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City of Heath, TX Purchasing Policy

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CHAPTER 1 ~ GENERAL PROVISIONS

§1-101 Purpose

The City of Heath, Texas (City) Finance Department presents this manual to promote understanding by employees, vendors, contractors, and the public regarding the procurement of goods and/or services on behalf of the City. The intent is that this manual be dynamic so as policies, laws or practices change, this document will be updated with the express approval of the City Manager and City Council (when required).

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

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

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

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

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

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

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

§1-102 Public Procurement

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

1. *Planning and scheduling.* Procurement activities to meet program and budgetary objectives;
2. *Source selection.* (Purchasing) The process through which solicitations are issued, advertisements run, vendors selected, and goods and services received and;
3. *Contract administration.* Enforcement of the terms of the purchase agreement or contract and payment of invoices.

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

§1-103 Mission

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

§1-104 Function and Responsibilities

A. The Purchasing Coordinator

Under the general supervision of the Director of Finance, some of the functions and responsibilities of the Purchasing Coordinator are as follows:

- To observe and enforce the procedures outlined and adopted in the City of Heath Procurement Manual, City Ordinances, City Charter and State Law.
- To conduct the Purchasing Process in such a manner that vendors:
 - Will be aware of the fairness of all awards
 - Will be encouraged to continually furnish competitive bids so the City shall secure the best goods and services of the right quality and the best price.

- To encourage competitive pricing at all times while maintaining good vendor relations. To solicit new vendors, specifically HUB vendors, and do all things possible to encourage maximum participation.
- To assist department directors in their efforts to purchase all supplies, materials and contractual services for the City.
- To explore the possibilities of consolidating purchases of like, when possible, or common items to obtain the maximum economic benefits.
- To prepare specifications, where practical, governing purchases of various items.
 - However, when it is proposed to purchase articles of technical or scientific nature for special use, the head of the requisitioning department shall submit recommended specifications.
- To provide for the inspection and appropriate testing for goods delivered, although this responsibility may be delegated to the head of the using department, and to ensure that inferior or unsatisfactory articles are rejected or returned.
- To monitor contract timelines in order to assure timely bids and contract renewals.
- To maintain a record of all bids, quotations and purchases.
- To investigate violations of the purchasing policies and regulations.
- To arrange for the disposal of surplus/scrap materials and equipment, including obsolete stock and scrap, as outlined by this manual.
- To manage the City's relations with vendors, in particular, those who have disputes and/or are disbarred.

B. Using Departments

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

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

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

C. Vendors

The vendor community can assist the Purchasing Coordinator in complying with state laws and regulations by:

- Following ethical business practices and procedures by working within the purchasing process, treating other vendors fairly and respectfully, not colluding or offering kickbacks.
- Providing goods and/or services as specified and on time.
- Completing and returning required forms, bid documents, affidavits and conflict of interest questionnaires.

§1-105 Principles

The Purchasing Coordinator shall comply with these principles:

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

§1-106 Code of Ethics

The Purchasing Coordinator is in compliance with the Code of Ethics of the National Institute of Governmental Purchasers (NIGP). This Code of Ethics may be found at <http://www.nigp.org/home/about-nigp/who-we-are/code-of-ethics>

PERCEPTION IS EVERYTHING. Even if a procurement decision is sound, the method of determination should be documented and will be open to public inspection. If a decision is perceived to be less than fair to all competitors, then the perception becomes the reality to the unsuccessful bidders. And, if the opinion is that the City has “favorite companies we always do business with,” our job is to set the record straight with all who may have this complaint. It is important that awards are made based on competition and/or the best value for the City, that the reason(s) for those awards is documented and defensible, and that a decision is based on fact and made in the best interest of the City.

§1-107 Conflict of Interest

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

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

A vendor or respondent that –

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

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

§1-108 Procurement Records and Information

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

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

CHAPTER 2 ~ ADMINISTRATIVE MATTERS

§2-101 Applicability

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

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

§2-102 Signatory Authorities

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

A. Goods and Services

- 0 - \$2,999.99 Departmental Director
- \$3,000.00 - \$9,999.99 Assistant City Manager
- \$10,000.00-\$ 49,999.99 City Manager
- \$ 50,000 + City Council Authorization for City Manager

B. Construction Contract Change Orders

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

Authority to sign contracts or agreements on behalf of the City is granted and delegated as shown above. This applies to all types of documents including, but not limited to: contracts for services, leases, rental agreements, service/maintenance agreements, facility use agreements, etc.

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

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

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

§2-103 Department Representative(s)

Directors of each using department may appoint a responsible and qualified employee(s) who shall assume the duties of liaison between their department and the Purchasing Division. The employee shall be responsible for the proper initiation of all purchasing matters concerning their departments, for the supervision of all receiving procedures and handling inventory for their department. Mandatory training for department representatives will be held as needed.

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

§2-104 Processes

A. Purchases less than \$3,000.00

No quotes are required when purchasing items less than \$3,000.00.

Directors, or their approved designees, may without further approval of the Purchasing Agent, make purchases of less than \$3,000.00 by authorizing invoices for payment through the A/P invoicing or the Purchasing Requisition process.

B. Purchases of \$3,000 to \$49,999.99

The Department must submit every purchase request for \$3,000.00 or more to the Purchasing Coordinator for approval through the Requisition Process. The Requisition Process requires approval by the Finance Director for all purchases \$3,000.00 and greater; and City Managers approval for purchases \$10,000.00 and greater.

If a purchase is \$3,000.00 or greater, the Department Liaison or Purchasing Coordinator must contact at least two Historically Underutilized Businesses (HUB), unless the list fails to identify a HUB that provides similar goods or services in Rockwall County according to *Texas Government Code, Chapter 252.0215*.

The Department must obtain at least three bid prices or quotes in writing, including any HUB quotes, and attach each to the purchase requisition, unless exempted from the competitive process. The Purchasing Coordinator will issue a purchase order when proper authorization is obtained.

C. Purchases for \$50,000 and over

The Finance Director and City Manager must approve, through the requisition process, all expenditures for \$50,000 or more. Except as provided in Non-Competitive Bid Items (page 18), competitive bids are required, and the City must formally advertise for bids and award

the **bid to the lowest responsible bidder, or to the best value bid** for the city if the proposed purchase is \$50,000 or more according to the City policy.

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

A. Requisition and Purchasing Process

1. All purchases for goods and services for \$3,000 and over shall be made by an official City of Heath Purchase Order.
2. Purchase requisitions will be initiated by the City departments and used to generate a Purchase Order. The Department Director or their designee shall approve all requisitions through the purchasing requisition workflow.
3. A purchase requisition must clearly and accurately represent all of the following specific requirements:
 - a. Company name or suggested vendor and address, if available.
 - b. Date (A specific date by which the item is needed must be provided. Requisitions marked "RUSH" or "AS SOON AS POSSIBLE" will be processed according to date of receipt.)
 - c. Shipping instructions (Complete shipping address including receiver's name and department)
 - d. Quantity and unit of item(s)
 - e. Description of goods or services ordered
 - f. Unit price
 - g. Discount (Make note of any discount even if \$0 or 0%)
 - h. Prices extended and totalled correctly
 - i. Freight and/or delivery charges if applicable
 - j. Vendor contract phone and email.
 - k. Account code to be charged
4. Purchasing will review requisitions based on previous experience with the item, records of past purchases, and vendor catalogues. Purchasing Coordinator retains the right to change the vendor (with departmental Director approval and/or notification), if deemed to be in the best interest of the City. The Purchasing Coordinator shall authorize the requisition.

5. The Finance Director shall authorize all requisitions over \$3,000.00 and the City Manager shall authorize all requisitions over \$10,000.00.
6. The Purchasing Coordinator authorizes final approval of the requisition and processes the purchase order. The Finance Department is responsible for processing all purchase orders.

B. Tax Exemptions

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

The Texas Sales Tax Exemption Certificate may be requested from the Finance Department.

C. Capitalized Fixed Assets

A capitalized fixed asset is tangible and intangible property that the City can leverage as a resource in providing services to the residents and inhabitants of the City. A capitalized fixed asset includes land, infrastructure, buildings, furniture and fixtures, motor vehicles and equipment with a cost of \$10,000 or more and a useful life of more than two years. Capitalized fixed assets are acquired for use in normal operations and are not for resale. These assets are long-term in nature and are subject to depreciation. Capitalized assets and projects should be charged to a capital project asset account. Items costing less than \$10,000 should not be charged to a capital account.

§2-105 Non Competitive Bid Items

Statement

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

A. Emergency Situations

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

In an emergency, the department director may proceed with the emergency acquisition. If the cost is \$3,000 or more, the department shall send a confirming requisition, along with a justification and reasoning for this emergency request and invoices to the Purchasing Coordinator within one business day of completion or receipt of goods or services. The Purchasing Coordinator will then assign a purchase order number and advise the user department to forward that number to the appropriate vendor in accordance with *Texas Local Government Code 252.022 (1), (2) & (3)*.

B. Professional Services

Professional services means services within the scope of the practice, as defined by the state. The City may not select a provider of professional services or a group or association of providers or

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

The City, acting by its appropriate Professional Services Committee, City Manager or appropriate department director, shall first select the most highly qualified provider of these services on the basis of demonstrated competence and qualifications, and attempt to negotiate with that provider a contract at a fair and reasonable price.

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

The City will continue the process described to select and negotiate with providers until the City enters into a contract. Once approved by City Council, the City Manager will execute contracts for the City.

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

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

C. Sole/Single Source Procurement

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

1. patents, copyrights, secret processes, or natural monopolies.
2. films, manuscripts, or books.
3. electricity, gas, water and other utility services.
4. captive replacement parts or components for equipment.
5. books, papers, and other library materials for a public library that are available only from the person holding exclusive distribution rights to the materials.

6. management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits.
7. Emergency repairs to ensure public safety.

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

A Single Source may be available from more than one vendor but has a justifiable reason to be purchased from a single vendor.

D. Purchase of Land or Right-of-Way

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

§2-106 Change Orders

Statement

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

- a. Changes in plans or specifications are necessary;
- b. It is necessary to decrease or increase the quantity of work to be performed;
- c. It is necessary to decrease or increase the quantity of materials, equipment, or supplies to be furnished.
- d. Change orders for construction and public works contracts will be addressed in Part X.

A. Material Changes

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

In the event there is a change to a contract or purchase order, a change order form shall be completed for all written contract documents. Also all change orders must include sufficient explanation or detail for the Purchasing Coordinator to make an informed consent to change the original contract. If necessary, a supplemental memo or supporting documentation may be attached to the change order.

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

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

- *Changes to Professional Services*
 - Changes to the standard Professional Services Contract for Architects and Engineers may be approved by the City Manager (or City Manager's designee) provided that the change order does not increase or decrease the original contract amount by more than \$50,000.
- *Changes to All Other Professional Services Contracts*
 - Written change orders to the Standard Consultant Contract may be approved by the City Manager or the City Manager's designee, provided that the change order does not exceed fifty thousand dollars (\$50,000.00).

C. Change Order Routing Procedures

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

- Approval for change orders less than \$3,000 may be authorized by the Department Director. The change order form is required and shall be approved by the following people:
 - Department Director
 - Project Manager
 - Contractor
- In the event a purchase order is created, change orders must be forwarded to Purchasing within one week of execution in order to increase/decrease the encumbrance on the Purchase Order.

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

- Change orders for \$3,000 to \$50,000 must be pre-approved by the following people prior to performance of the work:
 - Project Manager
 - Purchasing Agent
 - Department Director
 - Finance Director
 - City Manager
 - Contractor
- Executed change orders must be forwarded to Purchasing within one week of execution in order to increase/decrease the encumbrance on the Purchase Order.

3. Change Orders Greater than \$50,000.00

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

Electronic Bids Policy

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

§2-107 Historically Underutilized Business (HUB)

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

- (1) *Definition.* Vendor must be (a) at least 51% owned by an Asian Pacific American, Black American, Hispanic American, Native American, American woman and/or Service Disabled Veteran, (b) an entity with its principal place of business in Texas, and (c) has an owner residing in Texas with a proportionate interest that actively participates in the control, operations and management of the entity's affairs.
- (2) *Requirements.* According to §252.0215 of the Texas Local Government Code, the City, in making an expenditure of more than \$3,000 but less than \$50,000, must contact at least two (2) HUBs on a rotating basis, based on information provided by the comptroller. If the list fails to identify a HUB in Rockwall County, the City is exempt. If the expenditure is for less than \$3,000 or for more than \$50,000, this special notification requirement does not apply.
- (3) *Procedure.* Departments must contact at least two (2) HUBs in the procurement process of construction, goods and services (including professional and consulting) if the expenditure is between \$3,000 and \$50,000. To determine what businesses within the county are classified as HUBs, departments can access the comptroller's website: <https://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp>, select "HUBs Only" and enter the appropriate search criteria. Documentation must be presented to the Purchasing Coordinator through the purchasing requisition process, certifying that the requesting department either made contact with available Rockwall County HUB vendors or that no applicable HUB vendors were identified in Rockwall County for the particular commodity being ordered.

§2-108 HB 89-Doing Business in the Middle East

Adopted by the 85th Texas Legislature (2017) and relating to contracts with and investments in companies that boycott Israel.

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

In 2015, the Texas Legislature adopted [House Bill 1295](#), which added section 2252.908 of the Government Code. The law states that a governmental entity or state agency may not enter into

certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million. The disclosure requirement applies to a contract entered into on or after January 1, 2016.

§2-110 Tax Exempt Status

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

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

§2-111 Confidential Information

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

[This section intentionally left blank.]

CHAPTER 3 ~ SOURCE SELECTION

Part A ~ Methods of Source Selection

§3-101 Methods of Source Selection

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

- a) **Section 3-102 - Competitive Sealed Bidding (Requests for Bid);**
- b) **Section 3-103 - Competitive Sealed Proposals or Request for Proposal;**
- c) **Section 3-104 - Construction Related Procurements;**
- d) **Section 3-105 - Purchases less than \$ 50,000;**
- e) **Section 3-106 - Cooperative Procurements;**
- f) **Section 3-107 - Separate, Sequential or Component Purchases Procurements;**
- g) **Section 3-108 - Finality of Determination;**
- h) **Section 3-109 - Bid Protests.**

Dollar Range	Procedure
\$0.00 to \$ 2,999.99	<ul style="list-style-type: none"> ○ Competition is not required. It is advisable to include a written quotation in some format for auditing purposes.
\$3,000.00 to \$49,999.99	<ul style="list-style-type: none"> ○ City departments and/or Purchasing will solicit a minimum of three informal quotes (should be written/e-mail quotes). Departments must contact at least two (2) HUBs in the procurement process of construction, goods and services. ○ Purchasing will use its discretion to issue a solicitation and obtain competitive bids. Purchasing Coordinator will consult with user department personnel to develop applicable bid specifications. ○ Requisition should be entered by department and all quotes obtained shall be attached. ○ Requisitions will be authorized through the requisition process workflow including Purchasing Coordinator authorization, Finance Director authorization if over \$3,000.00 and City Manager authorization if over \$10,000.00 ○ Purchase Orders are generally created by Purchasing within two business days of approved requisition.
\$50,000.00 and up	<ul style="list-style-type: none"> ○ User department or Purchasing Coordinator must issue a formal solicitation and obtain competitive sealed bids. ○ Requires advance Public Notice of the bid opportunity in the City's Newspaper of Record. Minimum posting is 14-days from original 2-week newspaper ad. ○ Award of bid requires approval by City Council.

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| | <ul style="list-style-type: none"> ○ Requires CIP Form 1295 (see item 2-107) ○ Entire process should be estimated at 45-60 days. |
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§3-102 Competitive Sealed Bidding (Request for Bid)

(1) *Conditions for Use.* Contracts shall be awarded by competitive sealed bidding for any solicitation that is projected to exceed \$50,000 except as otherwise provided in Section 3-101 (Methods of Source Selection).

(2) *Request for Bids.* State law requires a formal, competitive process for purchases of more than \$50,000 (Texas Local Government Code §252.021). However, there are sixteen (16) general exceptions delineated in Section 252.022 of the Local Government Code. <http://www.statutes.legis.state.tx.us/SOTWDocs/LG/htm/LG.252.htm>.

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

- the purchase description
- contractual terms and conditions applicable to the procurement
- any special terms and conditions
- criteria for evaluating the bids received
- whether the bid will be awarded by line item, groups of items or the entire bid

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

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

(5) *Bid Acceptance.* Bids shall be unconditionally accepted without alteration or correction, except as authorized in this manual. Un-opened bids are to be time and date stamped at the office of the Purchasing Agent to validate the time of receipt. Late bids shall not be considered and will be returned un-opened to the bidder, as will bids which are lacking an appropriate signature on the Bid Proposal page.

Bids which are not received in a sealed envelope by bid opening date/time will be rejected by the Purchasing Coordinator. This includes all envelopes, which are secured by metal clasp, twist tie string, etc. or those, which do not otherwise preclude unauthorized access. Bidders who deliver

their bids in an envelope which is not sealed may be allowed to correct this deficiency provided they do so before time/date specified for opening of bids.

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

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

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

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

(7) *Correction or Withdrawal of Bids; Cancellation of Awards.* Bidders are allowed to make corrections to their bid only before the bid opening date and time. Bids will still be due at the specified date and time in order to be considered for award. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price. This chapter does not change the common law right of a bidder to withdraw a bid due to a material mistake in the bid.

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

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

- Unavailable, inadequate, ambiguous specifications, terms, conditions or requirements were cited in the solicitation;
- Specifications, terms, conditions or requirements have been revised;
- The supplies or services being contracted for are no longer required;
- The solicitation did not provide for consideration of all factors of cost to the agency;
- Bids received indicate that the needs of the agency can be satisfied by less expensive article differing from that for which the bids were invited;
- All otherwise acceptable bids received are at unreasonable prices or only one bid is received and the agency cannot determine the reasonableness of the bid price;
- No responsive bid has been received from a responsible bidder,
- The bid process was not fair or equitable; or
- Insufficient funds or budget, if appropriate.

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

Re-bid

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

Cancellation of Request for Bid

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

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

- (1) the purchase price;
- (2) the reputation of the bidder and of the bidder's goods or services;

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

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

Identical Bids. Per §271.901 of the Texas Local Government Code:

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

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

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

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

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

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

§3-103 Competitive Sealed Proposals or Request for Proposal

(1) *Conditions for Use.* A contract may be entered into by competitive sealed proposals when the Purchasing Coordinator or Finance Director determines that the use of competitive

sealed bidding is either not practicable or not advantageous to the City. **City Manager approval is required prior to soliciting Competitive Sealed Proposals.**

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

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

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

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

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

(7) *Award.* Award shall be made to the responsible offeror whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to the City taking into consideration price and the evaluation factors set forth in the RFP. Written notice of the award of a contract to the successful offeror shall be given to all offerors. The Director of the using department will make the final recommendation to the City Council for award.

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

§3-104 Construction Related Procurements

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

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

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

§3-105 Purchases Less than \$ 50,000

Conditions for Use. Any procurement not exceeding \$49,999 may be recommended by the Director or his designee in accordance with procedures per §2-104C. Per §3-102 of this manual, Competitive Sealed Bidding, purchases above \$50,000 will be procured by the Purchasing Coordinator. Per §3-105 of this manual, purchases shall not be artificially divided so as to constitute a small purchase under this Section.

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

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

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

§3-106 Cooperative Procurements

(1) *Definition.* The Interlocal Cooperation Act, Chapter 791 of the Government Code and Chapter 271, subchapters F and G, of the Local Government Code authorizes local governments to enter into interlocal agreements with other governmental jurisdictions including all states within the United States, independent school districts, counties, councils of governments, and non-profit corporations created to provide various governmental functions/services. Furthermore, §271.103 of the Texas Local Government Code provides for the purchase of goods and services under Federal supply schedules of the U.S. General Services Administration.

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

Using departments are requested to contact the Purchasing Coordinator to determine that proper Interlocal Contracts are in place before attempting to secure pricing through any co-ops.

§3-107 Separate, Sequential or Component Purchases

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

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

Part B ~ Determinations and Reports

§3-108 Finality of Determinations

The determinations required by Section 3-102(7) (Competitive Sealed Bidding, Correction or Withdrawal of Bids; Cancellation of Awards), Section 3-103(1) (Competitive Sealed Proposals, Conditions for Use), Section 3-103(7) (Competitive Sealed Proposals, Award), Section 3-106 (Cooperative Procurement), Section 3-107 (Separate, Sequential or Component Purchases), Section 5-101 (Insurance) are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

§3-109 Bid Protests

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

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

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

(2) *Staff Review.* A protest must be in writing and supported by sufficient information in order to be considered. A decision and response to the protest will be prepared by the Purchasing Coordinator or his designee, in consultation with the Department Director and the City

Attorney, within fifteen (15) days of receipt of the protest. Within the fifteen (15) day time period, the City may:

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

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

§3-110 Reporting of Anticompetitive Practices

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

§3-111 Retention of Procurement Records

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

§3-112 Federal Excluded Party Verification-All Funds

For any expenditure, regardless of funding source, in excess of \$25,000.00, the Purchasing Coordinator will run a System for Award Management (www.sam.gov) excluded party search on the prospective awarded vendor prior to issuance of a Purchase Order and maintain a copy of the results in its documentation. Any findings of exclusion, debarment or suspension will result in the vendor being ineligible for participation in City of Heath purchases.

§3-113 Non-Compliant Purchases

Purchases made without using an authorized purchasing method require justification and approval by the Departmental and Finance Directors prior to the issuance of a Purchase Order or payment. The justification from the department's Director should include:

- Documentation of the reason for the non-compliant purchase;
- Name and title of the individual responsible for the purchase;
- Amount of purchase;
- Signed statement declaring that the individual involved has been informed of proper purchasing procedure;

- Agreement that future purchases will be made in accordance with purchasing procedures.
Note: Future non-compliant purchases may be refused reimbursement.
- Appropriate signature of the Departmental Director AND the City Manager.

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

§3-114 IT (Information Technology) Related Purchases

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

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CHAPTER 4 ~ SPECIFICATIONS AND AMENDMENTS

§4-101 Specification Preparation

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

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

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

§4-102 Specifications Prepared by Other Than City Personnel

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

§4-103 Specification Amendments

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

§4-104 Pre-Bid Conferences and Site Visits

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

(2) *Process.* The Director of the using department shall schedule and conduct all pre-bid meetings. The Purchasing Coordinator will also be present at the pre-bid meeting. Pre-bid

conferences and site visits are an opportunity for dialogue between purchasing, the using department and the supplier community. Both facilitate the timely exchange of information to enable all involved to clarify bidding requirements and specific program needs. Bidder servicing or equipment capabilities, application of industry requirements or standards may be clarified. In addition, any need for changes in specifications or bid requirements may be identified to facilitate a more competitive environment or to better define the City's needs so that we obtain the desired materials, equipment or services to meet our program needs. Sign-in sheets will be made available to all attending the pre-bid conference. Bids received from vendors not listed on the role of attendees of mandatory pre-bid conferences will be rejected and returned unopened to the bidder.

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CHAPTER 5 ~ LEGAL REQUIREMENTS

§5-101 Insurance

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

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

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

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

- (1) Workman's Compensation Insurance as required by laws and regulations applicable to and covering employees of Contract engaged in the performance of the work under this agreement with a limit of not less than \$1,000,000.00;
- (2) Employers Liability Insurance protecting contractor against common law liability, in the absence of statutory liability, for employee bodily injury arising out of the master-servant relationship with a limit of not less than \$100,000.00.
- (3) Comprehensive General Liability Insurance including products/completed operation with limits of liability of not less than: Bodily Injury \$1,000,000.00 per each person, \$1,000,000.00 per each occurrence/\$2,000,000.00 aggregate; Property Damage \$1,000,000.00 per each occurrence;
- (4) Builders "All-Risk Insurance" protecting the respective interest of Owner and contractor and its "Field Subcontractors" covering loss of damage during the course of construction of the Project described in this agreement and all property at the job site or in transit

thereto which shall become a part of such Project. Such insurance shall be maintained until such Project is completed and accepted. This insurance shall be terminated with respect to portions of such Project when such portions are completed and accepted; and

(5) **Performance Bond and Payment Bond**, furnished as guaranty of the faithful performance of the work and for the protection of the claimants for labor and material, each in the full amount of the Contract price, executed by a surety company or surety companies authorized to execute surety bonds under and in accordance with the laws of the State of Texas.

(6) **Maintenance Bond**, furnished with Notice of Substantial Completion, often converts from Performance Bond.

Errors and Omissions Insurance (Professional Liability Insurance)

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

Medical Malpractice Insurance

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

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

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

§5-102 Prompt Payment Act

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

§5-103 Public Works Bonding Requirements

Chapter 2253 of the State of Texas Government Code states the following regarding public work performance and payment bonds are located at <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2253.htm>

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CHAPTER 6 ~ CONTRACT ADMINISTRATION, MODIFICATION AND TERMINATION

Part A ~ General Information

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

Part B ~ Preferred Type of Contract

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

§6-101 Multi-Year Contracts

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

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

Part C ~ Basic Contract Process

§6-102 Definition

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

1. Professional/Consulting Service Agreements

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

- ❖ “Professional services” means services: (A) within the scope of the practice, as defined by state law, of: (i) accounting; (ii) architecture; (iii) landscape architecture; (iv) land surveying; (v) medicine; (vi) optometry; (vii) professional engineering; (viii) real estate appraising; or (ix) professional nursing; or (B) provided in connection with the professional employment or practice of a person who is licensed or registered as: (i) a certified public

accountant; (ii) an architect; (iii) a landscape architect; (iv) a land surveyor; (v) a physician, including a surgeon; (vi) an optometrist; (vii) a professional engineer; (viii) a state certified or state licensed real estate appraiser; or (ix) a registered nurse.

Professional Services

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

§6-103 Competitive Sealed Qualifications

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

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

- (3) *Public Notice.* Adequate public notice of the RFQ shall be given in the same manner as provided in §3-102(3). (Competitive Sealed Bidding, Public Notice)
- (4) *Receipt of Qualifications.* Qualifications shall be opened so as to avoid disclosure of contents to competing offerors. Only the name and location of the responding vendors will be announced. A Register of Qualifications shall be prepared and shall be open for public inspection.
- (5) *Evaluation Factors.* The RFQ shall state the relative importance demonstrated compliance with requirements, offeror qualifications, financial capacity, project schedule and other factors, if any. Qualifications shall be evaluated by the director of the using department. All submittals shall be evaluated.

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

The State of Texas, under Government Code 2254, has defined Consulting Services as the service of studying or advising an agency under a contract that does not involve the traditional relationship of employer and employee. "Consultant" means a person that provides or proposes to provide a consulting service.

A pre-approved agreement to engage a provider for Professional/Consulting Services is available from the Finance Department.

2. City Contract

A City Contract is required for providers who are performing a service for the City, usually on City property, where the City must ensure that all protections for the City (insurance, Worker's Comp, etc.) are in full force and effect. For example, grounds maintenance, software, maintenance agreements and janitorial services, etc. are prime examples of general services that would require a Vendor Agreement. Purchasing has developed a formal agreement for these type services which has been approved by the City Attorney. The City Contract is included in this correspondence as an exhibit.

In both of the aforementioned instances, the Signatory Policy noted in section 2-102 of this document is understood. Only those employees with specific authority may obligate the City and sign an agreement.

§6-104 Initiation of Contract

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

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

§6-105 Monitoring and Contractor Report Cards

(1) *Using Departments.* The using department is responsible for monitoring the vendor and the goods and services being provided to the City. It is imperative that using department heads and Directors familiarize themselves with their contracts in order to help facilitate vendor compliance. The scope of work, services and the terms and conditions of the contract must be met prior to making payment.

§6-106 Renewals

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

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

Part D ~ Contract Modifications and Terminations

§6-107 Change Orders

(1) *Definition.* As stated in Texas Local Government Code §252.048, if changes in plans or specifications are necessary after the performance of the contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished.

(2) *Requirements.* The original contract price may not be increased by more than twenty-five percent (25%). The original contract price may not be decreased by more than twenty-five percent (25%) without the consent of the Contractor.

(3) *Appropriations.* The total contract price may not be increased because of the change orders unless additional money for increased costs is appropriated for that purpose from available funds.

§6-108 Terminations

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

(2) *For Convenience.* The City may terminate a contract at any time giving at least thirty (30) days' notice in writing to the Contractor. If a contract is terminated by the City as provided herein, the Contractor will be paid for the service that it has performed up to the termination date.

Part E ~ Maintenance and Lease Agreements

§6-109 Maintenance Agreements

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

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

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

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

§6-110 Lease Agreements

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

§6-111 Contract Review and Approval

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

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CHAPTER 7 ~ SURPLUS MATERIALS AND EQUIPMENT

Part A ~ Disposal

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

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

(2) Under this provision, an employee may not purchase property of any type through City auction.

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

§7-101 City-Owned Materials and Equipment

(1) *Procedure.* The Purchasing Agent will periodically notify each department of the dates that the department will be available to accept surplus items. Using departments will complete and submit to the Purchasing office via interoffice mail, surplus auction forms for those items (including vehicles and heavy equipment) that they wish to dispose of.

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

(2) *Responsibilities:*

Purchasing. The Purchasing Agent shall be responsible for:

- Maintaining an inventory log of surplus items and equipment.
- Preparing an agenda item for City Council approval for the sale of the items and equipment, when appropriate or required.
- Photographing all items and equipment and submitting to the auctioneer, along with descriptions, location, preview dates, contact information, etc.
- Scheduling the auction, coordinating with the auctioneer and overseeing the sale.
- Releasing the property to the successful bidder. No auction items shall be released to any buyer without a paid sales receipt from the Auctioneer.
- Collecting the revenue from the auctioneer and depositing it with the Finance Department.

Equipment Services. Vehicle Maintenance shall be responsible for:

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

Auctioneer. The Auctioneer shall be responsible for:

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

Buyer. The successful bidder shall be responsible for:

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

[Section intentionally left blank]

GLOSSARY OF TERMS

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

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

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

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

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

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

Bonds

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

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

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

Maintenance Bond, furnished with Notice of Substantial Completion, often converts from Performance Bond.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Request for proposal - A formal written document requesting that potential vendors make an offer for goods or services to the City. The request for proposal method of procurement may be used for all goods and services. RFPs differ from Invitations to Bid in that the City is seeking a solution, as described in the document, not a bid/quotation meeting firm specifications for the lowest price. Proposals are evaluated based on criteria formulated around the most important features of a product or service, of which quality, testing, references, availability or capability may be overriding factors, and price is not the sole factor of the award. All request for proposals are kept secret during negotiations until a contract is awarded.

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

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

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

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

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

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

Specifications – A description of the physical or functional characteristics, or of the nature of a supply, service, or construction item; the requirements to be satisfied by a product, material or process indicating, if appropriate, the procedures to determine whether the requirements are satisfied. Specifications should be descriptive, but not restrictive.

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

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

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