



# **PURCHASING POLICY MANUAL**

**FINANCE DEPARTMENT**

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PURCHASING POLICIES MANUAL

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## INTRODUCTION

This Purchasing Policies Manual was written to guide City employees and officials when procuring goods or services for the City. It may be used as a training manual for the new employee or newly elected official, or it may be used by the experienced as a refresher or reference manual.

The manual establishes policies, procedures, and guidelines relating to the procurement, and disposal of supplies, services, and construction, under the authority of Resolution 2018-127. The American Bar Association's "Model Procurement Code for State and Local Governments" was also used as a guide.

This Manual is meant to be dynamic and allows for easy change with changing conditions. City employees and officials are encouraged to submit their suggestions for change or improvement of the Manual in writing, and they will be considered in the next review of the Manual.

The purpose of this Manual is to provide for the fair and equitable treatment of all persons involved in public purchasing with the City of Mount Dora, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

## APPLICATION

This Manual applies to the procurement of supplies, services, and construction. The Policies shall apply to all expenditures of public funds by the City, irrespective of the source. When the procurement involves the expenditure of grant funds, the procurement shall be conducted in accordance with any applicable mandatory laws and regulations of the granting agency, whether or not they are reflected in the applicable ordinances or Manual. Nothing in this Manual shall prevent any public agency from complying with the terms and conditions of any grant, gift, or bequest which are otherwise consistent with law.

## CHAPTER 1 - PURCHASING AUTHORITY

### POLICY 1.1 PURCHASING POWERS

The Finance Director is given the power, duty, authority, and responsibility to purchase or contract for all commodities, equipment, and services on behalf of the City of Mount Dora. He / She shall coordinate and exercise control of the acquisition of commodities, equipment and services, selection of bidders, and awarding of purchase orders and contracts to vendors.

The Finance Director or Designee shall have the authority for the following:

- (a) The Finance Director may create a Purchasing Division to handle the procurement responsibilities of the City of Mount Dora.
- (b) To promulgate regulations governing the procurement, management, control, and disposal of any and all supplies, services, and construction to be procured by the City, subject to the approval of the City Division.
- (c) Purchase or Contract: To perform the duties specified in connection with the purchase or contract for all supplies and contractual and professional services needed by any using agency which derives its support wholly or in part from the City, when authorized, in accordance with the Policies and Procedures Manual, and such rules and regulations as may be adopted for the internal management and operation of the Purchasing Division and such other rules and regulations as shall be prescribed by the Finance Director
- (d) Exceptions Prohibited: The authority of the Purchasing Division to negotiate or cause to be negotiated all purchases for all using agencies shall not be abridged, except as required by Charter.
- (e) Unauthorized Purchases: Except as herein provided, purchases made without the written consent of the Finance Director shall be considered illegal, and referred to the Finance Director for judgment as to penalty. Except as herein provided, it shall be illegal for any City officer, employee, or other person to order the purchase of any materials, supplies, or services.
- (f) Disqualification of Bidders: Have the authority, with the consent of the Finance Director, to declare vendors who default their quotations as irresponsible bidders, and to disqualify them from receiving any business from the City for a stated period of time.
- (g) Requisitions and Estimates: All using agencies, either by or with the authorization of the head of the department under which the using agency operates, shall file with the Purchasing Division detailed requisitions or estimates of their requirements in supplies and services in such manner, at such time, and for such future period as the Purchasing Division shall prescribe.

(h) To evaluate contracts let by any other government entity for the provision of commodities and contract services, and when it is determined to be cost-effective and in the best interest of the City, to enter into a written agreement and/or Purchase Order. A copy of the award and the contract shall be retained by the Purchasing Division, and proof of insurance, licenses, and any other requirements of the awarding entity's bid specifications shall be obtained by the using department, and a copy provided to the Purchasing Division. These purchases must be approved by either the City Council or City Manager based on dollar thresholds.

(i) The Finance Director shall have the right to choose the most advantageous method of payment for all invoices received by the City.

(j) The Finance Director is responsible to interpret this Manual.

## **POLICY 1.2 PURCHASING DIVISION DUTIES**

(a) The Purchasing Division shall procure for the City the highest necessary quality in materials and services at the least expense to the City, following the applicable laws, policies, and procedures.

(b) The Purchasing Division shall advise and assist the Finance Director in the formulation of policies and procedures in connection with the procurement activities of the City.

(c) The Purchasing Division shall be the final review of the specifications for correctness, competitiveness, and suitability.

(d) The Purchasing Division shall have a member (non-voting) on the Selection Committees for professional and consulting services to guide the Committees in the prescribed process.

(e) It shall be the responsibility of the Purchasing Division to maintain and secure all documents relating to each bid in its bid file.

(f) It shall be the responsibility of the Purchasing Division to maintain and retain the records of his/her office in compliance with the State of Florida's record retention laws.

(g) The Purchasing Division shall be familiar with the State of Florida and other Florida based contracts for commodities and services which are available for use by the City.

(h) The Purchasing Division shall be familiar with applicable Purchasing laws, policies, and procedures.

(i) It shall be the responsibility of the Purchasing Division to write, oversee review and revision, and distribution of this Manual. The Purchasing Division shall maintain a list of the recipients of this Manual, and distribute all revisions to them.

- (j) Maintain lists of qualified vendors, an email specifications to those vendors. When the list for a commodity or service is too long, the Purchasing Division shall use his/her discretion developing the email list.
- (k) The Purchasing Division may remove a vendor from the vendor list for failure to reply to three consecutive invitations, or for non- or unsatisfactory performance on a previous contract.
- (l) To supervise the work of the personnel in the Division.
- (m) To keep informed of new entries in the marketplace, and new procedures in the purchasing profession.
- (n) The Purchasing Division shall perform such other duties as may be required by the Finance Director.
- (o) With the approval of the City Manager or Finance Director, the Purchasing Division may delegate all or some of her/his responsibilities to another.
- (p) All staff of the Purchasing Division shall submit annually the State of Florida Financial Disclosure Form 1.

### **POLICY 1.3 PURCHASING REQUISITIONS**

All requisitions shall be authorized by the Department Director or designated authority. Requisitions should originate in the department at the level where the purchase is to be used and routed to the designated approval authority prior to being sent to Finance Department. Requisitions not properly authorized will not be accepted by the on-line system.

#### **ROUTING:**

1. For all purchases from \$5,000 up to \$35,000, the requisitioning agency will enter the requisition into the on-line system for issuance of a purchase order. The Department will obtain quotes as:
  - a. Quotes not required under \$5,000
    - i. Estimates are encouraged
    - ii. Preference given to local suppliers
  - b. Three written quotes \$5,001- \$35,000
2. For all purchases \$35,000 or greater, the requisitioning Department will request a formal solicitation to be issued by the Finance Department, and then assure that City Council approval is obtained for award, either of the solicitation or other Council direction.
3. Upon receipt of the requisition in the Finance Department and dependent on the dollar amount, formal quotations, bids or proposals will be solicited. A purchase order, contract or work order will be issued upon completion of this process.

4. If the requisition is incomplete or not properly prepared, the Finance Department will notify the originating department.
5. For all purchases of capital goods or services, regardless of the dollar amount, the requisitioning Department will enter the requisition into the system assuring appropriate approvals are obtained, unless approved by the Finance Director and under \$35,000.

**POLICY 1.4 PURCHASING REVIEWS**

**REVIEW OF SPECIFICATIONS-OTHER DEPARTMENTAL APPROVALS REQUIRED:** Prior to issuance of bids or the processing of a requisition with specifications included, review of the items to be purchased and the specifications for certain commodities and services must be made by other departments/divisions within the City to assure open competitive bidding, compatibility, standardization, and up-to-date specifications. The following are mandated reviews:

**TYPE OF EQUIPMENT/SERVICE REQUESTED    DEPARTMENT REVIEW**

Information Technology Equipment	Information Technology
Vehicles/Heavy Equipment	Fleet Maintenance or designated contractor

PLEASE ENSURE THE ABOVE APPROVALS ARE OBTAINED PRIOR TO SUBMITTAL TO THE FINANCE DEPARTMENT.

**POLICY 1.5 FIELD PURCHASE ORDERS**

The Field Purchase Order if available should be used as a payment tool/ check request for all items under \$5,000. Common uses include: Subscriptions, Memberships, Advertisement and Registrations requiring a check, Petty Cash Reimbursements and Employee Travel Reimbursement checks. Also, the Field Purchase orders should be used for items under \$5,000 for vendors that do not accept the Purchasing Card.

Invoices that are attached to FPO's need no signatures. Approvals will be tracked by the financial software.

**POLICY 1.6 APPROVAL LEVEL THRESHOLDS**

The City Manager or designee shall have the authority to award and execute purchases of goods and services not to exceed \$35,000 including change orders and amendments. The City Manager or designee is authorized to renew options on approved contracts, as long as it is per the terms, conditions and renewal period specified in the original contract and the total dollar amount for each contract or purchase order is within the Council approved budget. All purchases of goods and services, in excess of \$35,000 shall be awarded by the Council, except as otherwise provided within this section. The City Manager or designee shall have the authority to approve all purchase orders, contracts, and Master Agreements up

to \$50,000 for projects, goods and services that are detailed in the adopted budget as long as award is to the lowest responsive, responsible bidder in a competitive environment.

The City Manager or designee shall have the authority to approve and execute all change orders and amendments and to approve price escalation/de-escalation changes, according to the terms of the particular contract providing that the change does not exceed 10% (not to exceed \$50,000 in total) of the latest approved contract value for contracts. Amendments to contracts greater than these amounts must be approved by City Council.

The City Manager or designee shall have the authority to settle individual claims under contract provided the settlement does not exceed ten percent 10% (not to exceed \$50,000) of the latest approved contract value for contracts. All change orders issued which modify a contract, the original and revised total cost of which exceeds ten percent 10% (not to exceed \$50,000), shall require Council approval, unless otherwise specified herein.

It shall be prohibited for any City employee to order the purchase of any goods or services or make any contract change without the delegation of authority under this section other than through the Finance Department, unless utilizing an authorized procurement card. City employees will be held accountable for unauthorized purchases and appropriate disciplinary action will be taken pursuant to the City Policy and Procedures Manual. The Department committing the unauthorized purchase will document the incident with a memo to the City Manager explaining the details of the unauthorized purchase. These details must include a brief summary of what happened and the corrective action that the Director has taken to prevent unauthorized purchases in the future. The memo shall state any disciplinary action taken, if any, and request the City Manager approve the unauthorized purchase if under \$35,000. Unauthorized purchases of \$35,000 and greater shall be submitted to the Council for approval. Any purchase or contract made contrary to this section hereof shall not be binding on the City unless approved by the Council.

The City Council has the right to award all contracts except as otherwise provided in the Code of Ordinances of the City. As to those contracts which the Council retains the right of award, the Council shall have authority to review, modify or set aside all previous administrative determinations, whether appealed or not, made in the course of the procurement.

## **CHAPTER 2 - SOURCE SELECTION AND CONTRACT FORMATION**

### **SECTION A - COMPETITIVE SEALED BIDDING, INVITATION TO BID (ITB) POLICY 2.1 CONDITION FOR USE**

Competitive sealed bidding is the preferred method for the procurement of supplies, services, or construction.

The Invitation to Bid shall include specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the Invitation. It shall include the following:

- (a) Instruction and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the address of the office to which bids are to be delivered, and any other special information;
- (b) The purchase description, evaluation factors, delivery or performance schedule, and such inspection and acceptance requirements as are not included in the purchase description; and
- (c) The contract terms and conditions, including warranty and bonding or other security requirements, as applicable to the procurement.

## **POLICY 2.2 LIFE CYCLE COST OR TOTAL COST BID**

A Life Cycle Cost or Total Cost Bid may be used when it is desirable to award on the basis of the cost to the City to acquire and use the goods or services over a period of time. An example would be a copier. The Invitation to Bid would require bidders to supply the price of the copier, its electric usage, the cost of maintenance, and the cost of supplies for five years' usage, or for making a specific number of copies. The lowest cost is determined by adding together the costs of each of these components.

## **POLICY 2.3 PUBLIC NOTICE**

The Invitation to Bid must be publicly advertised via the City of Mount Dora's website or a third party bid system and in accordance with State or Federal guidelines, if applicable, at least twenty calendar days preceding the day set for the receipt of bids or proposals. Bids shall be solicited from an adequate number of known suppliers.

Pre-selected bid lists, posting in public places, and publication in trade journals and magazines are additional steps to attract competition, when used in conjunction with newspaper advertising. Proof of publication of the advertisement shall be placed in the Bid file.

If deemed necessary by the City Manager a notice may be emailed to prospective bidders, informing them of the bid and how to obtain specifications.

If grant money is involved, the advertisement shall so state, and state that compliance with all applicable federal, state, and local laws, rules, and regulations is required. Such regulations shall be incorporated into the specifications.

## **POLICY 2.4 RECEIPT OF BIDS**

Upon its receipt, each bid shall be time-stamped, but not opened, and shall be stored in a secure place until the time and date set for bid opening. Depending on the type of bid, the Purchasing Division may allow email bid responses.

## **POLICY 2.5 BID OPENING**

All timely bids shall be opened publicly at the time, date, and place announced in the advertisement and Invitation to Bid. The responses shall be read aloud by the Purchasing Manager or his/her designee, and recorded by the Purchasing Manager or his/her designee.

Bids if allowed to be received via email shall be held unopened until the bid opening time. An online bid system is preferred.

Bids received after the time and date specified shall be late and not considered, unless the bid would have been received timely except for the action or inaction of City personnel and the bid has not yet been awarded.

If the bids are lengthy or contain many items, at the discretion of the Purchasing Division, only the names of the bidders may be read aloud. If such is the case, the Purchasing Division shall prepare a tabulation of the bids as soon after the bid opening as possible for attachment to the Bid Summary.

The recorded Bid Summary prepared by the Purchasing Division shall be made available to anyone who requests it.

The Purchasing Division shall tabulate all bids timely received in a manner that will facilitate comparison of the relative advantages and disadvantages of each bid.

The Bid Summary shall be signed by witnesses to the bid opening.

No responsibility shall attach to a City employee for the premature opening of a bid not properly addressed and identified in accordance with the bid documents. The employee so doing shall not read or divulge the contents of the envelope or package. He/she shall reseal the envelope, note on it that it was not properly identified as a bid, and it was resealed and not read, initial and date the note, and put it in the bid file to be opened with the other bids at the date and time advertised.

## **POLICY 2.6 VARIANCES, ALTERNATES, AND MULTIPLE BIDS**

Unless specifically provided for in the specifications, variances, alternates, and multiple bids shall not be accepted. The bid shall be rejected, provided that if a bidder clearly indicates a base bid, it shall be considered for award as though it were the only bid or proposal submitted by the bidder.

Multiple and alternate bids, and variances to specifications are acceptable, provided they are requested in the specifications, and the method of selection and award is clear in the specifications. A Performance Specification should be used in such instances when alternate or variances are acceptable.

## **POLICY 2.7 OPTIONS**

When Options to a bid are requested, the lowest responsible, responsive base bid will be combined with such options, applied in such order as elected by the City that will produce a sum which is within the amount of funds available to finance the contract.

## **POLICY 2.8 BID EVALUATION**

The bid, or contract, shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set for in the specifications. No bid shall be evaluated for any requirement or criterion that is not disclosed in the specifications.

## **POLICY 2.9 WITHDRAWAL OF BID**

Bids may be withdrawn upon written request and presentation of proper identification by the bidder at any time prior to the time fixed for opening of bids, without prejudice to the right of the bidder to file a new bid. Withdrawn bids will be returned unopened. Negligence on the part of the bidder in preparing his bid confers no right for withdrawal of the bid after it has been opened. An email, telephone or telegraphic request to withdraw a bid proposal is not acceptable.

## **POLICY 2.10 AWARD**

The bid shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the specifications.

The using department shall review the bids and make recommendation to the Purchasing Division. The Purchasing Division shall add his/her recommendation to that of the using Department Head, and forward to the Finance Director for award or for placement on Council agenda for Council's award.

All Invitations to Bid, Requests for Proposals, Requests for Qualifications, Requests for Acquisition of Design-Build Services, for an amount less than \$50,000 may be negotiated, when applicable, and awarded by the City Manager. This applies to Construction in Progress (CIP) as well as standard contract needs. All awards at \$50,000 or more shall be awarded by the City Council.

A firm fixed-price contract (lump sum or unit price) shall be awarded to the responsive, responsible bidder, whose bid conforms with all the material terms and conditions of the Invitation to Bid, and is lowest in price or cost.

The City reserves the right to award any and/or all bids on an item-by-item basis or in the aggregate, whichever is deemed in the best interest of the City.

The City reserves the right to award a portion of a quantity requirement to more than one contractor. Such incremental awards are done when one contractor cannot supply the total required quantity, or if it is in the best interest of the City to have two suppliers because of commodity shortages, rationing, or the like.

The Purchasing Division shall notify the successful bidder(s) in writing of the award. The letter of award or contract is not notice to the awarded bidder to perform. Until a Purchase Order is issued, the awarded contractor shall not perform. Until a Purchase Order is issued, the funds have not been encumbered. In addition to price, all bid awards may take the following into consideration:

- The character, integrity, reputation, judgment, experience, previous performance, and efficiency of the bidder.

- The ability, equipment, capacity, financial strength, personnel resources, and skill of the bidder to perform the contract.
- The quality, availability, and adaptability of the supplies or contractual services to the particular use required.
- The ability of the bidder to provide future maintenance and service for the use of the subject of the contract.
- The quality of performance of previous contracts and whether the bidder can perform the contract within the time specified, without delay or interference.

In the event all bids exceed available funds as certified by the Finance Director, and the low responsive and responsible bid does not exceed such funds by more than 5%, the Purchasing Division may be authorized, when time or economic considerations preclude re-solicitation of a bid with reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder in order to bring the bid within the amount of available funds.

#### **POLICY 2.11 TIE BIDS**

If there are tie bids, meaning everything except the information relating to the bidder is the same, the following methods shall be used in the order below to break the tie:

- Drug free workplace policy in place.
- The bidder that has a Business Tax Receipt (BTR) within the City limits.
- If one has or had a contract with the City and performance is or was satisfactory. If performance of a tie bidder who has or had a contract with the City and performance is or was not satisfactory, the other tie-bidder is awarded.
- Timeliness of delivery.

#### **POLICY 2.12 AWARD TO OTHER THAN THE LOW BIDDER**

If award of bid is made to other than the low bidder, justification for doing so shall be completely documented in writing and included in the Bid File. Justification for awarding to the other than the low bidder may include: does not meet specifications (must specify how bid does not meet specifications), unsatisfactory performance on previous City contracts, unfavorable references, unable to meet project time or delivery requirements, etc.

#### **POLICY 2.13 REJECTION OF BIDS**

Any bid received after time of closing will be considered to be late and will be rejected and returned to the bidder unopened.

The City reserves the right to reject any or all bids or parts of bids, to waive any informalities in any bid, or to accept any bid which will best serve the interest of the City. The City also reserves the right to reject any unit prices, for additions to or deductions from the scheduled amount of work as given in the bid, if they are considered excessive or unreasonable, or to accept any or all of such unit prices that may be considered fair and reasonable. If any unit price is rejected for the reasons stated herein, the work governed by such unit prices, if required, shall be treated as a change in the work as specified in the General Conditions, or may be cause for rejection of the entire bid.

Bids may be rejected if they show any alterations of form, additions not called for, conditional bids, incomplete bids, erasures, or informalities of any kind. If a bid amount is changed after the amount is originally inserted, the change should be initialed by the person signing the Bid Proposal.

If more than one bid proposal is offered to the City by any person under the same or different names, all such bid proposals may be rejected.

#### **POLICY 2.14 CANCELLATION OF AWARDS**

The City may cancel an award or contract without cause at any time up to the time that work has begun on the contract, or delivery has been made.

An award or contract on which work has begun or delivery made may be canceled with cause, and the cancellation will be effective immediately upon delivery of written notice to the contractor.

An award or contract on which work has begun or delivery made may be canceled without cause, and the cancellation will be effective 30 days after delivery of written notice to the contractor.

#### **POLICY 2.15 MULTI-STEP SEALED BIDDING**

Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit un-priced technical offers to be evaluated; and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to evaluate and determine the acceptability of technical offers.

When it is not possible to write specifications with a description sufficient to award based on price, an Invitation to Bid may be issued requesting the submission of un-priced offers, followed by the second step of issuing an Invitation to Bid to only those bidders whose offers have been qualified under the criteria set forth in the first step. The specifications may, instead, require submittal of a second sealed envelope within the main sealed bid envelope. The second sealed envelope shall contain the prices, and only those bids of the bidders whose offers have been qualified will be opened.

Multi-step sealed bidding may be used when it is considered desirable:

- To invite and evaluate technical offers to determine their acceptability to fulfill the purchase description requirements;
- To conduct discussions for the purposes of facilitating understanding of the technical offer and purchase description requirements and, where appropriate, obtain supplemental information, permit amendments of technical offers, or amend the purchase description;
- To accomplish the preceding prior to soliciting bid prices;
- To award the contract to the lowest responsive and responsible bidder in accordance with the competitive sealed bidding procedures.

It may be beneficial to conduct a pre-bid conference or a conference during the evaluation of the technical offers.

The policies applying to Invitations to Bid shall apply to multi-step sealed bidding.

## **SECTION B - PRE-BID CONFERENCES**

### **POLICY 2.16 CONDITION FOR USE**

A pre-bid conference may be held at the discretion of the Purchasing Division to explain any part of the specifications and procurement requirements, and to allow the prospective bidders to ask questions. The pre-bid conference may be mandatory or non-mandatory. If mandatory, only those attending will be allowed to bid, so it may not be in the City's best interest to make it mandatory. It shall be held long enough after the specifications are issued to allow the bidders to become familiar with them, but sufficiently before bid opening to allow consideration of the conference results in preparing the bid. Nothing said in the pre-bid conference shall change the specifications unless a written amendment to the specifications is issued. A summary of the conference shall be supplied to all those prospective bidders known to have received the specifications.

## **SECTION C - COMPETITIVE SEALED PROPOSALS (REQUEST FOR PROPOSALS) (RFP)**

### **POLICY 2.17 CONDITION FOR USE**

This form of source selection is preferred when the following conditions exist:

- (a) A complete, adequate, and realistic specification or purchase description is not available.
- (b) There are two or more responsible, qualified, potential sources.
- (c) The procurement does not lend itself to a firm-fixed-price contract, and selection of the successful bidder cannot be made principally on the basis of price.

The RFP may contain an open invitation for new information on substitute products and services.

The specifications shall be written to require and allow for proposals to be submitted in a common format, for ease of evaluation.

Indicate in the specifications the last date for receipt of questions of a material nature.

If there is a pre-proposal conference, it should be scheduled half way between issue and opening dates.

#### **POLICY 2.18 PUBLIC RECORD EXEMPTION**

Financial statements submitted as requested in an Invitation to Bid, Request for Proposals, Request for Qualifications, or Request for Letters of Interest are exempt from the Public Records Act, as set forth in F.S. 119(3)(t).

Data processing software and software that is a trade secret are exempt from the Public Records Act, as set forth in F.S. 119(3) (o).

#### **POLICY 2.19 PUBLIC NOTICE**

The Request for Proposals must be publicly advertised in at least one newspaper having general distribution, for at least ten (10) calendar days preceding the day set for the receipt of bids or proposals.

Bids shall be solicited from an adequate number of known suppliers.

Pre-selected bid lists, posting in public places, and publication in trade journals and magazines are additional steps to attract competition, when used in conjunction with Online Bidding Services.

Proof of publication if required of the advertisement shall be placed in the Bid file.

If grant money is involved, the advertisement shall so state, and state that compliance with all applicable federal, state, and local laws, rules, and regulations is required.

#### **POLICY 2.20 RECEIPT OF PROPOSALS**

Proposals timely received shall be opened publicly at the time and date for such, and only the names of those submitting proposals announced. Proposals shall be viewed and reviewed only by City personnel having a legitimate interest in them.

#### **POLICY 2.21 EVALUATION FACTORS**

The Request for Proposals must identify all significant evaluation factors, including price or cost when applicable, and their relative importance. A weight may be assigned to each component of the proposal, but if used, it must be included in the specifications. Factors not specified in the Request for Proposals shall not be considered.

Initial review shall be for compliance with specifications or requirements.

#### **POLICY 2.22 DISCUSSION WITH RESPONSIBLE OFFERORS**

As provided in the Request for Proposals, discussions may be conducted with responsible offerors whose proposals have a reasonable chance of being selected for award. The purpose of the discussion and possible minor revision of proposals shall be for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Such minor revisions may be permitted after submission and prior to award, for the purpose of obtaining best and final offers.

In conducting discussions, there shall be no public disclosure of any information derived from proposals submitted by the offerors.

### **POLICY 2.23 AWARD**

Award shall be made to the responsive, responsible offeror whose proposal will be most advantageous to the City, considering initial price, overall cost, and the evaluation factors specified.

In the recommendation for award of proposals, give the criteria used, members of the committee, and why the recommended award is in the “best interest” of the City.

They shall have the potential ability to perform successfully under the terms and conditions of the contract. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, whether the work will be done in-house or subcontracted out, and financial and technical resources.

### **SECTION D - COMPETITIVE SEALED QUALIFICATIONS, REQUEST FOR QUALIFICATIONS (RFQ)**

#### **POLICY 2.24 CONDITION OF USE**

The City shall publicly announce, in the same manner that Invitations to Bid are announced, each occasion when professional or consulting services are required for a project whose cost is estimated by the City to be more than \$250,000, or for a planning or study activity when the fee for professional services exceeds \$35,000.

The court has ruled that selection meetings shall be open. However, we do not publicize this information. It is not usually done, but if anyone wants to sit in on the presentations, they may do so.

### **SECTION E - COMPETITIVE SEALED LETTERS OF INTEREST, REQUEST FOR LETTERS OF INTEREST (RLI)**

#### **POLICY 2.25 CONDITION OF USE**

The Request for Letters of Interest (RLI) is used when there is no expert on staff to write technical specifications, evaluate technical bids or proposals, or keep up with changing technology, and when the City is willing to consider many different approaches. It allows the purchase of complex and often expensive goods or systems without large investments in specifications development. It helps to develop knowledge, allowing some latitude in changing the requirements to obtain the most suitable goods or

systems. It begins when a using department provides a succinct, clear explanation of the results they desire from a technology system (this is sometimes called a performance specification). That explanation, along with standard language that advises each interested party of the job's basic requirements, and a detailed list of evaluation factors by which each response will be judged, shall be advertised, and mailed to known providers. Each respondent shall provide evidence of their capability and past experience to meet the desired results. The respondents are then short-listed, and those on the short-list are invited to provide additional evidence through interview or demonstrations before a Selection/Negotiation Committee. The Committee then decides whether they recommend inviting bids from or beginning negotiations with the selected firms. Each firm deemed capable of meeting all requirements shall submit a detailed bid or proposal, including costs, for evaluation. The firm with the evaluated bid or proposal that is most advantageous to the City will then be offered a contract. If it is bid, this would be a form of multi- step bidding.

## **SECTION F - SOLE SOURCE AND STANDARIZATON PROCUREMENT**

### **POLICY 2.26 EXEMPTION FROM BIDDING PROCEDURE**

Sole source or Standardization procurement is exempt from bidding procedures. The using department must submit to the Purchasing Division in writing for his/her approval the attempts made, or the data collected to substantiate declaring a product or service "sole source".

#### **SOLE SOURCE**

The following criteria must be met in order to satisfy the sole source or proprietary source requirement:

- a. It is the only item that will produce the desired results (or fulfill the specific need) ...or
- b. The item is available from only one source of supply ... or
- c. The item is available from more than one vendor but due to extreme circumstances, only one vendor is suited to provide the goods or services.

Sole source and proprietary source purchases are exempt from competitive requirements. However, all sole source requisitions exceeding \$10,000 in value will be electronically advertised for a period of at least five (5) calendar days. The steps to follow for sole source and proprietary source purchases are as follows:

- a. The User Department/Division and the Finance Department shall attempt to locate competition. Staff will also check for piggyback contracts. If no other sources are found, the User Department/Division shall submit to the Finance Department a completed sole source/proprietary source form, indicating the requisition number.
- b. A sole source or proprietary source form shall be used to justify and document the requirement. The form shall state why only one source can produce the desired results (or fulfill the specific need).
- c. The Finance Department will electronically post on the City website a description of all requisitions meeting the requirements for competitive pricing per Florida Statute for a period of at least seven (7) business days after the receipt of a completed sole source form from the department.

- d. The Finance Director shall review and approve or disapprove, in writing; sole source/proprietary source designation.
- e. The User Department/Division shall be notified of disapproved requests and the purchase shall be made in accordance with standard procedures.
- f. When the Finance Director approves a sole or proprietary source, staff shall conduct negotiations on price, delivery, and terms. The price must be determined fair and reasonable.
- g. The Finance Department shall keep a log of sole/proprietary source purchases, which includes the vendor name, the amount, item description, justification, and the purchase order number.
- h. For those instance that services are needed involving multiple years (i.e. maintenance of equipment, warranty, etc.) the request must be combined to capture the project, as a whole, and the proper approval must be obtained.

## **STANDARDIZATION**

Standardization is the process of examining characteristics and needs for items of similar end usage and developing a single specification that will satisfy the need for most or all purchases for that purpose. Proprietary purchases (usually components) maintain a degree of continuity to the original or existing decor, equipment, or programs.

Where standardization is determined to be desirable by the Finance Director, the purchase of materials, supplies and equipment and certain contractual services may be made by negotiation.

Compatibility to existing equipment will be an acceptable justification for waiver of bidding procedures provided the item meets the other criteria within the definition of sole source item (i.e.; available from only one source and only item that will produce the desired results).

## **SECTION G - OTHER GENERAL POLICIES REGARDING SOLICITATIONS**

### **POLICY 2.27 MULTI-TERM BIDS**

A multi-term bid is appropriate when it is in the best interest of the City to obtain uninterrupted services or supplies extending over more than one fiscal period. The objective is to promote economy and efficiency in procurement through volume, or to encourage competition when there are high start-up, or phase-in phase-out, costs. Multi-term bids must not exceed \$35,000 or five (5) years.

### **POLICY 2.28 ADDITIONAL SPECIFICATION CLAUSES**

Multi-term contracts shall include a clause that the contract will be canceled if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the first (if this is expected to happen, the contractor should be notified as soon as possible).

If the City will accept an escalation clause, that prices will remain firm for a certain period of time, and then may escalate (or de-escalate) according to some formula or index, or according to the amount stipulated by the bidder in his/her bid.

## **POLICY 2.29 AWARD**

Award shall be made as stated in the solicitation and permitted under the source selection method utilized. Care should be taken when evaluating multi-term bids to avoid award to a bidder with a low first period price, and a high escalated subsequent period's price. To avoid this, the City should either tie any escalation or de-escalation to an index, or set an escalation cap.

## **POLICY 2.30 BID TABULATION**

A tabulation of all timely bids received shall be made and available for public review. A list of the names of those submitting proposals or qualifications in a timely manner shall also be made and available for public review.

## **POLICY 2.31 SUPPLIER EVALUATION**

Sometime between mid-point and expiration of a contract for goods or services, the Purchasing Division shall request the using departments to complete a form evaluating the specifications, the supplier, and the goods or services provided. This information may be used to refine specifications for future bidding, to notify the contractor of unsatisfactory performance, or for future awards.

## **POLICY 2.32 NOTIFICATION**

All bidders shall be notified in writing as soon as possible after award or rejection of bids or proposals.

## **POLICY 2.33 REJECTION OF BIDS**

Any or all bids may be rejected when it is in the best interest of the City to do so. The item may, or may not, be re-bid in the best interest of the City.

## **POLICY 2.34 NON-COMPETITIVE NEGOTIATION**

Non-competitive negotiation may be used when the award of a contract is not feasible under any other formal procedure. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

- Cooperative Governmental Contracts:
- Resale: Items for resale, such as those being marketed by an enterprise function, shall be exempt from bid requirements;
- Copyrighted Materials:
- Acquisition of Real Property, such as land, easements, rights-of-way, existing buildings, structures, or improvements, resulting from negotiations and approved by the City Council;
- Court-ordered fines and judgments, resulting from litigation;
- Exceptional disbursement as authorized by the City Council;
- Court-ordered fees, resulting from the judicial process, processed by the Clerk of the Court, and recorded against the budget for such fees;

- Cash transfers and investment transactions for fiscal management purposes, recorded against general ledger accounts;
- Accrued or current liabilities already charged against the budget, recorded against general ledger accounts;
- Debt service payments charged against budgetary accounts as authorized by the City Council;
- Postage or other delivery services;
- Utility refunds;
- Pre-Employment testing;
- Employee deduction;
- State or County license, permit renewals or auto tags;
- Refunds of current or prior year revenues charged against budgetary accounts;
- Grant disbursements to federal, state, or local government agencies, or to private groups or agencies;
- Insurance including but not limited to liability, property, medical, and workers compensation insurance or payments from any loss fund established for such purpose;
- Dues and memberships in trade or professional organizations, subscriptions for periodicals, advertisements, copyrighted material, part-time, authorized hospitality expenses, and fees and costs of job-related travel, seminars, tuition registration and training as allowed by the City budget;
- Temporary work force
- Legal services, expert witnesses, court reporter services, and all other related expenses of claims and/or litigation;
- Consultant Services, other than those regulated by § 287.055, Fla. Stat.;
- Title insurance, title commitments, title searches, and ownership and encumbrance searches; and
- Transactions by Inter-local Agreement.

**POLICY 2.35 ONE RESPONSE**

The Purchasing Division shall make every attempt to receive multiple bid responses. Should only one response to an Invitation to Bid, Request for Proposals, Request for Qualifications, or Request for Letters of Interest be received, the City Council shall have the following options:

- (a) Accept the offer was made, if the price is fair and reasonable.
- (b) Negotiate an acceptable contract with the sole bidder.
- (c) Reject the offer as non-competitive and re-bid making changes to allow more competition. The changes may be, but are not limited to, the specifications, mailing list, and the advertising medium.

**POLICY 2.36 ERROR IN BID OR PROPOSAL**

In the event of a unilateral mistake or deficiency on the part of the low bidder, the following should be considered in determining whether the City should waive the bid deficiency:

Will allowing the bidder to correct the deficiency or mistake deprive the City of its assurance that the contract will be entered into and performed?

Will allowing the bidder to correct the deficiency or mistake give any bidder an unfair advantage or otherwise undermine “the necessary common standard of competition”?

The following action shall be taken:

- (a) If the error or deficiency is not material to the bid or proposal, the bidder may be allowed to send us a letter correcting the error or misinformation.
- (b) If the error and the correction are clearly evident, such as typographical, extension of unit prices, transposition, and arithmetical, the bidder may be allowed to send us a letter correcting the error.
- (c) If the error or deficiency is material to the bid, it may not be corrected. The bidder may go forward with the contract as bid, or the bidder may be allowed to withdraw its bid and the City, in its discretion, may accept the withdrawal with or without penalty. A typical penalty would be the difference between the low bid which contains the error, and the bid that is accepted.

## **POLICY 2.37 NO BIDS**

In the event no bids or proposals are received in response to a formal Invitation to Bid or Request for Proposals, the City has the following options:

- (a) Re-bid with either the same or revised specifications.
- (b) If, in the opinion of the Purchasing Division, re-bidding would produce the same results as the original bid, the Purchasing Division and a representative of the using department may negotiate for the purchase of the desired commodity or service.
- (c) Obtain informal written quotations, and purchase from the lowest quote meeting specifications.
- (d) Submit as an agenda item to City Council approval if greater than \$35,000.

## **POLICY 2.38 CONTRACT RENEWAL**

An agreement entered into as a result of an Invitation to Bid, Request for Proposals, Request for Qualifications, or Request for Letters of Interest may be renewed for additional one or multiple year periods upon mutual agreement in writing, under the same prices, terms, and conditions.

## **SECTION H - PROCUREMENT RECORDS MANAGEMENT**

### **POLICY 2.39 BID FILES**

Each Invitation to Bid, Request for Proposal, Request for Qualifications, or Request for Letters of Interest shall be assigned its own, individual number, and date and time of opening. A folder shall be used for each bid, with the label identifying the bid name, bid number, and user department. In each folder shall be placed all information related to the bid. At a minimum, the following information shall be included:

- (a) Proof of the advertisement announcing the bid or On-line notification.
- (b) The specifications.
- (c) Bid Summary recorded by the office of the City Clerk.
- (d) The original bids submitted. No marks, notes, or writing of any kind shall be made on the original bids. If such is necessary, make a copy and use it to write on. Keep the envelopes, which have been time-stamped when received by Purchasing, until Purchasing has received all the necessary documents from the awarded bidder, or, until Purchasing is reasonably sure no protest will be filed, whichever comes later.
- (e) Copy of Council meeting minutes, if bid is awarded by Council.
- (f) Copy of City Manager's award, if awarded by him/her.
- (g) Recommendation of award by Director of using department.
- (h) Copies of the letters of award and rejection.
- (i) Copy of the contract or agreement with the awarded bidder.
- (j) Copy of the work order with the awarded bidder.
- (k) Proof of the required insurance from the awarded bidder.
- (l) Copies of any required licenses or other documents.

#### **POLICY 2.40 AUDIT OF BID FILES**

Bid files are randomly audited every year by the City's outside auditors, by grantor agencies, and reviewed by bidders or their attorney for compliance with rules and regulations, and support for possible litigation.

Bid files shall always be maintained in a condition to allow such audit or review at a moment's notice. You may require bidders or their attorneys to make an appointment to do so.

When anyone is auditing or reviewing a Bid file, they shall do so in the presence and under the observation of personnel of the Purchasing Division. They may add or remove nothing from the file. They may write nothing on any document in the file. Staff may make copies of anything in the file, except those items that are exempt from the public records law. (For Purchasing or bidding purposes, the

documents which are not subject to the public records law are financial statements, computer software programs, and trade secrets.) We may charge for the copies.

#### **POLICY 2.41 FLORIDA PUBLIC RECORDS LAW**

Chapter 119, Florida Statutes, generally known as the “Florida Public Records Law”, provides that all documents, papers, records, and similar material produced or received by an agency or political subdivision of the State are subject to public inspection and examination under reasonable conditions and at reasonable times, under supervision by the custodian of the public record or the custodian’s designee. Accordingly, unless specifically exempted by law, all bids and materials received with bids will be considered a matter of public record. The items exempt from this Law are financial statements, computer software, and trade secrets. The City and its staff cannot regard any other document, information, or data as proprietary or confidential unless so advised by the City Attorney.

Purchasing Records shall be maintained, stored, and destroyed according to the rules of the State of Florida and the City of Mount Dora.

#### **SECTION I - ALTERNATE ACCEPTABLE MEANS OF PROCUREMENT**

#### **POLICY 2.42 STATE OF FLORIDA TERM CONTRACTS/SNAPS AGREEMENTS**

State of Florida Contracts for a variety of commodities has been competitively bid and meets all the State and City of Mount Dora requirements for bidding. They may be accessed through the Internet at the following address: [myflorida.com](http://myflorida.com) or you may call the Purchasing Division for assistance. State of Florida SNAPS Agreements are also accessed through the Internet via the State of Florida Contract System. These agreements include a variety of goods and services that utilize recycled and/or innovative products at pre-negotiated prices. SNAPS Agreements may be utilized in lieu of competitive bidding as follows: any single purchase from a SNAPS Agreement shall not exceed \$35,000 without City Council Approval.

#### **POLICY 2.43 OTHER GOVERNMENT ENTITIES’ CONTRACTS**

The City may utilize (piggy-back) any other government entity’s open contracts that have been competitively bid and awarded to the low responsive, responsible bidder meeting specifications, in accordance with City Purchasing regulations. The City may also piggyback off GSA Contracts. When another entity’s contracts is to be utilized, a copy of that contract shall be forwarded to the Purchasing Division for review and evaluation to determine if it meets the City’s requirements regarding competitive bidding and award.

#### **POLICY 2.44 COOPERATIVE PURCHASING**

The City may join with one or more other government entity and jointly bid common commodities or services. Cooperative Purchasing may take the following forms:

- (a) One entity “piggybacking” on the contract of another.
- (b) Entities joining together to bid.

(c) Regional associations or entities may form a purchasing council and share the cost of staffing and running the council.

## **POLICIES 2.45 RESPECT AND PRIDE**

Items purchased from these agencies are exempt from bidding. Purchasing has catalogues and price lists from these agencies.

RESPECT of Florida (Florida Association of Rehabilitation Facilities, Inc.)

Florida Statute Sections 413.032-413.037 directs state and local government agencies to purchase certain products and services from qualified, nonprofit, community-based organizations employing persons with disabilities.

PRIDE (Florida Prison Industries)

Florida Statute Section 946.006 authorizes the manufacture, processing, or production of "such items as are ... needed and used in state institutions and agencies and in other governmental jurisdictions of the state."

## **POLICY 2.46 OWNER DIRECT PURCHASES (ODP)**

It may be to the City's advantage to directly purchase materials, components, or systems to be used in a construction project. The advantages are a savings in sales tax (the City is tax-exempt, contractors are not), and the contractor's mark-up. If so doing, the construction contract shall contain language to make the contractor responsible for expediting, receiving, storing, protecting, installing the goods, arranging for training of staff by the supplier, and providing the suppliers' and manufacturers' warranties. Also, long-lead-time items may be ordered by the City, while the bidding/contract negotiation process is ongoing.

When the City elects to use this option, the Contractor shall comply with the procedures defined herein. It is noted that the term Contractor as used herein includes subcontractors

- A. This process recovers or saves funds which would otherwise be expended for sales tax. The City of Mount Dora tax recovery is based on the Lake County, and Florida State sales tax rates.
- B. In order to provide real time response(s) to sustain the Contractor's schedule and to maintain the integrity of interfacing and warranty considerations, the City reserves the right to perform a deductive change order to remove any and all materials associated with a contract and purchase said items directly from the manufacturer or supplier using sole source procedures. The materials shall be purchased from the suppliers originally selected by the Contractor, for the price originally negotiated by the Contractor including special terms and conditions agreed upon by the Contractor.
  - 1. It is recognized that the Contractor has used a competitive process to establish procurements applicable to the contract. Also, the fact that the contract was

competitively established satisfies the considerations of obtaining competition to ensure a prudent expenditure of funds.

2. The City Council has approved the general contract which includes approval of applicable direct purchases; therefore the Purchasing Division is authorized to proceed with the procurement action without additional approvals being required.

The Contractor shall, within twenty-one (21) calendar days from the date of the Notice to Proceed, prepare a complete list of materials, supplies and equipment applicable to the project. The list must include the delivered cost (including but not limited to applicable taxes) of each item, time-frame for delivery from supplier ARO, and information relevant to maintaining timely scheduling of the project. The City will advise the Contractor within ten (10) days which items from the list the Owner wishes to purchase directly.

In the event the City elects to make direct purchases, the responsibilities of both, the City and the Contractor relative to direct purchase Items shall be governed by the terms and conditions contained herein, in the solicitation and in the contract.

- A. The Contractor shall identify the supplier(s) from whom to purchase materials or equipment unless a different approach is mutually agreed upon by the City and the Contractor.
- B. At the time the direct order is placed, the Purchase Order to the General Contractor shall be reduced by the net, undiscounted amount of the Purchase Order, including the applicable sales tax.
- C. With the exception of the payments for the materials purchased, issuance of the Purchase Orders by the City does not change any of the Contractor's responsibilities regarding material purchases. The Contractor remains responsible for coordination, correct quantities of the order, submittals, receiving, protection, storage, shipping tickets, invoices, installation, cleaning, all applicable warranties, and compliance with the requirements of the Contract Documents. The Contractor shall certify all invoices as accurate and acceptable and forward the certified invoices to the City for payment. The Contractor shall furnish the City with a purchase requisition form which provides lists of supplies and/or identifies each item of material or equipment broken down as appropriate by supplier and specific procurements, including any special terms and conditions, to be relevant to the project. This form shall, in form and substance, be acceptable to the Purchasing Division of the City, Project Division and Engineer of Record.
  1. It is noted that clerical, administrative, management, supervisory, inspection handling, storage, and other costs necessary for the Contractor to comply with this requirement are not affected by this process.
  2. The Purchasing Requisition Form shall include:

- a) The name, address, telephone number, and contact person for the Supplier
  - b) Manufacturer or brand, model or specification number of the item
  - c) Quantity(s)
  - d) The price, including sales tax, quoted by the Supplier for the material or equipment in question
  - e) Shipping, handling, insurance instructions, and costs as applicable
  - f) Delivery date(s) established by the Contractor and Suppliers
  - g) Special terms and conditions which have been negotiated and established with the Supplier relative to payment terms, discounts, rebates, warranties, credits or other terms and conditions
  - h) Statement with the submittal control number that materials have been reviewed and approved by Architect or Engineer during the shop drawing submittal process
3. Upon receipt of a Purchasing Requisition Request Form, the City shall promptly provide an appropriate response to maintain integrity of the process in a timely manner to ensure that the Contractor is provided the means to sustain scheduling requirements.
    - a) A copy of each Purchase Order will be sent to the Contractor to verify that items ordered are in accordance with the Purchasing Requisition Request Form.
  4. The Contractor shall prepare and the City shall execute deductive Change Orders to reflect purchases made by the Owner. The amount of the deduction shall be based on the Requisition amount including sales tax. These Change Orders must be executed before the related Purchase Order will be paid.
  5. Nothing in this Section shall alter or modify the procedures for submission of shop drawings and other submittals by the Contractor.
- D. The Contractor shall be fully responsible for all matters relating to the receipt, protection and risk of loss of direct purchase items, the same as if such items were purchased by the Contractor. Direct purchase of materials by the City in no way relieves the Contractor of responsibility regarding the compliance with specification requirements, coordination, protection, scheduling, or warranty.
1. At a minimum, the Contractor shall verify correct quantities, condition of the items received, compliance of the shipment with the Purchase Order, verify documentation, coordinate and expedite delivery, obtain and verify warranties required by the Contract Documents, inspect and accept or refuse each item at the time of delivery, unload, handle and store the accepted item(s).

2. As direct purchase items are delivered to the job-site, the Contractor shall visually inspect, receive all shipments, verify and reconcile supplier's shipping documents and invoice with the Purchase Order.
  - a) The Contractor shall assure that each delivery of direct-purchase items is accomplished by documentation adequate to identify the Purchase Order against which the purchase was made.
  - b) The Contractor will forward approved invoices to the City's Representative for payment.
- E. If the Contractor discovers defective or non-conforming, items he/she shall promptly notify the City of the defect or nonconformity, and assist the City to obtain repair or replacement of the item.
  1. The Contractor shall not be relieved of its obligation to ensure that materials requested for purchase have been reviewed by the Architect, and are released for purchase complying with the shop drawing and submittal procedures.
  2. The Contractor shall warrant direct purchase items and provide indemnification to the City as germane to all other materials and equipment furnished by the Contractor. Nothing in this Section shall alter or modify the Contractor obligations under the Contract relative to warranties and patent indemnification.
  3. The Contractor shall be liable for any interruption or delay in connection with direct purchase items.
- F. The Contractor shall maintain records of all City direct purchase items incorporated into the project. These records shall be available for inspection by the City upon request.
- G. Approval of Owner Direct Purchases: It is recognized that the Contractor has used a competitive process to establish procurements applicable to the contract. Also, the fact that the contract was competitively established satisfies the considerations of obtaining competition to ensure a prudent expenditure of funds. Therefore, because the City Council has approved the general contract which includes approval of applicable direct purchases, the Purchasing Division is authorized to proceed with the procurement action without additional approvals being required.

## **SECTION J - SMALL PURCHASES**

### **POLICY 2.47 PURCHASES BELOW BID LIMIT**

Purchases which fall under the bid limit, and cannot be grouped for bidding, shall be made in conformity with one or more of the following procedures:

(a) Commodities or services in excess of \$5,000 and up to \$35,000 - A minimum of three written quotations shall be obtained. If three written quotations are not provided, the requisition shall contain an explanation of the reason.

(b) The City's Procurement Card may be used for certain purchases, with the approval of the department head, may be used by the departments for immediate need of supplies, materials, and contractual services not to exceed the maximum value of \$5,000.

The City's Procurement Card may be used by authorized staff for maintenance, repair, and operating supplies, travel, and any other materials or services, up to a limit as established by the City for the use of such Cards.

## **POLICY 2.48 BLANKET PURCHASE ORDERS**

Blanket purchase orders are for set prices, set time, and/or up to a set dollar amount. They may be written for an entire fiscal year or for a shorter period of time. Releases of commodities or services against them may be accomplished by telephone, fax, mail, or electronic interface. Blanket orders reduce internal processing and are encouraged for commodities and services that have been bid. Examples would be a Blanket Purchase Order for the fiscal year to make monthly payments for the maintenance charge for a piece of equipment; a Blanket Purchase Order for a certain dollar amount to the awarded vendor of office supplies.

All invoices for purchases against these Blanket Purchase Orders must be approved for payment and entered for payment by the using department, and forwarded to Accounts Payable immediately following receipt of materials or services. The standard Purchase Order/Requisition form shall be used, and identified as BLANKET PURCHASE ORDER.

## **SECTION K - LOCAL PREFERENCE**

### **POLICY 2.49 VENDOR PREFERENCE**

A local vendor would be interpreted as a bidder, which as of the date of the bid opening, has a valid Business Tax Receipt (BTR) issued by the City of Mount Dora to do business in the City of Mount Dora which authorizes the vendor to provide the goods, services, or construction to be purchased and has a physical address located within the limits of Mount Dora from which the vendor operates or performs business. A Post Office Box cannot be used to establish physical address.

A local vendor preference of no greater than 5% (Not to exceed \$5,000) of the price submitted by the non-local vendor shall be granted with City Council approval.

Local vendor preference is not applicable during declared emergency operations and when federal funding sources are applicable.

## **SECTION L -PROCUREMENTS**

### **POLICY 2.50 EMERGENCY PURCHASE ORDER (EPO)**

Emergency purchases are approved per the spending authority levels outlined in this Policy and subject to review by the Finance Director. The City Manager may approve those exceeding \$35,000 and return to the Council for confirmation of the purchase, unless an executive order has been issued that suspends all requirements during disaster related events.

For emergency purchases the using department shall request an emergency purchase from the Purchasing Division after the City Manager or Finance Director approves the request. Emergency Purchase Orders are only to be used when a threat exists to the public health, welfare, or safety, or if the operation of a City Department would be seriously hampered if immediate action is not taken.

**EMERGENCY PURCHASES - NIGHTS, WEEKENDS, OR HOLIDAYS:** If an emergency occurs when the Finance Department is closed, the Department Head shall act to secure the necessary materials or service. The evidence of purchase such as sales ticket, bill, delivery slip, counter receipt, etc., which the supplier normally furnishes, will be submitted concurrently with the requisition by the department to the Finance Department on the next work day following the date of purchase. Such back-up documents will be submitted to Finance. **Emergency Justification form must be forwarded to the Purchasing Division by the next business day.**

**GENERAL INFORMATION:** When emergency purchases are made, the department will make the purchase at the best possible price. A true emergency can occur as a result of parts and labor needed for repairs to vehicles or equipment, which must be kept in operating order. Emergencies due to negligence are to be avoided. **Failure to anticipate normal needs, project deadline dates or a desire to expend excess or remaining budgeted funds prior to year-end do not constitute an emergency.**

**NOTE:** Emergency purchases are costly and should be kept to a minimum. They are usually made hurriedly, on a non-competitive basis, and at top prices. Most vendors charge a premium when supplies must be obtained immediately.

## **POLICY 2.51 WALK-THROUGH OF REQUISITIONS**

As a preferable alternative to an Emergency Purchase Order, someone from the requesting department may walk (either literally or by telephone if electronic) a completed requisition that has been approved by the department head, through the approval process person-by-person, and get the necessary approvals and Purchase Order number.

## **POLICY 2.52 CANCELLATION OF INVITATIONS FOR BIDS, REQUESTS FOR PROPOSALS, OR REQUESTS FOR QUALIFICATIONS**

The City reserves the right to cancel any Invitation to Bid, Request for Proposals, Request for Qualifications, or Requests for Letters of Interest at any time up until award.

## **POLICY 2.53 INNOVATIVE PROCUREMENT METHODS**

Additional innovative procurement methods may be adopted by the City in accordance with the method described in this Manual for revising this Manual.

### **SECTION M - RECYCLING**

Each department and division shall take aggressive and pro-active measures to cause the recycling of their surplus or waste materials and equipment.

## **POLICY 2.54 BUYING RECYCLED PRODUCTS**

The Purchasing Division shall be knowledgeable of the availability of products made with recycled materials, whether or not they contain post-consumer waste, and the percentage of recycled materials. The Purchasing Division shall encourage the purchase of materials and equipment containing recycled materials. The City is willing to pay a premium of up to 10% for such materials and equipment.

The City may also pay up to a 10% premium for the purchase of environmentally-friendly products.

## **POLICY 2.55 ENERGY EFFICIENCY**

The City supports efforts to protect the environment, conserve energy, and reduce waste in its operations.

When planning new construction or retrofitting, design professionals or the City department doing the work shall investigate energy conserving systems, equipment, and materials, and weigh the initial additional cost against the pay-back period. If the pay-back period is reasonable, the City shall specify or buy the energy conserving systems, equipment, and materials.

### **SECTION N - PUBLIC-PRIVATE PARTNERSHIPS**

A public-private partnership may be formed for the purpose of timely delivering services or facilities in a cost-effective manner that might not otherwise be possible using traditional sources of public procurement. The City recognizes that properly structured public-private partnerships allocate risk and expenses amongst the partners; encourage efficiency and innovation in design, construction, operations and maintenance; and maximize funding and cash flow initiatives.

## **POLICY 2.56 PROPOSALS**

The City reserves the right to solicit for and accept proposals, accept any unsolicited proposals or reject any or all solicitations or proposals, for a public-private partnership, at any time and for any purpose which is deemed to be in the best interest of the City. Furthermore, although the City may decline to pursue a proposed project, it may, at any time thereafter, resolicit or accept new proposals for a project which is the same or substantially similar to the previously rejected project proposal. Discussions between the City and a private sector company or individual related to needed infrastructure, improvements or services shall not limit the City's ability to decide, at a later time, to use its standard procurement methods to meet its infrastructure, and/or other needs, whether or not by way of public-private partnership.

## **POLICY 2.57 AGREEMENTS**

After a proposal for a public-private partnership is accepted by the City Manager, and any relevant staff members, a written agreement will be negotiated with the assistance of the City Attorney and presented to the City Council for approval. In such an agreement, the assets and professional skills of each sector (public and private) shall be shared and leveraged to deliver a service or facility for the benefit of the general public.

## **POLICY 2.58 DEVELOPMENT**

Use of public-private partnerships to redevelop those underdeveloped and/or underutilized properties located in the City, or within the limits of any of its Dependent Special Districts, is encouraged.

## **CHAPTER 3 - VENDORS**

### **POLICY 3.1 VENDOR APPLICATION**

A prospective vendor interested in doing business with the City shall complete a vendor application and submit it to the Purchasing Division where a vendor number will be assigned, and the commodities, equipment, and services for which a vendor desires to receive bid invitations will be electronically recorded. When a commodity is bid, the vendors of record for that commodity will receive an invitation to bid. Should the vendor list for that commodity be too lengthy, it may be pared down at the discretion of the Purchasing Division. It shall not be done arbitrarily, but with a method; e.g. geography (eliminate out-of-state or Central Florida vendors); eliminate those that have not responded to previous invitations to bid.

### **POLICY 3.2 ACCEPTANCE OF GIFTS**

All employees of the City of Mount Dora shall keep themselves free of obligations by refusing to accept any gifts or entertainment, other than advertising materials such as pens, note pads, calendars, baseball caps, T-shirts, or other inexpensive office supplies advertising the vendor's name and/or product, offered by any of the City's suppliers or prospective suppliers.

### **POLICY 3.3 INVOICE PAYMENT**

The City of Mount Dora's policy towards vendor invoices is to pay them promptly in compliance with the State of Florida Prompt Payment Act F.S. 218.70. We expect good service and quality from our vendors, and we, in turn, should pay them in a timely manner. The using departments are directed to adhere to this policy to maintain vendor good will, to take advantage of discounts, and to avoid interest charges. Also, prompt payment also allows Accounts Payable to take advantage of vendors' discounts.

The Finance Director shall have the right to choose the most advantageous method of payment for all invoices received by the City.

### **POLICY 3.4 REMOVAL FROM VENDOR/BIDDER LISTS**

A vendor may be removed from the vendor/bidder list for:

- (a) Failure to reply to three Invitations to Bid. Returning a bid marked “No Bid” will be considered a reply.
- (b) Failure to make delivery as contracted.
- (c) Substitution of other or inferior materials or services.
- (d) Failure to make satisfactory adjustments.
- (e) Failure, without good cause, to satisfactorily perform in accordance with the terms and conditions of a previous City contract.

### **POLICY 3.5 DISQUALIFICATION OF BIDDERS**

A bidder may be disqualified temporarily or permanently and his/her bid(s) rejected for:

- (a) Poor performance or default, in the City's opinion, on previous contracts with the City.
- (b) Poor performance or default, in the City's opinion, on previous contracts with other public entities.
- (c) Insufficient financial or company size, in the City's opinion, to perform the requirements of the contract.

### **POLICY 3.6 DEBARMENT OR SUSPENSION**

A contractor or vendor may be temporarily or permanently barred or suspended from doing business with the City for the following reasons:

- (a) Failure to make delivery as contracted.
- (b) Substitution of other, inferior or un-contracted for materials or services.
- (c) Failure to make satisfactory adjustments.
- (d) Misstating any information submitted to the City.

### **POLICY 3.7 REINSTATEMENT PROCESS**

A contractor who has been permanently debarred may not be reinstated; it may not be a subcontractor to another firm having a contract with the City. If a principal or officer of the debarred or suspended contracting firm becomes a principal or officer of another firm, that other firm shall also be debarred or suspended. If a principal, officer, or employee of the debarred or suspended contractor becomes an employee of another firm, the City may require that employee have no part in any work for the City.

A contractor who has been temporarily barred or suspended from doing business with the City must appeal to the City Manager or Finance Director, to be reinstated.

### **POLICY 3.8 APPEALS AND REMEDIES**

Reconsideration of a decision of the Purchasing Division may be requested of the Finance Director by the protester.

A contractor or vendor that has been notified of a proposed debarment action may request in writing that a hearing be held. Such request must be received by the official proposing the action within five days of receipt of notice of the proposed action.

In order to be reinstated, the contractor or vendor shall do any or all of the following, as required at the City's discretion:

- (a) Make restitution to the City for any and all losses incurred due to default of the contractor.
- (b) Petition the City for reinstatement, and outlining the measures that have been instituted to eliminate the causes of the default.
- (c) Outline the procedures that have been put into place to allow the contractor to monitor its performance and/or materials.
- (d) Agree to a retention by the City of partial or final payments (or if intrinsic to the contract, a larger retention than called for in the specifications) until the City has complete satisfaction with performance of the contract.
- (e) Post a performance bond.

## **CHAPTER 4 - SPECIFICATIONS**

### **POLICY 4.1 SPECIFICATIONS**

The bid specifications are the foundation upon which the entire competitive bid process rests. Good specifications will prevent misunderstanding, delay, change orders, and errors in delivery or performance. They shall not contain unnecessary features that will unduly restrict competition.

The use of abbreviations shall be restricted to those in common usage and not subject to possible misunderstanding. Wherever used, the meaning should be clear from the context and a genuine saving in space effected.

When possible, specifications shall describe energy efficient materials and equipment. When practical, specifications shall describe the use of recycled materials in products or services.

If the bid includes additive or deductive bid items, the specifications shall include the procedures to be used in making an award. Since additive and deductive items can affect or change which is the lowest bid, they should be avoided when possible.

The opening date and time of the bid shall be set no sooner than ten working days after the date the public notice is advertised in the newspaper. This is a minimum time, and every effort should be made to extend it to three weeks for materials and four weeks for construction.

Requirements such as inspection, site visits, testing, packaging, warranties, delivery instructions, etc. shall be included.

All stated requirements must be capable of being checked. If a requirement cannot be checked, it should be either omitted or identified as not mandatory. If there is no check for conformance, there is no reason to write lots of detail.

The specifications should take advantage of the latest technology and industry practices consistent with minimum needs and lowest possible cost.

Specifications should be simple, clear, reasonable in its tolerances, and in the proper format.

The text of specifications shall be in clear, simple language, free of vague terms, or those subject to variation in interpretation.

If the bid is for construction or technical systems, or if in the opinion of the Purchasing Division advantageous to the bidders and the City, the specifications shall call for a pre-bid conference to answer questions and discuss problems presented by potential bidders.

Florida Statutes Section 218.80, otherwise known as the "Public Bid Disclosure Act" requires "...that a local government entity shall disclose all of the local governmental entities permits or fees, including, but not limited to, all license fees, permit fees, impact fees, or inspection fees, payable by the contractor to the unit of government that issued the bidding documents..." The City's specifications shall inform the prospective bidders if these fees are to be waived, paid by the City, or paid by the contractor.

The inclusion by reference of other material, such as other specifications, rules, regulations, or laws, standards, etc. is discouraged, especially if potential bidders do not have easy access to the referenced material. Include the material in the specifications, make it available for pickup or inspection, or don't mention it.

## **POLICY 4.2 ELEMENTS**

The elements of the specifications are as follows:

- Cover page
- Boiler plate(s)
- General Conditions
- Special Conditions
- Instructions to Bidders
- Technical specifications.
- Bid Proposal form.
- Other required forms.
- Sample agreement.

### **POLICY 4.3 INSTRUCTIONS FOR PREPARATION OF SPECIFICATIONS**

Number all pages of the specifications “ \_\_\_\_ of \_\_\_\_”. Numbering of the cover is optional. Each page of the Bid Proposal Form shall have provision for the name and signature of the bidder.

Use of “shall”, “will”, “should”, “may”, “or equal”, and “no substitute”:

(a) Shall: Use “shall” wherever a specification expresses a requirement that is binding on either the contractor or the City.

(b) Will: Use “will” to express a declaration of purpose on the part of the City. Also, it may be necessary to use “will” in cases where simple futurity is required, i.e., “The City will prepare the site.”

(c) Should & May: Use “should” and/or “may” to express non-mandatory provisions.

(d) Or Equal: Also “or equivalent”. Whenever brand names are used to supplement a detailed specification, the words “or equal” must be used, unless the using department provides the Purchasing Division in writing with satisfactory reason to do otherwise. When using “or equal”, the following statement should be included in the General or Special Conditions of the bid:

“Bid Proposals Based on Items Other Than Those Specified by Brand Names or Model Numbers in the Bid”: Any items other than those brands specified in the bid specifications require approval of the City. The items offered must be equivalent in function, basic design, type and quality of material, method of construction, and any required dimensions. Bidders must submit complete descriptive literature and specifications of the item offered with their bids. They should be prepared to provide a sample to the City for evaluation. The City shall make the final determination as to the equality of the item offered.”

“No Substitute”: Although it is recognized that the use of this term may allow for limited competition, it may be allowed in certain instances; e.g. to match all the other items in a standardized system, if it is the only item that will do the job. If there is more than one distributor, it shall be bid. If there is only one source, a “sole source” justification shall be required of the using department.

Whether or not the contractor or supplier performs to the satisfaction of the using department frequently is determined by the specifications. Therefore, all issues of importance shall be clearly stated in the specifications.

Do not use vague requirements such as “good workmanship”, “best design practices”, “high reliability”, which are too subjective and almost impossible to compare for compliance.

Standard and commercial material or services should be specified whenever possible to avoid special design or fabrication costs.

All questions by potential bidders of a material nature regarding the specifications or bid must be submitted in writing to the Purchasing Division, and will be answered via addendum to all holders of the specifications.

The Bid Proposal form shall ask the following questions:

“Do you have the required insurance and licenses? Yes No

License Number: \_\_\_\_\_.

Insurance Companies and Policy Numbers: \_\_\_\_\_

I have read these specifications and take the following exceptions:

\_\_\_\_\_ Signed

The Purchasing Division shall maintain a list of the names, addresses, email addresses, telephone and fax numbers of all those who have received specifications, so that addenda may be mailed or faxed to them.

#### **POLICY 4.4 TYPES OF SPECIFICATIONS**

(a) **INDUSTRY STANDARD:** Usually a simple specification. Like items made to an industry standard are identical, regardless of the manufacturer. Therefore, a designation of a standard will result in the acquisition of the proper item. Also, an industry standard is generally the least expensive alternative. They are generally stocked items, and generally available.

(b) **PERFORMANCE SPECIFICATIONS:** Function and use are the basic definitions. The parameters within which a product or service should perform to meet a given task. Considerable flexibility is allowed. This is generally the best kind of specification, if applicable. The supplier must guarantee that the delivered product or service meets the performance criteria.

a. Clearly defined expectations or statements of work are necessary to insure the selected supplier has the complete level of expertise and/or equipment required, and will not have to rely on subcontractors, which further escalates the cost.

b. It allows the outline of a problem and having vendors propose their own solutions. The vendors should be given as much information as possible about the environment, i.e. walk-through, current process and outcome observation, problem observation.

c. Award may be based on criteria other than low price, such as quality, life-cycle-cost, past performance, delivery time, and “other factors”, etc. The specifications should clearly state the criteria that will be used to determine award.

(c) **TECHNICAL OR DESIGN SPECIFICATIONS:** This is detailed in the specific requirements for features and functions. Rigid conditions often exist, such as retrofitting, critical application, and existing circumstances. This type of specification permits little, if any, deviation, and is the least competitive. It is very restrictive and has a tendency to lock in a particular product or service.

a. The description may include a statement of the qualitative nature of the material, product, or service to be procured, and when necessary, will set forth those minimum essential characteristics and standards to which it must conform to satisfy its intended use. Detailed product specification should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name "or equal" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offerors must be clearly stated.

b. This type of specification is typically used for construction, and accompanied by civil, structural, architectural, mechanical, electrical, HVAC, and landscaping drawings. The specifications and the drawings shall be in complete agreement and complement each other to avoid any misinterpretation by the bidders, to discourage bidders from factoring in excessive money in their bid to cover contingencies, and to reduce addenda and change orders.

(d) PURCHASE OF HIGH TECHNOLOGY SYSTEMS AND EQUIPMENT: Since the primary goal in government procurement should be "best value" and not "lowest price", and since the purchase of high technology systems and equipment do not favorably lend to the "low bid meeting specifications" process, these types of purchases shall be handled through the Request for Proposal process. Awards shall be made on the basis of best value for the City, taking into account quality, life-cycle costs, past vendor performances, reference checks, stability and length of time in business of proposer, and other relevant factors.

a. Specifications for procurement of high technology systems and equipment shall be functional or performance specifications, rather than detailed technical specifications. They shall outline problems to solve and/or goals to achieve, give the vendors enough information about the environment, and allow vendors to propose solutions.

b. The process may be a two-step process wherein the first step would be to invite solutions, and the second step would invite proposals and prices on the acceptable solutions.

(e) COMBINATION SPECIFICATIONS: Specifications falling somewhere in between the performance and technical specifications, stating only necessary requirements for functions and features. This is the most common type of specification.

(f) PROPRIETARY SPECIFICATIONS: Specifies an item, or component of an item, manufactured by a particular person or corporation, usually protected by a patent or trademark in which the manufacturer or seller has exclusive rights. Proprietary items may be sold exclusively by the manufacturer, or there may be many distributors. Proprietary specifications restrict competition and are the least desirable.

(g) PREFERENTIAL SPECIFICATIONS: The City may write specifications stating a preference for recycled products or products made with recycled material, reserving the right to award to bidders offering such products, even though they are not the low bidder.

a. When staff does not have the technical expertise to write specifications and specifications are provided by an outside source, that source shall not bid. If such is necessary, staff shall obtain

specification proposals from several sources, and specify only the necessary functions and features. This same shall apply when copying specifications from sales literature or catalogues.

(h) LIFE CYCLE COST OR TOTAL COST SPECIFICATIONS: Life Cycle Costing is the procurement technique that considers in award of a contract, not only the acquisition price, but also the cost of putting the material or equipment into the system or operation, operating, maintenance, and other cost elements of ownership. It is also known as "Total Cost Buying", or "Initial Cost plus Maintenance Costs".

a. The City encourages the use of Life Cycle Costing. For example, equipment with a higher initial purchase price but a longer warranty and/or lower maintenance or operating cost might actually have a lower overall, long-term cost than similar equipment initially costing less, but with higher maintenance and/or operating costs.

b. When a bid will be awarded based on Life Cycle Costing, it is important that the factors on which award will be made be stated with sufficient clarity to enable the bidders to know precisely how the bids will be evaluated. It should be clear, precise, and as exact as possible. Ideally, it should be capable of being stated as a mathematical equation.

Some of the components of the mathematical equation may be as follows:

- Wattage rating as reported by the manufacturer
- EPA mileage
- Cost of energy
- Anticipated life
- Hours of operation
- Disposal costs

Several factors to be considered when evaluating an item as a candidate for Life Cycle Costing are:

1. It should have a measurable service life. Any item that is expendable or usable has some type of time element that is the key of Life Cycle Costing, e.g. a vehicle, air conditioning unit, and a typewriter. The total ownership cost shall include the total ownership time.
2. It must be capable of being tested for design, performance, and characteristics. It must have something you can test and measure, such as vehicle life. You know the average life of a vehicle, and you have the EPA mileage figures.
3. The installation, operating, and maintenance costs should be determinable.
4. It should be a commercial item, able to be bid in a competitive environment.

(i) QUALIFIED PRODUCTS LIST: When it is practical and effective, the specifications may contain a qualified products list giving brand names and models that have been evaluated as acceptable. In such specifications, the term "or approved equal" shall be used. The specifications should advise all bidders as to how to proceed to seek approval if they offer an "equal".

## **POLICY 4.5 ADDENDA**

Everyone who has received specifications shall receive all addenda, even if they have not attended a mandatory pre-bid conference. A summary of the conferences shall be supplied to all those prospective bidders known to have received an Invitation to Bid.

Specifications shall state that it is the bidder's responsibility to insure they have received all addenda. Failure of any bidder to receive any addenda shall not relieve such bidder from obligation under his bid as submitted.

Addenda issued five days or less before a bid opening, shall cause the bid opening to be postponed.

## **POLICY 4.6 STANDARDIZATION**

Every possible and practical attempt shall be made to standardize materials and equipment. The goal of standardization shall be to reduce the amount of stocked parts, allow staff to become more proficient in the use, operation, maintenance, and repair of the materials or equipment, and reduce purchasing costs. Sometimes "simplification" is used synonymously with "standardization".

## **CHAPTER 5 - PROFESSIONAL SERVICES**

The City of Mount Dora has adopted Chapter 287.055 of the Florida Statutes "Acquisition of professional architectural, engineering, landscape architectural or surveying and mapping services..." This section of the statutes is known as the "Consultants' Competitive Negotiation Act", or "CCNA".

### **POLICY 5.1 DEFINITION OF PROFESSIONAL SERVICES**

As defined by the State, "professional services" "means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the State". To this definition, the City has added all professional and consulting services with the exception of those listed in the next paragraph.

### **POLICY 5.2 EXEMPT FROM CCNA**

The following contractual services are not subject to the CCNA:

- Artistic services
- Academic programs
- Lectures by individuals
- Auditing services
- Legal services
- Medical services

### **POLICY 5.3 CCNA REGULATIONS**

Following is a synopsis of the regulations imposed by the CCNA:

(a) “Each agency shall publicly announce, in a uniform and consistent manner, each occasion when professional services are required to be purchased for a project the basic construction cost of which is estimated by the agency to exceed the threshold amount provided in s. 287.017 for CATEGORY FIVE” (which at this writing is \$250,000) “or for a planning or study activity when the fee for professional services exceeds the threshold amount provided in s. 287.017 for CATEGORY TWO” (which at this writing is \$35,000), “except in cases of valid public emergencies so certified by the agency head. The public notice shall include a general description of the project and shall indicate how interested consultants may apply for consideration.”

(b) Qualifications of the consultants shall be due, opened, and the names announced at a date and time certain. Sufficient copies of the qualifications should be requested to be able to provide one to each member of the Selection Committee.

(c) A Selection Committee shall be appointed by the City Manager. There shall be at least one member from the Finance Department, but not from the Purchasing Division on the selection committee. The Committee shall individually review and evaluate the submittals, qualifications, and performance data of the respondents. Each member of the Selection Committee shall independently shortlist the responding consultants.

(d) The Committee shall consider such factors as the ability of professional personnel; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firms; and the volume of work previously awarded to each firm by the City, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms.

(e) The Committee shall jointly select, in order of preference, no fewer than three firms deemed to be the most highly qualified. Those firms may be invited for a presentation or interview before the committee.

(f) The Committee shall recommend to the City Manager and Council the top-ranked firm with whom the City will enter into contract negotiations, if Council approves the recommendation.

(g) If negotiations do not result in a written agreement between the consultant and the City, negotiations with that consultant shall be formally terminated the process shall continue with the second-ranked firm, and so on.

(h) The consultant and the City shall sign a formal written agreement setting forth the scope of the project, the consultant’s specific duties and responsibilities, and the fee due the consultant.

(i) The City shall discuss fees with those professionals specifically mentioned in the CCNA only at the time of negotiation. The City may request fees of the other professionals covered by this section of the Manual to be submitted, in a separate sealed envelope, with their qualifications. Separate sealed envelopes will only be opened at start of negotiation with top ranked firms.

(j) The City may enter in “continuing contracts”, or add a “continuing contract” clause in a contract for other design work, with consultants “for professional services entered into in accordance with all the

procedures of ..." the CCNA, "...whereby the firm provides professional services to the agency for projects in which construction costs do not exceed \$500,000, for study activity when the fee for such professional service does not exceed \$35,000, or for work of a specified nature as outlined in the contract required by the agency, with no time limitation except that the contract shall provide a termination clause."

(k) The City has adopted the fee curve for architectural services and the fee curve for engineering services that is followed as a guide to determining whether the consultants fees are fair, competitive, and reasonable.

(l) Since the owner of a construction project impliedly warrants to the construction contractor that the plans and specifications are adequate, it is imperative that the design professional contracting with the City carry professional liability insurance.

(m) The Purchasing Division shall prepare all City Manager Agenda request for all sealed bid items. This will maintain conformity in how these items are prepared and presented.

## **CHAPTER 6 - CONSTRUCTION BIDS**

### **POLICY 6.1 METHODS OF CONTRACTING FOR CONSTRUCTION**

(a) SINGLE PRIME CONTRACTOR. One contract with one licensed General Contractor who will use subcontractors to build according to plans and specifications prepared by an architect/engineer.

(b) MULTIPLE PRIME CONTRACTORS. A contract with each of a number of specialty contractors to complete a portion of the project in accordance with plans and specifications prepared by an architect/engineer. The City may take responsibility for management of the project, or one of the multiple contractors may have management of the project included in his/her contract.

(c) DESIGN-BUILD OR TURN-KEY. The City issues a Design Criteria Package, and contracts with a design-build contractor or team that will design and build the project to its completion.

(d) CONSTRUCTION DIVISION. A licensed construction person, who evaluates the design, coordinates, administers, and oversees the project to insure completion in accordance with the plans and specifications of an architect/engineer, at or below the specified price, on or before the specified date for completion.

(e) SEQUENTIAL DESIGN AND CONSTRUCTION. The design of the entire project is substantially complete prior to bidding and beginning construction.

(f) PHASED DESIGN AND CONSTRUCTION OR FAST-TRACK CONSTRUCTION. Construction is begun when appropriate portions have been designed, but design of the entire project has not been completed. Bidding this type of design is difficult, if not impossible.

### **POLICY 6.2 BID PACKAGE SPECIFICATIONS**

Following are subjects which shall be addressed in the Specifications:

(a) Bonding Requirements:

1. Bid Bond - Guarantees contractor can get a Performance Bond.
2. Performance (Bond Section 255.05 of Florida Statutes) - 100% of the cost of construction.
3. Payment Bond -100% of the cost of construction. (At the discretion of the Purchasing Division, the Performance and Payment Bonds may be separate bonds, or may be one bond.

(b) Insurance:

1. General
2. All Builders Risk
3. Installation Floater
4. Explosion
5. City shall be included as an "Additional Insured"

(c) "Or Equal":

1. Approved products lists may be used.
2. If "or equal" materials are allowed, who will decide if substitute is equal?

(d) Alternates - Add or Deduct

Additive or deductive alternates are discouraged. If they are used, the criteria for award shall be outlined in the specifications.

(e) Liquidated Damages. Consider 100% for substantial completion and 75% for final completion.

(f) Substantial Completion or Beneficial Occupancy shall be clearly defined. Please refer to the section in this manual entitled "Closing out a Project" for requirements.

(g) Progress Payments & Retainage -Section 255.05(2) of Florida Statutes. The City shall retain 10% of each request for progress payment until the project has been determined to be substantially complete. Upon substantial completion, the retainage shall decrease to 5%, at the discretion of the Purchasing Division, and the contractor may request payment of one half of the funds previously retained.

(h) Liens:

1. Partial Releases of Lien shall be required prior to or within five working days of City's progress payment to contractor.
2. No subsequent payment shall be made until approved Releases have been received for previous payments.

3. Final Releases of Lien shall be required prior to or within five working days of final payment to contractor minus retainage.

4. No retainage shall be paid until all Releases of Lien are received by the City.

5. Each invoice for a progress payment shall have indicated on it by the City's Construction Division that the appropriate releases of lien have been received.

(i) Final Completion and Payment: Please refer the section in this manual entitled "Closing out a project" for requirements.

### **POLICY 6.3 CHANGE ORDERS**

May be unilaterally issued by the City. Must be approved in writing by the Architect/Engineer (A/E), the Construction Manager, the Project Manager, the Department Head, the Finance Director, the City Manager. The change order cannot exceed 10% of the original award amount (Not to exceed \$50,000). The City Council must approve all change orders exceeding \$50,000.

Shall include method of pricing, e.g.: "The cost or credit to the City resulting from a Change Order shall be determined in one or both of the following ways:

(a) By mutual acceptance of a properly itemized lump-sum amount supported by sufficient substantiating data to permit evaluation.

(b) By unit prices stated in the contract documents or subsequently agreed upon.

### **POLICY 6.4 FIELD CHANGE ORDERS**

(a) The Consultant, Construction Manager, and Project Manager may issue written Field Change Orders which interpret the contract documents, or which order minor changes in the work, without change in contract sum or contract time.

(b) List license and permit requirements.

(c) City shall have no responsibility for property or equipment of contractor. City shall have no responsibility for damage, theft, or vandalism to materials for job, even though the City has issued the Purchase Order and paid for the materials or equipment, until City accepts the project as substantially complete.

### **POLICY 6.5 TERMINATION BY THE CITY**

(a) If the Contractor is adjudged to be bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed because of his insolvency, or if he persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials, or if he fails to make prompt payment to subcontractors or for materials or

labor, persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the contract documents, then the City may elect any of the following actions to obtain completion of the work. Should either actions two or three be elected, the Surety shall execute an appropriate document indemnifying the City against third party claims.

(b) Permit the Contract, with the assistance and consent of the Surety, to continue and complete the work in accordance with the terms and conditions of the contract documents.

(c) After giving the Contractor and his surety seven days written notice, terminate the employment of the Contractor and request the Surety to complete the work and satisfy all legitimate claims against the Contractor as required by the Performance and Payments Bonds. As the Surety completes the work satisfactorily, the balance of the contract sum will be paid in accordance with the terms and conditions of the contract documents.

(d) If the Surety fails to act expeditiously and competently to complete the work according to the terms of the contract documents, the City may then, without prejudice to any right or remedy and after giving the Contractor and his Surety seven days' written notice, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, and may finish the work by whatever method the City may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the work is finished. Such action may be taken by the City only after consulting with the Construction Manager and the Project Manager and after the consultant certifies that sufficient cause exists to justify such action.

(e) If the unpaid balance of the contract sum exceeds the costs of finishing the work, including compensation for the Consultant's, Construction Manager's, and Project Manager's additional services, such excess shall be paid by the Contractor. If such costs exceed such unpaid balance, the Contractor and/or his Surety shall pay the difference to the City. The costs incurred by the City as herein provided shall be certified by the Consultant and Construction Manager.

(f) For the purpose of determining debarment criteria, or for evaluating performance for future City work, the exercise by the City of any action authorized by sub-paragraph 1, 2, or 3, above shall be equivalent to a default.

## **CHAPTER 7 - CLOSING OUT A PROJECT**

### **POLICY 7.1 AT SUBSTANTIAL COMPLETION**

Substantial completion of a project is the point at which the work has progressed to where it is sufficiently complete so that the project, or part thereof, can be utilized for the purposes for which it is intended. The Designer, the Construction Manager, the Project Manager, the Building Officials, and the using department must all agree that the project has reached this stage.

(a) A punch list of work yet to be done, or work to be corrected or repaired, along with the time within which the work shall be completed, shall be developed at this time.

(b) If the contract documents call for it, and at the discretion of the City, the Contractor's retention may be reduced to 5% at this time. If the contract documents call for it, and at the discretion of the City, liquidated damages may be reduced to 75%.

## **POLICY 7.2 AT FINAL COMPLETION**

Prior to final payment, all of the following shall have been completed:

- (a) Completion of the items on the punch list.
- (b) Final approved inspection by the Building Official.
- (c) Issuance of a Certificate of Occupancy.
- (d) Receipt of as-built plans.
- (e) Receipt of final releases of lien from the Contractor, suppliers and subcontractors. In the event the final releases of lien from all the subcontractors and suppliers cannot be furnished, the Contractor shall submit a "Consent of Surety to Final Payment", recognizing lack of such releases of claim.
- (f) Proof of current insurance.
- (g) Training of staff on use and maintenance of equipment and materials, as specified.
- (h) Receipt of manuals on equipment and materials.
- (i) Receipt of warranties on equipment and materials.
- (j) Receipt of a list of subcontractors, major material and system suppliers, their project representative, trade, address, and telephone number.

All of the above (when practical) shall be bound in a ring binder.

## **POLICY 7.3 PROJECT EVALUATION**

The Project Manager shall record in the Project file, and the Bid file, his/her evaluation and observations of the designer, the design, the contractors, and the construction manager. This information may be used for future projects when selecting or pre-qualifying any of these disciplines. Any problems, delays, or defaults on the project shall be documented in writing and placed in the Project Manager's Project file and the Bid file.

## **CHAPTER 8 - CONSTRUCTION MANAGEMENT**

### **POLICY 8.1 CONSTRUCTION MANAGEMENT DEFINITION**

Engineer-constructors, general contractors, design firm, and pure construction management firms traditionally perform this service.

In the traditional relationship of owner and architect, the design, bid, and construction phases of a project are treated independently, each of which is completed before the ensuing one begins.

Using construction management allows the three phases to be conducted simultaneously, drastically cutting the lead-time required for delivery of the complete project. The construction manager and the architect should be selected at the same time. Basically the same process is used to select both. The construction manager then advises the architect on the facets of cost, time, materials, value engineering, and quality control through the design process.

## **POLICY 8.2 ORGANIZATION CAPABILITIES**

To properly perform construction management, the professional Construction Manager must have an organization capable of evaluating input from the owner, the architect/engineer, and the construction industry. Since there is no licensing for this service, some of the questions to ask prospective construction managers follow:

- (a) What is the purpose of Construction Management (CM) and what CM services are being provided?
- (b) Does the Construction Manager's fee include all construction management services?
- (c) Do you have the staff to provide the necessary services? What are the education, experience, and background of staff?
- (d) Have you done construction management before?
- (e) What type and scope of construction management work have you performed?
- (f) Are you members of a professional construction management society?

Ideally, the construction manager's staff should consist of:

- (a) Qualified project managers (the one person responsible to you).
- (b) Cost estimators.
- (c) Schedulers (with computerized scheduling).
- (d) Value engineers (preferably with an accounting degree).
- (e) Contracting department (to prepare scopes of work, bid packages, etc.)
- (f) Project accountants.
- (g) Architects (to evaluate materials and design).
- (h) Engineers (to evaluate materials and design).

(i) Personnel with field construction experience (preferably with degrees in engineering or construction technology).

### **POLICY 8.3 TYPES OF CONSTRUCTION MANAGERS**

The two types of construction managers (CM) are:

(a) Construction Manager for Fee: These firms are financially liable only for their fee on the project, and act generally as a consultant and agent for the owner. They do not ordinarily contract directly with prime contractors or subcontractors. They generally do not assume contractual or other responsibilities of a general contractor.

(b) Construction Manager at Risk: These companies take a more comprehensive role in the project in terms of legal and financial liability.

During the design phase of the project, the construction manager's expends about 20% of his/her contract time. The greatest opportunity for savings is in the concept and design phases. The cost to make changes during these phases is also the lowest. His/her work in this phase could have a big impact on the cost management of the project. As the phases of the project progress, the opportunities for savings become less, and the cost of changes becomes higher. Once construction starts, it is difficult to affect savings. Through the process of Value Analysis, the CM will influence the selection of materials and systems by taking into account initial cost; life cycle costs (maintenance, repair, replacement); interface costs (effect on costs of other systems); effect on project completion (time).

### **POLICY 8.4 CONSTRUCTION CONTRACT ADMINISTRATION**

The following are charged with administration of construction contracts:

(a.) Designer-architect or engineer:

The role of the designer may be from the lowest level of periodic inspection of the project for conformity to design specifications, to the highest level of construction management whereby the project is manned by the designer at all times during construction, they have an office on site, they inspect and approve/disapprove all phases of the construction, the materials, schedules, change orders, invoices. The designer's role could also be anywhere between. If a consultant, he/she would be compensated for this role according to the level of responsibility. The designer's role should be decided, and compensation negotiated prior to the start of construction.

(b.) Construction Manager:

This role may be filled by City staff, the project consulting architect or engineer, or a firm specializing in this service and selected through the public selection process.

(c.) Project Manager:

A City staff member, often an architect or engineer, who is responsible for monitoring the project as the direct representative for the City. This role also may be from an observer to a construction manager.

(d) Field Representative:

An employee of the City, an authorized representative of the Project Manager, assigned to make observations of the work performed by the construction contractor.

## **POLICY 8.5 CONTRACT ADMINISTRATION**

The following activities, at a minimum shall be conducted during construction of a project for the City. These activities may be performed by one, several, or all of the above (See Policy 10.4). The roles and responsibilities shall be determined prior to the pre-construction meeting at the latest.

(a) All instructions to the Contractor shall be issued through the Construction Manager, preferably in writing.

(b) All representatives of the City on the project shall each keep a log or diary on the project.

(c) All these representatives of the City shall at all times have access to the project. The Contractor shall provide safe facilities for such access. For safety reasons, unauthorized persons shall not be allowed access to the project.

(d) If the consulting designer's role is minimal, he/she will make periodic inspections of the project to familiarize him/her with the progress and quality of the work, and to determine in general if the project is being constructed in compliance with the plans, specifications, and other contract documents. On the basis of inspections as a consultant, he/she will keep the City informed of the progress of the project, and will make every effort to guard the City against defects and deficiencies in the work of the Contractor. The consultant shall attend the regular periodic on-site meetings with the Contractor, the Project Manager, Construction Manager, etc. The consultant shall keep a diary of all inspections, visits, and meetings.

(e) Minutes shall be taken and distributed at each scheduled meeting, starting with the pre-construction meeting. If there is a Construction Manager on the project, he/she shall be responsible.

(f) A pre-construction meeting will be held before starting any work. In attendance shall be the Designer, Construction Manager, Project Manager, Field Representative, and Contractor with the job superintendent, major subcontractors, representative from utilities if affected, representative from other entities if affected, City Purchasing Manager. At this meeting, the following issues shall be discussed or delivered:

1. Signed agreement, proof of insurance, bonds.
2. List of subcontractors with telephone numbers, addresses, licenses.
3. Communication (telephone, beeper, cellular numbers).

4. Schedule of Values. Care shall be taken when reviewing and approving this document. Be sure the Contractor has not front-loaded the schedule. If approved, this would result in payment to the Contractor a value greater than the work performed. The Surety would hold the City responsible for this money should the Contractor default on the project. After each progress payment, the City should have sufficient money to pay for the completion of the project if the Contractor defaults.

5. Date of commencement of work. (Notice to Proceed).

6. Work progress schedule chart.

7. Transmittal forms for shop drawings, change orders, payment requests, etc.

8. Number of copies of submittals required.

9. Project office with telephone.

10. Staging area.

11. Traffic control if necessary.

12. Construction fence.

13. Project signs.

14. City Noise Ordinance.

15. Clarification of plans and project manual.

16. Set the time, dates, location of the regular periodic meetings.

(g) The contract documents, permits, schedules, change orders, test reports, minutes, etc. shall be kept on the job or in one location, accessible to all concerned.

(h) Shop drawings, samples, change orders, application for progress payment, and other Contractor submittals shall be reviewed and approved/disapproved in writing by the A/E, Construction Manager, and Project Manager jointly, in a timely manner.

(i) The inspections of the A/E, the Construction Manager, or the Project Manager shall in no way supplant or supersede those of the Building Officials or inspectors of other entities.

(j) The A/E, the Construction Manager, and the Project Manager, after joint consultation and agreement, shall have authority to reject work not conforming to the construction documents and to require special inspection or testing.

(k) The A/E, the Construction Manager, and the Project Manager must each approve change orders in writing.

(l) The A/E, the Construction Manager, and the Project Manager must each approve the Contractor's application for progress payment, in writing.

(m) The A/C, the Construction Manager, and the Project Manager shall conduct inspections together to determine the date or dates of Substantial Completion and Final Completion, and to compile the punch list

(n) Although the Contractor shall have ultimate responsibility for developing and enforcing a job-site safety program, the A/E, Construction Manager, and Project Manager shall observe and call any violations or potential hazards to the Contractor. They shall have the authority to shut the job down should they determine there is a potential risk to life or property.

(o) Although the Contractor shall have ultimate responsibility for keeping the site free from the accumulation of waste materials or rubbish, the A/E, Construction Manager, and Project Manager shall observe and call any violations or potential hazards to the Contractor. They shall have the authority individually to have someone clean up the site and charged to the Contractor, should the site be determined to be a potential hazard and not cleared up when a natural disaster warning is issued.

(p) Although the Contractor shall have ultimate responsibility for all construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the work under the contract, the A/E, Construction Manager, and Project Manager jointly may require the Contractor to adopt other means, methods, techniques, sequences, and procedures should they be other than standard in the industry and/or contrary to the contract documents.

(q) The A/E, Construction Manager, and Project Manager jointly may require the Contractor to remove any worker from the job site who is unfit or unskilled in the job assigned to him/her.

(r) The Construction Manager or Project Manager shall retain all Notices to Owner, receive partial or final releases of lien prior to approving payment to the Contractor, and respond to inquiries of the bonding surety.

(s) The Construction Manager shall insure all the final documents, manuals, training, inspections, walk-throughs, etc. are delivered prior to declaring the project finally complete.

(t) The A/E, Construction Manager, and Project Manager shall inspect the project prior to the expiration of the one-year warranty, in the event there is failure of any materials or workmanship, and follow through should there be any warranty claims.

## **CHAPTER 9 - BONDS AND BID SECURITY**

Chapter 255.5(1)(a) of the Florida Statutes states that any person entering into a contract for the construction or renovation of a public building or a public work shall be required to deliver to the owner (City) a payment and performance bond. The City has discretion to exempt projects for \$200,000 or less

from the requirement of a payment and performance bond. In the City of Mount Dora, the City Manager or Finance Director must approve any exemption. An exemption is discouraged.

#### **POLICY 9.1 SURETY COMPANY**

The Surety shall be listed in the latest Federal Register of the US Department of the Treasury, “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies”. The contract amount shall not exceed the underwriting limitations as shown in this circular publication. The underwriting limitations shall exceed the contract amount. Do not accept a letter stating that the Surety has reinsurance for amounts over what the Federal Register says they can write.

(a) If a Surety is on the Treasury Listing of the Federal Register, giving the bonding limits, there is no need to be concerned over Best or Moody & Poor’s ratings. The company must be licensed to transact surety business in the State of Florida.

(b) A high A.M. Best rating is acceptable, but not as good as being listed in the Federal Register. The larger the contract amount, the higher the rating should be.

(c) Bond premiums are based on the amount of the contract, not the value of the bond.

#### **POLICY 9.2 CONSENT OF SURETY**

Obtain the consent of the Surety to make final payment to the contractor. You may require the Contractor to submit such approval with the request for final payment.

(a) Contractor must submit Final Releases of Lien with, or within five days of, the request for final payment.

(b) Contractor shall provide the City with the name, address, and telephone number of the Florida resident agent.

#### **POLICY 9.3 ATTORNEY SIGNATURE**

Attorneys-in-Fact who sign Bid Bonds or Performance and Payments Bonds must file with each bond a certified and currently valid copy of their Power of Attorney.

#### **POLICY 9.4 FRAUDULENT BONDS**

Twenty percent (20%) of construction bonds are fraudulent. If you have any doubts, check with the Surety Company to confirm they issued the bond.

The cost of the bonds to the Contractor is approximately 1-2.5% of the cost of the construction contract. Sureties may question a bid spread over 10%.

#### **POLICY 9.5 BID GUARANTEE OR BID DEPOSIT**

A bid guarantee or bid deposit may be a certified check, a bid bond, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified. There is no charge to the contractor for this bond.

(a) If bid security is required, a bid without it is not responsive and shall be rejected.

(b) Bid security shall be returned to the unsuccessful bidders only if requested.

(c) Bid security may be a specified dollar amount or it may be a percentage, not less than 5% of the amount bid.

(d) Should the successful bidder fail to enter into a contract, the bid deposit or guarantee will be forfeited.

(e) Failure to provide acceptable Performance and Payment Bonds within five working days of delivery of the agreement, and proof of insurance within 14 calendar days after notification of award, shall be just cause for the annulment of the award and the forfeiture of the bidder's security. The City may then award the bid to the second lowest responsible, responsive bidder.

#### **POLICY 9.6 PERFORMANCE BOND**

The awarded bidder or contractor shall provide a Performance Bond for 100% of the contract price or a specified dollar amount, to secure fulfillment of all the contractor's obligations under the contract. If a change order materially alters the terms of a contract and substantially expands the scope of work to include work that was specifically excluded under the original contract, the Surety may be discharged from any obligations under its bond, unless they are notified and subsequently approved.

#### **POLICY 9.7 PAYMENT BOND**

The awarded bidder or contractor shall provide a Payment Bond for 100% of the contract price to insure payment of all persons supplying labor and material in the execution of work provided for in the contract.

#### **POLICY 9.8 WARRANTY BONDS**

The Warranty or Guaranty Bond shall guaranty all labor and materials against defects for a period of one year from the date of substantial completion, or completion of the contract. Warranty bonds can be bought for additional 2 or 3 years.

#### **POLICY 9.9 DEFAULT**

Every effort should be made to prevent the contractor from defaulting on a contract with the City. Throughout the project, the City's project manager shall insure that minutes of each meeting are prepared and directives, change orders, notices, etc. are in writing. If it appears there is a possibility of non-performance or default, notify the contractor in writing, telling them what you want them to do, when it

must be done by, and what will happen if they do not. Copy the Surety, and call the agent. They can do certain things initially to mitigate problems.

If the contractor has not complied with your notice, notify the Surety in writing that the contractor did not comply and the City is declaring them in default.

Partial payments to the contractor should have been made according to the Schedule of Values submitted at the pre-construction meeting. It is incumbent upon the City or its design consultant to be sure the project is not front-loaded. If the Surety feels the City has approved payments to the contractor in excess of the value of the work performed, they may claim the City paid the contractor too much, leaving insufficient funds to complete the project.

In the event of default, Surety may (at their option):

- (a) Fund the Contractor to complete the job.
- (b) Bid the remaining work required for completion.
- (c) Have the owner bid and complete with funding by Surety.
- (d) Have the owner complete without surety and send Surety bill.
- (e) Forfeit and write a check to owner.

If Surety takes over project, they are obligated for the entire cost of completion. If Surety forfeits, they cap their liability up to amount of bond. Owner can tell Surety they will not accept decision that owner completes project. If owner is careless and overpays the Contractor through progress payment, the Surety may not pay owner the remaining balance.

#### **POLICY 9.10 FIDELITY BONDS**

At its discretion, the City may require a Fidelity Bond from certain contractors whose personnel have access to sensitive or valuable items or on City property after hours, such as janitorial services. In order to collect on a Fidelity Bond, there needs to be an arrest and conviction.

#### **POLICY 9.11 CHECKLIST FOR BONDS**

- (a) Bond Rating Companies: A.M. Best, Standard & Poor's, Federal Treasury List Cir 570
- (b) What is the bond's rating? Is it on the Federal Register (Treasury Department reviews bonding company's financial statements).
- (c) Get consent of Surety to make final payment. Require the contractor to submit Surety's consent with request for final payment.
- (d) Require name of insurance agent on Bid Proposal page.

- (e) Require name of bonding agent on Bid Proposal page.
- (f) Make sure bonds are signed by Surety and Contractor.
- (g) Make sure Power of Attorney is attached.
- (h) Make sure amounts match.
- (i) Make sure all dates are current and Power of Attorney has not expired. (Power of Attorney shall be dated same date or prior to date of bond. Misdating mistakes are not substantial.)
- (j) Bonds must be in writing.
- (k) Bonds are not part of FIGA. (Florida Insurance Guaranty Association)
- (l) Surety does not transfer risk. It remains with the construction contractor.
- (m) Surety is responsible for reasonable change orders. Legally speaking, it is not necessary to increase bond. Some may require an increase in bond amount with pass-through cost to owner.

**POLICY 9.12 FLORIDA STATUTES REGULATING BONDS**

- (a) Florida State Statute 255.05 - Little Miller Act regulates State’s bonding requirements.
- (b) Florida State Statute 723.13 - Lien law (private work) states that City property cannot be lienied.

**POLICY 9.13 REGISTERED RATES**

A Surety has registered rates and it also has deviations for good or better customers.

Cost of bond for Class B bonds (Construction) for \$1,000,000

- First \$100,000 - \$25 per \$1,000
- Next \$400,000 - \$15 per \$1,000
- Over \$500,000 - \$10 per \$1,000

“Bond Status Inquiry” -This form is sent to the owner by the Surety to keep informed of the progress and changes in the project. When it goes back to the Surety with change orders, Surety may charge the contractor an additional premium.

**POLICY 9.14 PAST PERFORMANCE**

Surety bonds for service contracts indirectly qualify contractors, since the Surety investigates the contractors past performance and financial history.

**POLICY 9.15 OPEN-ENDED CONTRACTS**

Open-ended contracts with no amount (such as sewer repair or asphalt repair on an as-needed basis) require a small bond up front. If a large job comes up unexpectedly get an additional bond as soon as possible.

**POLICY 9.16 SERVICE CONTRACT BOND**

Service contract bond - Require one in an amount to carry you for a few months in the event of default until you can re-bid. If you don't have a bond for a service contract, make sure the contractor meets the following qualifications:

- (a) Reasonable number of contracts same or larger size in the last five years.
- (b) Non-responsible contractors will be disqualified. Ask if any jobs incomplete or defaulted.
- (c) Retain a larger amount from progress payments.
- (d) Make payments dependent upon percentage of completion, less the retainage.

**POLICY 9.17 LIQUIDATED DAMAGES**

Should the Contractor fail to complete the work and provided the contractor has not previously obtained an extension of time from the City, a sum appropriate with the following schedule shall be deducted as liquidated damages for each calendar day of delay from the final contract price. This schedule is a guide and may be adjusted if needed. Language allowing for liquidated damages must be included in the project bid documents.

<u>Contract Price</u>	<u>Liquidated Damages</u>
Up to \$100,000	\$ 50.00 per day
\$100,000 to \$500,000	\$100.00 per day
\$500,000 to \$1,000,000	\$150.00 per day
\$1,000,000 to \$2,000,000	\$200.00 per day
\$2,000,000 to \$5,000,000	\$250.00 per day
\$5,000,000 and over \$	300.00 + \$50/\$1,000,000

Liquidated damages may be reduced upon substantial completion to 75%, at the discretion of the City.

Declaring the contractor in default shall not mitigate the City's right to assess liquidated damages.

**CHAPTER 10 - INSURANCE**

**POLICY 10.1 EVENT OF CANCELLATION NOTICE**

Each policy shall be endorsed to reflect that the City will be given not less than thirty days written notice in the event of cancellation. Upon expiration or cancellation of any insurance, the contractor shall provide

the City with proof of renewal or replacement insurance, with no change in coverage and no lapse of coverage.

#### **POLICY 10.2 INSURANCE CERTIFICATE**

- (a) Insurance companies sell direct or through agents.
- (b) The Insurance Certificate must have an original signature. A faxed certificate must be followed immediately by an original.
- (c) The City shall be the Certificate Holder.
- (d) The Certificate shall reference the bid number and the project name.

#### **POLICY 10.3 PROOF OF INSURABILITY**

A binder is good only for thirty days. Insist on proof of an issued policy within thirty days.

The Purchasing Division or Risk Manager may require the contractor to produce an original insurance policy to verify coverage.

- (a) All insurance companies providing the insurance under this contract must be authorized to conduct business under the laws of the State of Florida.
- (b) They must be participants in the Florida Insurance Guaranty Association (FIGA) fund. This fund covers claims if one of its member insurance company folds. Non-admitted carriers are not part of the Guaranty Fund. If bonding company is admitted, they are covered by FIGA.
- (c) All insurance companies must have a General Policyholder's Rating of "B" or better, and a Financial Rating of "V" or better according to the latest publication of Best's Key Rating Guide, published by A. M. Best Co.

A.M. Best Co.  
Oldwick, NJ 00858  
(Order) 1-201-439-2200  
Fax (201) 439-3363

- (d) All insurance companies are subject to approval, and may be rejected by the City without cause. If an insurance company is rejected, the contractor shall be given the opportunity to obtain the required insurance from a company acceptable to the City.
- (e) For demolition or other hazardous work, get a certified copy of the insurance policy.
- (f) Insurance companies are usually not good when they are small. The State cannot regulate small companies. A good company is a big company. Do not accept insurance from an offshore (foreign) company.

## **POLICY 10.4 ADDITIONAL INSURED**

The City shall be listed as an Additional Insured for Comprehensive General Liability Insurance. There may be a small charge to add the City as additional insured on a General Liability policy.

The City shall not be listed as an Additional Insured under Workers Compensation, Professional Liability, or Automobile Liability Insurance. If we are, we may be responsible for the insurance premiums.

## **POLICY 10.5 LIMIT OF LIABILITY**

The Limit of Liability is the maximum amount that an insurance company agrees to pay in the case of loss. There is an "aggregate" or "combined" limit, which is the maximum amount that will be paid for all losses of the insured during the annual policy period. (If the insured contractor has a \$1,000,000 aggregate limit, and has \$800,000 in outstanding claims on other contracts, that leaves \$200,000 for coverage on City Contracts.) The City should consider requiring the contractor's limit of insurance to be per occurrence, or the policy endorsed to indicate coverage of the required limits for the City's contract.

## **POLICY 10.6 CLAIMS MADE POLICY**

A "claims-made" policy covers claims made during the year the policy is in force, or during any previous period the policyholder was insured under the policy. When it is typical for claims to surface several years after completion of the contract, such as construction and construction design, the City may require General Liability or Professional Liability insurance be kept in force for five to ten years after completion.

## **POLICY 10.7 OCCURENCE POLICY**

An "occurrence" policy covers claims that arise from injury or damage that occurs during the policy period regardless of when a claim is filed.

Any and all deductibles in insurance policies shall be assumed by and be for the amount of and at the sole risk of the contractor.

## **POLICY 10.8 INSURANCE REQUIREMENTS**

Following is a guide to the type and limits of insurance that a contractor shall maintain during the life of the contract with the City. The Purchasing Division and/or the Risk Manager shall increase the limits of insurance commensurate with the City's legal exposure, cost, complexity, or hazardous nature of the contract.

### **(a) WORKERS' COMPENSATION INSURANCE**

In accordance with Florida Statue 440. Should the contractor be exempt from this statute, the contractor and each employee shall hold the City harmless from any injury incurred during performance of the contract.

The exempt contractor shall also submit a written statement such as “I \_\_\_\_\_ have only three employees and am not required to carry Workers Compensation insurance, and do not anticipate hiring any additional during term of this contract,” or copy of Certificate of Exemption.

JUA - Joint Underwriters Assn. - writes Workers Comp for those who can't buy in open market.

If contractor has no Workers Compensation, its employees can collect under City's Workers' Compensation. If audited, City may be responsible for Workers Compensation premium for contractor's employees. If contractor is legally exempt from carrying Workers' Compensation Insurance, have each principal and employee complete hold harmless agreements.

#### (b) COMPREHENSIVE GENERAL LIABILITY INSURANCE

With comprehensive single limit of liability not less than \$2,000,000 per occurrence for bodily injury and property damage combined. The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the vendor. This form of insurance covers Contractual Liability insurance.

1. Premises Operation: including coverage for explosion, collapse, or damage to underground property; also elevators, if any. Underground property refers to damage of wires, conduits, pipes, sewers, etc., beneath the surface of the ground, caused by the use of mechanical equipment for the purpose of grading land, paving, excavating, drilling, burrowing, filling, backfilling, or pile driving.
2. Personal Injury coverage.
3. Products and Completed Operations coverage: Which covers liability for bodily injury or property damage incurred by a merchant or manufacturer as a consequence of some defect in the product sold, manufactured, handled, or distributed. Claims are covered only after the product has been sold and possession relinquished. Completed operations are the liability, as a result of improperly performed work, incurred by a contractor after he has completed a job. Manufacturers buy Products and Completed Operations coverage, and contractors buy Completed Operations protection.
4. Owners and Contractors Protective Liability protects against losses caused by the negligence of a contractor or its subcontractors.
5. Broad Form Property Damage Liability, including completed operations.

#### (c) COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE

With bodily injury minimum limits of \$500,000 per person and \$1,000,000 per occurrence, and property damage limits of \$500,000; or a comprehensive single limit of liability for bodily injury and property damage combined, with minimum limits of \$1,000,000 per occurrence, covering all owned, non-owned, and hired vehicles used by the contractor while performing operations in connection with the contract.

(d) OTHER INSURANCE, DEPENDING ON THE TYPE AND VALUE OF CONTRACT

(e) BUILDERS RISK COMPLETED VALUE FORM

Fire, extended coverage, vandalism, and malicious mischief for the full value of the contract amount. The contractor, all subcontractors, and the City are to be named insured, as their interest may appear. This insurance is to be kept in force until the property has final acceptance by the City. This policy shall include a provision that the premises may be occupied and used by the City. Material and equipment theft is included in this coverage.

(f) PROFESSIONAL LIABILITY

Formerly called "errors and omissions", this protects the professional against his/her liability for damages (and the cost of defense) based upon his/her alleged or real professional errors and omissions or mistakes. Some of the forms available include: architects/engineers, medical malpractice, attorneys, trust department, escrow agents, accountants, veterinarians, etc.

Require Professional Liability coverage for five to ten years after completion of the contract if policy is "claims made".

## CHAPTER 11 - WAIVERS OF BID

The City Manager may waive the formal bidding procedure up to \$35,000, and Council may waive the formal bidding procedure over \$35,000, for the following reasons. Every attempt should be made to obtain three written quotations.

- (a) The health, safety, or welfare of the citizens or employees is at stake.
- (b) To get a vehicle or equipment vital to the operations of the City back into service.
- (c) If equipment needs to be taken apart to give an estimate or price.
- (d) For the purchase or rental of real estate when location is important.
- (e) Emergencies and natural disasters.
- (f) When specifications must not be made public due to covert or confidential operations of the Police Department.
- (g) When advertising must be done in a specific publication such as a trade journal, local publication, etc.
- (h) To obtain materials, equipment, or services which cannot be purchased under normal bid procedures, as confirmed by the Purchasing Division.
- (i) When an essential government service would be interrupted.

(j) When additional loss to public or private property might occur.

(k) When, after notice in accordance with ordinance, no bids or proposals are received.

## **CHAPTER 12 - BID PROTESTS**

The resolution of Bid Protests shall be governed by the following policies:

### **POLICY 12.1 NOTICE OF PROTEST**

This section shall apply to protests by bidders and proposers when the City Manager recommends a purchase of goods, supplies, equipment, or services that would cost thirty-five thousand dollars (\$35,000) or more.

The City shall provide notice of its intent to award or reject to all bidders by posting such notice on the City's website within two (2) working days after the posted review committee meeting.

The bidder must file a notice of protest in writing to the Finance Director within three (3) working days after the posting of the notice of the City's intent to award, and shall file a formal written protest within five (5) working days after filing the notice of protest. The notice of protest must be either, hand-delivered and date and time stamped by the Finance Department, or sent via Certified U.S. mail, return-receipt requested. Failure to file a protest within the time-frame specified herein shall constitute a full waiver of all rights to protest the City's decision regarding the award of bid.

(a) The written protest shall state in detail the specific facts and law or ordinance upon which the protest of the proposed award is based, and shall include all pertinent documents and evidence.

(b) A written protest may not challenge the relative weight of evaluation criteria or a formula for assigning points.

(c) Only a bidder whose bid is timely received and fully complies with all terms and conditions of the bid may protest an award.

(d) Upon receipt of a formal written protest, the City may stop award proceedings until resolution of the protest; however, the award proceedings shall not be stopped if the City Manager decides the award must continue without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

(e) Any and all costs incurred by a protesting party in connection with a bid protest pursuant to this section shall be the sole responsibility of the protesting party.

### **POLICY 12.2 PROTEST REVIEW**

A protest shall be reviewed and evaluated administratively and a decision in writing shall be forwarded to the protesting firm. If the protesting firm does not agree with the administrative decision, they may appeal the decision in writing to the City Manager within five (5) working days. The notice of appeal

must be either, hand-delivered and date and time stamped by the City Manager's Office, or sent via Certified U.S. mail, return-receipt requested to the City Manager. The decision of the City Manager will be final and submitted with his/her recommendation to the City Council if the award exceeds (\$35,000.00).

### **POLICY 12.3 PROTEST DEPOSIT**

Any person who files a formal written protest shall post with the Finance Director, at the time of filing the formal written protest a cashier's check made payable to the City of Mount Dora in an amount equal to (one) 1% percent of the City's estimate of the total amount of the contract or \$5,000, whichever is less.

If the decision of the City Manager or designee upholds the action taken by the City, then the deposit becomes non-refundable and the City shall retain the deposit as payment for a portion of the cost and expense, including but not limited to, time spent by City staff in responding to the protest and in conducting the evaluation of the protest. If the decision of the City Manager or designee does not uphold the action taken by the City, then the City shall return the amount of the cashier's check or bond without deduction, to the person or entity filing the protest.

### **CHAPTER 13 - PURCHASE / WORK ORDER PROCESS**

- (a) A need is determined by a person in a department.
- (b) The need is communicated, preferably in writing, to the person in the department responsible for typing or inputting the requisition.
- (c) The person with that responsibility types or inputs the requisition. Backup, forms, invoices, etc. are attached to the requisition. If it is input, such backup, with the requisition number written on it, is sent to the Purchasing Division for attachment to the Purchase Order, or other action.
- (d) If a requisition, it is circulated within the department for the appropriate approval signatures. If it has been input into the computer, on a regular basis, the department head will review and approve the requisition. Each electronic approval of a requisition automatically, electronically sends the requisition to the next person with approval authority.
- (e) The electronic requisition next goes to the Finance Director or designee for review.
- (f) The electronic requisition next goes to a Finance Department accountant for confirmation of the appropriate accounting code.
- (g) The electronic requisition next goes to the Purchasing Division for approval. Upon approval, the computer program assigns a Purchase Order number to the requisition.
- (h) The requisition next goes to Accounts Payable for input, or if payment is to be made, for vouchering.
- (i) The Purchasing Division then electronically sends the Purchase / Work Orders to print.

(j) After printing, the Purchasing Division signs each Purchase/ Work Order up to \$35,000. Purchase / Work Orders exceeding \$35,000 require the City Manager signature.

(k) The Purchasing Division emails the original Purchase / Work Order with any attachments to the vendor.

(l) The electronic copy of the Purchase / Work Order with any attachments is sent to Accounts Payable to hold in an open file until an invoice approved for payment is sent by the using department. It is then filed in a completed file. This copy, along with any attachments, is the official record of the transaction. It is the copy that is reviewed by our outside auditors. It is the copy that is retained according to the State of Florida Records Retention Act.

(m) A copy of the Purchase / Work Order is sent to the using department to match up with its paperwork on that order. It is held in an open file for attachment of the receiving slip and a copy of the invoice. It may then be filed in a completed file.

## **CHAPTER 14 - USING DEPARTMENT'S RESPONSIBILITIES**

### **POLICY 14.1 PLANNING**

Each department shall be aware of how long it takes to get all the necessary approvals and paperwork through the department. They shall plan ahead accordingly. Each person involved in any part of the procurement process shall become familiar with the City's laws, policies, and procedures governing procurement.

### **POLICY 14.2 SPECIFYING**

Each department has a responsibility to correctly and completely describe their needs.

### **POLICY 14.3 FOLLOW-UP**

Each department shall have a system in place to allow them to file its requisitions, attach its copy of the signed Purchase Order, monitor the Purchase Orders for receipt of the goods or services, attach the receiving slip, attach a copy of the invoice approved for payment, and file the completed order in a completed file.

### **POLICY 14.4 EXPEDITING**

If the goods or services have not been delivered in a timely manner, the using department shall call the vendor to expedite delivery. If the department is unable to receive a commitment of a satisfactory delivery date from the vendor, it may call on the Purchasing Division for assistance.

### **POLICY 14.5 RECEIVING**

Each department shall be required to inspect all deliveries of supplies or services to determine their conformance with the quality and quantity of the specifications set forth in the Purchase Order or contract. Should supplies or services not be as specified, the department shall make every effort to have the vendor correct the problem. If the department is unable to do so, they shall turn the matter over in writing, describing the problem and their efforts to have it corrected, to the Purchasing Division for assistance. If the non-conforming materials or services are not bid items, and are acceptable to the using department, they may have the vendor issue the City a credit for the difference between the materials or services specified and those delivered. If they are bid items, the vendor must conform.

If any damage is found, the using department shall notify the vendor immediately and request an inspection. Document the notice with the name of the person to whom damage was reported, the date reported, and the action promised. If inspection or action is not taken when promised follow up in writing with documentation of the action promised and send a copy to the Purchasing Division.

#### **POLICY 14.6 TESTING**

Should there be a dispute between the using department and the vendor over the compliance with the specifications of the goods or services delivered; the two parties may agree to engage an independent testing laboratory or an independent consultant to make a determination. Prior to engaging the testing lab or consultant both parties shall agree on who shall be responsible for the payment of this service.

#### **POLICY 14.7 PROCESSING VENDORS' INVOICES**

Florida Statute 218.70, known as the "Florida Prompt Payment Act" sets forth "the policy of this state that payment for all purchases by local governmental entities is made in a timely manner". This is also the policy of the City of Mount Dora. We expect prompt and accurate service from our vendors, and we should pay their invoices promptly and accurately.

The person who is assigned accounts payable responsibility shall match the vendor's proper invoice with the City Purchase Order, and the receiving slip signed by the City employee who received the goods or services. If all three do not match, investigate and resolve the disparity. If all three match, the person with the authority to approve invoices for payment shall stamp and sign the invoice "...this invoice is approved for payment".

If invoice is for a partial payment, or against a Blanket Purchase Order, the invoice number, date, and amount paid shall be written on the department's copy of the purchase order so the balance on the purchase order is always current.

The approved invoice shall then be sent to the Finance Department. The invoice will be paid the next time checks are printed. At the time of this writing, invoices received by Accounts Payable by noon on Thursday will be paid on Monday morning.

### **CHAPTER 15 - MISCELLANEOUS POLICIES**

#### **POLICY 15.1 SOLICITATION, GIVING, AND ACCEPTANCE OF GIFTS POLICY**

Florida Statute 112.313 prohibits the solicitation or acceptance of Gifts. -“No public officer, employee of an agency, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, or candidate would be influenced thereby.” “... the term ‘public officer’ includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.”

City of Mount Dora policy prohibits all public officers, elected or appointed, all employees, and their families from accepting any gifts of any value, either directly or indirectly, from any contractor, vendor, consultant, or business with whom the City does business. Only advertising office stationery or supplies of small value are exempt from this policy - e.g. calendars, note pads, pencils.

The State of Florida definition of “gifts” includes the following:

- (a) Real property or its use.
- (b) Tangible or intangible personal property or its use.
- (c) A preferential rate of terms on a debt, loan, goods, or services.
- (d) Forgiveness of indebtedness.
- (e) Transportation, lodging, or parking.
- (f) Membership dues.
- (g) Entrance fees, admission fees, or tickets to events, performances, or facilities.
- (h) Plants, flowers, or floral arrangements.
- (i) Services provided by persons pursuant to a professional license or certificate.
- (j) Other personal services for which a fee is normally charged by the person providing the services.
- (k) Any other similar service or thing having an attributable value not already provided for in this section.
- (l) The City of Mount Dora has added Food, meals, beverages, and candy to this list.

## **POLICY 15.2 DRUG-FREE WORK-PLACE POLICY**

Florida Statute 287.087 -“Whenever two or more bids which are equal with respect to price, quality, and service are received by the state or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process.”

## **POLICY 15.3 PUBLIC ENTITY CRIME POLICIES**

Florida Statute 287.133 - “A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, suppliers, subcontractor, or consultant under a

contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for Category Two for a period of 36 months from the date of being placed on the convicted vendor list.”

#### **POLICY 15.4 PERSONAL USE OF GOVERNMENT CONTRACTS OR PRICING**

If a vendor offers bid prices to all government officials and employees, the City’s officials and employees may avail themselves of such. However, the product must be ordered and paid for by the official or employee directly to the vendor.

The City shall not purchase personal items for resale to officials or employees, and should not use taxpayer’s money to finance employees’ purchases.

Officials and employees shall not seek bid or special pricing from City vendors for their personal purchases.

Employees in the Purchasing Division shall not make purchases from City vendors, unless they do so identified as a City employee, from a public retailer, or from sole source vendors, or when required for their health or safety.

#### **CHAPTER 16 - CAPITAL ASSET**

Capital asset control entails tracking, compiling and maintaining an inventory of capital assets to control losses due to negligence or theft, to provide a basis for insurance claims and identify surpluses. Capital asset records are set up to comply with Florida Statute 274.

#### **POLICY 16.1 CAPITAL ASSET TRACKING**

Capital assets are tangible items (e.g. land, buildings, building improvements, vehicles, machinery, equipment and infrastructure) or intangible items (e.g. easements, water rights) with original cost or value of \$5,000 or more, with an estimated useful life of at least one (1) year following the date of acquisition. Capitalization thresholds are to be applied to individual items rather than groups of similar items (e.g. desks and tables), unless the effect of doing so would be to eliminate a significant portion of total capital assets.

The Finance Department will coordinate the maintenance of the City’s Capital Assets Database. The Purchasing Division will provide copies of each purchase order that contains a purchase of a Capital Asset to the appropriate Accounting personnel. The ordering (receiving) Department must notify the Finance Department when an item is received so proper identification may be affixed, and records can be updated. All Capital Asset equipment is assigned a permanent City of Mount identification number, and is physically tagged or otherwise marked by the Finance Department. Records are entered and maintained for each item, and include the following information:

- Capital Asset Item Number
- Item Description

- Serial Number
- Make and Model
- Account Number
- Location and Custodian
- Payment Information: Vendor name, P.O. Number and Date of purchase
- Purchase Price
- Date of Last Inventory

The copy of the purchase order provides much of the above information. Additional information is obtained upon physical tagging of the equipment and through communication with the vendor and the ordering Department. Finance is responsible for taking a biennial Inventory of property in their custody. The Capital Asset Property Coordinator(s) will distribute an inventory list to each Department biennially. This biennial inventory will validate all items and any item unaccounted for will require a Missing, Lost or Stolen Form to remove the item from inventory. The biennial inventory shall be compared with the property record, and all discrepancies shall be traced and reconciled. The results of the biennial inventory will be provided to the Finance Director in an executive summary format.

**POLICY 16.2 DISPOSITION OF SURPLUS PROPERTY**

The Finance Department has the discretion to classify any City property/equipment as surplus that is obsolete or the continued use of which is uneconomical or inefficient, or which serves no useful function and is not otherwise lawfully disposed of per the City Charter. Qualifying property/equipment may be disposed of for value without bids to any governmental unit or if the property is without commercial value it may be donated, destroyed, or abandoned. (F.S. 274.06) Property valued to be under \$5,000, may be disposed of in the most efficient and cost-effective means as determined by the Finance Department. Any sale of property the value of which is estimated to be \$5,000 or more shall be sold only to the highest responsible bidder or by public auction. (F.S. 274.06).

The Finance Department shall provide a “Property Disposition Form” which shall include - all property/equipment declared surplus or obsolete and the requested method of disposition as mandated by "Florida Law". (F.S. 274.03)

Property/equipment valued under \$1,000.00 may be disposed of in the most efficient and cost-effective means as determined by the Finance Department. Any sale of property/equipment the value of which the Purchasing Division estimates to be \$1,000.00 or up to \$35,000 shall be sold at auction.

All Property/equipment valued at \$35,000 and above shall be approved by the City Council and sold at public auction.

**POLICY 16.3 NOTIFICATION & DELIVERY OF SURPLUS PROPERTY**

Each Division/Department must report its surplus or obsolete property, equipment, or supplies to the Finance Department. Once approved as surplus by the Finance Department, the items shall be held by the owning department until surplus.

The owning department shall complete a "Property Disposition Form" along with a picture of the surplus item. Once completed, all forms are electronically sent to the City Manager's Office for final signature (assuming the value is \$ 1,000.00 or more but less than \$35,000.).

If the value is over \$35,000 a City Council Agenda Item is prepared by the Finance Department and placed on the City Council Agenda for their approval.

The Purchasing Division shall maintain fiscal year listings of all surplus property/equipment. All department directors will be responsible for periodic review of the current "Surplus Property List" and must notify the Finance Department within fifteen (15) calendar days after notice of sale or other disposition, with any requirements for the material. Before property is disposed of, the Purchasing Division may check with other departments to ascertain the need for the property/equipment.

#### **POLICY 16.4 SURPLUS PROPERTY DISPOSITION FORMS**

The Purchasing Division shall recommend to the responsible Divisions/Departments the means and method of disposition of the surplus property. The following are acceptable forms of disposition:

1. Transfer to another department or division
2. Trade in on new equipment
3. Cannibalize for parts
4. Sell as scrap
5. Destroy or abandon
6. Sell to by public auction

#### **POLICY 16.5 PROPERTY TRANSFERS**

The owning department shall prepare a "Property Disposition Form". All Transfer property forms must be forwarded to the Finance Department prior to the transaction. The Finance Department will process the transfer request, route for appropriate approvals and distribute executed copies to the required personnel and the owning department for appropriate adjustment to the City's fixed asset records. Notification and delivery of the transferred property to the designated area is the responsibility of each division/department.

#### **POLICY 16.6 SALE OF SCRAP MATERIALS**

Items that have lost all value in their original form or have been declared obsolete and cannot be sold will be classified as scrap and all items shall be placed in the metal scrap dumpster at the City Complex.

The Finance Department shall contact the local scrap dealer when the dumpster is full for pick-up. The scrap dealer will then issue a check to the City within 48 hours. Proceeds from the sale shall be delivered to the Finance Department as revenues to the appropriate fund for the City. A copy of the sales proceeds document will be provided to the Finance Department for its records.

## CHAPTER 17 - ETHICS IN PUBLIC CONTRACTING AND PURCHASING

This Code of Ethics, which follows, shall guide the Finance Department and Purchasing Division staff.

- (a) Members regard public service as a trust and support the professional principals of governmental purchasing.
- (b) Members believe in the dignity of their office, the importance of the purchasing profession to their governmental agencies, and give first consideration and loyalty to their respective agencies.
- (c) Members are always guided in their actions by integrity and honor to merit the respect and inspire the confidence of the agency and the public which they serve.
- (d) Members accept full responsibility and accountability for their actions related to the purchase and supply functions.
- (e) Members believe that character is the greatest asset in their profession and therefore will not accept gifts or other things of value from vendors, where the intent is to influence the purchaser.
- (f) Members shall comply with all current laws and statutes pertaining to acceptance of gifts and gratuities.
- (g) Members keep their governmental agency fully informed of purchasing issues and progress toward resolving such issues through appropriate channels by emphasizing the facts without personal aggrandizement.
- (h) Members do not allow political considerations or other conflicting outside influences to enter their relationships with vendors or employees. Personnel administration is based upon a merit basis without regard to political, religious or racial considerations.
- (i) Members shall not engage in unscrupulous practices and misrepresentations; recognizing that mutually profitable business relations are based upon honesty and fair dealings.
- (j) Members will be courteous, considerate, prompt and businesslike with whom they deal, including their employers, employees, vendors, the media and the public.
- (k) Members subscribe to and support the purpose and professional objectives of the Association.
- (l) Members shall endeavor to increase their knowledge of the profession through education, organizational memberships, and participation with professional associations where possible.
- (m) Members shall strive to continually increase competition in vendor selection and shall endeavor to prevent any collusive activities among vendors.

### POLICY 17.1 EMPLOYEE CONFLICT OF INTEREST

It shall be unethical for any employee to participate directly or indirectly in a procurement when the employee knows that:

- (a) The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement; or
- (b) Any other person, business, or organization with whom the employee or any member of an employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
- (c) An employee or any member of an employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

#### **POLICY 17.2 GRATUITIES AND KICKBACKS**

- (a) Gratuities. It shall be unethical for any person to offer, give, or agree to be given any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.
- (b) Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the primary contractor or higher tier subcontractor any person associated therewith, as an inducement for the award of a subcontract or order.
- (c) Contract Clause. The prohibition against gratuities and kickbacks prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefore.

#### **POLICY 17.3 PROHIBITION AGAINST CONTINGENT FEES**

It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a City contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

#### **POLICY 17.4 CONTEMPORANEOUS EMPLOYMENT PROHIBITED**

It shall be unethical for any employee who is participating directly or indirectly in the procurement process to become or to be, while such an employee, the employee of any person contracting with the Governmental body.

## **POLICY 17.5 WAIVERS FROM CONTEMPORANEOUS EMPLOYMENT PROHIBITION AND OTHER CONFLICTS OF INTEREST**

The City Council may grant a waiver from the employee conflict of interest provision or for the contemporaneous employment provision upon making a written determination that:

- (a) The contemporaneous employment or financial interest of the City employee has been publicly disclosed;
- (b) The City employee will be able to perform his or her procurement functions without actual or apparent bias or favoritism.

## **POLICY 17.6 USE OF CONFIDENTIAL INFORMATION**

It shall be unethical for any officer, employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

## **CHAPTER 18 - PROCUREMENT CARDS**

The Finance Department initiated a Procurement Card Program for the purpose of expediting small purchases in the most cost effective and efficient method. This program will provide improved tracking of actual spending, and in addition, offer payments to vendors in a timelier manner, thereby increasing the City's opportunity of obtaining discounted pricing.

The policies and procedures provided herein are minimum standards for departments. Departments may establish additional controls beyond those stipulated herein.

### **POLICY 18.1 THE PROCESS**

The Procurement Card system simplifies the procurement/disbursement process by allowing the cardholder to place orders directly with the vendor. The purchasing card may be used only by the employee whose name is embossed on the card. No other person is authorized to use the card.

When a purchase is placed with the supplier and the supplier requests authorization, the Procurement Card System validates the transaction against preset, limits established in conjunction with the Department Head, Finance Director and/or City Manager. All transactions are approved or declined (electronically) based on the established procurement card authorization criteria. The authorization criteria may be adjusted periodically as needed and may include, but is not limited to, the following: single transaction limits (maximum of \$2,500.00 per transaction for employees; \$5,000 per transaction for supervisors and directors); approved merchant category codes; and monthly credit limit. The monthly credit limits and single purchase limits will be established by the Department Director, Finance Director and/or City Manager prior to the Purchasing Card being ordered for the employee.

### **POLICY 18.2 ELIGIBILITY**

Department Directors will recommend permanent employees within their respective departments whose positions would benefit in cost savings and efficiency to receive a Procurement Card. Temporary employees, part-time employees and employees on probation are not to be issued a card without City Manager or Finance Director approval.

### **POLICY 18.3 PROCUREMENT CARD USES**

Procurement Cards may be used for small dollar purchases, not in conflict with purchasing procedures, which do not exceed a total expenditure of \$2,500.00 per transaction for employees; \$5,000.00 per transaction for supervisors and directors. In most instances, this method of procurement is an alternate to traditional monthly purchase orders. In all instances, this card is to be used solely for Official City Business.

Procurement Cards may be used for travel expenses in accordance with the City Travel Policy. Eligible charges consist of registration fees, airfare or other common carrier charges, rental cars, hotel expenses, and parking fees required by the hotel.

Procurement Cards may not be used for items not budgeted, nor items for personal use. Failure to properly use the Procurement Card within the guidelines set by Purchasing will result in the cancellation of Procurement Card privileges for the employee and possible disciplinary action.

### **18.4 LIMITATIONS ON USE OF THE PROCUREMENT CARD**

Dollar Limitations:

The Department Head approving the assignment of a procurement card will set two limits for each cardholder with approval by the Finance Director and/or City Manager. A single transaction limit and also a monthly credit limit.

One purchase may be made of multiple items, but the invoice cannot exceed the threshold set by the Department Head, Finance Director and/or City Manager. Payment for purchases shall not be split to stay within the single purchase limit.

Limitations on use of the City Procurement Card:

- Fuel charges for city vehicles unless authorized by the Finance Department
- Cash advances
- Personal items
- Alcohol or prescription drugs
- Any transaction that would include sales tax
- Flowers/Greeting Cards
- College Tuition - Up Front
- Purchases using non-registered one-time vendors
- Capital Equipment (Over \$ 5,000.00 and a life of greater than 1 year)
- Splitting charges to avoid obtaining three quotes

## **POLICY 18.5 TRAINING**

Cardholder(s) will receive training from the Purchasing Division annually on the overall policies of the Procurement Card Program, as presented in this document, at the time the procurement card is issued.

## **POLICY 18.6 REVIEW OF DEPARTMENTAL PURCHASES**

- A. Because of their knowledge of the job responsibilities and requirements, Department Director and designated Card Representatives are required to review each procurement card expenditure (item purchased, amount, expenditure description and vendor) to ensure the goods or services were necessary, for official use, and conditions were complied with for the card purchase.
- B. When purchases are questioned, the Department Head or their designated Card Representative will be responsible for resolving the issue with the cardholder. If the Department Director cannot be satisfied that the purchase was necessary and for official use, the cardholder must provide either a credit voucher proving the item(s) were returned for credit or a personal check for the full amount of the purchase. Checks must be sent to the Finance Department with an explanation and account number.
- C. Serious or repeated misuse of the purchasing card will result in the revocation of the card. Employees incorrectly using their purchasing card will be disciplined by the Department/Division Director on a case-by-case basis.
- D. Department Directors will be required to review and adjust procurement card limits every fiscal year for their departments/divisions. City Manager approval of all card limit adjustments is required.

## **POLICY 18.7 MAKING PURCHASES WITH THE PROCUREMENT CARD**

- A. A receipt should be obtained for every purchase

This receipt or charge slip will be retained either by the cardholder or by a designated person in the cardholder's office until attached to the monthly statement.

- B. Telephone orders

When placing a telephone order, the cardholder must confirm that the vendor will charge the purchasing card when shipment is made so that receipt of the supplies may be certified on the monthly Statement of Account.

- C. Missing documentation:

If for some reason the cardholder does not have documentation of the transaction to send with the statement, he/she must attach a description of the purchase and an adequate explanation for the purchase. This explanation must state that the purchase is ordinary and necessary, reasonable in amount and for a valid business purpose.

Missing receipt for meals must include the explanation above, purpose and people attending meal.

Continued incidents of missing documentation may result in the cancellation of the employee's procurement card.

D. Payment and invoice procedures:

Transactions must be reviewed, substantiated, approved in the Online P-Card System and transaction documentation submitted to Finance for payment within five days of receipt.

1. REVIEW: The cardholder shall review the transaction for correctness. Ensure all charges are legitimate and no sales tax was charged.
2. SUBSTANTIATE: Each transaction should be documented with a receipt. Provide account numbers for each transaction in the City's system. Print documentation from the City's system and attach to transaction receipts and submit to Finance.
3. APPROVE: The approving Director or designee (usually the cardholder's immediate supervisor) or designee shall review each transaction and check all documentation. Any errors, sales tax issues or questionable purchases must be resolved before submitting to Finance. The Approving Official's review of transaction certifies all transactions as legitimate expenditures of City funds.
4. MISSING DOCUMENTATION: The cardholder is responsible for providing required documentation. If a receipt is lost, attempt to obtain a duplicate. If a duplicate cannot be obtained, prepare a statement that includes all the information normally found on the receipt and a brief explanation for the lost documentation. Continual abuse may result in loss of the card and disciplinary action.
5. DISPUTED CHARGES: If the cardholder questions a charge on the statement, the cardholder shall contact the vendor directly and attempt to reach resolution. If the cardholder reaches an agreement with the vendor, there is no dispute. If the vendor refuses to acknowledge the error or will not issue a credit, the cardholder must fill out the issuing bank's "Purchase Card Disputed Charge Form" and send it to the Finance Department. The bank will then adjudicate the disputed charge.

#### **POLICY 18.8 DISPUTES**

All purchases disputes must be handled before turning in purchasing card receipts to the Accounts Payable Section of the Finance Department.

- A. If items purchased with the procurement card are defective, the cardholder must return the item(s) to the vendor for replacement or credit. If the service paid for with a purchasing card is faulty, the vendor must be notified and asked to correct the situation or provide credit. If the vendor refuses to replace or correct the faulty item or service, the purchase will be considered in dispute.

- B. A disputed item must be explained with a note on the cardholder's Statement of Account before the statement is forwarded to Finance for payment.
- C. It is essential that the time frames and documentation requirements established by the purchasing card issuer be followed to protect the cardholder's rights in dispute. Dispute policies and procedures issued by the purchasing card issuer will be provided at the time purchasing cards are issued to cardholders.
- D. If a purchase includes sales tax, the cardholder must dispute this charge prior to turning in documentation to Finance.

## **POLICY 18.9 LOST OR STOLEN CARDS**

Any lost or stolen cards are to be reported immediately to the P-Card provider, 24 hours a day, seven days a week and to the Department Head (or designee). The report filed shall include the complete information surrounding the loss, the date and location of the loss, the date and time provider was notified, a list of any purchases made on the day the card was lost or stolen, and any other information pertinent to the incident.

Lost or stolen cards are the responsibility of the cardholder only. The Purchasing Division does not handle this type of request.

## **CHAPTER 19 DECLARED EMERGENCY OPERATIONS**

### **POLICY 19.1 DECLARATION STATUS**

In the event of City, County, State or Federal declaration of emergency with potential impact on the City, the standard Purchasing Policy will be suspended, and the City's EMERGENCY PROCUREMENT POLICY shall govern procurement activities until the City returns to normal operations or the need for emergency response is no longer required.

### **POLICY 19.2 OPERATIONS**

The City's Purchasing Division will in all instances operate under acceptable FEMA guidelines, as published in Public Assistance Policy Digest 312, most current edition, during emergency procurement events. However, the City Manager will be granted authority to waive the sealed formal solicitation policies and thresholds to procure goods and services through alternative competitive sourcing processes when time is of the essence and the formal solicitation policy would not be in the City's best interest.

### **POLICY 19.3 PROCUREMENT**

The City Manager or designee shall have the authority to negotiate a contract with the apparent low bidder as may be deemed necessary to comply with FEMA established and acceptable pricing guidelines and to meet the City's emergency requirements.

#### **POLICY 19.4 AUTHORITY**

The City's award authority policy shall be waived during emergency operations. The City Manager shall be granted authority to award contracts, which are normally reserved for City Council approval, as is determined to be in the best interest of the City.

#### **POLICY 19.5 CONTROL**

The City Manager or designee shall control all purchases for emergency response and recovery procurement needs for the City. However, the City Manager or designee is authorized to seek assistance from the either the County or State of Florida Emergency Operations Centers in procurement events as may be deemed necessary.

### **CHAPTER 20 FEMA APPROVED PURCHASING METHODS**

#### **POLICY 20.1 SMALL PURCHASES**

An informal method for securing services or supplies that do not cost more than \$100,000 by obtaining several price quotes from different sources.

#### **POLICY 20.2 SEALED BIDS**

A formal method where bids are publicly advertised and solicited, and the contract is awarded to the responsive bidder whose proposal is the lowest in price (preferred method for procuring construction.)

#### **POLICY 20.3 COMPETITIVE PROPOSALS**

A method similar to sealed bid procurement in which contracts are awarded on the basis of contractor qualifications instead of on price (this method is procuring architectural or engineering professional services.) This may or may not be a sealed process depending on the urgency of the goods or services required.

#### **POLICY 20.4 NON-COMPETITIVE PROPOSALS**

A method whereby a proposal is received from only one source, because the item is available only from a single source; there is an emergency requirement that will not permit delay; or the competition is inadequate to seek additional sources. If these conditions exist, FEMA may find this method acceptable. Otherwise, non-competitive proposals generally are ineligible.

### **CHAPTER 21 CONFLICTS OF INTEREST**

#### **POLICY 21.1 CONFLICTS OF INTEREST**

The City wishes to minimize conflicts of interests. Therefore, the following will be adhered to:

- No official or employee of the City, or member of the City Council shall participate in the selection or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
- Any member of his or her immediate family,
- His or her business or personal partner, or
- An organization, which employs, or is about to employ, any of the above has a financial or other interest in the firm selected or considered for award. No official or employee of the City, or member of the City Council shall either solicit or accept gratuities, favors, or anything of monetary value exceeding \$25 from contractors, potential contractors, or parties to sub-agreements.

Violations of these standards of conduct may result in disciplinary action as set forth in Chapter 113, Part III, Florida Administrative Code provided that such disciplinary action does not conflict with the jurisdiction of the State of Florida Commission on Ethics.

## **CHAPTER 22 PROCEDURES FOR FEDERALLY FUNDED PROJECTS**

- All federally funded projects will be advertised a minimum of three weeks or as dictated by the funding source.
- When establishing a contract time for all federally funded projects, the guidelines established in Exhibit "A" shall be followed. Contract time extensions shall be subject to the concurrence of the FDOT Division Administrator and will be considered in determining the amount of Federal participation. Contract time extensions submitted for approval to the FDOT Division Administrator shall be fully justified and adequately documented.
- Two engineering estimates (at 60% and 100% submittals) will be completed for each project. Unit price cost for each item will be utilized (when possible) and will utilize local contractor pricing. The 100% submittal will be certified by the responsible Professional Engineer.
- The City of Mount Dora will comply with 23 CFR 635.413 as shown in Exhibit "B" on all federally funded projects. The warranty will begin the day after substantial completion is awarded.
- Federal guidelines will be followed for the fair, open and competitive selection of qualified consultants (Professional Services) in accordance the Brooks Act, Section 40 USC 1101-1104 as shown in Exhibit "C".
- LAP Simplified Acquisition and Small Purchase Process shall be in accordance with the LAP manual which outlines the current limits which indicate this process may be used if the construction project is less than \$325,000 and the total contract amount for the professional service(s) is less than \$150,000.

- Local vendor preference is not allowed for federal –aid contracts The LAP Manual can be viewed by logging on to:
  - [http://www.dot.state.fl.us/projectmanagementoffice/LAP/LAP\\_TOC.shtm](http://www.dot.state.fl.us/projectmanagementoffice/LAP/LAP_TOC.shtm)
- There is no DBE/MBE preference for federally funded projects. While the use of DBE/MBE consultants is encouraged, there should be not be any DBE/MBE preference selection criteria in the selection process.

The City has issued a policy statement which expresses its commitment to the nondiscrimination provisions of Title VI. The policy statement shall be circulated

## **CHAPTER 23 PROCEDURES FOR ISSUING DEBT**

Long-term debt may only be used for the costs of acquisition, construction or modification of capital facilities and for the refinancing or refunding of such debt. This limitation prohibits any debt being issued to finance operational costs of City departments.

The legal, economic, financial and market conditions associated with the issuance of debt are dynamic, unpredictable and usually in a constant mode of change. Consequently, the decision to issue debt is best made on a case-by-case basis and only after careful and timely analysis and evaluation of all relevant factors. Some of the factors that should be considered include, but are not limited to, the following:

- Current interest rates and other market considerations;
- The financial condition of the City;
- The types, availability and stability of revenues to be pledged for repayment of the debt;
- Type of debt to be issued; and
- The nature of the projects to be financed (i.e., approved schedule of improvements, non- recurring improvements, etc.).

Capital improvements related to enterprise fund operations (e.g., water systems, wastewater systems, electrical and sanitation, etc.) shall be financed solely by debt to be repaid from user fees and charges generated from the respective enterprise fund operations, when practicable.

Capital improvements not related to enterprise fund operations (e.g., roads, parks, public buildings, etc.) may be financed by debt to be repaid from available revenue sources (including ad valorem taxes) pledged for same, when practical.

All capital improvements financed through the issuance of debt shall be financed for a period not to exceed the useful life of the improvements, but in no event to exceed 30 years.

The City shall not construct or acquire a public facility if it is unable to adequately provide for the subsequent annual operation and maintenance costs of the facility.

The City shall at all times manage its debt and sustain its financial position in order to seek and maintain the highest credit rating possible.

In order to maintain a stable debt service burden, the City will attempt to issue debt that carries a fixed interest rate. However, it is recognized that certain circumstances may warrant the issuance of variable rate debt. In those instances, the City should attempt to stabilize debt service payments through the use of an appropriate stabilization arrangement.

When refinancing current debt, the City will seek a savings (net of all issuance costs and any cash contributions to the refunding) as a percentage of the refunding debt of at least 3-5%. Lease Finance Agreements utilized for competitively bid items up to and including \$1,000,000 shall require a minimum of three (3) quotations. Quotes are to be obtained by the Finance Director and shall be maintained in the department file.

## **CHAPTER 24 WARRANTY REQUIREMENTS**

1. For purposes of this warranty requirement, the term "goods" means any equipment, machines, tools, vehicles, hardware, supplies, component parts or other tangible personal property procured by the city, to which procurement this warranty requirement is made applicable through the specifications. The term "City" means the City of Mount Dora, acting through its employees, departments, boards, council.
2. The successful bidder (also referred to herein as "vendor"), by submitting the bid, furnishes the following warranty as provided below:
  - a. Vendor warrants that the goods delivered are newly manufactured, free from defects in materials and workmanship and conform in every respect to City's specifications. Vendor also warrants that if, during the warranty period, all or any portion of the goods: (a) fail for any reason, (b) are discovered to be non-conforming, or (c) are defective in materials or workmanship, vendor will replace such failed, non-conforming or defective goods at no cost to city within the same time limit as the delivery period. This warranty shall run from date of official acceptance of the goods by city, which date is either the installation date or in-service date as shown on city records or the date of formal acceptance of the goods in writing by an authorized city official, whichever occurs first, and end one (1) year after the date of the official acceptance. This warranty shall be unconditional, except that it shall not apply to obvious abuse, misuse or damage caused by city.
  - b. As between vendor and city, the express warranty given in subparagraph (b) (1) is in lieu of any other express warranties. Should this warranty fail of its essential purpose, City will continue to have recourse under applicable Florida law. This warranty is intended for the exclusive benefit of the City and does not create any warranties (express or implied) or causes of action in favor of any third parties.

- c. If a manufacturer of the goods or of component parts of the goods provides a special or independent warranty which is longer than the period provided for this warranty, or which provides terms more favorable to city than those contained in this warranty as to any other provision, the provisions of this warranty shall not be construed to diminish or conflict with the special or independent warranty given by such manufacturer.

- 3 The successful bidder, by submitting the bid, agrees to give the following indemnity with respect to the goods:

Vendor shall defend, indemnify, and save harmless the City, its officers, agents and employees, from all suits, actions or claims of any character, type or description brought or made on account of any personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, arising out of or occasioned by any breach of any warranty, express or implied, as to the goods or the fault of subcontractors, in the performance of the contract, purchase order or price agreement; provided, however, that this indemnity shall not apply to any personal injury including (including death), property damage or other harm caused solely by the negligent use, misuse or abuse of the goods by city, or caused solely by any negligent act or omission of city unrelated to the use of the goods. In the event of joint or concurring responsibility of vendor and City, responsibility and indemnity, if any shall be apportioned comparatively in accordance with the laws of the state of Florida, without, however, waiving any governmental immunity available to the City under Florida law. This provision shall not be construed for the benefit of any third party, nor does it create or grant any right or cause of action in favor of any third party against city or vendor, this provision being solely intended to provide for indemnification of City from liability for damage to third persons or property as set forth in this paragraph.

## **CHAPTER 25 PURCHASING POLICY ADOPTION**

The Purchasing Policy shall be adopted by City resolution. The Finance Director and Department Directors shall review the Policy annually and submit recommendations to the City Manager for review and approval. If a change in the Policy is recommended for approval by the City Manager, the Finance Director will prepare the necessary report to Council.

Approved by the City Council of the City of Mount Dora at a meeting held on the 19th day of February 2019 under Resolution - 2019-012



**EXHIBIT "A"**

**FLORIDA DEPARTMENT OF TRANSPORTATION  
GUIDELINE FOR ESTABLISHING CONSTRUCTION  
CONTRACT DURATION**

**SEPARATE ATTACHMENT**

**EXHIBIT "B"**

**23 CFR 635.413**

**Code of Federal Regulations**

**Title 23 - Highways**

Volume: 1

Date: 2012-04-01

Original Date: 2012-04-01

Title: Section 635.413 - Guaranty and warranty clauses.

Context: Title 23 - Highways. CHAPTER I - FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION. SUBCHAPTER G - ENGINEERING AND TRAFFIC OPERATIONS. PART 635 - CONSTRUCTION AND MAINTENANCE.

Subpart D - General Material Requirements.

**§ 635.413 Guaranty and warranty clauses.** The STD may include warranty provisions in National Highway System (NHS) construction contracts in accordance with the following:

- (a) Warranty provisions shall be for a specific construction product or feature. Items of maintenance not eligible for Federal participation shall not be covered.
- (b) All warranty requirements and subsequent revisions shall be submitted to the Division Administrator for advance approval.
- (c) No warranty requirement shall be approved which, in the judgment of the Division Administrator, may place an undue obligation on the contractor for items over which the contractor has no control.
- (d) A STD may follow its own procedures regarding the inclusion of warranty provisions in non-NHS Federal-aid contracts.
- (e) In the case of a design-build project, the following requirements will apply instead of paragraphs (a) through (d) of this section.
  - (1) General project warranties may be used on NHS projects, provided:
    - (i) The term of the warranty is short (generally one to two years); however, projects developed under a public-private agreement may include warranties that are appropriate for the term of the contract or agreement.

(ii) The warranty is not the sole means of acceptance;

(iii) The warranty must not include items of routine maintenance which are not eligible for Federal participation; and,

(iv) The warranty may include the quality of workmanship, materials and other specific tasks identified in the contract.

(2) Performance warranties for specific products on NHS projects may be used at the STD's discretion. If performance warranties are used, detailed performance criteria must be provided in the Request for Proposal document.

(3) The STD may follow its own procedures regarding the inclusion of warranty provisions on non-NHS Federal-aid design-build contracts.

(4) For best value selections, the STD may allow proposers to submit alternate warranty proposals that improve upon the warranty terms in the RFP document. Such alternate warranty proposals must be in addition to the base proposal that responds to the RFP requirements.

[60 FR 44274, Aug. 25, 1995, as amended at 67 FR 75926, Dec. 10, 2002; 72 FR 45336, Aug. 14, 2007]

## EXHIBIT "C"

### BROOKS ACT

#### United States Code (U.S.C.) Title 40 - Public Buildings, Property and Works

#### *Chapter 11, Section 1101 - 1104: Selection of Architects and Engineers*

#### **§ 1101. Policy** (Formerly 40 U.S.C. § 541)

The policy [of the Federal Government] is to publicly announce all requirements for architectural and engineering services and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

#### **§ 1102. Definitions** (Formerly 40 U.S.C. § 542)

In this chapter, the following definitions apply:

1. **Agency head** - - The term "agency head" means the head of a department, agency, or bureau [of the Federal Government].
2. **Architectural and engineering services** - - The term "architectural and engineering services" means- -
  - A. professional services of an architectural or engineering nature, as defined by state law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide the services described in this paragraph;
  - B. professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and
  - C. other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.
3. **Firm** - - The term "firm" means an individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of architecture or engineering.

#### **§ 1103. Selection procedure** (Formerly 40 U.S.C. § 543)

- a. **In general** - - These procedures apply to the procurement of architectural and engineering services by an agency head.
- b. **Annual statements** - - The agency head shall encourage firms to submit annually a statement of qualifications and performance data.
- c. **Evaluation** - - For each proposed project, the agency head shall evaluate current statements of qualifications and performance data on file with the agency, together with statements submitted by other firms regarding the proposed project. The agency head shall conduct discussions with at least 3 firms to consider anticipated concepts and compare alternative methods for furnishing services.

- d. **Selection** - - From the firms with which discussions have been conducted, the agency head shall select, in order of preference, at least 3 firms that the agency head considers most highly qualified to provide the services required. Selection shall be based on criteria established and published by the agency head.

**§ 1104. Negotiation of contract** (Formerly 40 U.S.C. § 544)

- a. **In general** - - The agency head shall negotiate a contract for architectural and engineering services at compensation which the agency head determines is fair and reasonable to the Federal Government. In determining fair and reasonable compensation, the agency head shall consider the scope, complexity, professional nature, and estimated value of the services to be rendered.
- b. **Order of negotiation** - - The agency head shall attempt to negotiate a contract, as provided in subsection (a), with the most highly qualified firm selected under [section 1103](#) of this title. If the agency head is unable to negotiate a satisfactory contract with the firm, the agency head shall formally terminate negotiations and then undertake negotiations with the next most qualified of the selected firms, continuing the process until an agreement is reached. If the agency head is unable to negotiate a satisfactory contract with any of the selected firms, the agency head shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached.

## **EXHIBIT “D”**

### **GLOSSARY**

#### **APPROVED EQUAL**

The exact product of one or more suppliers of typical workmanship is designated as the level of quality and performance desired, and the City reserves the right to approve any other as equal or acceptable.

#### **BID**

As used in this document, bid refers to the formal process of issuing specifications, advertising the legal notice, receiving sealed offers, opening and reading them in public at a time and date certain, awarding the bid according to the criteria outlined herein, and entering into an agreement with the successful bidder.

#### **BLANKET PURCHASE ORDER**

An order to a vendor, or authority to Accounts Payable to make installment or progress payments, generally issued for established services or commodities under contract, for a firm price, for a specified period of time. Blanket Purchase Orders reduce the number of small orders.

#### **BRAND NAME**

A product whose manufacturer is identified on the product or on the package. Branded products are generally higher in price than unbranded products. However, a branded product usually insures consistency of quality.

#### **CHANGE ORDER**

A written order signed by the City and the Contractor, directing the contractor to make changes to the contract or project, change the time for completion, or changes the amount of the contract. To be enforceable, all Change Orders involving City contracts shall be in writing and signed by both parties.

#### **CONFIDENTIAL INFORMATION**

As it relates to Procurement, information which is confidential and not subject to the Florida Public Records Law consists of vendors' financial statements, computer software programming, and trade secrets.

#### **CONFLICT OF INTEREST**

A conflict of interest arises when an employee, official, or agent of the City, any member of his/her immediate family, or his/her partner, has a financial or other interest in a firm or individual soliciting business with the City.

## **CONTINUING CONTRACT**

An agreement for professional or consulting services entered into, in accordance with all the procedures of the State of Florida Consultants' Competitive Negotiations Act, between the City and a firm, whereby the firm provides professional or consulting services to the City for work of a specified nature as outlined in the agreement, with no time limitation except that the contract shall provide a termination clause.

## **CONSTRUCTION**

The process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

## **CONSULTING SERVICES**

Professional services complementing or supplementing the services of City staff. The consultant is highly rated and experienced in his/her profession, and retained to give expert advice.

## **CONTRACT**

All types of City agreements, regardless of what they may be called, for the procurement of supplies, services, or construction. A Purchase Order, when accepted by the vendor (delivery or performance constitutes acceptance), becomes a contract.

## **CONTRACT ADMINISTRATION**

A system or procedure to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

## **CONTRACTOR**

Any person having a contract or agreement with the City to perform work or furnish materials.

## **COST**

The amount paid to acquire goods or services. This may include, but is not limited to, price, transportation, supplies, etc.

## **COST REIMBURSEMENT CONTRACT**

A contract under which a contractor is reimbursed for costs which are allowable in accordance with the contract terms and the provisions of this Ordinance, plus a fee or profit, if any.

## **LIFE CYCLE COST**

Sometimes called TOTAL COST. The compilation of data for the purpose of arriving at costs actually incurred, or estimates of costs to be incurred, usually over the useful life of a piece of equipment. It

usually includes the acquisition cost, the cost of supplies, and the cost of power to run the equipment. It may include the cost of maintenance and repair.

### **DESIGN BUILD**

A single contract with a design-build firm for the design and construction of a public construction project.

### **EMERGENCY**

A temporary, unforeseen occurrence or combination of circumstances which endangers life or property, and calls for immediate action or remedy.

### **FINANCIAL INTEREST**

Ownership of any interest or involvement in any relationship from which, or as a result of which, a person has received, or is presently or in the future entitled to receive compensation. Ownership of such interest in any property or any business.

Holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

### **GRATUITY**

A payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

### **INVITATION TO BID**

All documents, whether attached or incorporated by reference, utilized for soliciting sealed offers on goods or services from prospective suppliers.

### **LETTERS OF INTEREST**

A process for procuring professional consultant service and sophisticated information technology. These are purchases where options and value may not be known until the most qualified firms have thoroughly demonstrated the scope of their abilities and their past experience.

### **LOCAL PREFERENCE**

Special or favored treatment or consideration based on vendor residency, the favoring of local or in-state products.

### **PERSON**

For the purpose of this Manual, any business, individual, corporation, partnership, joint venture, organization, or group of individuals.

## **PERSONAL PROPERTY**

Goods, materials, supplies, equipment, furniture, vehicles, machinery.

## **PRICE**

A monetary amount exchanged for property or services.

## **PROCUREMENT**

The procedures for obtaining goods or services, including all activities from the planning steps and preparation and processing of a requisition, through receipt and acceptance of delivery and processing of a final invoice for payment. The acts of preparing specifications, evaluating bids or proposals, making awards, and administering contracts are involved.

## **PROFESSIONAL OR CONSULTING SERVICES**

Those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the State, and all other professional services not listed in Section 287.055(2)(a), with the exception of legal services; or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper, or other professionals except legal professionals, in connection with his/her professional employment or practice.

## **PROJECT DIVISION**

The Project Division is the person who is assigned by the City to monitor the construction of a project, or the performance of a contract. There may be an outside firm, such as architectural or engineering, acting as the Project Division, or Construction Division; there may be a City engineer acting as the Project or Construction Division; or there may be both.

## **PROPRIETARY**

Made and marked by a person having the exclusive right to manufacture and sell it.

## **QUALITY**

In public purchasing, quality is related to function and ultimate cost. Quality determines price. The right quality needed is that which should be specified. Quality too low will result in a product or service that falls short of the need. Quality too high will result in unnecessary cost.

## **QUOTATION**

A price for materials or services given by a vendor in response to an inquiry by the City to a vendor. It is preferable in writing, but, for low-cost purchases, may be verbal.

## **REAL PROPERTY**

Land, buildings, fixtures, all other improvements to land, and rights of way.

## **REQUEST FOR LETTERS OF INTEREST**

A formal method to determine who, in the marketplace, is available, capable and interested in working on a specific project for the City. The project may be only a concept; it may require design by the respondents; or it may be beyond City staff to specify.

## **REQUEST FOR PROPOSALS**

All documents, whether attached or incorporated by reference, utilized for soliciting proposals. A formal, advertised procedure, following similar policies as an Invitation to Bid.

## **REQUEST FOR QUALIFICATIONS**

All documents, whether attached or incorporated by reference, utilized for soliciting responses from professionals. The qualifications submitted will allow the City to determine which professionals have done work of a scope similar to the City's subject project, which professionals shall then be considered for selection for the project. This shall be a formal, advertised procedure, complying with policies contained in this Manual.

## **RESPONSIBLE BIDDER OR OFFEROR**

A person who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

## **RESPONSIVE BIDDER**

A person who has submitted a bid which conforms in all material respects to the Invitation to Bid, Request for Proposals, Request for Qualifications, or Request for Letters of Interest.

## **SOLE SOURCE**

Sometimes called SINGLE SOURCE. The only vendor from whom a product or service is available.

## **SPECIFICATIONS**

A description of the product or service a purchaser is seeking to buy. The directions, provisions, and requirements setting out or relating to the method and manner of performing the work or furnishing the quantities and qualities of materials and labor under the contract. The description shall be adequate to assure obtaining a product or service which will satisfy a particular need with the right quality, at the right time, for the right price. Purchase specifications are usually of the following general types. They are not mutually exclusive, and may overlap. The objectives of specifications should be to encourage competition, keep design and other details to only those that are necessary.

## **DESIGN**

Tends to spell out in detail how a product is to be made or a service carried out. Tends to limit competition.

## **PERFORMANCE or FUNCTIONAL**

Focuses on the result that is expected or required of a product or service, rather than how it is to be accomplished. Tends to encourage competition, ingenuity, and innovation.

## **“OR EQUAL”**

Uses manufacturers’ or brand names as references to identify the quality and performance characteristics being sought.

## **QUALIFIED PRODUCTS LIST**

A compilation of manufacturers’ and brand names developed on the basis of a written specification, where the products listed have been examined or tested for compliance prior to asking for bids.

## **SURETY**

The corporate bond company or individual which is bound by contract bond with and for the contractor, who is primarily liable, and which engages to be responsible for his acceptable performance of the work of which contract has been made, and for his payment of all debts pertaining thereto.

## **VALUE ANALYSIS**

The comparison of the cost of a given need versus its worth, e.g. Will spending more on a better quality now give the item longer life; conversely, since we do this often, we don’t need a very good quality.

## **VENDOR**

An outside supplier of goods or services.

## **WAIVERS OF BID**

A process whereby supplies, or services, may be procured without a formal competitive bidding process when determined to be in the best interest of the City.