City of El Paso

The Amended and Restated Procurement and Sourcing Policy

(Effective April 17, 2018)

City of El Paso
PURCHASING & STRATEGIC SOURCING

MISSION

Deliver exceptional services to support a high quality of life and place for our community.

VALUES

Integrity
Respect
Excellence
Accountability
People

VISION

Develop a vibrant regional economy, safe and beautiful neighborhoods and exceptional recreational, cultural and educational opportunities powered by a high performing government.

CITY OF EL PASO
THE AMENDED AND RESTATED PROCUREMENT AND SOURCING POLICY

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CITY OF EL PASO
THE AMENDED AND RESTATED PROCUREMENT AND SOURCING POLICY

SECTION 1 – INTRODUCTION

The City of El Paso is a political body, with power to exercise all powers of local self-government, which are or come to be conferred upon constitutional home rule cities in the State of Texas. The City of El Paso (hereinafter referred to as "the City") shall exercise these powers as a municipal corporation, subject to the Constitution of the laws of the State of Texas.

1.1 Purpose and Scope

The purpose of The Amended and Restated Procurement and Sourcing Policy (hereinafter referred to as "the Policy") is to establish the general guidelines for conducting procurements, sourcing and qualification-based selections by and for the City.

1.2 Application

This Policy applies to all solicitations, negotiations, purchase orders and contracts, agreements for the procurement of goods, services, construction/public works and a sub-grant entered in to by City. It shall apply to every expenditure of Federal funds by City for public purchasing, including contracts which do not involve an obligation of funds (such as concession contracts); however, nothing in this Policy shall prevent the City from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with law. The term procurement, as used in this Policy, includes both contracts and modifications (including change orders) for goods, services and construction, as well as qualification-based selections, purchase, lease, or rental of supplies and equipment, but shall not be applicable in agreements wherein the City serves as the fiscal agent or to sub-grant.

Based on these policies, the Purchasing Director will establish procedures for procurements, qualification-based selections and sourcing in accordance with general procurement practices and in compliance with applicable laws. The Purchasing & Strategic Sourcing Department will implement and disseminate the procedures and practices adhering to the policies provided in this Procurement Policy and applicable local, state, and federal laws. In accordance with this purpose, the Purchasing & Strategic Sourcing Department has defined its mission as follows:

> *"Our mission is to facilitate the procurement of goods and services in an open, fair, transparent, economically competitive and respectful process with the goal of maximizing taxpayers' dollars. Therein promoting and fostering a climate of good business relationships between our suppliers and the City."*

1.3 Modification to The Amended and Restated Procurement and Sourcing Policy

Modification of any of the policies set forth in this Policy, subsequent to the adoption of this Policy by City Council, must be approved by same except that the City Manager or designee without the further approval of the City Council.

The City Manager or designee is authorized to correct inconsistencies, make such non-material changes, additions, corrections or amendments as he may deem necessary or advisable, or make such other changes as may be required by City Council, or as a result of changes in federal regulations, or results from a Six Sigma process improvement.

SECTION 2 – PROCUREMENT AUTHORITY AND RESPONSIBILITIES

2.1 City of El Paso's Governing Body

2.1.1 Mayor

The Mayor, elected by qualified El Paso voters in a regular election, is recognized as the head of the City government for all ceremonial and military purposes. The Mayor is the presiding member over City Council. The Mayor has no administrative duties in accordance with the City Charter [Abbreviated].

2.1.2 City Manager

The City Manager, appointed by City Council, on the basis of executive and administrative qualifications, is the Chief Administrative Officer of the City. The City Manager is responsible for the administration of all City affairs as provided in the City Charter [Abbreviated].

2.1.3 City Council - Eight (8) District Representatives

There are eight (8) District Representatives, as established by City Council, elected in a regular election of qualified El Paso voters. The eight (8) District Representatives, along with the Mayor, have legislative powers [Abbreviated].

2.2 Procurement and contract award duties of the Governing Body

2.2.1 The Mayor

Under the authority of the Council, the Mayor shall sign all lawful acts of the Council, such as ordinances, resolutions, conveyances, grant agreements, plats, contracts and bonds. The Council may, by ordinance, provide that additional designated officials may sign such acts of Council on behalf of the Mayor as provided by law.

2.2.2 City Council

Approval of the City Council is required for contracts and contract modifications that alone, or in the aggregate, total an amount in excess of ($50,000). In addition to the above, only City Council has the authority to terminate formal contracts in accordance with the terms of such contracts and enter agreements relating to resolution of any contract dispute.

2.2.3 The City Manager

The City Manager shall have the authority to execute intergovernmental agreements, as delineated within Ordinance 16015, contracts, purchase orders and/or modifications up to fifty thousand dollars ($50,000) without City Council approval.

In the event the City Manager determines it would be in the best interest of the City, the City Manager may execute a contract and/or modification that requires City Council's approval before the next City Council meeting, provided that said contract and/or modification(s) are presented to the City Council for ratification at the next regular or special City Council and/or Mass Transit Board meeting.

2.2.4 The Purchasing Director

The Purchasing Director shall serve as the Chief Procurement and Contracting Officer and is authorized to execute intergovernmental agreements, contracts, purchase orders and/or modifications in accordance with the authority delegated by the City Manager. The Purchasing Director may also sign contracts/agreements for the acquisition of any city goods and services in an amount of $3,501 to $50,000 per annum, or an aggregate of $100,000 on a multi-year contract. All single purchases equal to or greater than $50,000 must be approved by City Council upon review by the City Manager. The Purchasing Director can issue purchase orders in an amount greater than $50,000 if approved by City Council. The City Council herein delegates the authority to the Purchasing Director to exercise options of contracts wherein the initial term was approved by City Council.

SECTION 3 – COMPLIANCE WITH PROCUREMENT POLICIES

All City of El Paso personnel responsible for any aspect of a qualification-based selection, evaluation of contractor, or procurement process shall comply with the laws, regulations, policies and procedures established for conducting processes delineated in this Policy and Purchasing & Strategic Sourcing Manual. All personnel involved shall conduct his/her duties with the highest ethical standards and business practices.

SECTION 4 – DUTIES OF THE PURCHASING DIRECTOR

The Purchasing Director shall have the following duties:

4.1. Lead the day-to-day operations of the Purchasing & Strategic Sourcing Department and shall lead all city procurements.
4.2. Serve as the Wage Theft Coordinator.
4.3. Serve as Chief Contract Compliance Officer.
4.4. Exert good business acumen by seeking to establish contracts that represent the best value or most advantageous for the City of El Paso.
4.5. When advantageous, seek to collaborate with other agencies within the region and nationally to reduce costs and improve services.
4.6. Promote standardization and/or category management to improve the City's efficient use of resources.
4.7. Provide procurement planning and consultation services to City departments with the goal of enhancing value-added in related procurement and contracting activities.
4.8. Promulgate procedures in accordance with all applicable laws, regulations, and policies, including but not limited to the applicable provisions of the City of El Paso resolutions or Ordinances, State of Texas Statutes, and the Federal Acquisition Regulations if applicable [Abbreviated].

SECTION 5 – RESPONSIBILITY OF CITY STAFF INVOLVED IN PROCUREMENT AND SELECTION PROCESSES

City employees involved in the procurement, qualification-based selection, sourcing, contracting, or purchasing process must uphold the highest ethical standards. City employees carrying out procurement, contracting, or purchasing duties must become familiar with all requirements associated with their roles.

5.1 Purchasing Representatives

5.1.1. Purchasing Representatives must become familiar with policies; procedures and laws associated with the role assigned and understand the requirements.
5.1.2. Maintain the confidentiality of any and all procurements assigned, or that it comes into contact whether or not it has been assigned to the Purchasing Representative.
5.1.3. Promptly respond to the End User requests and advise the User Department of any deficiencies in the submission.
5.1.4. Provide guidance to the End User in the procurement, sourcing and contracting process.
5.1.5. Effect any allowable contract changes requested by the End User's Contract Administrator throughout the life of the contract [Abbreviated]

5.2 Contract Administrators

5.2.1. Understand and follow the procurement policies, procedures and principles of contract administration.

5.2.2. End Users' Contract Administrators shall manage contract(s) for compliance with all terms and monitor vendor performance to ensure that vendor performance adheres to contract terms. Vendor performance reports shall enter into the Vendor Performance Tracking System at a frequency to be determined by the Contract Administrator. A vendor performance report shall be completed upon closing out a contract. Any compliance issues must be reported to the End User's Director and Purchasing Director no later than one business day after the department first becomes aware of the issue. The Legal Department shall be engaged by the Purchasing Director on matters that have escalated to require a cure letter and/or termination.

SECTION 6 – PROCUREMENT GUIDELINES

6.1 Cone of Silence/Anti-Lobbying Policy

The City's Cone of Silence/Anti Lobbying Policy was adopted to ensure a fair and competitive bidding environment by preventing communication or lobbying between City officials, employees, or representatives and parties involved in the bidding process that could create an unfair advantage to any party with respect to the award of a City contract.

The City's Cone of Silence/Anti-Lobbying Policy prohibits any communication or lobbying activities with City officials, employees and/or its consultants or contractors on matters of a solicitation from its advertisement through the date said item is posted on the forthcoming City Council agenda.

In the case of an unsolicited or competing proposal for a public-private partnership, the period shall commence on the date that the City receives a notice of intent from a vendor declaring its intention to submit an unsolicited proposal and will end the on the date the notice of award has been posted on the City Council agenda. All provisions of the Cone of Silence/Anti-Lobbying Policy are hereby incorporated by reference.

6.2 Sustainability

Purchasing and Strategic Sourcing recognizes its responsibility to minimize negative impacts to the environment and to the public health when procuring products and services that have an inherent social, environmental and economic impact. Purchasing & Strategic Sourcing is committed to make procurement decisions that will contribute to promote sustainability by purchasing products and services whose quality, function and cost are equal or superior to more traditional goods or services.

6.2 Sustainability (Continued)

The following factors will be considered when preparing a solicitation:

a) In conjunction with User Departments and in a case by case basis and when relevant sustainability factors will be included in solicitations, including but not limited to:
   1. Resource conservation;
   2. Reduction of waste generated by construction projects;
   3. Energy efficiency;
   4. The use of recycled/recyclable supplies and material;
   5. LEED Certification;
   6. Minimum packing;
   7. Maximum durability, reparability, reusability, recyclability and upgradeability;
   8. Reduction usage of hazardous material;
   9. Disposal Cost;
   10. Disposal Methodology; and
   11. Recycling.

6.3 Public Notice Requirement

6.3.1. Publication

It is the policy of the City of El Paso to promote an open and transparent procurement process by giving public notice to bidders and/or offerors of upcoming opportunities.

The term “Publicize” or “Publication” as used in this Policy refers to the process of advertising in the official legal organ (hereinafter the “local newspaper”) a synopsis of solicitations that are available for review on the City’s website. All qualification based selections and procurements with an estimated value of fifty thousand dollars ($50,000) or greater shall be advertised in the local newspaper a minimum of once a week for two consecutive weeks.

The date of the first publication must be before the 14th day that the bids or proposals are publicly opened and read out loud. The Purchasing Director shall implement standards for advertisements. Consideration shall be given to the cost estimate, complexity of the requirement, market condition and other relevant factors. Such standards shall be applicable to all procurements, unless there are extenuating circumstances that may cause the Purchasing Director to authorize a deviation from the standard provided that such deviation meet the legal advertisement requirement.

6.3.2 Post on the City's Website

To enhance transparency, the City shall post all contracting opportunities to the City's website. The terms "Posting" or "Posted" as used in this Policy refers to the process of placing a solicitation on the City's website and thereby making it immediately available for downloading. Informal bids, Formals, Qualification based selections and Alternative procurement methods shall be posted in the e-Procurement page under the Purchasing & Strategic Sourcing Department of the City of El Paso's web site.

The documents shall be available no later than the first day that the procurement opportunity is advertised and appears in the local newspaper.

SECTION 7 – INITIATION OF PROCUREMENT ACTION

Documents authorized to initiate a procurement action shall include, but are not limited to, the following:

a. Initial Procurement Start-Up Package (Scope of Work, Procurement Request Form, Independent Cost Estimate),

b. Encumbrance (requisition),
and

c. Justification memo for non-competitive procurement (if applicable) or other forms that are developed and approved by the Purchasing Director (or designee) to facilitate the procurement action in compliance with this Policy.

SECTION 8 – EVALUATION COMMITTEE *[Revised January 1, 2019]*

Evaluation Committee (EC) Purpose: These evaluation guidelines apply to evaluation committees of any procurement with a qualitative process. An evaluation committee shall be formed for the purpose of evaluating the qualifications of proposals received in response to a particular qualitative procurement.

EC Formation: The End User and Purchasing Director shall identify candidates to serve as evaluation committee members for a particular project. Prior to issuance of the procurement document receipt of the proposals or submittals, the user department and Purchasing shall agree on the weight of criteria. It is ideal for the EC members to participate during the development of the solicitation. Their involvement will help them understand the goals of the project and not get lost in the mechanics of the process.

On non-routine and/or complex projects where the City desire to supplement its skill set or industry knowledge, the City may determine that non-City employees

may be engaged to participate as either a voting or non-voting members. The participation of non-City employees shall be approved in advance by the Purchasing Director upon confirming there are no conflicts of interests.

EC Size: The ideal size of the committee may range from 3 to 5 people depending on the project. The larger the committee, the more critical it is to set the evaluation schedule (rainbow report) in advance of the due date of proposals or submittals.

EC Notation: Each EC member shall be signed a valuation number and shall not be identified on the scoring documentation be name.

Role of EC members: A committee may include voting and observers members. Their role is similar in that they review and evaluate submittals or proposals, except that observers members are generally providing their technical or policy expertise where needed. Observers members need not be present for the deliberations of the voting members; but depending on the project, they may not be restricted from participating. All EC members must be available for all meetings and shall decline participation if he/she anticipates unavailability during the evaluation process.

Voting members: Voting members are required to read all proposals, evaluates, contributes comments to the evaluation process based on information received from vendors in their submission(s), interviews or presentations (if applicable). Voting members must attend all evaluation meetings, interviews and/or presentations, if applicable. Therefore, a voting member must be committed to participate so as not to cause delays in the evaluation process of the project.

Confidentiality: All EC members, regardless of role, are required to sign a Cone of Silence and confidentiality statement committing to non-disclosure of any information associated with the content of proposals, conversations, or anything associated with the evaluation of the proposals or submittals to any other person who have not signed the confidentiality statement.

Evaluation of Documents: EC members are encouraged to read the material more than once and rate each proposal/submittal in accordance with the evaluation guidelines provided in the solicitation. The EC member shall provide comments noting strengths and weaknesses of each proposal or submittal based on the criteria in the solicitation. These will help develop the evaluation summary, which will help support the selection and later debrief unsuccessful vendors, as appropriate.

Ranking: Upon preliminary evaluation of proposals/submittals, the EC may be required to rank the proposals/submittals so as to establish a shortlist/competitive range to move to the next step in the evaluation process.

The evaluation process may require that each evaluation team member rate the response or proposal and submit to the Purchasing Representative to average scores in order to determine the ranking. Evaluation Summary: The evaluation summary provides an objective set of reasons why the selected vendor was successful. The summary should be based on the strengths and weaknesses that help support the selection, regardless of whether a point system was used for the evaluation. This summary helps reconcile the selection to the evaluation criteria and ultimately the original goals of the RFP or RFQ. It is important to avoid any subjective comments in this document. Include relevant qualitative information that separates the selected vendor from the others.

SECTION 9 – SELECTION OF PROCUREMENT METHOD

All procurement transactions will undergo a procurement selection rationale process to determine which of the procurement methods identified is applicable, based upon the complexity of the scope of work and the estimated dollar amount of the procurement in accordance with this Policy. The Purchasing Director will provide a written determination (Procurement Rationale Form) of the procurement method that will be utilized.

9.1 Procurement Methods

In accordance with Chapter 252 of the State of Texas Local Government Code, all purchases exceeding $50,000 are deemed as formal and require public notice. All purchases and/or qualification based selection processes equal to or exceeding $50,000 shall be competitively awarded. The Purchasing Director shall, as part of his duties, implement procedures for qualification based selection processes and the procurement of goods and services in compliance with City, State, and Federal requirements. Such procedures shall promote fair and open competition. Procurement methods for formal procurements shall be in accordance with acceptable procurement practices and legal requirements established for each type of procurement. The Purchasing & Strategic Sourcing Manual shall also include applicable informal processes for purchases, sourcing and/or selections under $50,000.

9.1.1 EP MarketPlace

The use of EP MarketPlace is authorized by City Council in accordance with FY 2018 Budget Resolution, Item 16. The City of El Paso's Purchasing & Strategic Sourcing Department has implemented a system "EP MarketPlace," a catalogue-type system to facilitate access to strategic and cooperative contracts.

In an effort to enhance efficiency and maximize City resources, Departments shall first search the EP MarketPlace for the availability of goods and/or services. If the goods or services are not available on the EP MarketPlace the department will submit the Procurement Request Form to initiate the biding or sourcing process.

The purchase of vehicles, trucks and/or fire apparatus/pumpers shall be expressly prohibited from being sourced through the e-catalog. In addition to the above the sourcing or selection of services identified within the Professional Service Act shall be prohibited from being sourced through the EP MarketPlace.

9.1.2 Procurements under 50K

9.1.2.1 *Commercially available goods and services*

It shall be the policy of the City of El Paso that upon approval from the Purchasing Director End Users are allowed the purchase of commercially available items. Such items may be purchased with the P-Card provided that it is more efficient to purchase from a retail store to meet the needs of the City. Typically, this will be used for one-time purchases with an estimated value less than $ 3,500. Whenever feasible, End User should plan to utilize any strategic contracts that may be available through EP MarketPlace or other approved means.

9.1.2.2 *Non-competitive procurements*

Whenever a need is identified by an End User for goods or services available from a single source or meeting the sole source definition, the End User may submit a request for such purchase. The End User shall conduct its due diligence to ascertain that such goods or services are not available from other sources before submitting such request.

9.1.2.3 *Purchases under $3,500*

Competition is not required for one-time purchases under $3,500 dollars. End User is responsible for determining the cost reasonableness of said purchase. Purchases may be executed using the P-Card payment method, direct payment, or purchase order. However, the End User shall not use the purchase order process when the total amount of such purchases is equal to or less than $250.

9.1.2 Procurements under 50K (Continued)

9.1.2.4 ***Purchases between $3,501 and $49,999.99***

It shall be the policy of the City of El Paso to require three (3) quotes for non-commercially available purchases estimated between $3,501 and $49,999.99. In accordance with Section 252.0215 of the State of Texas Local Government Code, shall solicit quotes from a minimum of two (2) Historically Underutilized Businesses (HUBs).

If more than two (2) HUBs are available to provide goods and services for a specific category the City can stablish a rotation process and source directly based on the rotation process shall ensure an equitable distribution of opportunities to provide goods and/or services.

9.1.3 Competitive Sealed Bid

9.1.3.1 ***Low Bid***

In accordance with Section 252.043 (a) of the State of Texas Local Government Code, it shall be the policy of the City of El Paso to conduct a competitive sealed bid on purchases estimated at $50,000 or more, unless the Purchasing Director determines that a different procurement method is most advantageous to the City.

9.1.3.2 ***Best Value Bid***

In accordance with Section 252.043 (b) of the State of Texas Local Government Code, if a best value bid is conducted, the selection will be based on a combination of qualifications/quality and price. The procurement documents shall indicate that selection of the successful bidder will be based on the best value bid and shall identify the criteria that will be considered for the determination of the best value bid selection. The Purchasing & Strategic Sourcing Department in conjunction with the User Department shall select the factors applicable to best value bids. No single evaluation factor shall have a numerical value greater than price. In addition to the above, price alone shall not be weighted to result in de-facto low-bid. Price shall not have a numerical value exceeding 35 out of 100 points.

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b. Best Value Bid (Continued)

Best value considerations may include but not be limited to the following:

1. Purchase price;
2. Reputation of bidder;
3. Quality of bidder's services;
4. Extent to which bidder's services fit City's needs;
5. Past relationship with the City;
6. Impact on owner to comply with laws & rules relating to Historical Underutilized Businesses (HUB's) and nonprofit organizations that employ persons with disabilities;
7. Long-term costs to owner (Cost of Ownership);
8. Employee Medical Benefits (Resolution 8/28/12); and
9. Any other relevant factor.

9.1.4 Request for Proposals

9.1.4.1 *Competitive Sealed Proposals*

Pursuant with Chapter 252 and 2269 of the State of Texas Local Government Code, the City of El Paso may conduct competitive sealed proposals for construction projects whenever it is determined to be in the best interest of the City.

The competitive sealed proposals require that the contract be awarded to the responsible proposer whose proposal is determined to be the most advantageous to the municipality considering the relative importance of price and the other evaluation factors included in the request for proposals. Purchasing & Strategic Sourcing Department shall select the Evaluation Factors in collaboration with Capital Improvement Department. No single evaluation factor shall have a numerical value greater than price.

In addition to the above, price alone shall not be weighted to result in de-facto low-bid. Price shall not have a numerical value exceeding 35 out of 100 points.

9.1.4.2 *Request for Proposals*

It is the policy of the City of El Paso to seek to obtain the best value offered by a responsive and responsible proposer. In accordance with Section 252.042 of the State of Texas Local Government Code, the City may use the Request for Proposal method on certain procurements. The Request for Proposal must indicate the relative importance of the price and other evaluation factors.

b. Request for Proposals (Continued)

The City of El Paso may consider various factors, as determined by the Purchasing & Strategic Sourcing Department in collaboration with the User Department.

These include, but may not be limited to:

1. Purchase Price;
2. Reputation of the proposer and of the goods or services;
3. Quality of the proposer's goods and services;
4. Extent to which the proposer's goods or services meet the City of El Paso's needs;
5. The proposer's past relationship with the City;
6. The proposer's impact on the ability of the City to comply with laws and rules regarding Historically Underutilized Businesses (HUB's) and nonprofit organizations that employ persons with disabilities;
7. Long term-cost to owner (Cost of Ownership); and
8. Any other relevant criteria specifically listed in the Request for Proposal.

9.1.5 Request for Qualifications

It shall be the policy of the City of El Paso not to give consideration to price in the selection of vendors to provide professional services as defined in Chapter 2254 of the State of Texas Local Government Code. Professional services include certified public accountants, architects, landscape architect, land surveyor, physicians, optometrists, professional engineer, and state certified real estate appraiser. The Purchasing Director may make a determination that this process is appropriate as the first step to other solicitations where the area of services requires certain specialized qualifications. Other professional services not delineated within Chapter 2254 shall be procured using the Request for Proposal process.

9.1.6 Alternative Delivery Methods

It shall be the policy of the City of El Paso to enter into contract with vendors for the construction, alteration, rehabilitation, or repair of facilities using an alternative delivery method. The appropriate procurement method will be applied for the procurement and selection of such vendor. Alternative delivery methods include those authorized by the Texas Legislation, including any methods approved in the future (i.e., online bidding).

9.1.6 Alternative Delivery Methods (Continued)

Examples of the alternate delivery methods include:

9.1.6.1 Design-Build

Pursuant with Section 2269 of the State of Texas Government Code and this Policy, the City may elect to use design-build as an alternative delivery method for certain capital projects as determined by the City. This delivery method is a turnkey option to the traditional design-bid-build. The design-build is a project delivery method by which the City contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility. The evaluation factor for a design-build selection process shall incorporate the evaluation factors delineated within Chapter 2269 of the State of Texas Government Code.

9.1.6.2 Construction Manager at Risk (CMAR)

In accordance with the provisions of Section 2269 of the State of Texas Government Code and this Policy, the City may elect to procure construction services through the use of Construction Management at Risk, an alternative delivery method. The construction manager-at-risk method is a delivery method by which the City contracts with an architect or engineer for design and construction phase services and contracts separately with a construction manager-at-risk to serve as the general contractor and to provide consultation during the design and construction, rehabilitation, alteration, or repair of a facility.

9.1.6.3 Public Private Partnerships (P3)

Pursuant to Chapter 2267 of the State of Texas Government Code, the City may enter into Public Private Partnerships for the design, construction, operation, and/or financing of public facilities. The P3 selection process can only be utilized for qualifying projects as defined within Chapter 2267 of the State Government Code.

Prior to proceeding with this alternative delivery method, the City shall conduct the required analyses and processes, including but not limited to: cost-benefit analysis, assessment of opportunity cost, legal analysis, public hearings, and others as detailed in Chapter 2267. This method is generally used for development-type projects or governmental facility available for public use. This delivery method generally includes the design, construction management, construction, and may include financing and operation for a defined period of time.

c. Public Private Partnerships (P3) (Continued)

Any Private Entity submitting an Unsolicited Proposal or a Competing Proposal shall pay a preliminary review fee to the City in the amount of Five thousand and No/100 Dollars ($5,000) at the time it submits the proposal to the City, by check, money order, credit card or electronic transfer.

9.1.7 Cooperative Purchases

a. Participation in or use of a cooperative program and the resultant contracts/schedules require City Council approval prior to the use of said cooperative program. In accordance with Chapter 791 of the Texas Government Code, Chapter 271 of the State of Texas Local Government Code, and subsequent City Council Budget Resolution 2018, Item 15, the Purchasing Director is authorized to source or purchase under an approved cooperative program. The currently approved cooperative programs include:

State of Texas Department of Information Resources (DIR);
Harris County Department of Education Cooperative;

- Houston-Galveston Area Council (HGAC);
- ESC Region 19 Cooperative Purchasing Program;
- Tarrant County Cooperative Purchasing Program;
- Texas Association of School Boards (TASB Buy Board);
- Texas Procurement and Support Services TPASS);
- The Cooperative Purchasing Network (TCPN/National IPA);
- Texas Multiple Award Schedule (TXMAS);
- U S Communities Government Purchase Alliance;
- U. S. General Services Administration (GSA); and
- Technology Bidding and Purchasing Program (PEPPM).

9.1.7.1 Job Order Contracting

The City may use a Job Order contract whenever it is determined to be the most advantageous to the City. Job Order Contracting is a procurement method used for maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is of a recurring nature but the delivery times, type, and quantities of work required are indefinite, according to Texas Local Government Code 2269.

9.1.8 Non-Competitive Procurement Methods

9.1.8.1 *Sole Source*

In accordance with Section 252.022 of the State of Texas Government Code, it shall be the policy of the City of El Paso to employ a non-competitive process on a limited basis on goods and services that may only be acquired from a single source or when a specific source may be the only one to meet the City's requirements.

Examples of such situation may include but not be limited to:

1. A procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality;
2. If a contract cannot be awarded after two competitive procurements/selection process. The requirement can be fulfilled by a non-competitive award.*[Revised August 19, 2019]*
3. A procurement necessary to preserve or protect the public health or safety of the municipality's residents;
4. Public exigency will not permit a delay resulting from a competitive solicitation;
5. A procurement necessary because of unforeseen damage to public machinery, equipment, or other property;
6. A procurement for personal, professional, or planning services;
7. A procurement for work that is performed and paid for by the day as the work progresses;
8. A purchase of land or a right-of-way;
9. Items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies;
10. Films, manuscripts, or books;
11. Gas, water, and other utility services;
12. Captive replacement parts or components for equipment;
13. Books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials;
14. 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;
15. A purchase of rare books, papers, and other library materials for a public library;
16. Paving drainage, street widening, and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements;

a. Sole Source (Continued)

17. A public improvement project, already in progress, authorized by the voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes authorized by the voters;
18. A payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212;
19. Personal property sold: (A) at an auction by a state licensed auctioneer; (B) at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; (C) by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or (D) under an inter-local contract for cooperative purchasing administered by a regional planning commission established under Chapter 391;
20. Services performed by blind or severely disabled persons (Texas Industries for the Blind and Handicapped);
21. Goods purchased by a municipality for subsequent retail sale by the municipality;
22. Electricity;
23. Advertising, other than legal notices;
24. The City had previously conducted a formal competitive procurement leading to the standardization of goods or services and is seeking to add or replace portions of the original purchase, and
25. The purchase of a specific brand, make or model is necessary to prevent a warranty from becoming void.

b. Emergency Purchase – Public Health and Safety

Pursuant to Section 252.022 of the State of Texas Government Code, whenever there are circumstances that present a threat to the health or safety of the public and/or that may cause damage to public property, the City may authorize an emergency purchase, which will not require a competitive process.

a. Emergency Purchase – Public Health and Safety (Continued)

Whenever possible, however, the City may request quotes from more than one vendor, preferably three vendors. The Purchasing Director is authorized to approve emergency purchases under $50,000.

Emergency purchases of $50,000 or more must be approved by the City Manager. Emergency purchases of $50,000 or more shall be submitted to City Council for ratification.

9.2 Commodity Types

The type of commodities or services may generally dictate the procurement method. It should be noted that there are different categories that fall within each type of procurement. The general types of commodities include the following:

9.2.1 Goods

This type generally includes a variety of commodities that are commercially available such as materials and/or supplies.

9.2.2 Equipment

Equipment may generally include but is not limited to building equipment, office equipment, rolling stock, medical equipment, research equipment, and any other equipment necessary for the operation of the City.

9.2.3 General Services or Work Services

Some examples of categories within the general services may include custodial services, security services, and others. Janitorial/Security and Land management contracts require both a Payment and Performance Bond.

9.2.4 Construction/Public Works

Construction services shall be procured in accordance with of the Texas Government Code and Chapters 252, 2253, 2269 and 2267. Public works projects of 25,000 or more require both a Payment and Performance Bond in the amount of the contract.

9.2.5 Other Professional Service Agreements

Pursuant to the State of Texas Government Code, Chapter 2254, Subchapter B, consulting/other professional services shall be competitively procured provided they are not professional services as defined in Subchapter A. Consulting/other professional services may include but are not limited to management consulting services, training services, systems consulting services and others.

Professional Services not listed under Chapter 2254 shall be selected by a Request for Proposal. Disciplines that require a license and/or registered professional include legal, planning services, computer programmers, consultants, third party administrators, law enforcement consultants, property tax consultants and auditors.

9.2.6 Professional Services

9.2.6.1 *Categories*

Professional services include certified public accountants, architects, landscape architect, land surveyor, physicians, optometrists, professional engineer, and state certified real estate appraiser as provided in the Professional Service Act, Chapter 2254 of the State of Texas, Local Government Code. For purposes of this policy and resulting Purchasing & Strategic Sourcing Manual a qualification based section process is a Request for Qualifications.

9.2.6.2 *Architectural and Engineering (A&E) Services*

Architectural and Engineering services are procured through the Request for Qualification procurement method. While the State of Texas Government Code Chapter 2254 and Chapter 252 of the Local Government Code do not explicitly require the use of a Request for Qualifications, for purposes of this policy and resulting Purchasing & Strategic Sourcing Manual a qualification based section process is a Request for Qualifications. It is exempt from the competitive bid process as defined in Chapter 252, however competition is required under the Professional Service Act. Price is not an evaluation factor.

9.2.7 Technology

Technology may include the purchase of goods, supplies, equipment, software, and consulting services; therefore, technology may be included in various categories depending on the type of purchase required.

9.3 Strategic Sourcing

The Purchasing Director may, upon appropriate analysis, elect to designate a category under a type of purchase as a candidate for strategic sourcing. The purpose of strategic sourcing is to leverage spend across the organization in order to realize operational efficiencies and optimize resources. The Purchasing & Strategic Sourcing Department will conduct an annual spend analysis. The spend analysis will collect, cleanse, classify and analyze expenditure data with the purpose of decreasing procurement costs, improving efficiency, and monitoring compliance.

Upon determination that a category is a candidate for strategic sourcing, the Purchasing Director will issue notice to departments seeking department participation, cooperation or input in the process. End User shall cooperate with the Purchasing Representative responsible for leading the procurement effort so as to allow for the implementation of the strategic contract in an expeditious manner. Whenever feasible, such contracts will be made available on the EP MarketPlace.

9.4 Cost and Price Analysis

As part of the evaluation of bids or proposals, the Purchasing Representative will conduct a price analysis to determine the reasonableness of the price proposed by the vendor. The extent and form of analysis will depend on the type of goods or services being sought and the structure of pricing that was required from vendors.

A cost analysis is required for every sole source, change orders, amendments, or modifications to existing contract(s).

A cost or price analysis is required on all competitive procurements and qualification based selection processes.

9.5 Responsiveness and Responsibility

9.5.1 Responsiveness

The Purchasing Representative shall review all bids, proposals, quotes, or offers for responsiveness to the requirements stated in the solicitation document. Responsiveness means that the bid, proposal or offer meets the specifications in all material respects.

9.5.2 Responsibility

The Purchasing Representative shall also assess the responsibility of the vendor submitting an offer and its ability to meet the performance and quality requirements stated in the solicitation document. The responsibility assessment may include, but not be limited to, qualifications of the vendor to deliver the goods or services, financial capacity, availability of personnel or goods to be provided, and any other aspect necessary for the successful performance of the contract.

9.6 Contract Administration and the Contract Compliance Manager

The Purchasing & Strategic Sourcing Department share the contract administration responsibility with End Users. The Contract Compliance Manager, under the direction of the Purchasing Director, is responsible for the oversight and management of Contract Administrators throughout the City. Contract administration duties include but are not limited to contract management, vendor performance appraisal, vendor management, corrective action of any potential or real issues in the performance of the contract, and contract closeout. Contract Administrators will manage any and all daily matters associated with Vendor Performance Tracking System. However, Purchasing Representatives shall process any changes to the contracts that are initiated by the End User's Contract Administrator provided that said changes are approved.

9.7 Contract Types

The City may enter into different types of contracts in order to meet the operational needs of the City. Such types may include but not be limited to annual contracts, multi-year contracts; task order contracts; one-time or project-specific contract; or a requirements contract. A maximum dollar value may be established over a specific period of time. The dollar limit on a project-specific contract may be equal to the estimated price proposed for the completion of a project.

SECTION 10 – PROHIBITED PRACTICES

10.1 Separate or Sequential Purchases

It is the policy of the City of El Paso to implement procedures to prohibit practices that circumvent the purchasing process. Failure to follow purchasing requirements may have detrimental consequences for the City and personnel in accordance with State of Texas Local Government Code, Chapter 252, Subchapter D. Chapter 252.1 of the State of Texas Local Government Code defines Separate Purchases and Sequential Purchases as follows:

- “Separate purchases,” means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.
- "Sequential purchases" means purchases of items made over a period of time that, in normal purchasing practices, would be purchased in one purchase.
- No City personnel shall authorize the purchase of separate or sequential purchases as defined above for the purposes of circumventing or avoiding the appropriate procurement and approval process.

10.2 Approval prior to Delivery

City employees shall not request or accept goods or services without having first received written authorization in the form of a purchase order, contract, or other acceptable form of approval by the Chief Procurement and Contracting Officer.

SECTION 11 – SPECIAL APPROVALS

It is the policy of the City of El Paso to maintain uniformity and implement best practices in the purchase of certain types or categories of spend, such as technology and rolling stock.

All purchases of rolling stock shall require prior approval by the Director of Streets & Maintenance Department or his duly authorized representative.

SECTION 12 – SOCIOECONOMIC PROGRAMS

12.1 Hire El Paso First

It is the policy of the City of El Paso to enhance opportunities for economic development for local businesses. In accordance with amendment to the Texas Local Government Code Sections 271.905 and 271.9051, the City may give consideration of location of a bidder's principal place of business when awarding certain contracts. Provisions of the Hire El Paso First policy is hereby incorporated by reference.

Pursuant to the provisions of the policy, the City's Purchasing & Strategic Sourcing Department will apply incentives of 5% for Tier 1 and 2.5% for Tier 2. These incentives are applicable to construction projects of $100,000 or less, and to personal property or services of $500,000 or less.

The incentives applicable to purchases in excess of $500,000 are 3% for Tier 1 and 1.5% for Tier 2. In order to ensure that the best interests of the City are served, the City reserves the right to award a contract to the low bidder or to the local business, based on the local incentives applied. This policy is not applicable when the funding source prohibits consideration local preference criteria.

On August 26, 2014, The City of El Paso's City Council approved the use of Hire El Paso First Local Bid preference for alternative procurement methods. Said resolution allows the award of a construction contract to a Tier 1 bidder who is within 5 points of the highest ranked proposer, if the amount of the bid is within 5% of the highest ranked proposer; or Tier 2 proposer who is within 5 points of the highest ranked proposer if the amount of the bid is within 2.5% of the highest ranked proposer.

12.2 Equal Opportunity Contracting

The City's contracting opportunities are open to all and it is City policy that no person or firm will be discriminated against because of race, color, national origin, sex, or disability in the award of City contracts. Further, contractors shall not discriminate on the basis of race, color, national origin, sex, or disability in the performance of City contracts.

12.3 HUB/DBE Participation

It is the policy of the City to seek participation in its contracts by local small businesses and by small businesses owned by minorities, women and disadvantaged persons. The City has two strategies for achieving this policy objective. For locally or state-funded projects, the provisions of Section 252.0214 of the State of Texas Local Government Code Historically Underutilized Business (HUB) shall apply. The provisions of 49 CFR Parts 23 (FTA) and 26 (FAA), as amended, for Disadvantaged Business Enterprise (DBE) program shall apply whenever contracts are funded with federal funds.

12.4 Wage Theft

Pursuant to the City of El Paso Code, Ordinance No. 018370, adopted by City Council on June 16, 2015, the City may not award a contract to a vendor with wage theft adjudication. Prior to the recommendation of a City contract, the Purchasing Director shall verify that the vendor does not have a wage theft violation in accordance with said Ordinance. The Wage Theft Ordinance is applicable to all City contracts. The provisions of said Ordinance are hereby incorporated by reference.

SECTION 13 – DUE DILIGENCE

13.1 Vendor Indebtedness to the City

For all formal bids, in accordance with Ordinance No. 016529, it is the policy of the City to refuse to do business with a contracting entity, or any owner of 5% or more of such entity, who is indebted to the City or a qualifying governmental entity except in cases where the City deems it in its best interest to enter into such transactions. In the context the Indebtedness Ordinance, debt shall mean any delinquent sum of money in an amount greater than one hundred dollars ($100.00) levied, imposed or assessed against any contracting entity, or owner thereof, by the City or any qualifying entity for ad valorem taxes on real or personal property located within the boundaries of the city.

This Ordinance is applicable to all purchases and contracts, formal bids, proposals or otherwise, that require City Council approval. Contracts that are awarded without the submission of a proposal, including but not limited to, contracts for engineering and architectural services, shall be subject to this Policy and shall not be approved by Council until a determination as to any indebtedness of the contracting entity or any owner to the City has been made as provided for in this Policy.

13.2 Debarment Check

It shall be the policy of the City of El Paso to check if a vendor has been debarred prior to entering into a contract. The Purchasing Representative, in conducting his/her due diligence, shall verify that the vendor does not appear on the list maintained by the federal government. The System for Award Management can be accessed at the following web link: https://www.sam.gov/portal/SAM/##1.

13.1 State Reciprocity

It is the policy of the City of El Paso to equalize the opportunities of local vendors before awarding a contract to a non-resident bidder. When evaluating bidders from other States, that nonresident bidder's state reciprocity laws are applied to the bidder. For example, if a 10% preference would be applied to a nonresident bidder's home state on their contracts, then the City would penalize the nonresident bidder 10% when bidding in Texas.

SECTION 14 – FEDERAL PROVISIONS

The City of El Paso receives federal funds for a number of projects. Whenever a contract is funded in full or in part with federal funds, the appropriate federal provisions shall be included in the contract documents. When conducting the procurement process on federally funded projects, the procurement documents shall indicate the source of funding, as the vendor will be required to comply with all applicable federal requirements.

Federal funds generally include but are not limited to FTA, FAA, CDBG, and any other grant funds as may be applicable from time to time. All applicable federal provisions for the respective funding sources are hereby incorporated by reference.

SECTION 15 – CONFLICT RESOLUTION

15.1 Protest/Dispute

Only a vendor who has actually submitted a response to a solicitation may appeal an award decision. Failure to follow the requirements of the protest procedures established by the City of El Paso and included in all solicitations, shall constitute a waiver of all protest rights. Protest must be made after the Council agenda has been posted and by 5 p.m. the day before the Council meeting in which the award will be made.

15.1 Debriefing

Vendors that responded to a solicitation may request a debriefing to the Purchasing representative that procured said solicitation within five (5) days after the date of the award. Debriefing requests will be scheduled with the appropriate evaluation committee and Purchasing representative.