



# **City of Seabrook**

## ***Purchasing Policy***

**Effective March 17, 2020**

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CHECK REQUEST FORM

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ACH FORM

CIQ (CONFLICT OF INTEREST QUESTIONNAIRE)

CIS

CREDIT CARD FORM

HOUSE BILL 89 VERIFICATION FORM

TRAVEL EXPENSE FORM

IRS FORM W9

# **Chapter 1 - Introduction**

## **SECTION 1 - INTRODUCTION**

This policy ("Policy") supersedes any and all previous purchasing and travel policy's approved or utilized by the City of Seabrook ("City") and becomes effective March 17, 2020.

## **SECTION 2 - PURPOSE**

The purpose of this policy is to provide for the fair and equitable treatment of all persons involved in public purchasing by the City, to maximize the purchasing value of public funds in procurement and to provide safeguards for maintaining a procurement system of quality and integrity. The intent of this policy is to comply with all Federal, State and local purchasing laws.

## **SECTION 3 - APPLICATION**

1. Upon implementation, the policies contained in this policy shall become a matter of record, and any City employee who fails to follow these rules may be subject to disciplinary action, up to, and including termination.
2. This policy generally applies to contracts for the procurement of goods and services entered into by the City. It shall apply to all expenditures of public funds by the City, irrespective of the source of the funds. Nothing in this policy shall prevent the City from complying with the terms and conditions of any grant, gift or bequest that is otherwise consistent with the law.
3. The purchasing of goods and services is a function of each department, coordinated through the Finance Department. Each Director and their Designee(s) are responsible for coordinating with Purchasing for any purchases made on behalf of the City. "No payment shall be made or obligation incurred against any allotment or appropriation except in accordance with appropriations duly made, unless the City Manager or his or her designee first certifies that there is a sufficient unencumbered balance in such allotment or appropriations and that sufficient funds therefrom are or will be available to cover the claim or meet the obligation when it becomes due and payable. Any authorization of payment or incurring of obligation in violation of the provisions of this shall be void and any payment so made illegal. Such action shall be the cause for removal of any official who knowingly authorized or made such payment or incurred such obligations, and he or she shall also be liable to the City for any amount so paid." (City Charter, Article V, Sec. 5.04.)
4. The purchasing procedures resulting from this document are intended to comply with local, state and federal codes, ordinances and statutes. In the event of conflict, the appropriate statute or ordinance will prevail.
5. In the awarding of bids, proposals and quotes, the City does not discriminate against individuals, companies with respect to race, color, national origin, sex, age, disability or religion.

## **SECTION 4 - AMENDMENT**

These rules may be amended or superseded by recommendation of the Finance Director or the City Manager. Amendments must be consistent with the City Charter, State, and Federal Law. The City Manager or Finance Director shall present recommendation to City Council for final approval of amendments.

## **SECTION 5 - ADMINISTRATION**

While every effort is made to make this policy comprehensive, it is not possible to include all details and possible exceptions to general rules. Final authority in the form of review and approval is reserved by the City Manager with regard to all matters of subjects covered by these policies.

## **SECTION 6 - PUBLIC ACCESS TO PROCUREMENT INFORMATION**

Procurement information shall be a public record to the extent provided by Chapter 552 of the Texas Government Code and the Texas Local Government Code, and shall be available to the public as provided in these codes.

1. Contract File. All determinations and other written records pertaining to the solicitation, award or performance of a contract shall be maintained by the City in a contract file. ALL contract files shall be kept in the Office of the City Secretary, or a location designated by the City Secretary.
2. Retention of Procurement Records. All procurement records shall be retained and disposed of by the City in accordance with records retention guidelines and schedules approved by the City Council.
3. Financial Records of vendors that are gathered during the bid process will be retained and disposed of in accordance with adopted City retention policy.
4. Any requests for records pertaining to purchasing, including but not limited to contracts, bid responses, and quotes will be treated as open record requests and sent to the City Secretary for review and response.
5. Pursuant to Local Government Code 252.049, Trade Secrets and Confidential information in competitive sealed bids are not open for public inspection. Additionally, all contents of sealed proposals shall be kept confidential during the negotiation process and shall not become public record until after City Council award of contract.

## **SECTION 7 – DEFINED TERMS**

1. Officer- (Per Texas Local Government Code 176) a member of the governing body of a local government entity; a director superintendent, administrator, president or other person designated as the executive officer of a local governmental entity; an agent of a local government entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor.

2. Incode- Any and all current, or future financial, accounting or Enterprise Resource Planning (ERP) software.
3. Agent- (Per Texas Local Government Code 176) a third party who undertakes to transact some business or manage some affair for another person by the authority or on account of the other person. This term includes an employee.
4. Sequential Purchases- (Per Texas Local Government Code 252) purchases made over a period of time, of items that in normal purchasing practices would be purchased in one purchase.
5. Separate Purchases- (Per Texas Local Government Code 252) purchases made separately, of items that in normal purchasing practices would be purchased in one purchase.
6. Component Purchases- (Per Texas Local Government Code 252) purchase of the component parts of an item that in normal purchasing practices would be purchased in one purchase.

## **Chapter 2 - Ethics**

### **SECTION 1 - STATEMENT OF POLICY**

Public employment is a public trust. It is the policy of the City to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the City. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service.

Public employees must discharge their duties impartially to assure fair, competitive access to governmental procurement by responsible vendors. Moreover, they should conduct themselves in such a manner to foster public confidence in the integrity of the City's employees.

To achieve the purpose of this chapter, it is essential that those doing business with the City also observe the ethical standards prescribed here.

### **SECTION 2 - GENERAL ETHICAL STANDARDS**

This Policy, the City Charter/Code of Ordinances and statutory law set forth standards of conduct for employees of the City.

It shall be a breach of ethics:

1. To attempt to realize personal gain through public employment with the City by any conduct inconsistent with the proper discharge of the employee's duties.
2. To attempt to influence any public employee of the City to breach the standards of ethical conduct set forth in this code.
3. To offer, give or agree to give any employee or former employee of the City, or for any employee or former employee of the City to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore pending before this government.
4. For any payment, gratuity or offer of employment to be made by or on behalf of subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for the City, or any person associated therewith, as an inducement for the award of a subcontract or order.
5. For any employee or former employee of the City to knowingly use confidential information for actual or anticipated personal gain or for the actual or anticipated gain of any person.

6. All members of City Council or any officer or employee of the City "shall be subject to and shall comply with the provisions of general state law regarding personal, financial or conflicting interests in transactions with the City, including but not limited to Chapter 171 of the Texas Local Government Code. The City Council shall provide, by ordinance, regulations and procedures for the implementation and enforcement of said Chapter." (City Charter, Article XI, Section 11.09)
7. For any employee to purchase City property for his/her own personal use unless approved by the Finance Director and City Manager and purchased through public auction or through the City's sealed bid process. This includes new and used equipment, materials or supplies.
8. For any employee to use the City's purchasing power to make private purchases.
9. For any employee to have excessive private purchases delivered to the City. The City Manager will be responsible for determining if/when private deliveries to the City have become excessive
  - This can cause the appearance of using the cities purchasing power for private purchases.
  - This type of purchase may give the erroneous impression of dishonest business practices by the City.
  - This type of purchase may be considered a mild form of blackmail on the merchant who might wish to conduct future business with the City.
  - This type of purchase may result in illegal sales tax evasion.

### **SECTION 3 – DISCLOSURE OF CERTAIN RELATIONSHIPS**

This section applies to City Mayor, Council Members, Directors, Superintendents, Administrators, Presidents, or Agents, herein after referred to as "Officer." Agents are defined as anyone who exercise discretion in the planning, recommending, selecting or contracting of a vendor

Pursuant to Chapter 176 of the Texas Local Government Code, certain business relationships between vendors or potential vendors, and City Officers, or designated executive officers, and their family members must be disclosed. This law also applies to members of local government corporations, boards, commissions, districts or authorities whose members are appointed by the Mayor or City Council. As a best practice, vendors employing former City employees should disclose this relationship. Statements and questionnaires are required to be submitted to the Office of the City Secretary not later than the seventh (7<sup>th</sup>) business day after entering into a contract with the City, considering entering into a contract with the City or becoming aware of the conflict of interest. This applies to all written contracts for the sale or purchase of real property, goods (personal property), or services. Services include skilled and unskilled labor, as well as personal services.

An officer is required to file a conflicts disclosure statement ("statement") in at least three situations.

1. An officer must file a statement if the officer or officer's family member has an employment or other business relationship with a vendor that results in the officer or officer's family member receiving taxable income of more than \$2,500 in the preceding twelve months. An officer who receives investment income, regardless of amount, is not required to file a disclosure statement. Investment income includes dividends, capital gains or interest income gained from a personal or business checking or savings account or other similar account, a personal or business investment, or a personal or business loan.
2. An officer is required to file a statement if the officer or officer's family member accepts one or more gifts from a vendor with an aggregate value of more than ~~\$50~~ \$100 in the preceding twelve months. (A "gift" includes transportation, lodging, and entertainment, even as a guest.)
3. An officer is required to file a statement if the officer has a family relationship with the vendor.

There is at least one exception to the three situations set out above. A local government officer does not have to file a statement if the vendor is an administrative agency supervising the performance of an interlocal agreement.

A vendor or respondent is required to file a conflict of interest questionnaire in at least three (3) situations.

1. If the vendor or respondent has an employment or other business relationship with an officer or an officer's family member that results in the receipt by the officer or family member of taxable income of more than \$2,500 in the preceding twelve months.;
2. If the vendor or respondent has given an officer or an officer's family member one or more gifts totaling more than \$100 in the preceding twelve months.
3. If the vendor or respondent has a family relationship with an officer of the city.

The forms required to comply with the above Government Code are available in Appendix A of this policy and on the Ethics Commission website at <https://www.ethics.state.tx.us/forms/CIQ.pdf>

#### **SECTION 4 – DISCLOSURE OF INTERESTED PARTIES**

In 2015, the Texas Legislature adopted House Bill 1295, adding section 2252.908 of the Government Code. The law states that as of January 1, 2016 any government entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits a signed contract. The form must be filled out online through the Texas Ethics Commission Website, where it will be acknowledged by the City within 30 days. No hand written forms will be accepted.

The law applies only to those contracts that:

- Require an action or vote by the governing body or
- Have a value of at least \$1 million

Effective January 1, 2018 the form does not require notarization and the following contracts no longer require it be completed:

- A sponsored research contract of an institution of higher education
- An interagency contract of a state agency or institution of higher education
- A contract related to health and human services if:
  - The value of the contract cannot be determined at the time the contract is executed
  - Any qualified vendor is eligible for the contract
- A contract with a publicly traded business entity, including a wholly owned subsidiary of the business entity
- A contract with an electric utility, as that term is defined by Section 31.002 Utilities Code
- A contract with a gas utility, as that term is defined by section 121.001 Utilities Code

A newly completed Form 1295 is required when changes are made to an existing contract if the changes requires an action or vote by the governing body or if the change is valued at more than one million dollars. This applies to all amendments, change orders, and extensions or renewals.

Form 1295 is completed and submitted by the Vendor on the Texas Ethics Commission Website, <https://www.ethics.state.tx.us/filinginfo/1295/>. The City will acknowledge all completed Form's 1295 not later than the 30<sup>th</sup> day after receiving it. As a best practice, City staff should not answer questions regarding the completion of Form 1295; Vendors should see the Texas Ethics Commission website for clarification, or consult with their legal counsel.

## **Chapter 3 – Grant Fund Purchases**

When making purchases with grant funds the City's purchasing policy does not prevail. Most grants are heavily regulated by specific policies and operational procedures. It is important to know which purchasing rules and policies to follow and how to clarify and resolve any conflicts within those rules and policies.

Local Governments are permitted to use their own purchasing policies and procedures as long as those policies are substantially similar to the federal standards. If there are areas of deficiency in the City policies, then the federal policies and procedures must take precedence.

All Grant Fund purchases will be competitively bid and contracts that are based on cost plus a percentage of cost will not be used for grant procurement. The City will review all selected Contractors against the Excluded Parties List System (<https://www.sam.gov/SAM/>) and any vendor found on the Excluded Parties List will not be eligible for the award of grant funded projects.

If the goods and services are only available from a sole supplier a letter from the manufacturer is required stating that they do not distribute their product through distributors and any attempt to obtain bids would result in only one company being able to meet our specifications and needs.

Once these expenditures are purchased from federal funds, the grant number shall be included on all paper work i.e.: requisition, purchase order, receiving documents, vendors invoice and capital asset forms.

The City references the Code of Federal Regulations (CFR) 2 CFR 200. (<https://www.ecfr.gov>)

## **Chapter 4 - General Provisions**

### **SECTION 1 - GENERAL INFORMATION**

1. Purchasing is an administrative function shared by all departments of the City, coordinated by the Finance Department.
2. All departments shall make every effort to purchase goods and services from local businesses whenever feasible, appropriate and lawful to enhance local economic development.
3. Using departments shall be responsible for receipt and acceptance of purchased supplies or equipment and timely determining that the supplies/equipment conform to the Purchase Order.
4. Other than the exceptions listed in this policy, acquisition of requested goods and services shall be made by the issuance of an official, numbered, City Purchase Order.
5. The availability of unencumbered funds will be confirmed before a Purchase Order will be issued. If funds are not available, the issuing department will be notified and the transfer of funds process will be initiated, if funds are available.
6. To the extent permitted by law, purchasing decisions will be based on all or a combination of the following factors: price, delivery time, life cycle cost, past history of vendor, best value to City, and conformance to any applicable regulations.
7. No purchase shall be made without proper authorization (approval through requisition process).

### **SECTION 2 - AUTHORIZATION LEVELS**

1. The Finance Department shall maintain departmental lists of employees authorized to approve purchases. It shall be understood that the City Manager, Deputy City Manager and the Finance Director shall be authorized to sign for all Departments. No purchase shall be made without proper authorization (approval through requisition process).
2. Purchases of different price amounts require different approvals as designated in the following chart.

<b>CITY OF SEABROOK PURCHASE APPROVAL ROUTING REQUIREMENTS</b>				
<b>Total Amount of Request*</b>	<b>Type of Bid/Quotes Required</b>	<b>Dept. Responsible for Bids/Quotes</b>	<b>Type of Approval(s) Required</b>	<b>Other Requirements</b>
\$50,000 or more	Competitive (Sealed) Bid/Proposal	Finance	Department Designee Department Director Finance Department City Manager City Council	Formal Advertisement Sealed Bid (Paper)  Agenda Briefing Form w/all supporting documents  Signed Contract  Purchase Order  Resolution/Authorization of City Council, (if required)
\$2,500 - \$49,999	3 Written Quotations  Must attempt 2 HUB quotes	Department	Department Designee Department Director Finance Department City Manager	Paper or Electronic Quotations ** required  Purchase Order
\$500 - \$2,499	3 Telephone or Written Quotations	Department	Department Designee Department Director Finance Department	Paper or Electronic Quotations** required  Purchase Order
\$100 - \$499	Not Required; but recommended	Department	Department Designee Department Director Finance Department	Purchase Order
< \$99	Not Required	Department	Department Director or his/her designee(s)	Quotations not required; but recommended

\* Will change to correspond with current State law amount limits

\*\* Electronic quotations include email or Adobe PDF. Hard copy documents are retained by the finance department for audit purposes.

### **SECTION 3 - QUOTATIONS**

1. A minimum of three quotations should be obtained for all purchases over \$500, but less than \$50,000. Purchases over \$50,000 must be competitively bid (refer to Chapter 5). Competitive Bid limits are set by State law and will change as required to correspond to current legislation. If the annual amount spent with the vendor or on the commodity class will exceed \$50,000.00, the competitive bid process should be followed.
2. Quotations taken over the phone should have the current City Quote Forms included with the requisition request in the current or future accounting, finance, accounts payable, or ERP system, collectively referred to as Incode, and have quote information included on the requisition.
3. Quotations submitted by any vendor will be considered firm. For purchases less than \$50,000, the requesting department may permit a bidder alleging a material mistake of fact to withdraw their quote when there is reasonable

proof that a mistake was made and the intended quote cannot be ascertained with reasonable certainty. If the purchase is greater than \$50,000, a material mistake will be addressed during the award process.

4. If expenditure is more than \$2,500 but less than \$50,000, the City must contact at least two historically underutilized businesses, located in Harris County, on a rotating basis. This information is provided by the State Comptroller (Chapter 2161, Government Code) online at <https://mycpa.cpa.state.tx.us/tpasscmbsearch/>. The municipality is exempt from this requirement if there are no underutilized business in the county in which the City is situated, in the required commodity class.
5. Whenever possible and practical, quotes should be obtained by contacting the vendor, not reviewing online catalog and pricing.
6. For purchases being made using quotes, cooperative purchasing contracts should be reviewed and used when practical.
7. When using quotes to obtain goods or services used on a recurring basis, or for construction and capital improvement projects, contracts should still be developed.

#### **SECTION 4 - TAX EXEMPTION**

1. The City is exempt from payment of taxes under the Limited Sales, Excise and Use Tax Act, (State of Texas Tax Code, Subtitle E, Chapter 151, Subchapter A, Section 151.309) for the purchase of tangible personal property.
2. Sales tax exemption certificates must be obtained from the City's Finance Department. Exemption certificates are vendor specific and should be presented to the vendor upon request, when an account is established, or at time order is placed.
3. If a vendor charges sales tax on a City credit card purchase, the employee is responsible for reimbursing the City for the sales tax. Hotels, airfare and meals are exceptions.
4. Any employee who makes a purchase with personal funds and pays the vendor sales tax will not be reimbursed for the sales tax. Hotels, airfare, and meals are exceptions.
5. Any use of the City's tax exemption certification for personal purchases is strictly prohibited. Anyone using this tax exemption certificate for personal purchases shall be subject to prosecution under Texas Penal Code, Chapter 39, Section 39.01, Abuse of Office. Any employee engaging in such action may be subject to disciplinary action, up to and including termination.

#### **SECTION 5 - UNAUTHORIZED PURCHASES/CHARGES**

1. Any commitment to acquire goods or services valued at greater than \$100, prior to securing a purchase order is strictly prohibited. Any other number, such as the requisition number, must not be used in lieu of a purchase order number.
2. Anyone creating or authorizing such a commitment prior to securing a purchase order may be held personally liable for payment of such agreement and may be subject to prosecution under the Texas Penal Code, Chapter 39,

Section 39.01, Abuse of Office. Disciplinary action up to and including termination may be taken against any employee who engages in such practices.

3. If a purchase must be made outside normal business hours, or as a result of an actual emergency (poor planning does not constitute an emergency), the department will enter the purchase requisition as soon as possible. The comment section of the requisition should include "Emergency- No Purchase Order" and an explanation/description of why it was not possible to wait for a Purchase order. The department will approve at the appropriate level and the requisition must be forwarded to the Finance Department. If the transaction is deemed an emergency, the requisition proceeds to purchase order generation. If it is deemed to be a non-emergency, the requisition will be forwarded to the City Manager for approval.
4. A report of unauthorized purchases will be prepared annually for audit compliance.

## **SECTION 6 - COOPERATIVE PURCHASING**

Cooperative purchasing occurs when two or more entities (state, federal or local governments) coordinate some or all of their purchasing needs so they can join in purchases to the mutual benefit of all entities concerned. Cooperative purchasing is addressed in two main statutes.

1. Texas Government Code Chapter 791 – Inter-local Cooperative Act: Allows local governments to contract with and between each other, to provide governmental functions and services and to join together in contracting with others to provide goods and services.
2. Local Government Code Chapter 271, Subchapter D, Section 271.081 through Section 271.083 - State Cooperation in Local Purchasing Programs: Allows a local government to purchase goods on the state's purchasing contracts, and allows the state to solicit bids on the local government's behalf, when considered feasible by the General Services Commission.

The City belongs to several different Purchasing Cooperatives. These may be used to purchase goods and services for the City. The City can also choose to join another entity with an Interlocal agreement to purchase a commodity or service at a more advantageous price or with better contract terms. Joining new Purchasing Cooperatives or entering into new Interlocal Agreements must be approved by City Council. This method of purchasing goods and services can provide significant cost savings to the City. If you would like to use a cooperative contract, please contact Purchasing for a list of current programs available and how to purchase using this process.

These purchases must follow our dollar threshold approval process. If the purchase is over \$50,000, it must be approved by City Council. If it goes before Council, the contract between the cooperative and vendor must be included with the Agenda Briefing Form, and must have been reviewed by the City Attorney. If there is an additional Contract between the City and the vendor, it must

reference the Cooperative Contract, have been reviewed by the City Attorney, and include all documents required for Contracts.

If the purchase does not require City Council approval, the requisitions must include the cooperative name and contract number. If a copy of the contract is not on file with the Office of the City Secretary, one must be submitted to purchasing prior to the requisition being approved.

The following is a discussion of the normal types of cooperative purchasing. This discussion is taken from the Texas Comptroller of Public Accounts' Model Purchasing Manual for Texas Cities and Counties.

1. Piggybacking: One government purchases for themselves and for others as a convenience to the others. Both governments should protect themselves by establishing an agreement in writing, even when the arrangement is very informal. The agreement should specify the duties and responsibilities of each party.
2. Joint purchases: Two or more governments join to purchase one or more goods or services jointly. This may involve each government handling part of the administrative duties, or agreeing to have one of the governments handling the transactions under the guidance of the others. All parties to a purchase must agree to the product specifications, so that a mutually satisfactory good or service is ordered.
3. Buying from state contracts: Under the provisions of Local Government Code Section 271.081 through 271.083, the General Services Commission has established a cooperative purchasing program. This is a form of piggybacking. Under this program, a local government may participate in all state contracts that have been automated after it complies with certain legal requirements.
4. Purchasing through a third party: Several local governments agree to allow an independent agency to do all or part of the purchasing for them. This may be done by an agency formed especially for the purpose, or through an established council of governments. This type of agreement should be implemented by a contract that details the duties and responsibilities for both the agency and the local governments involved. It may include a continuing arrangement or be for a single purchase.

While acceptable under Texas Government Code these types of purchases are not always allowed for special funding, such as Federal, State and Grant funds. Please consult with the Finance Department prior to entering into these agreements.

## Chapter 5 - General Purchasing

### SECTION 1 - PURCHASING PROCESS OVERVIEW

1. Prior to issuing a purchase order or otherwise committing any City funds, the vendor must be vetted through the Finance Department. To begin the vetting process, a Vendor Packet must be completed and returned to the Finance Department. Upon receipt of Vendor Packet, it may take up to two (2) weeks for the vendor to be vetted and entered into Incode.
2. If a vendor is already active in Incode, the Purchase Order can be initiated with a Purchase Requisition. All vendors must be in Incode prior to entering a Purchase Requisition.
3. All purchases over \$100 must be initiated with a Purchase Requisition in Incode. The purchase requisition must be completed and approved electronically by authorized departmental personnel.
4. Upon verification of available funds and expense account number accuracy, Finance Department personnel designee will approve the requisition.
5. If required, the City Manager will approve the requisition.
6. Once the Requisition is approved at all levels, Finance Personnel will create purchase orders from the purchase requisition.
7. The using department may then place the order with the vendor; providing the vendor with the appropriate purchase order number and/or a copy of the Purchase Order.
8. When the goods or services are received, the using department must receipt them, electronically, through Incode. If no invoice is available at that time, the number on the packing slip, receipt of goods or the PO number should be used instead. This will allow the Finance Department to pay the vendor when the invoice is received. If there is a discrepancy between the invoice and the purchase order, Finance Department will notify and send the invoice to the using department. The using department must approve the invoice and return to Finance Department for processing. If there is an error, the using department will resolve with the vendor and request a revised/corrected invoice be returned to Finance Department. Altered invoices will not be accepted.
9. All aggregate annual amounts greater than \$50,000 by vendor, contract or project meet bid requirements and must be bid and awarded by Council prior to purchase order generation.

### SECTION 2 – PETTY CASH FOR SMALL PURCHASES

1. Petty cash funds should be used for those purchases that must be made quickly and without prior notice on a contingency basis.
2. Minor items which cost up to \$50.00 may be purchased directly from the vendor and cost reimbursed from the petty cash fund upon presentation of a paid invoice or receipt.
3. Petty cash funds will **not** be used to reimburse any travel expenses, including mileage.

4. A properly detailed and signed petty cash voucher must be presented along with the invoice or receipt for reimbursement.
5. The Finance Department will issue petty cash funds to departments in an amount not to exceed \$500.00, with approval of Finance Director and City Manager. The department director is responsible for choosing the custodian of the funds. A record of the custodian must be filed with the Finance Department. The funds must be kept in a locked box in a secure area.
6. Departments that operate during normal City hours may not request separate petty cash funds.
7. The Finance Director or his/her designee will periodically audit the petty cash fund.
8. A monthly reconciliation of the petty cash funds must be done by the department(s) and submitted to the Finance Department for review and processing.
9. The City is exempt from paying sales tax on its purchases. Employees making purchases out of personal funds will not be reimbursed for sales tax paid. Tax exemption forms are available from the Finance Department.

### **SECTION 3 - LEASES AND RENTALS**

1. Contracts for the lease of equipment may be negotiated by, or with the approval of, the Finance Department, provided that:
  - a) The title to the property does not transfer to the City at any time.
  - b) None of the lease or rental payments will apply toward a later purchase of the same or like item. Contracts for the lease or rental of equipment or materials where part or all of the payments may apply toward eventual purchase shall be treated as actual purchases.
  - c) The total expenditure is less than the \$50,000 threshold where competitive sealed bids or proposals are required.
  - d) All applicable purchasing laws, policies, and procedures are followed.
2. Any contracts for lease, rental or lease purchase that will extend past the fiscal year shall have cancellation provisions in the event that funds are not available.
3. All rentals and leases must have a new purchase order issued at the start of each fiscal year.
4. Any rental equipment will be insured through the City's existing liability insurance coverage.

### **SECTION 4 – TRAVEL POLICY**

#### **PURPOSE**

The City of Seabrook reimburses under an "Accountable Plan" for business travel expenses. Pursuant to Federal Tax Regulation §1.62-2 reimbursements for travel under an "Accountable Plan" must meet three requirements as follows:

1. There must be a business connection and the expense must be reasonable;

2. There must be a reasonable accounting of the expenses (amounts paid up to the allowable federal per diem rates are deemed substantiated); and
3. All excess reimbursements must be repaid in a reasonable time.

Federal Tax Regulation § 1.62-2(k) provides that, in addition to these three requirements, the plan cannot exhibit a "pattern of abuse." If a payer's reimbursement or other expense allowance arrangement evidences a pattern of abuse of the rules of section 62(c) and this section, all payments made under the arrangement will be treated as made under a nonaccountable plan.

Pursuant to Federal Tax Regulation § 1.62-2(c)(5), payments or reimbursements under a nonaccountable plan are included in the employee's gross income, must be reported as wages or compensation on the employee's Form W-2, and are subject to withholding and payment of employment taxes (social security, Medicare, unemployment).

The travel policies, guidelines, and procedures set forth below are applicable to City of Seabrook Officials (Elected Officials, Appointed Officials, and Department Directors) and employees.

## **POLICIES AND GUIDELINES**

1. Travel expenses are intended to be and shall be solely for travel performed by employees or officials (collectively, "employees") while on official City business. The purpose of the trip must be for the City's benefit and/or related to the Department's primary business activities as follows:
  - a) To obtain statutorily required continuing professional education;
  - b) To obtain continuing education related to an employee's work or maintenance of a license or certification;
  - c) To testify before legislative bodies regulatory agencies and commissions, and other forums that may make decisions affecting the City including its affiliated agencies and operations;
  - d) To participate in professional organizations related to the employee's job assignment;
  - e) To conduct essential research and information-gathering for improvement of City operations or compliance with the law;
  - f) To monitor the development of state or federal legislation or implementation of legislation that might affect the City;
  - g) To participate in forums, coalitions, and discussions relating to the policy, legislative, and regulatory interests of the County;
  - h) To pursue the City's interests in litigation or criminal justice;
  - i) To promote the economic development interests of the City's; or
  - j) To carry out other purposes determined by the City Manager or City Council to be in the interest of the City.
2. Sufficient funds must be available in the adopted budget and use of those funds must be approved before expenditures are made.

- a) Prior approval from the City Manager or his/her designee is required for business travel and/or training requests that exceed the approved training budget in any given fiscal year.
3. Travel expenses must be reasonable and necessary. Any inappropriate or excessive costs will not be reimbursed.
4. Preference should be given to local and in-state training, unless training is not available locally or in-state. Out-of-State travel must be approved by the City Manager.
5. Departments must ensure that all travel reimbursements are examined to ensure compliance with the Travel Policy prior to submitting payment requests. Employees must ensure that their travel complies with the Travel Policy and must not seek reimbursement for travel expenses that the employee should reasonably know are not reimbursable.
6. Only actual travel expenses incurred by the employee will be reimbursed. An employee who receives free transportation or lodging in exchange for mileage points or other non-monetary credits belonging to the employee is not considered to have incurred an expense.
7. Spouses/Companions travel at their own expense. No travel costs, whether for transportation, lodging, meals or cost of attendance to events, for spouses/companions are reimbursed by or chargeable to the City.
8. Travel expenses incurred by the City resulting from the failure of an employee to cancel reservations for reasons other than those outlined in this policy will be deducted from the employee's payroll check within 60 days of the seminar/conference/ meeting date.

## **METHOD OF PAYMENT FOR TRAVEL EXPENSES**

### **1. Direct Payment by Check**

Registration fees and lodging should be paid directly to vendors by the City. The request for payment must be submitted to the Finance Department at least two (2) weeks prior to the date the check will be needed.

### **2. City Credit Card**

If direct payment is not possible, a City credit card should be used to pay registration fees, lodging, and airfare. The City's credit card should not be used to make reservations at rates higher than allowed by this Travel

Policy. Expenditures made with a City credit card must comply with the City's policies and procedures.

3. Personal Credit Cards and/or Cash

If registration fees, lodging, or airfare is not prepaid and all attempts to use City funds have been exhausted, the City will reimburse the employee for travel expenses incurred in accordance with the Travel Policy upon completion and submittal of the Travel Expense Report. The City will not reimburse interest, over the credit limit charges, or late charges incurred on the employee's personal credit card.

4. Travel Advance

The employee may obtain a travel advance subject to certain restrictions, upon approval of the City Manager and/or Finance Director.

## **TRANSPORTATION**

1. City Vehicle

City vehicles should be used whenever possible. Gasoline, parking and tolls will be reimbursed by the City. Original receipts for all reimbursement requests are required and must be submitted with the Travel Expense Report.

Note: City vehicles are not exempt from toll charges, and any toll violations incurred while traveling in a City vehicle will be the responsibility of the employee.

2. Personal Vehicle

Should an employee use their personal vehicle for travel, the employee will be reimbursed using the current Internal Revenue Service (IRS) Standard Mileage Rate. Mileage will be calculated on a point-to-point basis using a readily available mapping service (MapQuest, Google Maps, etc.) and will be reimbursed based on the shortest practical route between points. Any deviations from the most practical route will not be reimbursed, unless a business purpose of the deviation is documented and approved in advance.

For mileage reimbursements where the employee reports to a destination (or the airport) from home rather than their normal place of work (i.e. City Hall, Public Works, etc.), the employee shall only be entitled to reimbursement of incremental mileage calculated as the mileage from their home to the destination.

If the employee travels from their normal place of work to a destination, the employee is entitled to reimbursement based on the actual mileage from their normal place of work to the destination.

If the employee chooses to drive to a destination that is more than 100 miles from City Hall, the City will reimburse with approval from the Director and/or Finance Director, the lesser of:

- i. The cost of a 21-day advance round trip economy or coach airfare; or
- ii. Actual mileage to and from the destination at the current IRS Standard Mileage Rate.

The mileage reimbursement includes all operating expenses such as fuel, oil and repairs. No separate claim will be accepted and approved for these items.

Mileage reimbursement will not be authorized for an employee's use of a personal vehicle while traveling within the City or within Harris or Galveston County if the employee receives a monthly car allowance from the City, unless otherwise approved by the Department Director and Finance Director or City Manager.

Mileage reimbursement will follow the following structure for employees who receive a car allowance:

- Tier 1 & Tier 2
  - No mileage reimbursements allowed
- Tier 3
  - Reimbursement for travel outside of Harris or Galveston County only in excess of 250 miles one-way (this amount would be deducted from the reimbursement request up to 500 miles round trip)
- Tier 4
  - Reimbursement for travel outside of Harris or Galveston County

### 3. Parking and Tolls

The City will reimburse reasonable and necessary parking and toll expenses with the submission of a valid receipt (or downloaded electronic payment method record).

Employees are encouraged to use the most economical means of parking. Employees requesting reimbursement for airport parking for a period of greater than two (2) days must use an economy parking facility.

Valet parking will not be reimbursed if another reasonable self-parking alternative is available.

### 4. Vehicle Rentals

Rental cars should only be used when either (1) taxi services are not readily available, or (2) the anticipated cost of using a taxi will exceed the cost of the rental car. When authorized, the City will pay auto rental charges for an employee in travel status. Unless otherwise authorized, the rental car shall

be of the most economical variety. Purchased gas and oil used in rental cars are reimbursable provided receipts are submitted. Several rental agencies should be contacted to obtain the most economical rate. The employee should take advantage of any discounts available to the City.

The following are obligations of the employee when renting a vehicle to conduct City business:

- a) A proper license to operate the vehicle is required;
- b) All traffic laws are to be obeyed; the City will not reimburse for traffic tickets and/or other citations
- c) A completed damage assessment must be made before a rental vehicle is accepted;
- d) All rental vehicles must be refueled immediately prior to check-in. The City will not reimburse for excess fuel charges assess by rental companies;
- e) Employees are encouraged to consult with the Human Resources department before the travel date to determine if additional collision coverage insurance should be purchased from the rental car company. All other insurance options should be declined.
- f) The City will neither pay nor reimburse the employee for personal injury or property damage that they incur or cause while driving a rental car for purposes other than City business.

#### 5. Air Travel

All airline tickets must be booked at the lowest available airfare in economy or coach class. Flight arrangements should be made at least twenty-one (21) days in advance to obtain the lowest possible airfares. The Department Director should approve airfare for flights booked less than twenty-one (21) days in advance or greater than \$350 prior to making the reservation.

Airline tickets should be purchased using a City credit card whenever possible. If a personal credit card is used to purchase an airline ticket, this expense will be reimbursed after the trip is completed and upon receipt of proper documentation by the City.

#### 6. Taxis and Other Local Transportation

- a) Expenses for taxis, buses, and other ground transportation to and from airports will be reimbursed only when necessary. The use of a hotel shuttle service is encouraged when available.
- b) Fares for transportation obtained by using ride-hailing apps such as Uber or Lyft are allowable.
- c) Limousine service is not allowed. If expenses for limousine service are incurred, the expenses will be considered a personal expense for the traveler.
- d) Original receipts are required for reimbursement.

## **MEALS & INCIDENTAL EXPENSES (M&IE)**

### **1. Individual Meals While Traveling Overnight**

- a) The City will reimburse meal expenses based on documentation of reasonable and actual expenses, not to exceed the GSA Per Diem Rate. All expenses must be noted on the Travel Expense Form and supported by original, itemized receipts. The City will reimburse at actual cost up to the per diem rate.
- b) Per Diem rate will be consistent with the most current allowances as set by law. Access the U.S. General Services Administration website, [www.gsa.gov](http://www.gsa.gov) and click on the Per Diem Rate Lookup under the Travel Tab.
  - i. Meals provided in the registration or by an event or other agency are not reimbursable and will be deducted from the maximum allowable reimbursement (except for medical, dietary or religious reasons as outlined in the GSA regulations). Please refer to the Meals & Incidental (M&IE) Breakdown at [www.gsa.gov](http://www.gsa.gov).
  - ii. The maximum allowable reimbursement will include a proration for the day of departure and the day of return according to GSA guidelines, currently 75% for each of the two (2) traveling days.

### **2. Individual Meals Away from Home but not Overnight (Day Meals)**

Meals for training or during travel that does not include an overnight stay are not reimbursable as they are taxable as wages

The City will reimburse for meal expenses that are part of attending meetings if related to an employee's trade or business and the meal is included in the cost of the program. The IRS gives examples such as chamber of commerce, business leagues, and trade or professional associations.

These expenses should be paid using normal Accounts Payable procedures.

### **3. Business Meals**

Legitimate business meals will be reimbursed if they are occasional, necessary, and associated with the active conduct of City business. A city credit card may be used for the purchase of legitimate business meals. A substantial business discussion must occur directly before, after, or during the meal.

An employee must provide supporting documentation detailing the date, place, name of individuals attending, and the subject matter discussed when

requesting reimbursement. Routinely scheduled meetings during meal times do not constitute legitimate business meals and are taxable to the employee.

#### 4. Gratuities

Reasonable gratuities for travel and business meals are reimbursable, not to exceed 20%. Any gratuity over 20% must be documented with an explanation and approved by the City Manager and/or Finance Director prior to reimbursement. If gratuity is not approved, the employee will be required to pay back the cost of the gratuity expensed. Travel meal gratuity is included as part of the maximum allowable reimbursement.

### **LODGING**

a) The City encourages the use of clean, comfortable, and safe hotels but expects that employees will be frugal in selecting a hotel. Employees are encouraged to use the State of Texas travel management services contract for hotels in order to arrange the most favorable rate unless cost benefits may be achieved by others means. The Finance Department may assist in securing hotel accommodations using this method.

Hotel reservations should be made in advance in order to obtain the most economical rates (government, conference, and other available discount rates, etc.)

If the employee is staying at the host hotel where the seminar/conference/meeting is held or overflow hotel, the City will pay the applicable single occupancy room rate, conference (block) rate, or government rate plus applicable tax per night.

In addition, if rooms are no longer available at the host hotel or overflow hotels, the City will pay the single occupancy room rate in an amount not to exceed the applicable host or overflow hotels conference (block) rate plus applicable tax per night.

b) Arrival one night prior to the day of the meeting or conference is acceptable whenever same day travel is not practical. However, same day travel is required when the location of the meeting or conference is within 100 miles from City Hall and the meeting or conference begins at or after 10:00 AM. Same day travel is encouraged when the meeting or conference begins at or after 12:00 PM and the location of the meeting is less than 300 miles away.

c) Return one day after the meeting or conference ends is acceptable whenever same day travel is not practical. However, same day travel is required when the location of the meeting is within 100 miles of City Hall and the meeting or conference ends at or before 3:00 PM. Same day travel is encouraged when the conference or meeting ends before 12:00 PM and the location of the meeting is less than 300 miles away.

- d) Extra hotel nights for personal reasons will not be reimbursed and may not be paid using City funds or a City credit card.
- e) An employee will not be reimbursed for a lodging expense incurred at a place that is not a commercial lodging establishment (e.g. Airbnb).
- f) An original lodging receipt showing payment in full must be submitted as supporting documentation for payment or reimbursement. The receipt must include the name and address of the commercial lodging establishment, the name of the employee, the single occupancy room rate, and a daily itemization of the lodging charges.

No meals are to be included, as this is considered covered under the maximum allowable reimbursement.

## **REQUEST AND REPORTING PROCEDURES**

### **1. Travel Advances**

Employees are encouraged to pay for mileage, meals and other incidental travel expenses and request reimbursement from the City after returning from the trip. Employees may request a travel advance if the seminar/conference/meeting is scheduled to last for two (2) or more days by completing the Travel Advance Request Form.

Travel advances are issued to the requesting employee and may not be used by any other employee. Likewise, travel advances are issued for a specific trip and may not be used for a trip different than the one listed on the original request.

Registration fees, lodging, and airfare will not be advanced to the employee, unless approved by the City Manager and/or Finance Director. Employees are expected to arrange for prepayment of these travel expenses, by requesting a check be issued to the vendor or by using a City credit card.

- a) Requests shall be submitted to the Finance Department at least ten (10) days prior to date of training, completed with the amount of the request, purpose, nature, location, place of lodging, travel dates and supporting documentation.
  - Approval - The request must be signed by the employee and submitted to the Department Director. The Department Director will sign the request indicating approval and availability of funds. The approved Travel Advance Request Forms are then forwarded to the Finance Department.
  - Check Processing - Upon receipt of the approved advance request, the Finance Department will prepare the advance check

payable to the employee. The advance will be issued to the employee no sooner than three (3) business days prior to travel. The employee is personally responsible for the advanced amount until the Travel Expense Form is reviewed and approved by the Finance Department.

- b) The Travel Expense Form must be submitted to the Finance Department with original itemized receipts within five (5) business days after the employee returns from travel. Subsequent travel advances will not be processed for an employee who has not settled a previous travel advance.
- c) In the event a trip is cancelled, travel advances must be returned to the Finance Department no later than five (5) business days after the day of the seminar/conference/meeting.
  - If an employee fails to account for a travel advance within 60 days from the date the employee returned from the trip, the Finance Department will submit a request to the Human Resources Department to deduct the travel advance from the employee's paycheck. After the advance has been deducted from the employee's paycheck, the employee will not be able to request reimbursement from the City. Unsettled travel advances from terminated employees will be deducted from their final paycheck.

## 2. Travel Expense Reports

- a) Reports must be completed within five (5) business days of return by the employee. The expense report must have attached receipts, hotel bills, etc. sufficient to review the employee's expenses for compliance with this policy.
- b) The Travel Expense Form must be completed and signed by the employee, reviewed, approved and signed by the Department Director and then submitted to the Finance Department for audit.
- c) The Finance Department will review the expense report for compliance with the City's policies and procedures. The Finance Director or their designee will sign the Travel Expense Form or return for further information. After a satisfactory review, the Finance Officer will relieve the traveler of the advanced amount and/or reimburse the traveler for expenses in excess of the advance.
- d) If an original receipt is lost, the employee must submit a lost receipt affidavit along with the Travel Expense Form to claim a reimbursement. If repeat requests are made, the City Manager and/or Finance Director may deny reimbursement for lost receipts.

- e) The following expense types are not eligible for a lost receipt affidavit:
  - a. Airfare
  - b. Lodging
  - c. Rental Cars

3. Travel Cancellations

- a) If it becomes necessary to cancel a trip, the employee is required to make all necessary cancellations, notify the Finance Department if a City credit card was used for reservations and if payments were made in advance (registration, lodging, airfare, and vehicle rental, etc.).
- b) An employee may be reimbursed for travel expenses or cancellation charges incurred as a result of attempting to conduct official City business if:
  - i. The employee is unable to conduct the official City business because of other official City business that had to be conducted by the employee
  - ii. The employee is unable to conduct the official City business because of a natural disaster or other natural occurrence and the expense would be payable or reimbursable had the official City business been conducted
  - iii. The employee is unable to conduct the official City business or returns before the official City business is completed because of an illness or a personal emergency
- c) The supporting documentation for a travel expense or cancellation charge incurred under these circumstances must include a description of the official City business, natural disaster or other natural occurrence, or the Department's determination that an illness or a personal emergency occurred that made the employee unable to conduct official City business.

In addition, any checks in the possession of the employee for payment of travel expenses (registration, hotel, etc.) must be returned to the Finance Department and be accompanied by a written request to void the checks.

- Travel expenses incurred by the City resulting from the failure of an employee to cancel reservations for reasons other than those listed above will be deducted from the employee's payroll check within 60 days of the seminar/conference/meeting date.

**SANCTIONS**

An employee who violates the Travel Policy and misuses City property or funds may be subject to disciplinary action, including termination, payroll deduction

or reimbursement of any unauthorized travel expenses, and/or criminal charges.

Expense reports and supporting documentation are subject to the Texas Public Information Act and may be disclosed to the public upon submission of an Open Records request.

### **INELIGIBLE EXPENSES**

The following items will not be considered for payment or reimbursement by the City:

- Entertainment including sporting events, theater, in-room movies, etc.
- Alcoholic beverages of any type
- Other items not pertaining to City business
- Spouse's or any other traveling companion's expenses
- Health clubs and spas
- Personal articles (i.e. toiletries, magazines, etc.)
- Business and personal calls from hotels
- Calls to 900 numbers
- Dry cleaning or laundry
- Fines, court costs, and related expenses
- Costs resulting from failure to cancel transportation or hotel reservations
- Valet parking (if self-parking is available)
- Loss of funds or belongings
- Baggage excess weight fees
- Insurance purchased for rental vehicles; Roadside assistance, GPS units, and Personal Accident Insurance.
- Expenses deemed unreasonable, excessive, unsupported or unexplained

The above items are specifically excluded, but the list is not to be considered all inclusive. In the event that an ineligible expense is inadvertently purchased using a City credit card, the employee must reimburse the City immediately upon returning from the event. A receipt for the purchase must be provided.

### **SECTION 5 – PURCHASE ORDERS**

1. A Purchase Order (PO) is generated from an approved purchase requisition, by the Finance Department.
2. A Purchase Order (PO) ensures payment to vendor for products or services procured. The purchase order provides vendor with an approved PO number, payment term, product or service description, quantity ordered, unit and extended price.
3. The Purchase Order is approval to initiate a qualified, budgeted purchase.
4. Only City employees with purchasing authority may make purchases on behalf of the City.

5. Prior to entering a requisition into the electronic system, the vendor must fill out the Vendor Packet and submit it, with all required supporting materials, to the Finance Department, and be entered into Incode. The vendor will be vetted by Finance staff, including checking all debarment and prohibited vendor lists and with the IRS, before being entered into the system.

## **SECTION 6 – CHECK REQUEST FORMS**

1. A Check Request Form is used to request payment for CERTAIN goods and services. The check request **may not be used in lieu of a purchase order** or to **circumvent the competitive bidding process**.
  - a) Circumventing the Purchase Order process includes making sequential, separate or component purchases to stay below the \$100.00 threshold.
  - b) Circumventing the competitive bidding process includes making sequential, separate or component purchases to stay below the \$50,000 threshold. For more information, see the Competitive Sealed Bid section of this Policy.
2. If a Check Request is created for a purchase that requires a purchase order, the check Request will be considered an unauthorized purchase for which the employee may be personally responsible for payment. In addition, the check request will be submitted to the City Manager for approval.
3. A check request requires supporting documentation for processing, such as invoices, registration forms, City Council agenda item, or petty cash vouchers.
4. Check Requests may be used for ordering and authorizing payment of the following (list is not all inclusive):
  - Petty cash fund reimbursements
  - Educational reimbursement
  - Refunds to customers (utility billing, community service fees, etc.)
  - Recording fees (plats, deeds, liens, etc.)
  - Payment of easement and right-of-way agreements

## **SECTION 7 - BLANKET PURCHASE ORDERS**

1. The general purpose of blanket purchase orders is to:
  - a) Eliminate the need for numerous individual purchase orders for small dollar items or services.
  - b) Eliminate the need for numerous individual purchase orders for vendors providing recurring products or services when expenditures will be recorded in varied account numbers within a department or division
  - c) Provide increased clarity in budgeting.
2. Blanket purchase orders shall not be used to acquire items or services required for specific one-time job requirements.
3. Blanket purchase orders shall be issued to vendors as requested by using departments through Incode, and shall remain in effect from the date the purchase order is issued through the last day of the month. A new PO for each vendor will need to be requested each month.

4. Only City employees authorized to purchase on behalf of the City may purchase from a blanket purchase order.
5. The using department shall enter the receipt and submit to the Finance Department within 5 business days of the purchase.
6. If the Blanket Purchase Order is for a Vendor with a City Contract, the Contract or Bid/RFP Project number must be referenced.

## **SECTION 8 – ANNUAL PURCHASE ORDERS**

1. The general purpose of annual purchase orders is to eliminate the need for numerous individual purchase orders for recurring monthly or quarterly expenses. All aggregate annual amounts greater than \$50,000 that meet bid requirements must be bid and awarded by Council prior to purchase order generation.
2. If the aggregate annual amount is greater than \$50,000, the Purchase Requisition must reference the bid and/or contract number.
3. Annual purchase orders shall not be used to acquire items or services required for specific one-time expenses or job requirements.
4. Annual purchase orders shall be issued to vendors as requested by using departments through the on-line purchasing system and shall remain in effect from the purchase order issuance date through September 30 of the current fiscal year. Annual purchase orders are supported by copies of the contract, agreement or other support document. Annual purchase orders are determined by the Finance Director or their designee.
5. Requisitions for annual purchase orders are entered by Finance staff.

## **SECTION 9 - EMERGENCY PURCHASES**

This section **DOES NOT** refer to declared disaster situations. Purchasing for declared disasters situations will be handled as dictated by the Federal Guidelines (FEMA) in 2 CFR 200, and then current FEMA publications, or any other relevant or subsequent law or policy.

Texas Local Government Code Chapter 252 allows exemption from the competitive bidding process for emergency purchases.

1. Emergency purchases shall be defined as follows:
  - a) A procurement made because of public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality; or
  - b) A procurement necessary to preserve or protect the public health or safety of the municipality's residents; or
  - c) A procurement necessary because of unforeseen damage to public machinery, equipment or other property
2. Emergency purchases may be made for items costing less than \$15,000 without being subject to the competitive quotes. A properly executed purchase requisition, including the entry of appropriate documentation certifying that an emergency exists, must be completed. If Incode is not

accessible, the user department shall contact the Finance Department to obtain a purchase order number. No order should be placed without a purchase order number.

3. Emergency purchases exceeding \$50,000 shall require a properly executed requisition, a signed statement from the Department Director certifying that an emergency exists, and approval of the City Manager. The emergency purchase must then be approved by City Council at the next regularly scheduled Council meeting. Nothing herein shall prevent the emergency purchase from being made prior to the next Council meeting.
4. Emergency Purchase Orders may be generated immediately, by the Finance Director or their designee, from approved purchase requisitions. Purchase Order approval routing requirements outlined in Chapter 3, Section 2 (Authorization Levels) should be followed when possible for Emergency Purchase Order requisitions.
5. If a purchase must be made outside normal business hours, or as a result of an actual emergency (poor planning does not constitute an emergency), the department will enter the purchase requisition as soon as possible. The comment section of the requisition should include "Emergency- No Purchase Order" and an explanation/description of why it was not possible to wait for a Purchase order. The department will approve at the appropriate level and the requisition must be forwarded to the Finance Department. If the transaction is deemed an emergency, the requisition proceeds to purchase order generation. If it is deemed to be a non-emergency, the requisition will be forwarded to the City Manager for approval.

## **SECTION 10 – CHANGE ORDER REQUESTS**

1. Change Orders are issued for cost or quantity changes to existing Purchase Orders or contracts.
2. Pursuant to Texas Local Government Code Section 252.048, the total amount may be changed to reflect up to a twenty-five percent (25%) increase or decrease by written or electronic request with appropriate approval, based on the dollar amount of the Change Order.
3. Change Orders can only be issued after performance under the PO or contract has begun.
4. Change Orders should be requested in writing, and once approved and signed, should be filed with the Contract.
5. For change orders to original contracts of \$1,000 or more, but less than \$2,500, City Manager approval is required if the increase will raise the contract to over \$2,500.
6. For change orders to original contracts of \$2,500 or more, but less than \$50,000, the City Manager has the authority to approve an increase or decrease unless an increase will increase the total value of the contract to greater than \$50,000. The Department Director shall attach a memorandum to the quotation explaining the reason for the increase or decrease.
7. The Finance Director or designee will enter the change order request into Incode upon verification of approval and availability of funds.

8. If a change order is for a purchase that was not made through a competitive sealed bid or proposal and it raises the total annual expenditure for the project or vendor to more than \$50,000, the change order will be denied. Therefore, it is recommended that the sealed bidding process be followed for all projects, expenditures, vendors or purchases expected to be in excess of \$40,000.

## **SECTION 11 – CREDIT CARDS**

The Finance Director is designated to be responsible for the City of Seabrook's credit card issuance, accounting, monitoring, retrieval, and for general oversight of compliance with this credit card use policy.

- a) City credit cards may be used only by those authorized and only for the purchase of goods services for the official business of the City.
- b) A Purchase Order should be issued if the amount is to exceed \$100.
- c) All authorized users of City credit cards shall submit a Charge Card Expenditures Form to the Finance Department within five (5) business days along with receipt(s) that includes a description of the goods or services purchased, cost of the goods or services, the date of the purchase and official business for which it was purchased.
- d) If a City credit card is used for travel purposes, all receipts and documentation shall be submitted to the Finance Department on a Travel Expense Form.
- e) Upon termination of an employee who has been issued a City credit card, that employee shall immediately return the credit card to the Finance Department.
- f) An authorized employee, who is issued a credit card, is responsible for its protection and custody, and shall immediately notify the bank card issuer and the Finance Director if the credit card is lost or stolen.
- g) The Finance Department will follow established Accounts Payable internal control procedures for approval, documentation and payment of credit card charges.
- h) The City is exempt from Federal, State, and Local taxes except in certain prescribed cases. An exemption certificate is available from the Finance Department and will be furnished to any of the City's vendors or employees upon request.
- i) Authorized employee is responsible for making sure all purchases are tax exempt, where applicable. If a vendor charges sales tax on a credit card purchase, the employee is responsible for reimbursing the City for the sales tax.
- j) Employees may not use the City's tax exempt status for purchases of personal property. Anyone avoiding payment of sales tax by using this exemption may be liable for prosecution under Texas Penal Code, Chapter 39.
- k) Unauthorized use of a City credit card shall result in disciplinary measures to the fullest extent of the law.

## **ISSUANCE OF CREDIT CARDS**

Credit cards will be issued to employees approved by the Finance Director and City Manager and/or City Council. The cards will be issued to individuals, in the name of the individual; there will be no departmental cards with the exception of the Police Department. Only one card will be issued in an individual's name. Cards are nontransferable.

The Finance Director and City Manager and/or City Council shall set the authorized credit limit of all credit cards issued by the City. Exceptions may be made with City Manager approval.

## **CARD USE**

1. The credit card shall be used for the purchase of goods and services that are for the official business of the City when normal Accounts Payable procedures cannot be utilized.
2. Credit cards should not be used for the following, unless the circumstances are such that a Purchase Order or Check is not a feasible option:
  - a) Purchases with vendors that the City has an existing account established; (this list is not considered all inclusive):
    - i. Home Depot
    - ii. Kroger
    - iii. Sam's Club or Walmart
    - iv. Office Depot
    - v. Amazon
    - vi. Fry's
  - b) Recurring expenses (e.g. storage units, utilities, memberships, software, maintenance fees, etc).
  - c) Restaurants and catered meals, when the total is known in advance
  - d) Conference and Training fees
3. If the credit card is used for travel purposes, all charges must be noted on the Travel Expense Form and submitted to the Finance Department within five (5) business days of return. Supporting documentation must be submitted; this includes the detailed receipt(s) for any meal(s) purchased.
4. Misuse of the card will subject the cardholder to disciplinary action in accordance with city policies and procedures relating to disciplinary action and termination for cause.
5. Any employee issued a City of Seabrook credit card shall sign a Credit Card User Agreement, thereby agreeing to abide by adopted City credit card policies and procedures. The cardholder is responsible for assuring that all credit card charges are accurate and consistent with policy guidelines.
6. Receipts and any supporting documentation must be turned in to the Finance Department within five (5) business days of purchase;
7. Emergency purchases with proper approval, documentation and justification are allowed.
8. If an original receipt is lost, the employee must submit a lost receipt affidavit along with the Charge Card Expenditure Form. If repeat requests are made, the City Manager and/or Finance Director may require the employee to reimburse the City for the expense.

9. The following expense types are not eligible for a lost receipt affidavit:
  - a. Airfare
  - b. Lodging
  - c. Rental Cars

### **CARDHOLDER RESPONSIBILITIES**

- a) Ensure the card is used only for legitimate business purposes;
- b) Maintain the card in a secure location at all times;
- c) Not allow other individuals to use the card unless for city business AND with cardholder's permission;
- d) Adhere to City purchase limits and restrictions;
- e) Obtain all sales slips, register receipts and/or credit card slips and provide same to the Finance Department for reconciliation and approval of transactions;
- f) Employee is responsible for retaining all receipts for credit card purchases, if a receipt is lost or misplaced the employee may be responsible for reimbursing the City for those charges;
- g) Employee may be personally responsible for reimbursement of late fees and/or finance charges if receipts are not furnished to the Finance Department in a timely manner.
- h) Ensure that sales tax is not charged on any purchases, where applicable;
- i) Attempt to resolve disputes related to billing errors with the vendor directly or in conjunction with the Finance Department;
- j) Ensure that the appropriate credit is issued, in a timely manner, for disputed items or billing errors on a subsequent credit card statement.
- k) Immediately report a lost or stolen card to the card issuer and notify the Finance Department of the lost or stolen card at the first opportunity during business hours.
- l) Return the card to the Finance Department upon terminating employment with the City.

### **CARDHOLDER LIABILITY**

The credit card is a corporate charge card that will not affect the cardholder's personal credit; however, it is the cardholder's responsibility to ensure that the card is used within stated guidelines, policies and procedures of the City. Failure to comply with program guidelines may result in the permanent revocation of the card, charge-back of an improper or unsupported transaction to the cardholder for reimbursement to the City, notification of the situation to management, and further disciplinary measures, which may include termination.

### **CARDHOLDER TERMINATION OR CARD CANCELLATION**

1. The City is required to close an account if a cardholder:
  - Terminates City employment; or
  - Moves to a new position in which a credit card is not required.
2. The City reserves the right to cancel a credit card at any time, including any of the following reasons:
  - The card is used for personal or unauthorized purposes;

- The card is used to purchase any material or service that violates policy, law or regulation pertaining to the City;
- The cardholder allows the card to be used by another individual not in direct purpose with City business;
- The cardholder fails to provide the required receipts and supporting documentation;
- The cardholder does not adhere to all of the appropriate Personnel Policies and Procedures.

### **CREDIT CARD USE AUDITS**

The Finance Department will make periodic random audits of card use and charges for appropriateness. Areas to be monitored include, but are not limited to, compliance with this and other related policies and procedures. Excessive and/or non-use by cardholders will also be monitored.

## Chapter 6 - Source Selection and Contract Development

All purchases, contracts and project valued at \$50,000 or great should be entered into pursuant to Local Government Code 252, as outlined in this section. This includes all vendors with annual expenditures of greater than \$50,000. Failure to follow this Policy as outlined in this section, or the appearance of circumventing purchasing policies and laws may result in civil and criminal penalties, including jail time and fines.

### SECTION 1 - COMPETITIVE SEALED BIDS OR PROPOSALS

1. **Conditions for use.** All contracts and expenditures of the City in excess of \$50,000 shall be awarded as provided for in Chapter 252 and Chapter 271 (where applicable) of the Texas Local Government Code. This shall include the provisions for invitations for bids and notice requirements. The amounts mentioned above will change to correspond to limits set by current State law.
2. The City may not avoid competitive bidding or proposals by purposely dividing a single purchase into smaller components so that each component purchase is less than \$50,000. Chapter 252 of the Local Government Code prohibits the use of "separate, sequential, or component purchases" to avoid bidding.
  - Separate purchases are defined as purchases made separately of items that in normal purchasing practices would be purchased in one purchase.
  - Sequential purchases are defined as purchases made over a period of time of items that in normal purchasing practices would be purchased in one purchase.
  - Component purchases means the purchase of parts of an item that in normal purchasing practices would be purchased in one purchase.The law does not specify a wait period between purchases that would cause said purchase to not be defined as separate, sequential or component. Civil and criminal charges are possible for the appearance of violating the sealed bid threshold.
3. If expenditure is more than \$2,500 but less than \$50,000, the City shall contact at least two historically underutilized businesses, located within the same county as the City, on a rotating basis. This information is provided by the State Comptroller (Chapter 2161, Government Code). The municipality is exempt from this bidding requirement if there are underutilized business in the county in which the City is situated.
4. **Bid Specifications.** All sealed bids and proposals require a complete set of detailed specifications of the item(s) or services to be purchased. All bids and proposals shall be drafted by the Finance department, with requirements and specifications provided by the using department, in order to ensure that all purchases are made for the purpose intended, with goods and services that encourage competition and satisfy the City's needs. Requirements and specifications shall not be unduly restrictive or written to favor any particular brand or company. Reference to a specific product, brand or process is discouraged, and must include "or equivalent" in the specifications.

5. **Bid Preparation and Administration.** The Finance Department or approved Consultant or Engineering Firm will prepare all sealed bids and proposals, based on the specifications as outlined above. A project number will be assigned, advertising dates, pre-bid conference date (if needed) and bid opening date will be set. Bids will be administered by the Finance Department, or approved Consultant or Engineering Firm who will be the only point of contact for vendors during the sealed bid process. Using department and Finance are responsible for compliance with state laws related to competitive sealed bids.
  - a. The City as a governmental entity, will not entertain provisions attempting to require indemnification by the City.
6. **Advertising and Advertising Time Requirements.** Texas Local Government Code, Chapter 252.041 requires that all sealed bids and proposals be advertised publicly with time and location of the public bid opening and reading. The public notice must be published in a newspaper published in the City at least once a week for two (2) consecutive weeks. The first publication must occur at least 15 days before the date of the public bid opening. If there is no paper published in the City, then the notice must be posted at City Hall for at least 15 Days and in the City's paper of record. Bids should also be posted on the City website. The City may also post bids online utilizing an electronic bidding service.
  - If a department chooses to place publications with media sources other than the official newspaper, any additional costs incurred are to be borne by the department placing the ad.
7. **Pre-bid Meeting and Bid Opening.** Pre-bid meetings (if needed) and bid openings shall be conducted publicly, in the presence of two member of City Staff, including at least one (1) staff member from the using department, at the time and place designated in the published notice. Pre-bid meeting attendees should be prepared to answer questions on all bid specifications. At bid opening, at least two (2) members of City staff must be in attendance, including at least one (1) from the Finance Department and one (1) from the using department or Office of the City Secretary. At the bid opening the amount of each bid, and other relevant information, together with the name of each bidder shall be stated aloud. If Proposals were requested, only the vendor names on the submitted proposals shall be read aloud. All information read at the bid opening should be recorded and confirmed for truthfulness. Each bid shall be available to the public for inspection in accordance with this policy (Chapter 1, Section 6, Public Access to Procurement Information).
8. **Bid acceptance and evaluation.** Bids shall be unconditionally accepted until the date and time indicated in the advertisement. No changes or alterations will be allowed after bid opening. Bids may be withdrawn after opening but prior to bid award due to errors, if errors will result in significant harm to vendor. Bids shall be evaluated based on the specifications set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs and total or life cycle costs. The invitation for

bids shall set forth the evaluation criteria to be used. According to State of Texas Local Government Code, Chapter 252.043, the contract must generally be awarded to the lowest responsible bidder or the bidder who provides the best value for goods and services. Chapter 252.043 (d) (1), (2) provides the contract must be awarded to the lowest responsible bidder if it is for a construction project i.e. construction of highways, roads, bridges, utilities, incidental structures etc.

Criteria to determine the best value may include:

- Purchase Price
- Reputation and quality of the bidder and of the bidder's goods or service
- The bidder's past relationship with the municipality
- The impact on the ability of the municipality to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organization employing persons with disabilities
- The total long-term cost to the municipality to acquire the bidder's goods or services
- Any relevant criteria specifically listed in the request for bids or proposals

9. **Electronic Bids.** The City may accept bids electronically in accordance with the State of Texas Local Government Code Sec. 252.0415. The State of Texas Local Government Code, Chapter 252.0415 states the following:

- a. A municipality may receive bids or proposals under this chapter through electronic transmission if the governing body of the municipality adopts rules to ensure the identification, security, and confidentiality of electronic bids or proposals and to ensure that the electronic bids or proposals remain effectively unopened until the proper time.
- b. Notwithstanding any other provision of this chapter, an electronic bid or proposal is not required to be sealed. A provision of this chapter that applies to a sealed bid or proposal applies to a bid or proposal received through electronic transmission in accordance with the rules adopted under Subsection (a).

This procedure is to ensure the identification, security and confidentiality of electronic bids or proposals and to ensure that the electronic bids or proposals remain effectively unopened until the proper time.

- Purchasing Coordinator and/or other password-enabled designee, determined by the Director of Finance, will be responsible for decrypting and opening electronic responses after the established closing time and date of bid
- Electronic responses will be read aloud with any hard document (paper) responses received after closing time and date of bid
- Electronic responses will be reflected on the bid tabulation sheet along with any hard document (paper) responses

9-10. **Late bids, late withdrawals and late modifications.** Any bid received after the time and date specified for receipt of bids is late. Any

withdrawal or modification of a bid received after the time and date specified for opening of bids at the place designated for opening is late. No late bid, late modification or late withdrawal will be considered unless received before contract award, **and** the bid, modification, or withdrawal would have been timely, but for the action or inaction of City personnel administering the procurement activity. Bidders submitting late bids that will not be considered for award shall be duly notified as soon as practicable.

~~10.11.~~ **Correction or withdrawal of bids, cancellation of awards.**

Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice received by the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake and the bid price actually intended. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the City or fair competition shall be permitted. In lieu of bid correction, a bidder alleging a material mistake of fact may be permitted to withdraw their bid if:

- a) The mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
- b) The bidder submits evidence that clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by written determination made by the using department.

~~11.12.~~ **Price discrepancies.** In the event the unit price submitted on the bid, multiplied times the estimated quantity, does not match the total price submitted, the unit price shall prevail.

~~12.13.~~ **Consideration of Location of Bidder's principal places of**

**business.** (Texas State Government Code, Section 271.9051) The purchase of any real property, personal property that is not affixed to real property, or services where the City receives one or more competitive sealed bids from a bidder whose principal place of business is in the municipality and whose bid is within five (5) percent of the lowest bid price received by the municipality from a bidder who is not a resident of the municipality, the municipality may enter into a contract for an expenditure of less than \$100,000 with:

- a) the lowest bidder or
- b) the bidder whose principal place of business is in the municipality if the governing body of the municipality determines, in writing, that the local bidder offers the municipality the best combination of contract price and additional economic development opportunities for the municipality created by the contract award, including the employment of residents of the municipality and increased tax revenue.
- c) This does not prohibit the City from rejecting all bids and does not apply to the purchase of telecommunications services or information services.

## **SECTION 2 – EXEMPTIONS FROM COMPETITIVE BIDDING**

The following procurements are exempt from the bidding process.

1. Personal, professional, or planning services (See section 7)
2. Work that is performed and paid for by the day as the work progresses,
3. Purchase of land or right-of-way
4. Purchase of items that are available from only one source, including:
  - a) Items available from one source due to patents, copyrights, secret processes or natural monopolies
  - b) Films, manuscripts, or books
  - c) Gas, water, and other utility services
  - d) Captive replacement parts or components for equipment
  - e) Books, papers, and other library materials for a public library that are available only from the person holding exclusive distribution
5. Purchase or rare books, papers and other library materials
6. Paving, drainage, street widening, and other public improvements if at least one-third of the cost is to be paid by or through special assessments
7. Personal property sold at an auction by a state licensed auctioneer, at a going out of business sale, by a political subdivision of the state, a state agency or an entity of the federal government
8. Services performed by blind or severely disabled persons
9. Electricity
10. Advertising other than legal notices

## **SECTION 3 - COMPETITIVE SEALED PROPOSALS (Request for Proposal)**

1. Competitive sealed proposals shall be utilized as provided for in Chapter 252.021 of the Local Government Code.
2. The City may use the Competitive Sealed Proposals procedure for the purchase of goods and services, including high technology items and insurance.
3. Competitive sealed proposals use performance standards as specifications for product or service. Specifications must list judgment criteria and weight for each standard.
4. At the public opening, competitive sealed proposals will be opened in a manner that avoids disclosure of their contents to competing vendors. Contents will then remain secret throughout the negotiation process.
5. Late proposals, late withdrawals and late modifications shall have the same provisions as stated above under Competitive Sealed Bids.
6. Using department may enter negotiations with as many qualified vendors as have submitted reasonable proposals to achieve the best value for the City.

## **SECTION 4 - CONTRACTING FOR DESIGNATED PROFESSIONAL SERVICES**

Pursuant to Texas Government code 2254, the selection of a provider or providers for professional services and award of contract for them will not be on

the basis of competitive bids submitted for the contract or services. The selection and award will be based on demonstrated competence or qualification and a fair and reasonable price. Professional Services include:

- Accounting
- Architecture
- Landscape Architecture
- Land Surveying
- Medicine
- Optometry
- Professional Engineering
- Real Estate Appraising
- Professional Nursing

## **SECTION 5 - SPECIFICATIONS**

All specifications for the purchase of goods or services shall be drafted by the Finance Department, or an approved consulting or engineering firm, with requirements provided by the using department, in order to ensure that all purchases are made for the purpose intended, with goods and services that encourage competition and satisfy the City's needs. Requirements and specifications shall not be unduly restrictive or written to favor any particular brand or company. Reference to a specific product, brand or process is discouraged, and must include "or equivalent" in the specifications.

## **SECTION 6 - BRAND NAME SPECIFICATION**

1. **Use.** Since use of a brand name specification is restrictive of fair product competition, it may be used when only the identified brand name item or items will satisfy the City's needs.
2. **Competition.** The using department shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under this chapter, Section 7 (Sole Source Procurement).

## **SECTION 7 - BRAND NAME OR EQUAL SPECIFICATION**

1. **Use.** Brand names or equal specifications may be used when:
  - a) No other design or performance specification or qualified products list is available;
  - b) Time does not permit the preparation of another form of purchase description, not including a brand name or equal specification;
  - c) The nature of the product or the nature of the City's requirements makes use of a brand name or equal specification suitable for the procurement;

- d) Or use of a brand name or equal specification is in the City's best interests.
2. **Designation of Several Brand Names.** Brand name or equal specifications shall seek to designate three, or as many brands as are practicable, as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.
3. **Required Characteristics.** Unless the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, performance characteristics which are required.
4. **Nonrestrictive Use of Brand Name or Equal Specifications.** Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition.

## **SECTION 8 - SOLE SOURCE PROCUREMENT**

1. Texas Local Government Code, Section 252.022, allows an exemption from the sealed bidding procedures for items or services which are protected by patents, copyrights, secret processes and natural monopolies.
2. A contract may be awarded without competition when the using department determines in writing, after conducting a good faith review of available sources, that there is only one source for the required supply, service or equipment item.
3. The using department and finance shall conduct negotiations as to price, delivery and terms, and a contract or agreement will be approved and signed by both parties. Any sole source expenditure exceeding \$50,000 shall be approved by City Council prior to contract award. In case of emergency purchase, please refer to Chapter 4, Section 9.

## **SECTION 9 - CANCELLATION OF INVITATIONS FOR BIDS OR REQUESTS FOR PROPOSALS**

An invitation for bids, a request for proposals or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is for good cause and in the best interest of the City. City Council must approve the rejection of all bids.

Bids not awarded within the time parameters stated in the bid or proposal invitation shall be considered void unless written approval of an extension of the bid is obtained by the City.

## Chapter 7 - Qualifications and Duties

### SECTION 1 - RESPONSIBILITY OF BIDDERS AND OFFERORS

1. **Determination of Non-responsibility.** If a bidder or offeror who otherwise would have been awarded a contract is found non-responsive, the using department or Finance Department shall prepare a written determination of Non-responsibility, setting forth the basis of the finding. The unreasonable failure of a bidder or offeror to supply information promptly in connection with an inquiry with respect to responsibility may be grounds for a determination of Non-responsibility with respect to such bidder or offeror. A copy of the determination shall be sent to the non-responsible bidder or offeror, as soon as practicable. The final determination shall be made part of the contract file and be made a public record.

In the event that a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, the City may offer a contract to the bidder or offeror whose bid or proposal is second low bidder or second best offer, if it is in the best interest of the City. If the second low bidder or second best offeror is found non-responsible, the City shall continue this process with the third low bid or third best offer until such time as all bids or offers have been evaluated or until the City elects to re-bid.

2. **Right of Nondisclosure.** Under Chapter 252.049 of the Local Government Code, proposals will be opened in a manner that keeps the contents of each proposal secret from the offerors of competing proposals, if the request for proposals provides for such confidentiality. The contents of each proposal may then be kept confidential throughout the negotiation process. However, once the contract has been awarded, all proposals are open for public inspection. As with competitive sealed bids, any trade secrets or other information that is confidential under state law remains confidential even after the proposal becomes open for public inspection.

In addition to the confidentiality provisions of Local Government Code Chapter 252.049, the Texas Public Information Act provides that the information contained in a proposal may be withheld from public disclosure if releasing that information would give advantage to a competitor. That is, if the City's interest would be harmed by releasing information in a proposal during the negotiation process, the City may withhold that information under section 552.104 of the Texas Government Code. This provision for confidentiality of information in a proposal applies even when the request for proposals has not specifically provided for confidentiality of the proposals. Again, **however**, once negotiations are complete and the contract has been awarded, the information in all proposals generally becomes an open record.

## **SECTION 2 – BONDING REQUIREMENTS ON SUPPLY OR SERVICE CONTRACTS**

**Surety** bonds may be requested for supply, service and public works contracts, to protect the City's interest. Any such bonding requirements shall be set forth in the bid or proposal solicitation. Bid, payment or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility. If payment and performance bonds are not required, the bid bond will be retained by the City to ensure compliance for the term of the Contract.

If payment and/or performance bonds are required, they must be submitted after the contract is approved by Council, but prior to the Contractor beginning work.

The bid bond ensures that the vendor who has been awarded a contract will enter into an agreement to complete the project or provide the services stipulated in the specifications.

The payment bond is for the protection of subcontractors or vendors supplying materials or labor for the contract.

The performance bond is to ensure the faithful performance of the contract as required by the plans and specifications and contract documents.

Bonding requirements will be set forth in the bid documents. Minimum bonding requirements are as follows:

1. Bid Bonds- The minimum bid bond limit is 5% of the total bid or proposal amount. If there is a price range, the bid bond should be based on the highest possible total.
2. Payment Bonds- For a contract exceeding \$50,000, a payment bond shall be executed in the amount of the contract. If there is a price range, the payment bond should be based on the highest possible total.
3. Performance Bond- For a contract greater than \$100,000, a performance bond shall be executed in 100% of the contract total. If there is a price range, the performance bond should be based on the highest possible total.

The City may at its discretion require a bond even if it does not meet the thresholds required by State Statute.

## Chapter 8 - Types of Contracts and Contract Administration

All Contracts with values of less than \$50,000 must be signed by the City Manager or their designee. All contracts with values \$50,000 or greater must be approved by City Council, and signed by the Mayor or their designee.

### SECTION 1 - TYPES OF CONTRACTS

1. **General Authority.** Subject to the limitations of this section, any type of contract which is appropriate to the procurement and which will promote the best interests of the City may be used. However, the use of cost-plus percentage contract is prohibited, unless a not-to-exceed clause is included. A cost-plus percentage contract may be used only when the using department determines, and documents in writing, that such contract is likely to be less costly to the City than any other type or that it is impracticable to obtain the supply, service or construction item required, except under such a contract.
2. **Multi-term Contracts.**
  - a) Specified Period. Unless otherwise provided by law, a contract for goods or services may be entered into for any period of time deemed to be in the best interest of the City, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are budgeted and available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the budget availability and appropriation of funds therefore.
  - b) Determination Prior to Use. Prior to the utilization of a multi-term contract, it shall be determined:
    - That estimated requirements cover the period of the contract and are reasonably firm and continuing; and
    - That such a contract will serve the best interests of the City by encouraging effective competition or otherwise promoting economies in City procurement.
3. **Multiple Source Contracting.** (Contingency)
  - a) General. A multiple source award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror. The obligation to order the City's actual requirements is limited by the provision of Uniform Commercial Code Section 2-306(1) Limitations on Use. A multiple source award may be made when awarded to two or more bidders or offerors for similar product is necessary for adequate delivery, service or product compatibility. Any multiple source award shall be made in accordance with the provisions of Chapter 5, Section 4 (Competitive Sealed Bidding), Chapter 5, Section 6 (Competitive Sealed Proposals), Chapter 4, Section 2 (Petty Cash for Small Purchases) and Chapter 4, Section 9 (Emergency Purchases), as applicable. Multiple source awards shall not be made when a single award will meet the City's needs without sacrifice of economy or service.
  - b) Awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference

unrelated to utility or economy or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements. The City shall make every effort to purchase all items from the primary vendor and shall only order from the secondary vendor when necessary.

- c) Contract and Solicitation Provisions. The City shall name eligible users of the contract in the solicitation, when practicable. If, during the term of the contract, another department determines a need for those items contained in the contract, that department may use the same contract. It shall be mandatory that the actual requirements of such users that can be met under the contract be obtained in accordance with the contract, provided:
  - The City shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds its normal requirement or an amount specified in the contract; and
  - The City shall reserve the right to take bids separately if it is found that the supply or service available under the contract will not meet a nonrecurring special need of the City.
- d) Intent to Use. If a multiple source award is anticipated prior to issuing a solicitation, the City shall reserve the right to make such an award and the criteria for award shall be stated in the solicitation.
- e) Determination Required. The Director of the using department, or their designated representative, shall make a written determination setting forth the reasons for a multiple source award, which shall be made a part of the procurement file.

## **SECTION 2 - CONTRACT CLAUSES AND THEIR ADMINISTRATION**

1. Contract Clauses. All City contracts for goods or services shall include provisions necessary to define the responsibilities and the rights of the parties to the contract. The City may issue clauses appropriate for such contracts, addressing among other, the following subjects:
  - a) The unilateral right of the City to order, in writing, changes in the work within the scope of the contract;
  - b) The unilateral right of the City to order, in writing, temporary stopping of the work or delaying performance that does not alter the scope of the contract;
  - c) Variations occurring between estimated quantities of work in contract and actual quantities;
  - d) Defective pricing;
  - e) Liquidated damages;
  - f) Specified excuses for delay or nonperformance;
  - g) Termination of the contract for default; and
  - h) Termination of the contract in whole or in part for the convenience of the City.

- i) City objections to any contractual provisions or representations attempting to require City indemnification of contractors, vendors or 3<sup>rd</sup> parties.
2. Price Adjustments.
    - a) Adjustments in price resulting from the use of contract required by Subsection 1 of this Section shall be computed in one or more of the following ways:
      - By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
      - By unit prices specified in the contract or subsequently agreed upon;
      - By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
      - In such other manner as the contracting parties may mutually agree;
      - In the absence of agreement by the parties, by a unilateral determination by the City of the costs attributable to the events or situations under such clauses with adjustment for profit or fee as computed by the City, as accounted for in accordance with reference to cost principles and subject to the provisions of Chapter 9 (Appeals and Remedies).
  3. Standard Clauses and Their Modification. The City may establish standard contract clauses for use in City contracts. If the City establishes any standard clauses addressing the subjects set forth in Subsection 1 of this Section, such clauses may be varied provided that any variations are supported by a written determination that states the circumstances justifying such variations, and provided that notice of any such material variation be stated in the invitation for bids or request of proposals.
  4. Tax Statement Set Forth in City Construction Contracts. The following statement should be set forth in all construction contracts:

“The City qualifies for exemption from State and Local Sales and Use Taxes, pursuant to the provisions of Section 151.309 of the Texas Tax Code, as amended. Therefore, the City shall not be liable for, or pay the Contractor’s cost of, such sales and use taxes which would otherwise be payable in connection with the purchase of tangible personal property furnishes and incorporated into the real property being improved under the contract. This contract is a separated contract (as that term is defined in Texas Comptroller’s Rule 3.291, as amended) between the City and Contractor. All invoices or estimates submitted by the Contractor to the City shall be separated into three categories:

    - i. Total cost of materials incorporated into the work
    - ii. Total cost of materials purchased or leased for use, but not incorporated into the work.
    - iii. Total cost of labor, overhead, profit and other reasonable, incidental costs of the work

The contractor shall fully indemnify, defend, and hold harmless the City from the cost of any and all sales and use taxes incurred or otherwise exempted as a result of the separated contract arrangements, if such sales and use taxes become due and payable, or are paid by the Contractor or the City, as a result of the Contractor's failure or refusal to abide by the provisions of this section or the other applicable provisions of the specifications relating to separated contracts."

5. Prohibition on Contracts with Companies Boycotting Israel. Pursuant to Section 2270 of the Texas Government Code, as of September 1, 2017, a governmental entity may not enter into a contract for goods or services unless the contract contains a written verification from the company that it does not boycott Israel and will not boycott Israel during the term of the contract. Pursuant to House Bill 793, this applies to contracts valued at \$100,000.00 or more with companies that have ten (10) or more employees. This does not apply to Sole Proprietorships. A completed House Bill 89 Verification Form (included in bid packet or Vendor Packet) will be required prior entering into a contract with any vendor. Companies that boycott Israel are identified on a list prepared and maintained by the Texas State Comptroller. In addition to signing the House Bill 89 Verification Form, Finance Personnel will check for the vendor on the Comptroller maintained list prior to entering into a contract, entering a vendor into Incode, or issuing a purchase order.
6. Prohibition on Contracts with Certain Companies. Pursuant to Section 2252.151 of the Texas Government Code, as of September 1, 2017, a governmental entity may not enter into a contract with companies that engage in business with Iran, Sudan, or known foreign terrorist organizations. These companies will be identified on a list prepared and maintained by the Texas State Comptroller. Finance Personnel will check for the vendor on the Comptroller maintained list prior to entering into a contract, entering a vendor into Incode or issuing a purchase order.
7. Venue for Construction Contracts. Pursuant to Business and Commerce Code, Chapter 272, as of September 1, 2017 venue and choice of law will be restricted to Texas in the case of conflict resolution and/or litigation.
8. Procurement of Iron and Steel for Construction Contracts. Pursuant to Texas Government Code 2252, as of September 1, 2017, any construction, remodeling, or altering of a building, a structure, or infrastructure, including a road or highway, when state funds are used, must source iron or steel products from the United States, unless the product is not produced in sufficient quantities in the US or if the use of products made in the US will increase the total cost of the project by more than 20%

### **SECTION 3 - CONTRACT ADMINISTRATION**

Using department is responsible for Contract Administration. If a Contract does not have a specific using department or will be used by multiple departments, the Finance Department, City Secretary or their designee will be responsible for Contract Administration. A contract administration procedure designed to insure that a contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract, shall be maintained by the using department. The contract administration procedure should include at minimum:

- Review invoices for correct goods or services and pricing, including no sales tax.
- Timeliness of delivery of goods or services being performed.
- Process for reporting issues to the vendor.
- Process for assessing liquidated damages when allowed by contract and where appropriate.

### **SECTION 4 - REPORTING OF ANTICOMPETITIVE PRACTICES**

When, for any reason, collusion or other anticompetitive practices are suspected among any bidder or offeror, a notice of the relevant facts shall be transmitted to the State Attorney General and the Harris or Galveston County District Attorney's Office.

### **SECTION 5 - CITY PROCUREMENT RECORDS**

1. Contract File. All determinations and other written records pertaining to the solicitation, award or performance of a contract shall be maintained by the City in a contract file. **ALL** contract files shall be kept in the Office of the City Secretary, or a location designated by the City Secretary.
2. Retention of Procurement Records. All procurement records shall be retained and disposed of by the City in accordance with records retention guidelines and schedules approved by the City Council.
3. Financial Records of unsuccessful vendors that are gathered during the bid process will be destroyed upon award of contract. Financial records of the successful bidder will be destroyed upon completion of the contract.
4. Any requests for records pertaining to purchasing, including but not limited to contracts, bid responses, and quotes will be treated as open record requests and sent to the City Secretary for review and response.
5. Pursuant to Local Government Code 252.049, Trade Secrets and Confidential information in competitive sealed bids are not open for public inspection. Additionally, all contents of sealed proposals shall be kept confidential during the negotiation process and shall not become public record until after City Council award of contract. The City Secretary shall be notified of any request for such information for disposition.

## **SECTION 6 - CONTRACT CHANGES**

If changes in plans or specifications are necessary after the performance of the contract has begun or if it is necessary to decrease or increase the quantity of work to be performed, or of materials, equipment or supplies to be furnished, the City Council or City Manager may approve change orders making the adjustments (See Chapter 252.048 of the Local Government Code).

All changes to contracts must be made in writing, agreed to by both parties and signed by the City Manager or Mayor and Contractor representative prior to taking effect.

1. The total contract price may not be increased or decreased by more than 25% of the original total.
2. The total contract price may not be increased because of the changes unless additional money for the increased costs is appropriated for that purpose.
3. City Manager or his/her designee can approve change orders valued at less than \$50,000. All change orders over \$50,000 must be approved by Council.
4. If changes in plans or specifications are necessary after a contractor has begun the performance of the contract or if is necessary to decrease or increase the quantity of the work to be performed or of materials, equipment or supplies to be furnished, the City Council must approve change orders that exceed the City Manager's authority.

## **Chapter 9 - Debarment or Suspension by City**

### **SECTION 1 - AUTHORITY TO DEBAR OR SUSPEND**

After reasonable notice to the person or firm involved and reasonable opportunity for that person or firm to be heard, the City Manager is authorized to debar a person or firm for cause from consideration for award of contracts. The debarment shall be for a period of not more than three years. The City is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity that might lead to debarment. The suspension shall be for a period not to exceed three months. The causes for debarment include:

1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a City contractor;
3. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
4. Violation of contract provisions, as set forth below, of a character which is regarded by the City to be so serious as to justify debarment action:
  - a) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
  - b) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
5. Any other cause the City determines to be as serious and compelling as to affect responsibility as a City contractor, including debarment by another government entity for any cause listed in this policy.

### **SECTION 2 - DECISION TO DEBAR OR SUSPEND**

A copy of the decision required by Section 1 shall be mailed or otherwise furnished immediately to the debarred or suspended person or firm.

### **SECTION 3 - FINALITY OF DECISION**

A decision under Section 1 shall be final and conclusive, unless fraudulent, or the debarred or suspended person within 10 days after receipt of the decision takes an appeal to the Finance Director. If, after review, the Finance Director affirms the debarment, the suspended person may appeal to the City Manager whose decision shall be final.