

PROCUREMENT REGULATION

APPENDIX G



Purchasing Division
Finance Department
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Finance Department

PROCUREMENT REGULATIONS

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PROCUREMENT REGULATIONS

(Revised 11/1/11)

1.1 City procurement regulations

These regulations issued by the city manager, establish policies, procedures and guidelines relating to the procurement, management, control, and disposal of supplies, services, information technology and construction, as applicable, under the authority of the city procurement code [section 1-3040 et seq].

1.2 Department heads may develop specifications and receive bids

The city manager may designate in writing the authority to certain department heads to develop their own specifications and handle bidding procedures as outlined in these regulations. The term "procurement officer" as used in these regulations shall mean the purchasing agent or any person duly authorized to handle a procurement.

1.3 Competitive sealed bidding

(a) *The invitation for bids.* The invitation for bids by newspaper, mail, or e-mail invitation to selective suppliers shall be used to initiate a competitive sealed bid procurement and shall include the following:

(1) instructions and information to bidders concerning the bid submission requirements, including the time and date set for submission of bids, the individual to whom the bid is to be submitted, the web address to which bids are to be submitted, the maximum time for bid acceptance by the city, and any other special information;

(2) the purchase description, evaluation factors, delivery or performance schedule, and such inspection and acceptance requirements as are not included in the purchase description;

(3) the contract terms and conditions, including warranty and bonding or other security requirements, as applicable; and

(4) instructions to bidders to visibly mark as "confidential" each part of their bid which they consider to be proprietary information. Bidding time will be set to provide bidders a reasonable time to prepare their bids. A minimum of seven

(7) days shall be allowed unless a shorter time for a particular procurement is specified in the instructions.

(b) Bond and security.

(1) *Bid security.*

a. Requirement for bid security. Bid security shall be required for all competitive sealed bidding for construction contracts and such other contracts as may be prescribed by the city manager. Bid security shall be a bond provided by a surety company meeting the approval of the city attorney.

b. Amount of bid security. Bid security shall be in an amount equal to at least five percent (5%) of the amount of the bid.

c. Rejection of bids for noncompliance with bid security requirements. When the invitation for bids requires security, noncompliance requires that the bid be rejected.

d. Withdrawal of bids. After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids. If a bidder is permitted to withdraw its bid before bid opening, no action shall be had against the bidder or the bid security.

(2) *Contract performance and payment bonds.*

a. When required - amounts. When a construction contract is awarded, the following bonds or security shall be delivered to the procurement officer and shall become binding on the parties upon the execution of the contract:

1. a performance bond satisfactory to the city attorney, executed by a surety company, or otherwise secured in a manner satisfactory to the city manager, in an amount equal to 100 percent of the price specified in the contract;

2. a payment bond satisfactory to the city attorney, executed by a surety company, or otherwise secured in a manner satisfactory to the city manager, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100 percent of the contract price.

b. Additional bonds. Nothing in subsection (2) of this section shall be construed to limit the requirement of other appropriate bonds or other security in addition to these bonds.

(3) *Retention.*

a. Minimum amount to be withheld. In any contract or subcontract of reconstruction which contract or subcontract provides for progress payment in installments based upon an estimated percentage of completion, with a percentage of the contractor's proceeds to be retained by the city or general contractor pending completion of the contract or subcontract, the retained amount of each progress payment or installment shall be no less than five percent (5%).

b. Release of retained refunds. When the work to be performed on a construction project or pursuant to a construction contract is to be performed by multiple prime contractors or by a prime contractor and multiple subcontractors, the work contracted to be done by each individual contractor or subcontractor will be considered a separate division of the contract for the purpose of retention. As each such division of the contract is certified as having been completed, that portion of the retained funds which is allocable to the completed division of the contract may be released to the prime contractor, who shall, within 10 days of its receipt, released to the subcontractor responsible for the completed work the full amount of any retention previously withheld from him by the prime contractor.

1.4 Receipt and safeguarding of bids

Procedures prior to bid opening. All bids (including modifications) received prior to the time of opening shall be kept secure and unopened. If an invitation for bids is cancelled, bids shall be returned to the bidders or deleted from the City's system. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.

1.5 Bid opening

(a) *Procedures.* The procurement officer of the governmental body or his designee shall decide when the time set for bid opening has arrived, and shall so declare to those present. He shall then personally and publicly open all bids received prior to that time and when practicable, read them aloud to those persons present and have the bids recorded. The amount of each bid and such other relevant information, together with the name of each bidder, shall be tabulated. the tabulation shall be open to public inspection.

(b) Postponement of bid opening. An amendment postponing bid openings may be issued by the procurement officer as follows:

(1) causes beyond control of bidders (e.g., flood, fire, accident, weather conditions); or

(2) when emergency or unanticipated= events interrupt normal governmental operations.

(c) *Disclosure of bid information.* Only the information disclosed by the procurement officer or his designee at bid opening is considered to be public information under the Freedom of Information Act, chapter 3 of title 30, Code of Laws of South Carolina, 1976, until the award is made.

1.6 Bid acceptance and bid evaluation

When necessary for the best interest of the city, bid criteria to determine acceptability may include 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 measurable costs to include, but not be limited to, discounts, transportation costs, total or life cycle costs. All sole source requests shall be forwarded first to the City Purchasing Division for review and recommendation to the city manager. (Amended, by AR-90-3, 11/15/90)

1.7 Telegraphic bids

As a general rule, telegraphic bids will not be authorized. When, in the judgment of the procurement officer, the date for the opening of bids will not allow bidders sufficient time to prepare and submit bids on the prescribed forms or when prices are subject to frequent changes, telegraphic bids may be authorized.

1.8 Rejection of bids

(a) *Application.* Unless there is a compelling reason to reject one or more bids, award will be made to the lowest responsible and responsive bidder. Every effort shall be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective bidders of any resulting modification or cancellation, thereby permitting bidders to change their bids and preventing the unnecessary exposure of bid process.

(b) Cancellation of bids prior to award. When it is determined prior to an award, but after opening, that the requirements relating to the availability and identification of specifications have not been met, the invitation for bids shall be canceled. Invitations for bids may be canceled after opening, but prior to award, when the procurement officer determines in writing that:

- (1) inadequate or ambiguous specifications were cited in the invitation;
 - (2) specifications have been revised;
 - (3) the supplies or services being procured are no longer required;
 - (4) the invitation did not provide for consideration of all factors of cost to the city, such as cost of transporting city furnished property to bidders' plants;
 - (5) bids received indicate that the needs of the city can be satisfied by a less expensive article differing from that on which the bids were invited;
 - (6) all otherwise acceptable bids received are at unreasonable prices;
 - (7) the bids were not independently arrived at in open competition. were collusive, or were submitted in bad faith; or
 - (8) for other reasons, cancellation is clearly in the best interest of the city.
- Determinations to cancel invitations for bids shall state the reasons therefor.

(c) Extension of bid acceptance period. Should administrative difficulties be encountered after bid opening which may delay award beyond bidders' acceptance periods, the several lowest bidders should be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties, if any) in order to avoid the need for readvertisement.

1.9 Rejection of individual bids

(a) *General application.* Any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected.

(b) *Alternate bids.* Any bid which does not conform to the specifications contained or referenced in the invitation for bids may be rejected unless the

invitation authorized the submission of alternate bids and the supplies offered as alternates meet the requirements specified in the invitation.

(c) *Nonresponsive bids.* Any bid which fails to conform to the delivery schedule, or permissible alternates thereto stated in the invitation for bids may be rejected as nonresponsive.

(d) *Modification of requirements by bidder.* Ordinarily a bid should be rejected when the bidder attempts to impose conditions which would modify requirements of the invitation for bids or limit his liability to the city, since to allow the bidder to impose such conditions would be prejudicial to other bidders. For example, bids should be rejected in which the bidder:

(1) attempts to protect himself against future changes in conditions, such as increased costs, if total possible cost to the city cannot be determined.

(2) fails to state a price and in lieu thereof states that price shall be "price in effect at time of delivery;"

(3) states a price but qualified such price as being subject to ' price in effect at same time of delivery;"

(4) when not authorized by the invitation, conditions or qualifies his bid by stipulating that his bid is to be considered only if, prior to date of award, bidder received (or does not receive) award under a separate procurement;

(5) requires the city to determine that the bidder's product meets city specifications; or

(6) limits the rights of the city under any contract clause. The lowest responsive and responsible bidder may be requested to delete objectionable conditions from his bid provided that these conditions do not go to the substance, as distinguished from the form, of the bid or work an injustice on other bidders.

(e) *Price unreasonableness.* Any bid may be rejected if the procurement officer determines in writing that it is unreasonable as to price.

(f) *Bid guarantee requirement.* When a bid guarantee is required and a bidder fails to furnish it in accordance with the requirements of the invitation for bids, the bid shall be rejected.

(g) *Unsigned bids.* Unsigned bids shall be rejected unless a representative of the company who has the authority to sign is present at the bid opening and if discovery is made prior to the reading of any bids for the procurement, the representative may be allowed to sign the bid.

(h) *Late bids.* Any bid received after the procurement officer or his designee has declared that the time set for bid opening has arrived, shall be rejected.

1.10 All or none qualifications

Unless the invitation for bids so provides, a bid is not rendered nonresponsive by the fact that the bidder specifies that award will be accepted only on all, or a specified group, of the items included in the invitation for bids. However, bidders shall not be permitted to withdraw or modify "all or none" qualifications after bid opening since such qualification is substantive and affects the rights of the other bidders.

1.11 Minor informalities and irregularities in bids

A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids, having no effect or merely a trivial or negligible effect on price, quality,

quantity, or delivery of the supplies or performance of the services being procured, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to bidders. The procurement officer shall either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency where it is to the advantage of the city. Such communication or determination shall be in writing. Examples of minor informalities or irregularities include, but are not limited to:

(1) failure of bidder to return the number of copies of signed bids required by, the invitation;

(2) failure to furnish the required information concerning the number of the bidder's employees or failure to make a representation concerning his size status;

(3) failure of a bidder to sign his bid, but only if:

a. the firm submitting the bid has formally adopted or authorized the execution of documents by typewritten, printed, or rubber stamped signature and submits evidence of such authorization and the bid carries such a signature; or

b. the unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid document such as the submissions of a bid guarantee with bid, or a letter signed by the bidder with the bid referring to and clearly identifying the bid itself.

(4) failure of a bidder to acknowledge receipt of an amendment to an invitation for bids, but only if:

a. the bid received clearly indicates that the bidder received the amendment, such as where the amendment added another item to the invitation for bids and the bidder submitted a bid thereon;

b. the amendment clearly would have no effect or merely a trivial or negligible effect on price, quality, quantity, delivery, or the relative standing of bidders, such as an amendment correcting a typographical mistake in the name of the name of the governmental body;

c. there is a failure to furnish an affidavit concerning affiliates, if required; or

d. there is a failure to execute the certifications with respect to Equal Opportunity and Affirmative Action Programs.

1.12 Correction or withdrawal of bids; cancellation of awards

(a) *General procedure.* A bidder or offeror must submit in writing a request to either correct or withdraw a bid to the procurement officer. Each written request must document the fact that the bidder's or offeror's mistake is clearly an error that will cause him substantial loss.

(b) *Correction creates low bid.* To maintain the integrity of the competitive sealed bidding system, a bidder shall not be permitted to correct a bid mistake after bid opening that would cause such bidder to have the low bid unless the mistake in the judgment of the procurement officer is clearly evident from examining the bid document; for example, extension of unit prices or errors in addition.

1.13 Award

(a) Application. The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the

invitation for bids.

(b) Time of award. The contract award shall be made within 30 days from the bid opening unless the procurement officer shall determine that a longer review time is necessary. Notice of a time extension shall be given to each bidder by the procurement officer.

(c) Local Business Enterprise Preference

(1) Scope and Exclusions: This Local Business Enterprise (“LBE”) preference program shall apply to any procurement valued at \$10,000 or less and any City contract procured by competitive sealed bidding or by requests for proposals wherein the underlying contract value is estimated by the City to be in excess of \$10,000, and which is not procured pursuant to State or federal guidelines that prohibit or restrict local preferences of this kind.

(2) Definitions: The following definitions shall apply to the terms of this Local Business Enterprise Preference Policy:

a. Columbia-Newberry Combined Statistical Area (“CSA”) – The Columbia-Newberry Combined Statistical Area (“CSA”) is presently defined as seven counties in central South Carolina including Richland County, Lexington County, Kershaw County, Fairfield County, Saluda County, Calhoun County, and Newberry County. A CSA is a designation that the U.S. government uses to refer to a region that, broadly speaking, consists of a city and its suburbs, plus any surrounding communities that are closely linked to the city because of social and / or economical factors. The CSA represents multiple metropolitan or micropolitan statistical areas that have a moderate degree of employment interchange. Definition of the CSA is the responsibility of the Office of Management and Budget (OMB), and as such, this definition may be modified from time to time. (OMB Directive 09-01; Executive Order No. 10253 (June 11, 1951)).

b. Control - the authority of a person or business owner to sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the business, and have the primary authority to direct the day-to-day management and operation of a business enterprise without interference from others.

c. Independently Owned and Operated – ownership of an LBE firm must be direct, independent, and by individuals and/or other businesses, provided the ownership interests that Control the LBE firm can satisfy the LBE eligibility requirements for ownership and Control as specified herein in Sections (c) (2) b and c. The LBE firm must satisfy the eligibility requirements for LBE Certification as established by the Office of Business Opportunity.

d. Local Business Enterprise (“LBE”) – a Local Business Enterprise is a business firm that is in good standing with the State of South Carolina and with the City of Columbia regarding its payment of taxes and required business licenses, and that is currently certified by the Office of Business Opportunity (“OBO”) as being Independently Owned and Operated within the Columbia-Newberry Combined Statistical Area (“CSA”) and as having maintained a Significant Business Presence within the CSA for at least one year prior to being certified by the OBO. The OBO shall establish documentation requirements and certification eligibility standards for LBE firms that are consistent with

the terms of this policy. The OBO shall also review the status of certified LBE firms for purposes of renewal of LBE certification status at least once every four years.

e. Significant Business Presence – to qualify for this Local Business Enterprise Preference, an LBE must be operated out of a physical office located in the CSA, and have a significant business presence for at least one year within the CSA, defined as: an established place of business in one or more of the seven counties that make up the Columbia-Newberry Combined Statistical Area (CSA), from which no less than 50% of its full-time, part-time and contract employees are regularly domiciled, and from which a substantial role in the performance of the City contract is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a Significant Business Presence.

(3) Price Preference: For the purpose of determining the lowest responsible and responsive bidder on any qualifying contract valued above \$10,000, the City shall evaluate any bid submitted by an LBE by discounting its bid by up to 5% of its actual bid amount (up to a maximum dollar value not to exceed \$500,000). If the aforementioned calculation results in the LBE bidder being ranked as the lowest responsible and responsive bidder, then the LBE bidder shall be offered the opportunity to accept the contract award at the same dollar amount bid by the lowest non-Local Business Enterprise bidder.

(4) Evaluation Preference: For the purpose of ranking proposals submitted in competition for a qualifying contract valued above \$10,000 under a best value method of contracting wherein factors other than price are taken into consideration, the City shall evaluate any proposal submitted by an LBE by increasing its score by 5 percentage points of the total number of points allocated for evaluation purposes. If the aforementioned Evaluation Preference results in the LBE offeror's proposal being ranked as the highest scoring proposal among all proposals submitted, then the contract shall be awarded to the LBE offeror.

(5) Program Administration: Each City contracting department shall be responsible for application of this Local Business Enterprise Preference policy to appropriate contracts, for including appropriate language regarding application of the LBE Preference in bid solicitations and Requests for Proposals, and for awarding contracts in a manner that is consistent with this policy. The Office of Business Opportunity shall be responsible for establishing certification applications, procedures, and standards for the certification of LBE firms. The OBO shall also be responsible for reviewing all documentation submitted by applicants for LBE certification and re-certification and then making determinations regarding the certification and de-certification of firms as Local Business Enterprises. The OBO shall maintain an accurate and up-to-date directory of certified LBE firms and share it with the City contracting departments, and indicate such status in a firm's registration within the City's centralized bidder registration system. Only firms that have been certified as LBE firms by the OBO as of the time of bid opening or proposal opening shall be eligible for application of the Price Preference and Evaluation Preference provisions of this policy.

1.14 Competitive sealed proposals

(a) *Receipt and safeguarding of proposals.* The provisions of regulation 1.4 shall apply for the receipt and safeguarding of proposals.

(b) *Receipt of proposals.* Proposals shall be opened publicly by the procurement officer or his designee in the presence of one or more witnesses at the time and place designated in the request for proposals. A tabulation of those offering a proposal shall be made public record. Contents of competing offers shall not be disclosed during the process of negotiation. All offerors must visibly mark as "confidential" each part of their proposal which they consider to be proprietary information.

(c) *Evaluation of proposals.* The provisions of regulation 1.6 shall apply to bid evaluation.

(d) *Other applicable provisions.* The provisions of the following regulations shall apply to competitive sealed proposals:

- (1) regulation 1.7, telegraphic bids;
- (2) regulation 1.8, rejection of bids;
- (3) regulation 1.9, rejection of individual bids;
- (4) regulation 1. 10, all or none qualifications;
- (5) regulation 1.11, minor informalities and irregularities in bids; and
- (6) regulation 1.12, correction or withdrawal of bids; cancellation of awards.

1.15 Small procurements and other simplified purchasing Procedures

(a) *Authority.* Procurement requirements shall not be artificially divided by departments so as to constitute a small purchase under this subsection. Related items (such as small hardware items or spare parts for vehicles) may be included in one solicitation, and the award made on "all or none" basis. In such cases, suppliers shall be advised of this award procedure when quotations are requested.

(b) *Competition and price reasonableness.*

(1) Procurement not in excess of \$5,000. Small procurements not exceeding \$5,000 may be accomplished upon approval of the city manager, at his discretion, may direct department heads to reject or approve bids and purchase agreements and award contracts in accordance with regulations up to \$5,000 without securing competitive quotations if the prices are considered to be reasonable. The procurement officer or designee shall annotate the requisition: "Price is fair and reasonable" and sign. Such procurements shall be distributed equitably among qualified suppliers. When practical, a quotation will be solicited from other than the previous supplier prior to placing a repeat order. The administrative cost of verifying the reasonableness of the price of procurements "not in excess of" may more than offset potential savings in detecting instances of overpricing; therefore, action to verify the reasonableness of the price need be taken only when the procurement officer suspects that the price may not be reasonable, e.g., comparison to previous price paid, personal knowledge of the item involved.

(2) Procurements from \$5,000.01 to \$25,000. Solicitations of verbal or written quotes from a minimum of two (2) qualified sources of supply shall be made and documented, that the procurement is to the advantage of the city, price and other factors considered, including the administrative cost of the purchase. Such documentation shall be attached to the purchase requisition and the

procurement must be approved by the city manager, at his discretion, may direct the senior assistant city manager or assistant city managers to reject or approve bids and purchase agreements and award contracts in accordance with regulations up to \$25,000.

(3) Procurements from \$25,000.01 to \$49,999. Solicitation of written quotations from three (3) qualified sources of supply shall be made and documented, that the procurement is to the advantage of the city, price and other factors considered, including the administrative cost of the purchase. Such documentation shall be attached to the requisition. When prices are solicited by telephone, the vendors shall be requested to furnish written evidence of their quotation. The procurement must be approved by the city manager.

(c) *Establishment of blanket purchase agreements.*

(1) General. A blanket purchase agreement (BPA) is a simplified method of filling anticipated repetitive needs for small quantities of supplies or services by establishing "charge accounts" with qualified sources of supply. Blanket purchase agreements are designed to reduce administrative costs in accomplishing small purchases by eliminating the need for issuing individual purchase documents.

(2) Alternate sources. "To the extent practicable, blanket purchase agreements for items of the same type should be placed concurrently with more than one supplier and all competitive sources given an equal opportunity to furnish supplies or services under such agreements.

(3) Terms and conditions. Blanket purchase agreements shall contain the following provisions:

a. Description of agreement - a statement that the supplier shall furnish supplies or services, described therein in general terms, if and when requested by the purchasing agent or his authorized representative, during a specified period and within a stipulated aggregate amount, if any. Blanket agreements may encompass all items that the supplier is in a position to furnish.

b. Extent of obligation - a statement that the city is obligated only to the extent of authorized calls actually placed against the blanket purchase agreement.

c. Notice of individuals authorized to place calls and dollar limitations a provision that a list of names of individuals authorized to place calls under the agreement, identified by organizational component, and the dollar limitation per call for each individual shall be furnished to the supplier by the purchasing agent.

d. Delivery tickets - a requirement that all shipments under the agreement, except subscriptions and other charges for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information:

1. name of supplier;
2. blanket purchase agreement number;
3. date of call;
4. call number;
5. itemized list of suppliers or services furnished;
6. quantity, unit price, and extension of each item less applicable discounts (unit price and extensions need not be shown when incompatible with the use of automated systems, provided that the invoice is itemized to show this information); and
7. date of delivery or shipment.

e. Invoices - one of the following statements:

1. A summary invoice shall be submitted at least monthly or upon expiration of the blanket purchase agreement, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipted copies of the delivery tickets; or

2. An itemized invoice shall be submitted at least monthly or upon expiration of the blanket purchase agreement, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. Such invoices need not be supported by copies of delivery tickets.

3. When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated provided that a consolidated payment will be made for each specified period; and the period of any discounts will commence on final date of billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later. This procedure shall not be used if the accumulation of the individual invoices materially increases the administrative costs of this purchase method.

4. An invoice for subscriptions or other charges for newspapers, magazines, or other periodicals shall show the starting and ending dates and shall state either that orders have been placed in effect or will be placed in effect upon receipt of payment.

(d) *Competition under blanket purchase agreement.* Calls against blanket purchase agreements shall be placed after prices are obtained. When concurrent agreements for similar items are in effect, calls shall be equitably distributed. In those instances where there is an insufficient number of BPAs for any given class of suppliers or services to assure adequate competition, the individual placing the order shall solicit quotations from other sources.

(e) *Calls against blanket purchase agreement.* Calls against blanket purchase agreements generally will be made orally, except that informal correspondence may be used when ordering against agreements outside the local trade area.

(f) *Receipt and acceptance of supplies or services.* Acceptance of supplies or services shall be indicated by signature and date on the appropriate form by the authorized city representative after verification and notation of any exceptions. A sales slip or delivery ticket may be used for receipt and acceptance when purchases are retained for administration. (g) *Blanket purchase agreements.* Blanket purchase agreements shall be issued for a period of no longer than 12 months.

1.16 Sole source procurements

(a) *Application.* The provisions of this regulation shall apply to all sole source procurements unless emergency conditions exist as defined in regulation 1.17.

(b) *Exceptions.* Sole source procurement is not permissible unless there is only a single supplier. The following are examples of circumstances which could necessitate sole source procurement:

(1) where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;

(2) where a sole supplier's item is needed for trial use or testing;

(3) where a sole supplier's item is to be procured for resale;

(4) where public utility services are to be procured;

(5) where the item is one of a kind; and

(6) printed forms, pamphlets, and brochures, exclusive of printing equipment.

The determination as to whether the procurement shall be made as a sole source shall be made by the procurement officer, or designee. Such determination and the basis therefore shall be in writing. In cases of reasonable doubt, competition should be solicited. Any request by a department that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

1.17 Emergency procurements

(a) *Application.* The provisions of this regulation apply to every procurement made under emergency conditions that will not permit other source selection methods to be used.

(b) *Definition.* An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, fire loss, or such other reason as may be proclaimed by the city manager. The existence of such conditions must create an immediate and serious need for supplies, services, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten:

- (1) the functioning of city government;
- (2) the preservation or protection of property; or
- (3) the health or safety of any person.

(c) *Limitations.* Emergency procurement shall be limited to those supplies, services, or construction items necessary to meet the emergency.

(d) *Conditions.* Emergency procurements may be made when an emergency condition arises and the need cannot be met through normal procurement methods.

(e) *Selection of method of procurement.* The procedure used shall be selected to assure that the required supplies, services, or construction items are procured in time to meet the emergency, given this constraint, such competition as is practicable shall be obtained.

(f) *General procedures.* Competitive sealed bidding is unsuccessful when bids received pursuant to an invitation for bids are unreasonable, noncompetitive, or the low bid exceeds available funds as certified by the appropriate fiscal officer, and time or other circumstances will not permit the delay required to re-solicit competitive sealed bids. If emergency conditions exist after an unsuccessful attempt to use competitive sealed bidding, an emergency procurement may be made.

(g) *Written determination.* The procurement officer, department head or a designee shall make a written determination stating the basis for an emergency procurement and for the selection of the particular contractor.

1.18 Responsibility of bidders and offerors

(a) *Standards of responsibility.* Factors to be considered in determining whether standards of responsibility have been met include whether a prospective contractor has:

- (1) available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;

(2) a satisfactory record of performance;
(3) a satisfactory record of integrity;
(4) qualified legally to contract with the city; and
(5) supplied all necessary information in connection with the inquiry concerning responsibility.

(b) *Duty of contractor to supply information.* The prospective contractor shall supply information requested by the procurement officer concerning the responsibility of such contractor. If such contractor fails to supply the requested information, the procurement officer shall base the determination of responsibility upon any available information or may find the prospective contractor non-responsible if such failure is unreasonable.

(c) *Demonstration of responsibility.* The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

(1) evidence that such contractor possesses such necessary items;
(2) acceptable plans to subcontract for such necessary items; or
(3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

(d) *Written determination of nonresponsibility.* If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the procurement officer. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination shall be made part of the procurement file upon approval of the city manager.

1.19 Prequalification of supplies

A qualified products list may be developed with the testing or examination of the supplies or construction items prior to issuance of the solicitation to best satisfy city requirements. The procedures for the inclusion of a product on the qualified products list ("QPL") must be available to prospective vendors for consideration of their product to the list.

1.20 Specifications

(a) *Definitions.*

(1) "Brand name specification" means a specification limited to one (1) or more items by manufacturers' names or catalogue number.

(2) "Brand name or equal specification" means a specification which uses one or more manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet state requirements, and which provides for the submission of equivalent products.

(3) "Qualified products list" means an approved list of supplies, services, or construction items described by model or catalogue number, which, prior to competitive solicitation, the city has determined will meet the applicable specification requirements.

(4) "Specification" means any description of the physical, functional, or performance characteristics, or of the nature of a supply, service or construction item. A specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service or construction item for delivery. Unless the context requires otherwise, the terms "specification" and "purchase description" are used interchangeably throughout the regulations.

(5) "Specification for a common or general use item" means a specification which has been developed and approved for repeated use in procurements.

(b) *Issuance of specifications.* The purpose of a specification is to serve as a basis for obtaining a supply, service, or construction item adequate and suitable for the city needs in a cost effective manner, taking into account, to the extent practicable, the cost of ownership and operation as well as initial acquisition costs. It is the policy of the city that specifications permit maximum practicable competition consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the city's requirements. All specifications shall be written in a non-restrictive manner as to describe the requirements to be met.

(c) *Use of functional or performance descriptions.* Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the city. To facilitate the use of such criteria, using departments shall endeavor to include as a part of their purchase requisitions the principal functional or performance needs to be met. It is recognized, however, that the preference for use of functional or performance specifications is primarily applicable to the procurement of supplies and services. Such preference is often not practicable in construction, apart from the procurement of supply type items for a construction project.

(d) Preference for commercially available products. It is the general policy of this city to procure standard commercial products whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided, to the extent practicable.

1.21 Supply management

(a) *Authority.* The sale of all city owned surplus supplies and property not in actual public use shall be conducted by the purchasing division at such places and in such manner most advantageous to the city as may be approved by the city manager. The purchasing division shall deposit the proceeds from such sales, in the city's general fund unless a department requests in writing the need to retain such proceeds, for the purchase of a like kind item.

(b) *Disposition of surplus property and scrap.* Surplus property and scrap shall be offered through competitive sealed bids or public auction. It is recognized, however, that some types and classes of items can be sold or disposed of more readily and advantageously by other means, including barter. In such cases, and also where the nature of the supply or unusual circumstances call for its sale to be restricted or controlled, the purchasing agent or his designee may employ such other means, including, but not limited to, appraisal, provided he makes a written determination that such procedure is advantageous to the city. Only cashiers' checks, United States' currency or personal checks shall be accepted for sales of surplus suppliers or property.

(c) *Competitive sealed bidding.*

(1) Solicitation and opening. When making sales by competitive sealed bidding, notice of the sale should be given by at least 15 days before the date set for opening bids. Notice shall be given by mailing a notice of sale to prospective bidders, including those bidders on lists maintained for this purpose, and by making the notice of sale publicly available. Newspaper advertisement or publication in the official city publication may also be used. The notice of sale shall list the property offered for sale; designate the location and how it may be inspected; and state the terms and conditions of sale and instructions to bidders including the place, date, and time set for bid opening. Bids shall be opened

publicly.

(2) Award. Award shall be made in accordance with the provisions of the notice of sale to the highest responsive and responsible bidder, provided that the price offered by such bidder is acceptable to the purchasing agent. Where such price is not acceptable, the purchasing agent may reject the bids in whole or in part and negotiate the sale provided the negotiated sale price is higher than the highest responsive and responsible bid.

(d) *Auctions*. Property may be sold at auction by an experienced auctioneer to cry the sale and assist in preparation of the sale. The solicitation to bidders should stipulate, at a minimum, all the terms and conditions of any sale and the fact that the city retains the right to reject any and all bids.

(e) *Trade-in sales*. The purchasing agent may trade-in personal property, the trade-in value of which may be applied to the purchase of new like items.

1.22 Protested solicitations and awards

(a) *Right to protest*. Any actual or prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation or award of a contract may protest to the appropriate procurement officer. The protest, setting forth the grievance, shall be submitted in writing within five (5) days after such aggrieved persons know or should have known of the facts giving rise thereto, but in no circumstance after 10 days of notification of award of contract.

(b) *Authority to resolve protests*: The appropriate procurement officer shall have authority, prior to the commencement of an administrative review, as provided in this article, to settle and resolve a protest of an aggrieved bidder, offeror, contractor or subcontractor, actual or prospective, concerning the solicitation or award of a contract. This authority shall be utilized in a manner consistent with regulations or laws governing the procurement of supplies, services and construction for the city.

(c) *Decision*. If the protest is not resolved by mutual agreement, the appropriate procurement officer shall promptly issue a decision in writing within 10 days. The decision shall state the reasons for the action taken.

(d) *Notice of decision*. A copy of the decision under subsection (c) of this section shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.

(e) *Finality of decision*. A decision under subsection (c) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a review in writing, setting forth the grievance, to the city manager within 10 days of the decision. The protestant may also request an interview with the city manager.

(f) *Request for review*. The request for a review shall not stay the contract unless fraudulent.

1.23 Debarment or suspension

(a) *Applicability*. This section applies to a debarment for cause from consideration for award of contracts or a suspension from such consideration during an investigation where there is probable cause for such debarment.

(b) *Authority*. After reasonable notice of debarment to the person or firm involved, and a reasonable opportunity for such person or firm to be heard, the appropriate procurement officer shall have the authority to debar a person for cause from consideration for award of contracts, provided that doing so is in the best interest of the

city. The debarment shall be for a period as set forth by the appropriate procurement officer. The same officer shall have authority to suspend a person from consideration for award of contracts, provided that doing so is in the best interest of the city, and there is probable cause for debarment. The suspension shall be for a period as prescribed by the appropriate procurement officer.

(c) Causes for debarment or suspension. The causes for debarment or suspension shall include, but not be limited to, the following:

(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 professional honesty which currently, seriously and directly affects responsibility as a city contractor,

(3) conviction under state or federal antitrust laws 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 appropriate procurement officer 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;

(5) any other cause the appropriate procurement officer determines to be so serious and compelling as to affect responsibility as a city contractor, including debarment by another governmental entity for any cause listed herein.

(d) *Decision*. The appropriate procurement officer shall issue a written decision to debar or suspend within 10 days. The decision shall state the specific reasons for the action taken.

(e) *Notice of decision*. A copy of the decision under subsection (d) of this section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

(f) *Finality of decision*. A decision under subsection (d) of this section shall be final and conclusive, unless the debarred or suspended person requests a review, in writing, setting forth the reasons, to the city manager within 10 days of the decision. The person may also request an interview with the city manager. The written decision of the city manager may be appealed to city council within 10 days in writing.

1.24 Recycled materials

The City of Columbia supports the concept of using recycled materials whenever possible. Recycled materials will be used whenever economically feasible and within the guidelines of the procurement code. (AR-90-2, 6/1/90)