manual.

Protest Process and Procedures

Notice of Intent to Award

City department directors responsible for a particular procurement shall notify all bidders or proposers of the intended award of a contract for the procurement.

All bidders and proposers are deemed to have constructive notice of the City's intent to award a contract on the day the City Secretary publically posts notice of any City Council agenda containing the applicable award. Generally, the City Secretary posts notice of the City Council agenda at 4:00pm on the Friday preceding a regular Wednesday City Council meeting.

Post-Award Debriefing

A bidder or proposer shall, upon written request, be debriefed and furnished the basis for the selection decision and contract award. Debriefings of successful and unsuccessful respondents will be done orally. The Team Leader should normally chair any debriefing session. Individuals who conducted the evaluations shall provide supporting documentation.

At a minimum, the debriefing information shall include:

1. The overall evaluated cost or price and technical rating, if applicable, of the successful respondent and the debriefed respondent, and past performance information on the debriefed respondent;
2. The overall ranking of all respondents; and
3. A summary of the rationale for award.

The debriefing shall not include point-by-point comparisons of the debriefed respondent's proposal with those of other respondents. Moreover, the debriefing shall not reveal any information prohibited from disclosure or exempt from release. Such information may include, but is not limited to:

- Trade secrets;
- Proprietary information;
- Privileged or confidential manufacturing processes and techniques;
- Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and
- The names of individuals providing reference information about a respondent's past performance.

An official summary of the debriefing shall be included in the contract file and a copy will be provided to the debriefed respondent.

Bid Protests

The purpose of the bid protest process is to ensure the appropriate steps are taken by City departments when a bidder is dissatisfied with a decision to disallow the reading of a bid by the City Secretary or the award of a contract to another bidder. This process does not create any due process rights, but is intended to allow bidders to raise concerns regarding actions taken regarding a bid or other form of competitive solicitation.

The following types of issues only will be considered an appropriate basis for a protest:

1. An alleged violation of state or federal laws;
2. An alleged violation of City ordinances, procedures, policies; or
3. An alleged failure of the City to follow terms or processes set out in the applicable Solicitation.

The filing of a protest does not operate as a stay of action in relation to the awarding of a contract.

Bid Protest Requirements

Protests must be made in writing and must contain all of the following:

1. The name, address, email, and telephone number of the protestor;
2. The signature of the protestor or a representative who has the written delegated authority to legally bind the protestor;
3. Identification of the request for proposal, request for qualifications, contract number or other solicitation being protested;
4. A detailed written statement of the legal and factual grounds of the protest, including specific citations of the solicitation, law, ordinance, policy or procedure allegedly violated or failed to be followed by the City, along with copies of relevant documents, photos, etc.; and
5. The desired relief or outcome which the protestor is seeking.

Bid Protest Procedures

Protests shall be submitted in writing and filed with both (a) the City Attorney, and (b) the Solicitation Contact Person identified in the solicitation.

The address for the Solicitation Contact Person shall be the same as the one provided in the solicitation. The address for the City Attorney is 900 Bagby St., 4th Floor, Houston, Texas 77002.

Protests will be handled as follows:

1. Protests regarding the ruling of the City Secretary to disallow the reading of the bid. These must be submitted in accordance with this Manual.
2. Protests regarding solicitation (pre-bid or pre-proposal protests). These must be filed no less than five business days before the opening of the bid or proposal.
3. Protests regarding the evaluation of bids, qualifications, or proposals (pre-award protest). These must be filed no later than five business days prior to the City Council meeting at which the award appears on the agenda.
4. Protests made after City Council's decision to award a contract must be received by the City no later than 5 calendar days after the date of Council award.

Protests may be hand-delivered by the Protestor or the Protestor's representative, or they may be mailed, but regardless of the method of delivery, they must be ***received*** by the City no later than the deadline identified above.

Bid Protest Panel

Protests shall be heard by a cross-departmental panel composed of three directors or designees. The City Attorney or his designee may select the panel members from the following departments: Public Works and Engineering; Houston Airport System; General Services; Administration and Regulatory Affairs (for procurements that are not handled by SPD); the Controller's Office; and other departments that may possess relevant expertise. The panel shall be impartial; no member of the department whose award is being protested shall serve on the panel. A member of the City Attorney's Office shall be assigned to advise the panel but shall not serve as a voting member.

A member of the City Attorney's Office will prepare the written record, which shall generally include the written protest and any opinion of the City Attorney's Bid Irregularity Committee and other relevant information. After giving written notice (including by email to a confirmed address) of the time and place of the hearing, the panel shall hear oral arguments from the protestor and the department conducting the procurement (in some cases, this may require participation by SPD). The time allotted for oral arguments shall generally be 15 minutes, unless a longer period is granted by the Bid Protest Panel. After considering the record, the Panel shall issue a written decision. This decision will be submitted to the protestor and the relevant department as soon as practicable. In the case of a pre-award protest, if the Panel determines that the award may go forward, its decision shall be included in the backup documentation provided to

City Council and shall be reflected on the Request for Council Action. In the case of a post-award protest, the Panel shall issue a recommendation to the department director responsible for the procurement as to whether to take no action or to proceed with termination of the contract.

City Council may, at the meeting to consider the award that has been the subject of a protest:

1. Tag the contract agenda item in order to seek more information;
2. Vote in favor of the contract agenda item; or
3. Vote against the contract agenda item.

Recommended Solicitation Language

The following language should be included where appropriate in all City solicitations:

X.0 PROTEST:

X.1 A protest shall be handled according to the City of Houston Procurement Manual.

X.2 A protest shall include the following:

1. The name, address, e-mail, and telephone number of the protester;
2. The signature of the protester or its representative who has the delegated authority to legally bind the person protesting;
3. Identification of the solicitation description and the solicitation or contract number;
4. A detailed written statement of the legal and factual grounds of the protest, including copies of relevant documents, etc.; and
5. The desired form of relief or outcome.

Chapter

9

9. Non-Price Procurement Requirements

Price is not always the sole basis for awarding a contract. The successful bidder must also demonstrate that it is a responsible bidder. In the City of Houston, that means paying its employees fair wages and providing them with health insurance. It also means complying with the same equal employment opportunity requirements that the City must follow, and promoting minority, women-owned, small and local businesses. Finally, it means vendors must disclose any City Hall campaign contributions.

Prevailing Wages

The Prevailing Wage Act[48] applies to the construction of "a public work, including a building, highway, road, excavation, and repair work or other project development or improvement, paid for in whole or in part from public funds, without regard to whether the work is done under public supervision or direction." It does not apply to maintenance or other work. A contractor who is awarded such a contract and its subcontractors must pay their workers no less than the general prevailing wage as determined by the City of Houston. They may pay a greater amount. The contractor and its subcontractors must keep records demonstrating their compliance.

A contractor or subcontractor that violates this mandate is subject to contractual, civil and criminal penalties. The contract must contain the applicable wage rate in order for the City to collect penalties in the event of a violation. An officer, agent or representative of the City can also be found liable. The City must hear complaints from the contractor or subcontractor's employee and make an initial determination within 31 days of whether good cause exists to believe a violation occurred.[49] If a disagreement persists, the employer and employee must submit the dispute to binding arbitration. The City must retain any amount due under the contract pending a final determination of the alleged violation.

Various federal statutes providing grants, loans or funds to the City incorporate the terms of the Davis-Bacon Act[50] which similarly mandates the payment of certain minimum wage levels. If the contract falls under such funding sources then the federal Davis-Bacon wage levels preempt the wage levels set under the state Prevailing Wage Act. Although the City may rely on the federal wage levels in determining its own wage levels, it is not required to do so.[51] Careful attention must be given to which wage levels apply.

As a part of the terms and conditions of a City contract, prime and subcontractors are required to submit certified payrolls on a weekly basis, to the Office of Business Opportunity. For the Houston Airport System and the City's Housing and Community Development Department there are designated contract compliance officers who receive certified payrolls. The certified payrolls list the workers on the job site, along with title/function in the particular week on the job site and the wages paid to the worker. OBO monitors the payrolls, conducts field

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[48] Tex. Gov't Code Ch. 2258.

[49] Tex. Gov't Code § 2258.052(b).

[50] 40 U.S.C. § 276a.

[51] Tex. Gov't Code § 2258.022(a)(2).

audits and on-site interviews to verify information. If contractors are found to be in violation a penalty may be assessed pursuant to state law.

Pay or Play Health Insurance Requirements

Mayor's Executive Order No. 1-7 achieves several goals, including the promotion of fairness in the competition for contracts between bidders that offer their employees health insurance and those that do not. It requires vendors for services that equal or exceed $100,000 in total value to (a) document that they provide health benefits to their full-time employees ("Play"), or (b) pay to the City $1.00 for each regular hour of work performed on a City contract by each of its employees ("Pay").[52] This requirement also applies to subcontractors with subcontracts that equal or exceed $200,000 in total value. The Executive Order is flexible and allows a vendor to Play for some of its employees by providing them health insurance, and Pay for others not offered health insurance.

Pay or Play does not apply to contracts for the procurement of property, goods, supplies or equipment. Intergovernmental contracts and contracts awarded via an intergovernmental agreement or purchasing cooperative are also exempt. Individual employees have the option of demonstrating they are exempt using Pay or Play Form 8 (POP 8). Furthermore, departments may request a waiver for the contractor or subcontractor from the Office of Business Opportunity using Pay or Play Form 4 (POP 4).

Compliance is achieved by the bidder or proposer submitting a Notice to Prospective City Contractors (POP 1A or Standard Form Document 00460) with the bid or proposal. In POP 1A the bidder or proposer acknowledges its knowledge of the program and requirements, and its intention to comply. The successful bidder or proposer must then submit Certification of Contractor's Intent to Comply with Pay or Play Program (POP 2 or Standard Form Document 00630). Vendors that opt to Play (and their covered subcontractors) must provide proof of coverage, including documentation from their insurance provider and the names of covered employees using Employer Benefit Expense Report, Pay or Play Form 7 (POP 7). Alternatively, the successful bidder or proposer who opts to Pay (and any covered subcontractors), must provide monthly reports detailing the names of employees, hours worked, any exemptions claimed, and the amount owed to the City on form POP 5. Payment is due with the subsequent monthly POP 5 form. All contractors must submit a quarterly report detailing their Pay or Play compliance using Pay or Play Form 6 (POP 6).

Finally, a successful bidder or proposer must also submit a List of Participating Subcontractors (POP 3 or Standard Form Document 00631) if their

[52] *See also*, Pay or Play Program Requirements (POP 1 or Standard Form Document 00840).

subcontractors are covered by the program, and provide regular updates of the subcontractor's compliance using the same applicable POP forms.

Equal Opportunity Employment

Section 15-17 of the House Code of Ordinances requires that all contracts involving the expenditure of $10,000 or more incorporate the well-established federal equal employment opportunity clause.[53] Although the federal government requires compliance only with respect to non-construction supply and service contracts, the City of Houston extends the requirement to construction contracts. All notices to prospective bidders must include a statement that they will be required to comply with such anti-discrimination provisions. Failure to comply may result in sanctions, including cancellation, termination or suspension of the contract in whole or in part, declaring the vendor ineligible for future City contracts, or any other lawful sanction.

Minority-Owned, Women-Owned, Disadvantaged and Small Business Enterprise Program

The City's Minority and Women-Owned Business Enterprise Program was created in 1984, with the passage of Ordinance No. 84-1309,[54] the first in the State of Texas, which set specifics for including minorities and women in City funded contracting. The goals are based on the ratio of local M/WBEs to majority businesses in three areas. In 1999, Ordinance No. 99-893 went a step further by providing opportunities for disadvantaged business enterprises ("DBEs") to compete for City and federally funded contracts. Both provisions can be found in Article V of Chapter 15 of the Houston Code of Ordinances.

Additionally, the Mayor's Executive Order No. 1-2 requires departments to reduce the size of City contracts to allow smaller contractors a better opportunity to compete. This includes, where it will be effective, feasible and without undue interference with contract needs, the division of contracts into separate components to allow M/WBE, DBE and SBE contractors to compete for the separate contact services. It is important that this be done to allow for greater participation, and not as a means of allowing a single vendor to circumvent the competitive bid requirements.

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[53] 41 C.F.R. Part 60-2.

[54] *See also*, Houston Code of Ordinances §§ 15-81 to 15-95.

Based on the availability of certified M/WBEs, DBEs and SBEs and the divisibility of the contract, the department designates a contract specific goal.[55] A "Goal Oriented Contract" is defined as any contract, agreement or other undertaking (1) for construction in excess of $1,000,000 in value, or for the supply of goods or non-personal or non-professional services in excess of $100,000 in value, and (2) for which competitive bids are required by law.[56] Additionally, a "Regulated Contract" is defined as any contract, agreement or other undertaking for which competitive bids are not required by law. In the case of both Goal Oriented and Regulated Contracts, first the initiating department must determine if adequate numbers of known M/WBEs, DBEs or SBEs, as determined by a search of OBO's certified firm online directory, exist to compete for and perform the prime or subcontract services being solicited. Then OBO will review the initiating department's goal proposal and determine whether the goal reflects both the availability of certified M/WBEs, DBEs and SBEs and the divisibility of the contract. After this review, as appropriate, OBO will sign-off on contract specific goals or on goal waivers.

Because the City's program supplements existing state and federal provisions, if the contract opportunity is already covered by the United States Environmental Protection Agency or Department of Transportation's Disadvantaged Business Enterprise Program,[57] then it is outside the scope of the City's program. Additionally, the M/WBE, DBE and SBE requirements do not apply when (1) there exists a public or administrative emergency which requires the goods or services to be provided with unusual immediacy, (2) the service or goods requested are of such a specialized, technical or unique nature as to require the department to select its contractor without application of the program,[58] (3) application of the program would impose an unwarranted economic burden or risk on the City, unduly delaying the acquisition of the goods or services, or would otherwise not be in the best interest of the City, or (4) M/WBE, DBE or SBE availability would produce negligible participation.[59] If one of these exceptions exists, the department director must so certify, in writing, to OBO prior to the award of the contract.

Requirements for Certification

Once a contract goal has been established and the contract has been awarded, OBO monitors the prime contractor's utilization of certified firms, along with

[55] Houston Code of Ordinances § 15-83(c).

[56] Houston Code of Ordinances § 15-82.

[57] 49 CFR Part 26.

[58] Examples provided include contracts for expert witnesses, certain financial advisors or technical consultants.

[59] Houston Code of Ordinance § 15-83(c)(1).

their efforts to achieve the aspirational goals. On contracts with goals, prime contractors are required to make good faith efforts to achieve the goals.

The minority, female, or small business owner must possess at least 51% ownership, management, and control of the business. The minority or female owner must have the training or expertise to perform the work, and where required, have a license or certificate issued in his or her name.

The business enterprise must be independent, currently operating, and cannot exceed the size standards established by the Small Business Administration in 13 CFR Part 121 for its specific standard industry code or codes. The business enterprise must maintain a significant local business presence in Harris, Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, or Waller counties to be certified to do business with the City on City funded projects. DBEs do not need to meet the geography requirement for certification. In order for a business enterprise to be classified as disadvantaged, its owners must meet the DBE requirement of $1.32 million or less in personal net worth.

The Certification Process

M/WBE, DBE and SBE Program participation requires certification. The process can take up to 90 days from the receipt of a complete application package. The process includes the following steps: (1) pre-certification workshop, (2) preliminary screening of application, (3) desk audit, (4) financial audit, (5) field audit, and (6) committee review. Note that financial and field audit are not required for SBE certification. At the end of this process, OBO will either grant certification or issue a tentative denial. If denied, the applicant may file an appeal.[60]

Advantages of Certification

M/WBE, DBE and SBE certification is not required to compete for City contracts. However, there are several advantages that make the process worth the efforts. The certified M/WBE, DBE or SBE will:

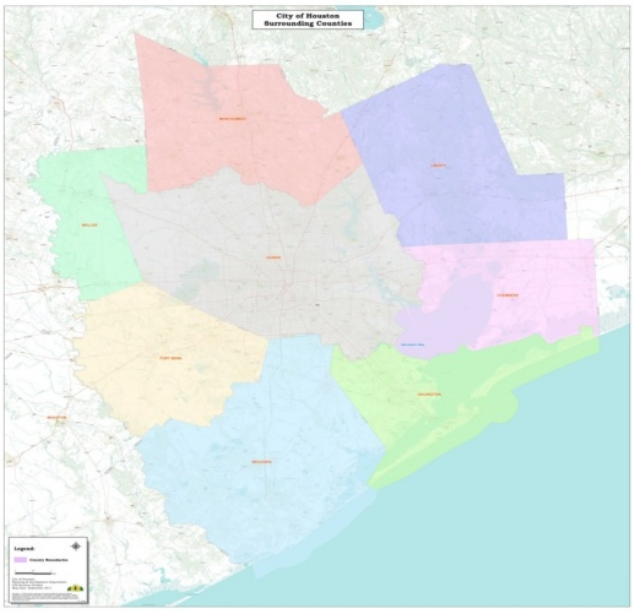
- Have the opportunity to bid on contracts which have M/WBE, DBE or SBE goals.
- Be invited to subcontract with City prime contractors seeking to meet their M/WBE, DBE or SBE goals.
- Be publically listed in the City's directory at: https://houston.mwdbe.com/FrontEnd/VendorSearchPublic.asp.
- Have access to OBO-sponsored workshops and seminars.

[60] Houston Code of Ordinances § 15-88.

- Receive fast track certification (not reciprocal) with the Houston Minority Supplier Development Council, Women's Business Enterprise Alliance, and the Texas Department of Transportation's Unified Certification Program.
- Have the opportunity to simultaneously apply for certification with the State of Texas Historically Underutilized Business ("HUB") Program pursuant to the City's Memorandum of Understanding with the State.
- The City's M/WBE, DBE and SBE certification is also accepted by KBR, Houston Housing Authority, the Houston Independent School District (HISD), Texas Southern University's Economic Development Center, and the Texas Department of Economic Development.

Hire Houston First

An amendment to the Texas Local Government Code during the 82nd Texas Legislative Session authorized large municipalities to award contracts to the "best combination of contract price and additional economic development opportunities for the local government created by the contract award, including the employment of residents of the local government and increased tax revenues to the local government."[61] The Mayor created the Hire Houston First program to take advantage of this change in law and promote Local and City Businesses.[62]



Prior to submitting its bid or proposal, a potential vendor must be certified by OBO as being either a Local Business or a City Business. A "Local Business" is defined as "a business with a principal place of business in the Local Area." The term "Local Area" is then defined as Harris County and the seven counties surrounding it: Fort Bend, Montgomery, Brazoria, Galveston, Chambers, Waller and Liberty. A "City Business" is a smaller subset of businesses with principal place of business within the Houston City limits.

[61] Tex. Local Gov't Code § 271.905(b)(2); see also, Tex. Local Gov't Code § 271.9051(b).

[62] City of Houston Ordinance No. 2011-0766 (Aug. 31, 2011).

There are two ways to determine the Principal Place of Business. The first method determines whether the business' headquarters, which is defined as "where an entity's leadership directs, controls, and coordinates the entity's activities," is located in the Local Area or City. In the second method, OBO determines if the business has a local presence, which is defined as the location having 20% or more of its workforce regularly based in the Local Area or City. In making this determination, OBO will investigate whether that workforce has a substantial role in the business' performance of a commercially useful function or represents a substantial part of its operations.

For the purchase of personal property, i.e. goods, the contract shall be awarded to:

- The City Business if the contract value is $100,000 or greater, and the bid is within 3% of the lowest bid.
- The City Business if the contract value is between $50,000 and $100,000, and the bid is within 5% of the lowest bid.

For the purchase of services, excluding professional services,[63] the contract shall be awarded to:

- The Local Business if the contract value is $100,000 or greater, and the bid is within 3% of the lowest bid.
- The Local Business if the contract value is between $50,000 and $100,000, and the bid is within 5% of the lowest bid.

For the procurement of professional services (i.e. architectural, engineering and land surveying services), the Hire Houston First ordinance allows the procurement agent to take into consideration whether knowledge of local conditions should be part of the qualifications determination. The amount of weight to be given is determined by the committee.

For the purchase of goods or services[64] under $50,000, the contract shall be awarded to the Local Business, provided the bid is not more than 5% greater than the lowest bid. If a purchase is covered by a blanket purchase order or contract, the procurement is exempt from the Hire Houston First requirements.

When goods or services are procured through a best value bid or request for proposals process, the Hire Houston First requirements must be included in the invitation to bid and submitted to the City Secretary. If a bidder or proposer is a

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[63] Government Code § 2254.004 defines "professional services" as architectural, engineering and land surveying services.

[64] For contracts for architectural, engineering and land surveying services under $50,000 in value, the process set forth in Government Code § 2254.004 must also be followed.

City Business, then it shall receive additional points equal to 5% of the total number of evaluation points. Similarly, if a bidder or proposer is a Local Business, then it shall receive additional points equal to 3% of the total number of evaluation points. It is recommended that the Hire Houston First points be added as bonus points on top of the regular evaluation points rather than pro-rated.

Exceptions: The Hire Houston First requirements do not apply to the following contract opportunities:

- Contracts in which the federal government participates in the form of a grant or loan, or the City acts as a conduit for federal money.
- Contracts for telecommunications or information services as those terms are defined in 47 U.S.C. Section 153.[65]

Waivers: The department may waive the Hire Houston First requirements if it determines there is a reason that award to a Local or City Business would unduly interfere with contract needs. If the potential contract is over $100,000 in value, the department must document the waiver in writing, obtain the department director's consent, and submit a copy to OBO.

Fair Campaign Compliance

The Houston Fair Campaign Ordinance makes it unlawful for a Contractor to offer any contribution to a candidate for City elective office or elected City official during certain periods of time prior to, and following, the award of a contract by City Council.[66] It defines "Contractor" to include "proprietors for proprietorships, each partner having an equity interest of ten percent or more for a partnership, and each corporate officer, corporate director or holder of ten percent or more of the outstanding share of stock for a corporation."[67]

Implementation is achieved by including a notice regarding this prohibition in each request for proposal, notice, advertisement or other solicitation for a contract. Additionally, each Contractor must submit with its submission for the award of a contract a complete list of the persons included in the definition of "Contractor." The City Attorney has prescribed Standard Document 00452 as meeting this requirement and it is used by all departments. City departments are responsible for forwarding completed forms to the City Secretary, who publically posts the information.

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[65] Tex. Local Gov't Code § 271-9051(d).

[66] Houston Code of Ordinances § 18-36; see also, Houston Code of Ordinances § 18-35 (blackout periods for contribution applicable to all contributors).

[67] Houston Code of Ordinances § 18-2.

Chapter

10

10. Contract Administration

These operational procedures of the City of Houston contain basic guidelines for administration of contracts to which the City is a party. Administration of contracts at the City encompasses the full realm of implementation and oversight, including, without limitation, receipt of work, services, and products, as well as monitoring contractor performance; issuing status reports; reviewing required insurance documents; reviewing invoices and payments; and similar types of review and responsibility.

City departments are expected to diligently and proactively monitor performance and progress of contracts and take the necessary steps to require compliance with the terms, specifications, conditions, and provisions of the contract, as well as foster and maintain compliance with the City's procurement policies and the Texas Local Government Code, specifically Chapter 252.

The purpose of this chapter is to assist the City in assuring maximum contract performance. The procedures herein do not in any way diminish responsibility of the contractor/vendor to completely and independently perform contractual obligations or terms, nor do they excuse or mitigate nonperformance by the contractor, even if the City does not fully comply with this chapter.

The failure of any City official or personnel to adhere to these procedures is not intended as a waiver of performance by the contractor. However, failures of City employees will be addressed consistent with the terms of the City's Human Resources Policy. These procedures are subject to change without notice; however, provisions applicable to a specific contract shall be included within that contract verbatim or by specific attachment and reference, and shall be binding on the terms stated in the contract document.

Types of Services and Supply Contracts

The following procedures apply to services or supply contracts, as applicable:

1. **Service Contracts**. Service agreements are contracts that include within the scope of services, provisions covering a contractor's time and effort rather than for a product or materials, although the use of products and materials may be an incidental aspect of the work/service to be performed. The work performed does not involve the delivery of any specific end product, other than results and reports that are incidental to the required performance. Examples of service agreements are for repairs to equipment, training, or consulting. Service agreements shall specify the service to be obtained, the method and amount of payment for those services, and any other provisions necessitated by the procurement documents, law or regulation.

2. **Supply Contracts**. Supply contracts shall be administered consistent with the procedures as provided herein. These contracts will be administered by the City Purchasing Agent or other designee of the department director. At a minimum:

    a. Each vendor will reference every shipment and invoice with a purchase order number starting with the last two digits of their contract number followed by a purchase order number assigned by the City Purchasing Agent.

    b. All vendors must obtain and use this purchase order number when shipping and invoicing to the City. No order will be received or processed for payment without a purchase order number.

Initial Contracting Requirements

Prior to the issuance of a solicitation, the requesting department must verify budget authority and funding availability with the department director or designee. All requests for contract-based services, goods, equipment or products shall be initiated by an authorized requestor through a memorandum to the department director or the City Purchasing Agent. Contract-based services, goods, products, or equipment shall not be requested by Department(s) absent valid and actual budget or from an available funding source.

Solicitation/Award of Contract. Solicitations shall be conducted by the City Purchasing Agent or department director or their designees in compliance with applicable policy, regulation, and law. Contracts shall be awarded in accordance with the terms of the solicitation. The award will be to the lowest responsive and

responsible firm or individual whose bid, proposal or quotation conforms to all specifications, terms and conditions as set forth in the solicitation.[68] The method and terms of solicitation will be determined by the products, goods or services to be procured. Contract awards will be made on the basis of the lowest price (or best value, as applicable), provided the offer is responsive, responsible, and is in the best interest of the City to accept it.

RFP Form of Contract. Those responding to a solicitation may be asked to provide a proposal to be considered for contract award. However, the contract will be negotiated on standard City terms. Contracts that the City Attorney deems routine will be generated by SPD on forms approved by the Office of the City Attorney. More complicated contracts will be drafted and reviewed by the Office of the City Attorney prior to execution by the Mayor and City Controller. Applicable provisions of these procedures will be included in the form of contract as well as required City provisions.

Contract Tracking/Monitoring. The City Purchasing Agent or department director or their designees shall assign a contract number/outline agreement to each contract and maintain tracking and monitoring information in SAP for individual tracking purposes as required herein. The assigned departmental Contract Administrator, as defined herein, will monitor the contract, respectively, for the purpose of contract administration as determined by the department director. The Contract Administrator will review termination dates sufficiently in advance to determine whether implementation will be timely and to determine appropriate steps in the event of untimely completion.

Contract Administrator / Contract Administration Plan

The Contract Administrator is the City employee designated to oversee and manage the performance of the contract on behalf of the City. The Department Director will designate the Contract Administrator for each contract in writing and shall make the designation based on the requirements and purpose of the contract.

A Contract Administration Plan ("CAP") will be prepared by the Contract Administrator. The CAP will identify the designated City Representative, and will include, at minimum, the contract amount, funding source, contractor contact person, other pertinent vendor information, schedule to guide implementation of the contract, and other information as may be necessary and appropriate. The CAP will become a part of the working file of the Contract Administrator. In addition to the Contract Administrator, a copy of the CAP will be forwarded to

[68] Tex. Local Gov't Code § 252.043.

the City Purchasing Agent to be attached to the SAP Outline Agreement ("OA"). Each Contract Administrator shall set up a file, which includes the contract, the CAP and other information pertaining to the contract. The Contract Administrator will maintain sufficient documentation to track and monitor the progress of performance of the contract in the file. It is subject to audit and review by the department director or designee, city, state or federal agency.

Contract Execution and Term. The contract is not effective until it is signed by all the parties and countersigned by the City Controller, regardless of when it is approved by City Council.[69] The term specified in the solicitation will establish the basis for the time for performance of the contract. A start and completion date shall be specified in the contract, subject to additional time extensions and other termination provisions authorized by the City Purchasing Agent or Department Director. Original contracts shall be prepared and executed by the parties. The City Controller's Office maintains one original copy for the City. An electronic copy of the fully executed contract will be attached to the OA by City Purchasing Agent and an electronic copy will be sent to the DPU and Contract Administrator.

Post Award/Pre-Performance Conference. Following the award of a contract, a post award/pre-performance conference, which may include a OBO representative, may be held to discuss applicable information as it pertains to the contract awarded, including identifying personnel, discussing the scope of work, M/WBE goals, Pay-or-Play, federal labor standards requirements, safety issues, payment methods, required forms to be submitted and other contract related documents and issues. Post award/pre-performance conferences may be recorded electronically and a transcript of the minutes shall be made a part of the contract file. Post award/pre-performance conferences held in the field (on the site) may be recorded electronically or summary/recap of the issues discussed will be drafted and submitted in writing to each person present at the conference.

Notice to Proceed. Upon the Controller's countersignature of the contract and delivery by the contractor of all required bonds and insurance certificates to the City Purchasing Agent prior to execution of the contract, the City Purchasing Agent shall prepare and issue to the contractor, a Notice to Proceed. The Notice to Proceed will be forwarded to the contractor electronically and by mail with an original copy of the executed contract. An electronic copy of the Notice to Proceed will be attached to the OA by City Purchasing Agent and an electronic copy will be sent to the DPU and Contract Administrator. The Contract Administrator shall monitor the progress of the contract from the date of its commencement forward.

City Purchasing Agent/Authorized Signatory. The City Purchasing Agent is the City Representative authorized to sign supply/services contract(s) on behalf of the department director(s); provided such contracts have been procured in

[69] Houston City Charter, Art. II § 19.

compliance with the City Procurement Manual, regulation and law, and provided such purchases have been authorized by the department director or designee. After City Council approval, the Mayor and City Controller are the other necessary authorized representatives for the purpose of binding the City to the terms of any contract or agreement, including any applicable amendments, modifications, or changes, as specifically authorized.

Ongoing Contract Administration

The Contract Administrator has the primary responsibility of implementing the contract on behalf of the City. This means that the Contract Administrator has oversight responsibilities on behalf of the City and will monitor implementation of performance and compliance with the specifications and terms of the contract by the contractor from the date performance commences until the date of termination.

Inspection/Monitoring/Reporting. The Contract Administrator will maintain a file for each contract. The file will include the following: copy of the contract with all amendments; modifications; add-delete; letters/change-orders; exhibits; updated insurance certificates; copies of bonds; completed CAP; diary of the progress of the work, services, or product procured; inspection and monitoring reports; implementation records as applicable; monthly review of price commitments for supply and services contracts; copies of correspondence and notices to the contractor, and any other pertinent and relevant documentation (*e.g.*, M/WBE and Pay or Play). In addition, for each contract, OBO's Contract Compliance division will perform a full contract compliance assessment regarding equal employment opportunity, discrimination, prevailing wage and fair labor standard compliance. The Contract Compliance division will also ensure small, minority, women, persons with disabilities and disadvantaged business enterprise utilization and will monitor whether or not these enterprises receive payment.

Deficiencies. In receiving goods and services, and during the ongoing contract implementation by the contractor, the Contract Administrator should remain alert for irregularities or deficiencies in the performance of the contract. Deficiencies shall be brought to the attention of the department director or designee. Non-conforming work, services, products, equipment or goods should be promptly and definitely rejected. Where appropriate, the Contract Administrator shall promptly prepare a notice of default/cure letter for the department director signature notifying the Contractor of any irregularities or deficiencies in performance under the contract. If contractor fails to cure the default, the department director may terminate in accordance with the contract terms. It is recommended that City departments contact the Office of the City Attorney before terminating a contract.

Time Extensions. The contractor is responsible for completing the work within the time established by the contract. Time extensions will be considered only if the

contractor requests an extension from the Contract Administrator, in writing, within a reasonable time prior to the time before the contract expires and if the contract allows. The written request will clearly state the cause for the delay and offer facts supporting justification and verification of the cause stated. The Contract Administrator shall review the request, stated justification, supporting facts and verification submitted by the contractor for the delay. If the contractor's documentation appears to be acceptable and verifiable, the Contract Administrator shall promptly prepare a letter to the contractor acknowledging receipt of the request and stating that the request is under review and consideration. The Contract Administrator shall prepare a finding of facts and recommendation to be submitted within three working days to the department director or designee for review and consideration as to whether the time extension will be granted.

Approval of Extension. If the time extension is authorized by the Department Director, a memorandum shall be submitted to the City Purchasing Agent requesting to extend time as per established provision in contract or extend time via amendment to the contract. **No term extensions shall exceed the term established in the contract without a contract amendment**. All time extensions to the contract will be approved in writing and must be completed in advance of the time for termination of the contract. Amendments will need to be approved by City Council and executed by the Mayor, City Controller, City Purchasing Agent and Office of the City Attorney and delivered by the City to the Contractor to become an amendment to the original contract.

Disapproval of Extension. If the time extension is not authorized, the Contract Administrator will communicate the disapproval in writing to the contractor prior to contract expiration date. The contractor will remain obligated to complete the work within the original contract term.

Contract Modifications / Additional Work / Expanded Scopes of Services

The Texas Constitution prohibits cities from taking on any unfunded liability. Therefore, a department should not request a change order or a contract amendment unless it has actually encumbered the money to pay for the change order or amendment. It the department requests additional services without first securing the money to pay for them, it may be very difficult to find a way to legally pay the contractor for the extra services.

Contract Modification Process. The Contract Administrator shall provide a written recommendation to the department director for review of any proposed contract modifications before proceeding with requesting the City Purchasing

Agent to issue a change order. The recommendations shall include all documentation, justification, and verification as provided by these provisions. The department director must approve the negotiation of the modifications prior to the Contract Administrator engaging in such negotiations. The Contract Administrator, with the assistance of the Office of the City Attorney shall negotiate the proposed modification within the parameters established by the department director. No amendment is effective until approved by the department director, City Purchasing Agent and/or City Council and communicated in writing to the contractor. The department director may proceed with a change order if authorized by the contact.

Written Authorization Required. All contracts must be modified in writing by an add/delete letter issued by City Purchasing Agent, Change Order or a bilateral Contract Amendment (signed by both parties approved by City Council and countersigned by the City Controller), prior to performance of the work that is the subject of the modification. Neither the Contract Administrator nor any other City employee is authorized to modify or enter contracts verbally or in writing. Contracts and amendments may only be authorized by City Council. Any purported modification by the Contract Administrator or any other unauthorized party shall be ineffective to bind the City. Contract modifications must be fully documented in the contract file and attached to the SAP OA maintained by the City Purchasing Agent. The Contract Administrator must maintain full documentation of any changes to the contract.

Termination. The Department Director or the City Purchasing Agent may terminate a contract if so authorized by the terms of the contract and if all contract requirements applicable to termination are followed. Consultation with the Office of the City Attorney is advisable to ensure that all City Representatives understand the prerequisites for and consequences of any termination.

Progress / Installment Payments. The Contractor will be paid in progress or installment payments or will be paid within thirty (30) days of the Contractor's invoice, and approval for payment upon completion of the work/services to be performed under the Contract. The method of payment shall be specified in the contract. For contracts with an approved schedule of progress payments, inspection shall be performed progressively on work as it is completed. The Contractor shall submit to the Contract Administrator, a statement of completion of phases of the work with a request for inspection, and payment for the completed work.

Completion of Work. The contractor shall provide prompt written notification to the Contract Administrator when all work is completed. The City may take five working days or more to inspect/process final contract documents. Upon notification from the Contract Administrator of completion of work, OBO Contract Compliance division will issue a compliance evaluation of labor, equal

employment opportunity laws and prevailing wage rate before the project is closed. The Contract Administrator will provide written verification of approved and completed work to the department finance manager and the accounts payable representative.

Payment. The contractor will be informed of the procedures for payment. The contractor shall submit invoices or payment request to the Contract Administrator for review and approval. Upon approval, the Contract Administrator shall forward the invoice to the department finance manager and the accounts payable representative. A copy of the contractor's invoice shall be attached to the contract file accordingly. Payment shall be made within thirty (30) days from the receipt of the contractor's invoice to avoid interest penalties as provided under the Prompt Payment Act[70]. The Contract Administrator should promptly notify the contractor of any dispute for payment of the amount due. The Contract Administrator will advise the contractor within fifteen (15) days from receipt of his/her invoice of any dispute for payment of the amount due.

Warranties. The warranty period for labor and work performed or equipment/materials provided shall be specified in the contract between City and the contractor. All manufacturer's warranties are expected to be obtained by the City contractor.

Warranty Inspection. A warranty inspection shall be conducted one month prior to the warranty expiration date, or within a reasonable time prior to the expiration of the warranty, as may be appropriate, to provide the opportunity for the City to observe and determine defects prior to the expiration of the warranty period. The Contract Administrator shall notify the contractor of upcoming warranty inspections. Materials, equipment or work appearing to be defective, shall be promptly reported to the contractor and/or manufacturer prior to the end of the warranty period.

Warranty Records. Original warranty records, documents, and cards shall be maintained in the Contract Administrator contract file.

Construction Contracts

Construction contracts shall adhere to the foregoing procedures as well as those outlined in this section.

[70] *See* Texas Gov't Code, Chapter 2251

Required Pre-Construction Documents

The contractor shall submit specified documents prior to the issuance of a Notice to Proceed. The Contract Administrator shall review and verify all documents and forward them to the DPU with a recommendation. The following pre-construction documents may be required to be submitted by the contractor to the Contract Administrator:

1. ***Certificates of Insurance and Associated Endorsements***. Contractor shall provide all of the insurance specified in the contract prior to contract execution by the Mayor and the City Controller.

2. ***Permits***. The Contractor shall obtain all building or other work permits required by law or regulation.

3. ***Applicable License***. When applicable contractor's license shall be required on all construction contracts and as otherwise required by law.

4. ***Performance and payment bonds***. Contractor's performing construction contracts shall provide all bonds pursuant to the Texas Government Code before the contract can be executed by the City.

Contractor Forms / Responsibility upon Completion

The contractor and City personnel shall comply with the following sections upon completion of the work:

Post-Award Conference Forms

Wage Rates. The contractor is responsible for paying not less than the applicable wage rates (as stated in the bid document) to all employees engaged in work under the contract and ensuring that any subcontractors pay not less than the applicable wage rates.

Contractor Delays and Liquidated Damages. In addition to provisions otherwise provided in these procedures and if the contract so specifies, the contractor may be held responsible for liquidated damages if the work is not completed on time.

The Contract Administrator shall consult with the department director prior to the assessment of liquidated damages under any Contract. The Contract Administrator shall provide a detailed report to the department director for review and

consideration pertaining to delay in completion of the work. The department director will make the final determination regarding the assessment of liquidated damages.

Upon determination by the department director that the assessment of liquidated damages is proper under the terms of the Contract and the relevant portions of these procedures, the Contract Administrator shall promptly prepare a letter for the department director's signature, notifying the contractor of the City's assessment of liquidated damages. The amount of liquidated damages assessed may be deducted from the contractor's final invoice. Should the amount of the liquidated damages exceed the final invoice amount, the Contract Administrator shall submit an invoice to the contractor for the difference.

Contractor Close-Out

Contractor Performance Ratings. Upon completion of a contract, the Contract Administrator will be required to rate the Contractor's performance using the Contractor Performance Rating Form. Contractors shall be rated based on quality of workmanship, timeliness of work, contract compliance, documentation requirements and overall job performance. Performance ratings shall be forwarded to the City Purchasing Agent, documented in the contract file and used in the determination of contractor's responsibility for consideration of future contracts.

Code of Conduct. The City Purchasing Agent shall promptly report to the City's Office of Inspector General ("OIG") any suspected anti-competitive practices by contractors and employees, as well as any other violations of City Procurement Policies and Procedures.

System of Sanctions. The Contract Administrator, the City Purchasing Agent, and all other City employees are responsible for preventing, detecting, and reporting fraud and procurement policy or regulatory violations. Violations may lead to the sanctioning or debarment of a contractor.

Documentation. Under the guidance and instruction of the City Purchasing Agent, the Contract Administrator shall maintain, in a designated contract file, documentation related to the execution, performance and completion of any contract. The City Purchasing Agent shall receive, from the Contract Administrator or other appropriate staff, a copy of all reports, correspondence, memoranda, etc. relating to any City contract to fully document the OA and maintain the contract file. Contract file documentation must also include the method of procurement, copy of the contract, contractor selection or rejection and the basis for the contract price. Contract files shall be made available to the general public in accordance with the Texas Public Information Act.

Debarment

Procedures for City's contractor debarment process are located in the City Code of Ordinances, Chapter 15, Sections 15-101 to 15-112.

Glossary of Terms

BAFO (Best and Final Offer)
Generally used during the RFP process, a BAFO is often requested when two or more finalists for an award are in close competition and the City feels it may be able to secure a better price or value.

BVB (Best Value Bid)
In contrast to a lowest price bid, a Best Value Bid may be used when the City seeks to evaluate factors other than cost.

Bid Limit
The amount established by state law (currently $50,000) that triggers the requirement to conduct a competitive procurement.

Blanket Purchasing Agreement
An agreement with a supplier, entered into like any other purchase, that allows periodic minor purchases to be made when the need arises.

Buyer
This term includes the individual within the Strategic Purchasing Division or a particular City department who has overall responsibility for managing the procurement activity.

Change Order
When changes in plans or specifications are necessary after the performance of a contract has begun, City Council may approve a change order, provided the maximum contract price would not be increased more than 25%. A change order may decrease the contract price by more than 25% if the consent of the contractor is secured.

City Purchasing Agent
The authority responsible for the integrity of City-wide purchasing functions, including monitoring of Departmental Purchasing Unit activities within the parameters of City ordinance.

Construction Manager-at-Risk
A delivery method by which a governmental entity contracts with an architect or engineer for design and construction phase services and contracts separately with a construction manager to serve as the general contractor.

Debarment
Action taken by the City Council to exclude a person from acting as a City public works contractor for a specified period.

Design-Build
A project delivery method by which the City may contract with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility or an associated structure, including an electrical utility structure.

Departmental Purchasing Unit
An organization responsible for the purchasing functions within a department, as designated by a department director. The department director appoints a single point of contact – who may be referred to as the Procurement Executive – within this organization.

E-Bid System
The Strategic Purchasing Division's E-Bid System is a web-based application that automates both the submission and tabulation of competitive bids from suppliers. Data is stored in a back-end database. The latest information for each bid is automatically accessible to both buyers and suppliers. Suppliers cannot see other suppliers' submissions due to a secure connection and log-in for users.

Interlocal Agreement
A contract between two governmental entities to study the feasibility of the performance of a governmental function or service or to provide a governmental function or service that each party is authorized to perform individually.

ITB (Invitation to Bid)
A procurement method used for purchases over $50,000 when the decision to award will be made based on low price.

Proposer (also Bidder, Offeror, Responder)
The name describing the company or firm that is expected to respond or has responded to a solicitation.

Job Order Contract
A procurement method used for maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is of a recurring nature but the delivery times, type, and quantities of work required are indefinite.

Liquidated Damages
Damages that are quantified in a contract for the injured party to collect upon the occurrence of a specific breach (such as late performance). The amount of the damages identified must roughly approximate the damages likely to fall upon the party seeking the benefit, and they must be sufficiently uncertain at the time the contract is made that such a clause will likely save both parties the future difficulty of estimating damages.

Pay or Play
A City of Houston program that requires contractors to provide a minimum level of healthcare benefits to its employees or pay a designated amount to be used to offset the costs of providing healthcare to uninsured people in the Houston/Harris County area.

PCard
A credit card for the purchase of contract and non-contract goods and/or services necessary for official City business. Individuals who use a PCard are referred to as "PCardholders" or, occasionally, "Cardholders".

Prevailing Wage
The minimum wage a contractor must pay its employees for work on certain projects.

Purchase Order
A document creating a binding agreement for contract or non-contract items between the City and a supplier/contractor for goods and/or services to be provided to the City at a specified price.

Quiet Period
A "no contact period" that is established during the procurement process, during which actual and prospective bidders/proposers are prohibited from contacting anyone at the City who is not the designated procurement official for the procurement. This prohibition extends to contacting City Council members and their staff.

RFI
A Request for Information is not open for bidding. The Buyer solicits feedback from suppliers and may re-open or re-issue an opportunity as an open tender at a later day. RFIs may include attached documents.

RFP
A Request for Proposal is used for requirements of $50,000 or more, and generally where the selection of a supplier cannot be made solely on the lowest price.

RFQ
A Request for Qualifications is a solicitation document requesting submittal of qualifications or specialized expertise in response to the scope of services required. No pricing is solicited with an RFQ.

Sole Source
A procurement of items that are available from only one source due to patents, copyrights, secret processes, or natural monopolies, or because the purchase is for captive replacement parts or components for equipment.

Exhibits: Administrative Procedures and Executive Orders

CITY OF HOUSTON

Administrative Procedure 5-2

Subject: PROCUREMENT PROCEDURES	A.P. No: **5-2 (Revised)**
	Effective Date: April 10, 2010

The document can be viewed by visiting the official City of Houston website:

http://www.houstontx.gov/adminpolicies/5-2.pdf.

CITY OF HOUSTON

Executive Order 1-14

Subject: PROCUREMENT AND PAYMENT POLICIES	E.O. No: **1-14 (Revised)** Effective Date: April 10, 2010

The document can be viewed by visiting the official City of Houston website:

http://www.houstontx.gov/execorders/1-14.pdf.

CITY OF HOUSTON

Executive Order 1-42

Subject: PURCHASING CARD POLICY AND PROCEDURES	E.O. No: **1-42 (Revised)** Effective Date: April 10, 2010

The document can be viewed by visiting the official City of Houston website:

http://www.houstontx.gov/execorders/1-42.pdf.

Appendices

Administration and Regulatory Affairs Department – Strategic Purchasing Division

The Strategic Purchasing Division mission is to manage, facilitate, and provide the highest quality, value-added procurement services that exceed the needs and expectations of our customers. SPD's processes and purchasing guidelines to achieve this mission, inclusive of the following requirements, can be viewed by visiting SPD's website at:

http://purchasing.houstontx.gov/docs/SPD%20Procurement%20Manual.pdf

1) Strategic Purchasing-Central Homepage

2) Overview of Procurement, Code of Ordinances

3) Procurement Roles and Responsibilities

4) Procurement Service Level Agreement

5) Memorandum of Understanding

6) Flow Charts:

- *Formal Request for Proposal over $50K*
- *Formal Invitation to Bid Process over $50K (Contract)*
- *Formal Invitation to Bid Process over $50K (Supply)*
- *Formal Invitation to Bid Process over $50K (One-Time/Rolling Stock)*
- *Informal Invitation to Bid Process equal to or under $50K*
- *Vendor Master Record Process and Material Master (NIGP) Process; and*

7) Request for Council Action Approval and Routing Process:

- *High Technology and Complex RFP Procurement Projects*
- *Professional Services RFP Procurement Projects*
- *Recurring Services and Commodity/Supplies Procurement*

Department of Public Works and Engineering

INTRODUCTION

Procurement Processes

This appendix will address the processes the Department of Public Works and Engineering ("Department" or "PWE") will use to obtain goods and services, issue Emergency Purchase Orders, develop new contracts, renew existing contracts and follow PCard procedures.

Goods and services cannot be obtained without having an instrument of agreement and payment in place prior to the delivery of the goods or services. This instrument may be a PCard, an EPO, a purchase order or a release against an existing contract. All transactions are recorded in the City's financial system.

The Department by ordinance has certain purchasing capabilities. Authority for the procurement of goods and services has been delegated to the Department by the City Purchasing Agent. Our current threshold for the procurement of goods and services is $50,000, with unlimited ability to purchase against existing City contracts. In turn, purchasing authority up to $7,500 has been further delegated to certain divisions within the Department. These divisions may purchase against existing City contracts up to their allocation on the contract.

The procedures outlined in these processes will allow the procurement of goods and services in the most cost-effective and efficient manner while staying within procurement policies guidelines.

DEFINITIONS of terms that are used in these procedures:

1. Cardholder – Individual assigned accountability and responsibility for a Purchasing Card for a cost center.

2. Contracting Officer (CO) – The final approval point under the contract. Has the authority to enter into a contract or to amend or terminate the contract. Usually the Director, but could be a deputy director.

3. Contracting Officer's Representative (COR) – Has the authority to start and stop the contract and to approve payments. Provides guidance to the CTR. This is an Assistant Director (AD).

4. Contract Technical Representative (CTR) – Oversees the contractor's performance and ensures that the performance is fulfilling the needs of the Department. Usually negotiates the contract. Evaluates performance, handles scheduling, recommends payment and has primary responsibility to ensure payment is made. Often is the Project Manager.

5. Cost Center Manager – An individual who is responsible for approving budget transaction for a particular cost center.

6. DPU Buyer - The Contract Administrator Position is responsible for managing contracts, supplier negotiation, negotiating contract terms and conditions, supplier management, and collaboration with internal City departments. Responsible for assisting with contract development for tangible goods, technical and professional services and construction projects, administration, tracking, and analysis, as well as communication of supplier performance and contract compliance.

7. Departmental Purchasing Unit (DPU) – Appointed by the Department Director and responsible for:

    a. The Department of Public Works and Engineering Purchasing Unit (PWE/DPU) will coordinate all procurement and related activities within the Department, with vendors and with support departments.

    b. The Department of Public Works and Engineering Purchasing Unit will ensure that procurement and related activities are conducted in accordance with written procurement procedures, the ordinances of the City of Houston and the applicable state statutes.

8. User Department Representative (UDR) – Handles the day to day aspects of the contract performance and coordination with other City/Department functions, immediate public issues, including all of the incidental aspects, routine inspections, etc.; often an inspector.

The Materials Management Branch has four sections: Warehousing and Distribution, Administrative Support (PCard Coordinator), Procurement (One-time purchases, capital equipment and warehouse stock) and Contract Management.

Department of Public Works and Engineering

PO Process for Non-Contract Goods & Services
Equal to or Less than $50,000

1. Delegated Spending Authority $50,000 (MMB)
   a. End-user identifies need
   b. If product, checks warehouse stock.
   c. Prepares Scope of Work describing requirement for services or specification describing product required
   d. Requests from the vendor any required insurance, drug forms or bonds
   e. Create requisition (PR) with attachments
   f. Approving Manager for Cost Center approves PR
   g. DPU Buyer proofs supporting documentation and creates PO
   h. DPU approves PO
   i. DPU Buyer distributes PO to vendor and End-user

2. Delegated Spending Authority up to $7,500
   a. End-user identifies need
   b. If product, checks warehouse stock.
   c. Prepares Scope of Work describing requirement for services or specification describing product required
   d. Determines any required insurance, drug forms or bonds
   e. If total value is within delegated purchasing authority level for the Cost Center, create PR with attachments, insurance, drug forms and bonds
   f. Cost Center Approving manager approves PR
   g. Creates purchase order
   h. Releases PO
   i. Distributes PO to vendor

Department of Public Works and Engineering

One-Time Non-Contract Purchases over $50,000

1. End User determines need.
    a. Commodity
        i. Develop generic specification
        ii. Submit to DPU Buyer for approval
    b. Service
        i. Develop generic scope of work
        ii. Submit to DPU Buyer for approval
2. End-user creates Purchase Requisition with attachments.
3. Submit to DPU Buyer
    a. DPU Supervisor reviews and assigns to DPU Buyer.
    b. DPU assigns PR to appropriate SPD queue.
4. SPD manager/supervisor assigns to SPD Buyer.
    a. SPD Buyer reviews attachments and if over $1,000,000 reviews with City Purchasing Agent.
5. SPD schedules a work shop to discuss specification/Scope of Work meeting with Department and end user.
    a. If required, adjustments are made to specification/scope of work.
6. SPD Buyer coordinates pre-bid conference with Department.
7. SPD Buyer schedules advertisement and bid due date.
8. Letters of Clarification are issued by SPD Buyer if required.
9. Bids submitted to the City Secretary and SPD Buyer takes possession of bids.
10. Bids are reviewed for commercial acceptance by SPD Buyer and forwarded to Department.
11. DPU Buyer reviews and distributes bids to End User Buyer representative.
    a. End User evaluates bids according to bid requirements.
    b. Award Recommendation submitted to DPU Buyer.
12. DPU Buyer reviews recommendation and submits to DPU.
13. DPU issues Award Recommendation to SPD.
14. SPD prepares Request for Council Action (RCA).
15. RCA Routing and Approval Process
    a. RCA reviewed by SPD management and forwarded to DPU
    b. The RCA is received from SPD and reviewed for accuracy
    c. Prepare Routing Sheet for the RCA
    d. Send request to SPD for RCA back-up documentation if it was not provided
    e. Proof read RCA and backup documentation and verify accuracy of recommendation
    f. RCA is routed via email to CORs and Budget for approval
    g. Forward RCA to the respective Divisions for Deputy Director's signature
    h. DPU signs off on RCA and returns copy to SPD
    i. The approved RCA package is forwarded to PWE's Agenda Liaison who in turn forwards to the PWE Director for signature
    j. Director Approved RCA is forwarded to SPD for further processing

Department of Public Works and Engineering

CONTRACTS DEVELOPMENT AND RENEWAL PROCESS

INTRODUCTION

Contract Management (CM) supports the contract-related tasks for the Department, Materials Management Branch, and as such serves as the focal point between the CORs, Divisions, and Strategic Purchasing Division (SPD).

1. Process Flow for Request for New Contract

a. MMB Contracts Section Request for New Service or Supply Contract

Contract Management receives request for new contract from the End User via email or inter-office memo. The contract will be assigned to a DPU Buyer, who will review and evaluate or develop the Scope of Work and Technical Specifications, and who will request usage data and funding.

b. In-House Workshop - The DPU Buyer is responsible for the following:

i. Evaluating usage data.
ii. Reviewing scope of services/work, highlighting any special clauses (i.e. escalation) or price increase language that involve certain market indices, and reviewing technical specifications with End User.
iii. Consolidating requirements from CORs.
iv. Identify and submit request to Subject Matter Experts to attend Workshop.

c. After In-House Workshop - The DPU Buyer is responsible for the following:

i. Prepare/Rewrite/Develop
    1. Scope of Work
    2. Technical Specifications
    3. Identify bid type
    4. Identify payables
    5. Review and analyze funding requirements and make recommendations
    6. Follow up with COR and End Users
    7. Prepare certification of funds documentation.
ii. Identify by Division requirements for developing MWBE Goal.
    1. Prepare documentation for MWBE Goal review and approval.
iii. Review contract criteria and determine whether Hire Houston First is applicable.

d. Forward New Contract Request - The DPU Buyer is responsible for the following:

i. Request Certification of Funds from Budget Section.
ii. Request MWBE Goal approval from Small Business Development Group.
iii. DPU Buyer prepares formal memo to Strategic Purchasing Department (SPD) to initiate new contract.

e. Bid Document Preparation - The DPU Buyer is responsible for the following:

i. Review the bid document.
ii. Forward bid document to Subject Matter Experts (SMEs) for their input.
iii. Prepare and forward pre-bid meeting notification to CORs to attend up-coming Pre-Bid Conference for the advertised bid.
iv. Attend Pre-Bid Conference with Subject Matter Experts (SMEs) and End Users.

f. **After Pre-Bid Conference -** The DPU Buyer is responsible for the following:
i. After Pre-Bid, rewrite and revise sections of Bid Solicitation as noted.
ii. Respond to potential vendor's questions via Letters of Clarification.
iii. Forward Letters of Clarification to SPD for posting on their website.
iv. Review Final Bid Document prior to advertisement.
v. Setup and attend site visits.

g. **Bid Review and Award Recommendation -** The DPU Buyer is responsible for the following:
i. Review the bids and bid tabulations received from SPD on the advertised bid.
ii. Forward bids to CORs for their review and award recommendation.
iii. Submit request for samples (if required).
iv. Identify discrepancies (if any) and communicate with SPD.
v. Prepare award recommendation based on the criteria of the advertised bid (i.e. lowest bid; best value)
vi. Re-calculate contract spending authority with current bid prices.
vii. Submit award recommendation to SPD.

h. **Contract Award**
i. For PWE-only contracts (contracts prepared outside of SPD), PWE prepares Contract Award and Notice to Proceed (NTP) Letters and sends them to the successful vendor.
ii. For City-wide contracts, DPU Buyers forward to CORs:
1. Notice of compliance of all Bond Requirements:
a. Performance Bonds
b. Maintenance Bonds
c. Bid Bonds
d. Payment Bonds
e. Fidelity Bonds

i. **RCA Routing and Approval Process -** The DPU Buyer is responsible for the following:
i. The RCA is received from SPD and reviewed for accuracy
ii. Prepare Funding spreadsheet, COR documents, and routing sheet for the RCA
iii. Send request to SPD for RCA back-up documentation if it was not provided
iv. Proof read RCA and backup documentation and verify accuracy of recommendation
v. RCA is routed via email to CORs and Budget for the approval
vi. Forward RCA to the respective Divisions for Deputy Director's signature
vii. The approved RCA package is forwarded to PWE's Agenda Liaison who in turn forwards to the PWE Director for signature

viii. Director Approved RCA is forwarded to SPD for further processing

For PWE only RCA's the same procedures are followed with no intervention from SPD

j. **Pre-Performance Meeting -** The DPU Buyer is responsible for the following:

i. Obtain authorized Award Notification document from SPD.
ii. Schedule meeting with CORs and Vendor.
iii. Distribute contract documents to CORs.
iv. Set tentative schedule for six (6) month follow-up meeting and performance evaluation

k. **COR Develop a Contract Administration Plan (CAP) –** The CAP serves as an effective tool in establishing parameters within which the contract administration will take place.

i. Ensures CORs have in place a Quality Check or Quality Assurance plan to monitor and rate contractor performance.
ii. CAP includes planned inspections and site visits, unscheduled site visits, random inspections and validation and documentation of complaints and poor contractor performance.

l. **Contract Maintenance -** Pertinent revisions to the contract are reviewed for the following:

i. **Additions-** The request is generated by the COR and forwarded to DPU Buyer. DPU Buyer validates information and prepares memo to SPD.
ii. **Deletions -** The request is generated by the COR and forwarded to DPU Buyer who will validate information and prepare memo to SPD.
iii. **Price Adjustments -** SPD forwards price increase/decrease request to DPU Buyer who reviews information, validates request and forwards either concurrence or denial based on conditions provided in the contract.
iv. **Request for spending authority increases and monitor contract spending levels.** Request for spending authority is validated and forwarded to SPD by DPU Buyer.
v. **Contract Extension Request –** DPU Buyer will monitor contract expiration dates to determine when requests for contract extensions should be forward to SPD.
vi. **Termination Request -** Issue termination request to SPD when a supplier fails to cure non-compliant contract issues; or issue request for Termination for Convenience where there is no cause for termination.

m. **Problem Resolution**

i. Setup vendor performance meetings to resolve non-compliance issues.
ii. Prepare and issue Cure Letters to non-compliant suppliers who are in violation of the terms and conditions of their contractual obligations to PWE.
iii. Monitor vendor performance.
iv. Upon failure to resolve non-compliance issues, DPU Buyers request an administrative hearing.

n. **File Maintenance**

i. Ensure all pertinent contract documentation is file both electronically and hard-copy.
ii. Maintain Contract Roster.
iii. Maintain archived contract files.

o. **Contract Closeout -** COR for each division is responsible for contract closeout and establishing separate closeout procedures as follows:

i. Verify Statements of Work are complete by establishing a system that tracks contract from physical completion through final payment.
ii. Use a Team Approach consisting of Government/Contractors.
iii. Verify no credits are due from suppliers.
iv. Identify open purchase order commitments and establish plan to complete.
v. Verify all expense/inter-entity commitments have been paid.
vi. Shut down (close) all applicable WBS numbers.
vii. Dispose of City Property or transfer accountability to follow-on contract.

2. **Process Flow for Contract Renewal**

a. **Renew Existing Service or Supply Contract -** The DPU Buyer will correspond with SPD to initiate the renewal of the expiring contract normally 6 months to one year in advance. A time line for the workshop will be determined. DPU Buyer will request new entry on "in-house" contract roster.

b. **Evaluate and Update Current Specifications -** The DPU Buyer is responsible for the following:

i. Evaluating usage data.
ii. Reviewing scope of services/work, highlighting any special clauses (i.e. escalation) or price increase language which involve certain market indices and review technical specifications.
iii. Gathering specification requirements from CORs.

c. **Prepare and Forward Specifications Review -** The DPU Buyer is responsible for the following:

i. Request Certification of Funds from Budget.
ii. Request MWBE Goal approval from Small Business Development Group.
iii. Prepare formal memo to Strategic Purchasing Department (SPD) to initiate renewal contract.

d. **Bid Document Preparation -** The DPU Buyer is responsible for the following:

i. Review the bid document.
ii. Forward bid document to Subject Matter Experts (SMEs) for their input.
iii. Prepare and forward pre-bid meeting notification to CORs to attend up-coming Pre-Bid Conference for the advertised bid.
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vi. Forward RCA to the respective Divisions for Deputy Director's signature.
vii. The approved RCA package is forwarded to PWE's Agenda Liaison who in turn forwards to the PWE Director for signature.
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i. Ensures CORs have in place a Quality Check or Quality Assurance plan to monitor and rate contractor performance.
ii. CAP includes planned inspections and site visits, unscheduled site visits, random inspections and validation and documentation of complaints and poor contractor performance.

k. **Contract Maintenance -** Contract Management reviews and processes all pertinent revisions to the contract for the following:

i. **Additions -** The request is generated by the COR and forwarded to DPU Buyer who validates information and prepares memo to SPD.
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i. Verify Statements of Work are complete by establishing a system that tracks contract from physical completion through final payment.
ii. Use a Team Approach consisting of Government/Contractors.
iii. Verify no credits are due from suppliers.
iv. Identify open purchase order commitments and establish plan to complete.
v. Verify all expense/inter-entity commitments have been paid.
vi. Shut down (close) all applicable WBS numbers.
vii. Dispose of City Property or transfer accountability to follow-on contract.

Department of Public Works and Engineering

EMERGENCY PURCHASE ORDERS (EPOs)

1. EPO During Working Hours – Less than or equal to State Limit of $50,000

    a. End-user completes Justification Form, which must be signed by A.D. or higher.
    b. Requestor secures insurance, drug forms and other current requirements.
    c. If possible, creates requisition (PR) and attaches EPO Justification Form, insurance, drug forms and other requirements into the PR.
    d. Cost Center Approving manager approves PR.
    e. Notify MMB by email or phone.
    f. MMB Manager previews justification for conformance with State and AP requirements and issues either:
        i. SAP order (if vendor in SAP); or
        ii. Issue manual EPO number if vendor is not an SAP-Registered vendor

2. EPOs During Work Hours – Over State Limit Requiring City Council Approval

    a. End-user prepares EPO Justification Form, must be approved by A.D. or higher
    b. If possible, create PR and attach EPO Justification Form, insurance, drug forms and other requirements
    c. PR approved by Cost Center approving manager
    d. Notify MMB by email or phone.
    e. MMB Manager to review justification for conformance with State and AP requirements and forward email to SPD and follow up with phone contact.
    f. SPD issues EPO number.
    g. MMB Manager emails and follows up with phone contact with Requestor.
    h. If no progress payment is requested, MMB assist SPD with RCA creation and processes RCA \of Director's signature.
    i. If progress payment requested, requestor must obtain a not to exceed total of the job and coordinate with SPD and process RCA.

3. EPO After Working Hours

    a. Contact MMB Manager – Primary or MMB AD as secondary.
    b. MMB Manager or AD will issue manual EPO.
    c. The next working day, follow process as above.

Department of Public Works and Engineering

PWE PCARD PROCESS

INTRODUCTION

PCards are a purchasing instrument for purchase of goods or services to fulfill an immediate requirement. All purchasing policies apply to the use of the PCard

1. Selection of Employee to be Issued PCard

a. Each new Fiscal Year a memo is submitted to the Department's PCard Coordinator from the Division's Deputy Director or Assistant Director indicating the appointment(s) of their Division Coordinator(s), Approving Manager(s) and Cardholder(s).

b. All new Cardholders must submit to the Division/Department's PCard Coordinator an Exhibit 1 form completed and signed by their Approving Manager.

c. Division PCard Coordinator initials the Exhibit 1 form and forwards to the Department PCard Coordinator for further processing.

d. Department PCard Coordinator signs and forwards the completed Exhibit 1 form to ARA for further processing and distribution of the card to the cardholder.

2. Purchases Allowed with PCard

a. PCards may be used to purchase goods or services not prohibited by policy approved by the Mayor or any ordinance of the City of Houston.

b. The total purchased with the PCard must not exceed the limits associated with each cardholder.

c. Authorization to utilize a PCard for travel must be obtained under separate authority.

d. Request for travel authorization will be processed through the Department's PCard Coordinator.

3. Purchases Prohibited from being made with PCard

a. Cash advances

b. Restocking of Inventory Items

c. Personal expenditures

d. Furniture (without approval by GSD)

e. Food/Travel(exception: written approval by Mayor's Office)

f. Technology (exception: prior written approval by Departmental Chief Technology Officer)

g. Sales Tax(es) (exception: rental equipment where State law does not exempt local governments)

h. Cellular phones

i. Payment of aged invoices

4. Individual Responsibility

a. Cardholders are responsible for the security of their cards.

b. Cardholders should verify unsolicited requests for account information prior to releasing any information.

c. Cardholders must obtain receipts for all purchases.
d. If receipt is lost, Cardholder must obtain a copy at his or her own expense from the bank or supplier. Faxed or computer generated receipts will be acceptable.
e. Cardholders should discourage vendors from maintaining his or her account number on file.
f. Cardholders should keep PCard secured, distinguished and separated from your personal credit cards.
g. Cardholders should delete entire PCard account number from all documentation.
h. Cardholders should block the first eight digits of the account number from any receipt showing the entire 16-digit account number.

5. Declined Transactions

a. Occasionally a supplier will receive a "decline" response from the bank after attempting to complete a PCard transaction. The decline could be for multiple reasons: purchase exceeds spending limits (monthly remaining limit and/or single transaction limit), incorrect expiration date, billing address or purchase outside assigned spending profile.
b. If the purchase is a one-time event, the Cardholder will contact the PCard Department Coordinator for resolution if the transaction is declined and provide him or her with the following information: reason for decline, account, and the Cardholder's name.
c. If decline is a purchase outside assigned spending profile, Cardholder will contact bank and obtain a 4 digit Merchant Category Code (MCC).
d. Cardholder will e-mail price, purpose, vendor and MCC Division/Department Coordinator requesting a one-time override.
e. Departmental Coordinator forwards the email to City PCard Administrator for further processing.

6. Using a PCard

a. A need to use a PCard is established when the purchase of contract and non-contract goods or services is for official City business.
b. Before using the PCard, a Cardholder will determine if the required item is available from a City warehouse, storeroom or on contract.
c. Cardholder will identify if purchased item is on contract and report it to the divisional PCard Coordinator.
d. Certain items to be purchased on a PCard require pre-approvals (see No. 3 for details). These include: IT items over $200, food transactions, travel transactions, seminars and conferences, license renewals, and new furniture for emergency needs.
e. Adherence to the insurance and drug policies is applicable to all non-contract purchases that require the contractor/supplier to perform work on City property, deliver goods to City property or repair or maintain equipment on City property. Technology, furniture, and chemicals purchased must be made according to the appropriate policies governing each.
f. Whenever possible, cardholders should make purchases from suppliers certified as M/WBEs by the City of Houston.
g. Cardholders must ensure that sales taxes are not included in the total price.
h. Cardholders must obtain receipts for all transactions and credits made on the PCard. Cardholders need to note on the receipt the purpose of purchase and attach it to the

monthly statement. The statement is forwarded to the Approving Manager for authorization.

7. Monthly Bank Statements and Reports

a. ARA sends the master summary report, including cycle dates for reconciliation periods.

b. Department Coordinator sends Account Statements and Expense Reports to the division coordinator.

c. Division Coordinator sends Account Statements and Expense Reports to the cardholders.

d. Cardholders and Approving Managers have ten (10) working days to reconcile statements and reports.

e. Division Coordinators ensure that the correct budget codes and contract number(s) have been entered in the bank system prior to the deadline established by ARA.

f. Division Coordinators send reconciled summaries, statements and expense reports to Department Coordinator.

g. Receipts are maintained with the division coordinators, along with copies of the statements and expense reports.

8. Records Management

a. Departmental/Division PCard Coordinators are required to maintain records of PCard transactions, purchase documents and reconciliation for a three year period.

b. Records should be kept by billing cycle.

c. Records are considered as accounts payable transactions and should be maintained in accordance with the established guidelines and policies for such documents.

d. Documents should be destroyed through the appropriate contract source when archival period requirements have been satisfied.

9. Lost or Stolen PCards

a. When a PCard has been lost or stolen, the PCardholder must contact the bank by calling the bank's 1-800 number. In the event that the Cardholder is unsuccessful in contacting the bank, the PCardholder should call the City's PCard help line (832-393-8775). A member of the PCard staff will contact the bank to cancel the card.

b. It is imperative that lost or stolen PCards be cancelled immediately given the fact that the City liability on lost or stolen cards is not capped. The City is liable for all charges until the card is reported lost or stolen. Thus, the Cardholder to whom the PCard is issued will be responsible for all charges made against the PCard from the time it is lost or stolen until the bank is notified.

10. Unauthorized Use of a PCard

Purchases that the department manager or the PCard Administrator deems inappropriate as outlined herein will be referred back to the Cardholder for justification. If unauthorized charges appear in a Cardholder's Monthly Statement, the following will occur:

a. The PCard Administrator will investigate all circumstances surrounding alleged misuse of a PCard, and in such cases where there is evidence substantiating a procedure or policy violation, will refer that information to the appropriate authority for investigation and/or disciplinary action.

b. In cases where there is evidence of negligence in the use of a PCard but no fraudulent acts have been committed, the Cardholder will surrender the PCard, and all further privileges will be revoked for a period of time established by the City Purchasing Agent.

Any employee having knowledge of violations of this procedure or any other procedure or policy governing the use of a PCard will immediately report such violations to the Purchasing Card Program Administrator. Cardholders suspected or accused of fraud, theft, or misuse will have their PCards suspended or terminated. Further, appropriate disciplinary action will be taken against the employee in accordance with City Policies and Procedures.

11. Disputed PCard Purchases

a. PCardholders are responsible for immediately resolving any disputes between themselves and a supplier on item(s) they purchase. Failure to do so will result in an authorized purchase, and the charge(s) being expensed to a Department's cost center, even if it is an incorrect charge.

b. If an item was returned for credit after the billing cycle has closed, the current statement will not be used to dispute charges.

c. Charges on the current statement should not be disputed if an item was returned for credit after the billing cycle closed. The credit should not appear on the next statement, and the Cardholder will annotate on the current statement that there is a disputed charge.

12. Revocation of PCard Use

The use of a PCard will be revoked when a:

a. Departmental PCard Coordinator and/or a Cardholder's Supervisor/Manager issues a request to the Purchasing Card Administrator.

b. Cardholder violates the approved policies and procedures regarding the use of PCards.

c. Cardholder is no longer employed by the City of Houston.

d. The Purchasing Card Administrator will cancel the account with the Bank. When PCard is to be revoked, the Departmental Purchasing Card Coordinator will complete Exhibit 5, attach the PCard to it, and then forward it to the PCard Administrator. The PCard Administrator will be destroy or deface the card and verify account's cancelation with the bank. The Department will be responsible for any change incurred by an employee who no longer works for their Department, if the delay to cancel the use of the PCard is the result of the Department's actions.

Department of Public Works and Engineering

Process for Procurement of Construction Services
(Competitive Bidding) (Service and Supply Contracts of More than $50,000)

ADVERTISING AND PUBLICIZING (INVITATION TO BID-ITB)

APWA PRACTICE 13.1 – BID ADVERTISEMENT http://bidsets.publicworks.houstontx.gov/

1. Based on production of Construction Documents Plans and Specification/Project Manual, which includes M/WBE requirements when applicable.
2. The City Secretary acknowledges receipt of package.

RECORD KEEPING

1. Post Electronic Bid-Ready Document onto the City of Houston-Public Works and Engineering (COH-PWE) Website. Confirmation is sent to the Project Manager.
2. Designated newspaper(s) publishes the advertisement on two consecutive Fridays.

PRE BID CONFERENCE
APWA Practice 13.2 – Pre Proposal or Pre-Bid Meeting
http://documents.publicworks.houstontx.gov/document-center/standard-front-end/index.htm

1 The date, time, and location of the Pre-Bid Meeting is scheduled. The Pre-Bid Meeting is usually scheduled for the Monday or Tuesday following the second Friday Advertisement for Bids.
2. The principal objectives of the Pre-Bid Meeting are to explain the project to the prospective Bidders and to receive questions from prospective Bidders.
3. The Bid Documents also require that comments or questions be submitted in writing and answered via **addenda** if necessary.

LETTERS OF CLARIFICATION (ADDENDUM)
http://documents.publicworks.houstontx.gov/document-center/standard-front-end/index.htm

1. The Addendum will provide answers to written questions from the Pre-Bid Meeting and other written questions received and incorporate changes to the Bid Documents as necessary. The deadline to issue the last addendum is one week prior to Bid Date. Electronic File Containing Addendum is posted on the COH-PWE Web Site.

CANCELLATION OF ITBs BEFORE BID OPENING

1. Delaying and/or cancelling the scheduled Bid Date is exercised only if it serves the best interests of the City. If so determined, an addendum is issued that delays the scheduled Bid Date and the City Secretary is notified.

SUBMISSION OF BIDS

1. The Sealed Bids are received by the City Secretary on or before the Bid Date, not later than 10:30 AM on the date of the bid opening.

OPENING OF BIDS
APWA Practice 13.4 – Bid Opening
http://library.municode.com/index.aspx?clientID=10123&stateID=43&statename=Texas13.4
Code of Ordinances Sec 15.3 Bid Opening Procedures, rules and appeals01032012.pdf

1. The City Secretary opens the bids at 11:00 AM on the published date of the bid opening.
2. The Bidders and public may examine the bids on the afternoon of the bid opening, generally beginning at 2:00 PM.

EVALUATION OF BIDS
APWA Practice 13.5 - Bid Evaluation

1. Bid Tabulation Package is prepared, consisting of:
   - Bid Tabulation -- spreadsheet tabulating all bids received - hard copy and electronic file.
   - Letter of recommendation identifying the lowest responsive and responsible Bidder (any irregularities are noted).
2. Per City of Houston General Requirement, Section 00410 (Bid Form -Part A), the bids shall remain valid for 90 days. If it is determined that the 90-day period is likely to expire prior to Council Award, then a written time extension is requested from the low Bidder.

CONTRACT AWARD
APWA Practice 13.6 – Bid Award/Rejection
http://documents.publicworks.houstontx.gov/document-center/standard-front-end/index.htm

1. A Yes/No is decided regarding the Notice of Intent to Award (NOIA) Package, as follows:
   - If the Bid Tabulation Package identifies no bid errors, then the NOIA is issued to the apparent low Bidder.
   - If the Bid Tabulation Package identified bid errors that were **minor** or involved recalculation of bid amounts due to math errors, then recommendation of award proceeds to the lowest responsive and responsible Bidder.
   - If the Bid Tabulation Package identified **major** bid errors, the impacted bidders will either be determined to be nonresponsive and the lowest responsive and responsible Bidder will be issued a NOIA, or a bid opinion will be requested from the City Attorney's Office.
2. The City Attorney's Office reviews the Bid Tabulation Package and determines whether the bid irregularities can be waived. Based on the City Attorney's Office's determination, one of the following actions is implemented:
   - Staff is able to identify the lowest responsive and responsible bidder, and moves forward with NOIA.
   - In cases where the lowest responsive and responsible Bidder is not the same as the apparent low Bidder, a letter shall be sent to the apparent low Bidder stating that the contract will not be awarded to them, and the appropriate NOIA is issued.

3. Staff coordinates with the City Attorney's Office on composition and execution of the contract.

PWE Process for Procurement of Engineering and other Professional Services
(Service and Supply Contracts of More than $50,000)

QUALIFICATIONS BASED SELECTIONS
REQUEST FOR AND RECEIPT OF QUALIFICATIONS RFQs/SOQs
APWA Practice12 - Engineering Management
http://documents.publicworks.houstontx.gov/latest/professional-services-selection-and- procurement.htm

1. Develop an Inventory of Professional Service Contracts based on the Capital Improvement Plan for the upcoming fiscal year.
2. Develop Request for Qualifications (RFQs) for each project.
3. RFQs are posted on the COH-PWE website for submission of Statement of Qualifications (SOQs).
4. Pre-Submission Meeting with Consultant is held.
5. SOQs are submitted to PWE for evaluation.

APPOINTING EVALUATION COMMITTEE MEMBERS

1. Set up Review Panels.
2. Panel Meetings are scheduled for evaluation of SOQs.

SCORING MATRIX

1. SOQs are distributed to the appropriate Panels for scoring using qualifications-based scoring criteria.
2. Panel Recommendations are submitted by the Panels.
3. Selections are determined.
4. Selections are posted to the COH website.

CONTRACT NEGOTIATION and EXECUTION

1. Initiate negotiation of each selection for contract execution, may include, but is not necessarily limited to:
   - Information pertinent to the project/Scope of work /Cost Estimate
   - Scope of capital project -- description of proposed capital improvements
   - Any project implementation schedule and milestone restrictions
   - Sample of COH Professional Engineering Services Agreement (Contract)
   - Notice of M/WBE Goals for professional services
2. The scope of professional services and cost proposal is considered using a level of effort and supporting documents.
3. Staff coordinates with Legal on composing the Professional Service Contracts with the negotiated fees and schedules.

General Services Department

Competitive Sealed Proposals

In accordance with state law, Competitive Sealed Proposals are a procurement method by which the City of Houston contracts with a contractor for the construction, alteration, rehabilitation, or repair of a facility by awarding the contract to the proposer that offers the best value. The City of Houston will contract for the construction, alteration, rehabilitation, or repair of a facility after the City advertises for bids for the contract in a manner prescribed by law, receives competitive proposals, and awards the contract to the proposer that offers the best value.

Process:

1. A Request for Competitive Sealed Proposals is prepared.
2. A Selection Committee of a minimum five persons is formed.
3. The solicitation is advertised for two consecutive weeks in a newspaper of general circulation and is posted on the City's website.
4. A Pre-submittal meeting is held for the respondents.
5. Statements of Qualifications (SOQs) are submitted to the City Secretary's office and the respondents' names are read aloud.
6. The Selection Committee evaluates and scores the SOQs based on advertised weights and criteria.
7. Respondents are shortlisted to submit proposals.
8. Proposals are submitted to the City Secretary's office and the respondents' names are read aloud.
9. The respondent that offers the best value is selected.

Construction Manager-at-Risk

In accordance with state law, the Construction Manager-at-Risk method of procurement is a project delivery method by which the City of Houston contracts with an architect or engineer for design and construction phase services and contracts separately with a construction manager-at-risk to serve as the general contractor and to provide consultation during the design and construction, rehabilitation, alteration, or repair of a facility. A construction manager-at-risk is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the City of Houston regarding construction during and after the design of the facility. The contracted price may be a guaranteed maximum price.

Process:

1. An RFQ/RFP is prepared.
2. A Selection Committee of a minimum five persons is formed.

3. The solicitation (RFQ/RFQ) is advertised for two consecutive weeks in a newspaper of general circulation and is posted on the City's website.
4. A Pre-submittal meeting is held for the respondents.
5. Statements of Qualifications (SOQs) are submitted to the City Secretary's office and the respondents' names are read aloud.
6. The Selection Committee evaluates and scores the SOQs based on advertised weights and criteria.
7. The respondents are Short-Listed to give a presentation and/or be interviewed.
8. The presentations/interview scores are evaluated in accordance with advertised weights and criteria.
9. Respondents are shortlisted to submit proposals.
10. Proposals are submitted to the City Secretary's office and the respondents' names are read aloud.
11. The respondent that offers the best value is selected.

Design-Build

In accordance with state law, the Design-Build method of procurement is a project delivery method by which the City of Houston contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility. This applies only to a facility that is a building or an associated structure, including an electric utility structure.

Process:

1. An RFQ is prepared.
2. A Selection Committee of a minimum five persons is formed.
3. The solicitation (RFQ) is advertised for two consecutive weeks in a newspaper of general circulation and is posted on the City's website.
4. A Pre-submittal meeting is held for the respondents.
5. Statements of Qualifications (SOQs) are submitted to the City Secretary's office and the respondents names are read aloud.
6. The Selection Committee evaluates and scores the SOQs based on advertised weights and criteria.
7. The respondents are Short-Listed to give a presentation and/or be interviewed.
8. The presentations/interview scores are evaluated in accordance with advertised weights and criteria.
9. The respondent that offers the best value is selected.

Job Order Contract

In accordance with state law, the Job Order Contracting delivery method of procurement is used for maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is of a recurring nature but the delivery times and types and quantities of work required are indefinite. This applies only to a facility that is a building, the design and construction of which is governed by accepted building codes, or a structure or land, whether improved or unimproved, that is associated with a building. Indefinite quantities and orders are awarded substantially on the basis

of pre-described and pre-priced tasks. The governmental entity shall establish the maximum aggregate contract price when it advertises the proposal.

Process:

1. An RFQ/RFP is prepared.
2. A Selection Committee of a minimum five persons is formed.
3. The solicitation (RFQ/RFQ) is advertised for two consecutive weeks in a newspaper of general circulation and is posted on the City's website.
4. A Pre-submittal meeting is held for the respondents.
5. Statements of Qualifications (SOQs) are submitted to the City Secretary's office and the respondents' names are read aloud.
6. The Selection Committee evaluates and scores the SOQs based on advertised weights and criteria.
7. Respondents are short-listed to submit proposals.
8. Proposals are submitted to the City Secretary's office and the respondents' names are read aloud.
9. The Selection Committee recommends an award to the proposer that offers the best value.
10. The City of Houston may award job order contracts to one or more job order contractors in connection with each solicitation of proposals.

Houston Airport System

Under construction by the Houston Airport System as of date of publication.