

**RESOLUTION NO. R2016 –20**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOUTH JORDAN, UTAH, ADOPTING CITY-WIDE POLICY 210-01 PURCHASING.**

**WHEREAS**, Utah Code Annotated §63G-6a-103(50), permits a city council to adopt purchasing policies different than the State Procurement Code if approved by ordinance; and

**WHEREAS**, the South Jordan City Council has adopted an ordinance, codified in the South Jordan Municipal Code §3.04.010, which requires that all City procurement rules and regulations be adopted by the City Council; and

**WHEREAS**, The City Council has adopted procurement rules and regulations by resolution in the form of a Purchasing Policy, the last revision of which was adopted in 2008; and

**WHEREAS**, the proposed policy updates, expands, and clarifies the City’s purchasing policy, adopts best practices, and allows the City to take advantage of changes to State law; and

**WHEREAS**, the South Jordan City Council finds it in the best interest of the City to adopt the proposed City Wide Policy 210-01 Purchasing.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SOUTH JORDAN, UTAH:**

**SECTION 1. Adoption of City-wide Policy 210-01.** City of South Jordan City-wide Policy 210-01 Purchasing, attached, is hereby adopted.

**SECTION 2. Effective Date.** This Resolution shall become effective immediately upon passage.

[Signatures on Following Page]

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SOUTH JORDAN, UTAH, ON THIS 17 DAY OF May, 2016 BY THE FOLLOWING VOTE:

	YES	NO	ABSTAIN	ABSENT
Patrick Harris	<u>  </u>	<u>  </u>	<u>  </u>	<u>  X  </u>
Bradley Marlor	<u>  X  </u>	<u>  </u>	<u>  </u>	<u>  </u>
Donald Shelton	<u>  X  </u>	<u>  </u>	<u>  </u>	<u>  </u>
Tamara Zander	<u>  X  </u>	<u>  </u>	<u>  </u>	<u>  </u>
Christopher Rogers	<u>  X  </u>	<u>  </u>	<u>  </u>	<u>  </u>

Mayor:   
David L. Alvord

Attest:   
City Recorder

Approved as to form:  
  
Office of the City Attorney



**City of South Jordan**  
**City-wide Policy 210-01**  
**Purchasing**

**POLICY STATEMENT**

The purpose of this document is to establish operational policies for the City's purchasing process which assures the community that goods and services required to support the operation of City government are procured in a manner consistent with provisions of the City's Code and State Code. In addition, the City is committed to fair and equal opportunity with integrity and openness that results in the best value for the City. The statements contained in this policy represent the basic intentions and goals of the City. Nothing in this statement shall create rights or interests in third parties or impose obligations upon or create causes of action against the City, its officers, agents, or employees. Failure to follow the procedures set forth herein may be remedied by a City Council determination, as defined by this policy, unless otherwise provided by law.

**RESPONSIBILITY**

The responsibility of compliance with this policy rests with employees who perform purchasing functions, Department Directors, the Finance Department, and the Office of the City Manager.

**DEFINITIONS**

1. Addendum or Amendment - any written modification or revision to any bid document or contract document.
2. Bid - unless otherwise specified, represents all forms of solicitation including, but not limited to, Request for Proposal (RFP), Request for Bid (RFB), Request for Qualifications (RFQ), and formal quotes.
3. Competitive Sealed Bidding - a process in which vendors are invited to submit formal sealed bids to provide a designated product or to complete a designated project in accordance with specifications provided by the City.
4. Contract - all types of City agreements, regardless of what they may be called, for the purchase or disposal of real or personal property and/or service.
5. Cooperative Procurements - the combining of requirements for two or more purchasing units outside the City, in order to obtain the benefits of volume purchases and/or reduction in administrative efforts and costs.
6. Formal Quotes - a solicitation process where signed quotes are obtained from potential vendors.
7. Immaterial Error - an irregularity or abnormality that is a matter of form that does not affect substance, or an inconsequential variation from a requirement of a solicitation that has no, little, or trivial effect on the procurement process and that is not prejudicial to other vendors.
8. Insufficient Response: where one (1) or less response is received to any Request for Bid (RFB), Request for Qualification (RFQ), or Request for Proposal (RFP).
9. Purchasing Tools - the City's preferred method(s) of advertising and hosting solicitations. These tools shall be selected and approved by the City Manager or designee.

10. Professional Services - means labor, effort, or work that requires an elevated degree of specialized knowledge and discretion, including labor, effort, or work in the field of:
  - a. Accounting;
  - b. Architecture;
  - c. Construction design and management;
  - d. Engineering;
  - e. Financial services;
  - f. Information technology;
  - g. Artistic endeavors;
  - h. Law;
  - i. Medicine;
  - j. Psychiatry; or
  - k. Underwriting.
11. Project Manager (PM) - the City individual who is in charge of managing a specific purchasing process. This person is the main point of contact for the purchase and is the individual ultimately responsible for oversight and execution of the purchase.
12. Purchasing - the process of buying, procuring, renting, leasing, or otherwise acquiring any commodity, service(s), or construction. The term "procurement" shall be interchangeable with the term "purchasing" for the purpose of this policy. It also includes all functions that pertain to the obtaining of any commodity, including:
  - a. Description of requirements;
  - b. Selection and solicitation of bids, proposals, qualifications, or formal quotes;
  - c. Preparation and award of contract; and
  - d. All phases of contract administration.
13. Purchasing Agent - an authorized agent of the City that oversees the City's purchasing functions.
14. Purchasing Committee - a committee appointed to perform the duties enumerated in the Policies and Procedures section of this policy.
15. Related Party - any party, whether an individual, corporation, partnership, association, limited liability company, or any other form of business association or other entity whatsoever related to any vendor by blood, marriage, ownership, or contract within the first degree of consanguinity, through which the party has a relationship of ownership, or other interest with the vendor, so that the party will actually or by effect receive or control a portion of the benefit, profit, or other consideration from performance of a vendor contract.
16. Request for Bid (RFB) - a solicitation process where bids are solicited from potential vendors. The term "Invitation for Bid" shall be interchangeable with the term "Request for Bid" for the purpose of this policy.
17. Request for Information (RFI) - a solicitation process where written information, comments, or suggestions is requested from potential vendors. A RFI is not a bid process resulting in a purchase or contract.
18. Request for Proposal (RFP) - a solicitation process where proposals are solicited from potential vendors.

19. Request for Qualifications (RFQ) - a two-step solicitation process where qualifications are solicited from potential vendors.
20. Responsible Bidder or Vendor - a vendor who has the capability in all respects to fully perform the agreement requirements and is determined to have the experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.
21. Responsive Bidder - a vendor who has submitted a bid which conforms in all material respects, including exceptions, to the requirements set forth in the RFB, RFP, RFQ or formal quote.
22. Separation of Cost Method - process of evaluating RFP's where cost is evaluated separately from the rest of the criteria established in the RFP.
23. Sole Source Procurement - a situation where a service, product, or requirement is available only from a single vendor. Examples of circumstances which may necessitate sole source purchase include:
  - a. The City needs a supply or service of a unique or specialized nature, and only one known vendor is available to meet the need.
  - b. Specific parts, accessories, equipment, materials, services, proprietary commodities, or other commodities are necessary to meet the City's needs and there are no comparable commodities available.
24. Specification - any description of the physical or functional characteristics or nature of a commodity. It may include a description of any requirement for inspecting, testing, or preparing a commodity for delivery.
25. Standing - means to have suffered an injury or harm or to be about to suffer imminent injury or harm, if:
  - a. The cause of injury or harm is:
    - i. An infringement of the protestor's own right and not the right of another person who is not a party to the purchase;
    - ii. Reasonably connected to the purchasing unit's conduct; and
    - iii. The sole reason the protestor is not considered, or is no longer considered, for an award of a contract for the purchase that is the subject of the protest;
  - b. The protestor has the legal authority to file the protest on behalf of the actual or prospective bidder or offeror or prospective contractor involved in the procurement that is the subject of the protest
26. Vendor - any person or entity who does business with the City or is seeking to enter into a contract with the City, other than as an employee or volunteer, whether by purchasing, selling, constructing, providing services, or commodities. This includes a bidder, offeror, or approved vendor. The term "Vendor" shall be interchangeable with the terms, "Provider", "Contractor", "Consultant," etc. for the purpose of this policy.

## **POLICY AND PROCEDURES**

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#### **1. *Purchasing Committee***

- a. The purpose of the Purchasing Committee is to provide guidance and oversight over the purchasing policy and processes. The Purchasing Committee will have specific authority in the following instances:

- i. Review and recommend any proposed changes to the current policy to the City Manager. These recommendations will be required to be approved by the City Council before taking effect.
- ii. Review and issue determinations for appeals regarding the purchasing policy and interpretation by the Purchasing Agent. All disputes or clarifications need to be originated by the Purchasing Agent; Departments may appeal the decision by sending written documentation to the Purchasing Agent describing the specific dispute or clarification sought and any support. The written documentation will be forwarded to the Purchasing Committee along with an explanation from the Purchasing Agent.
  - a) All external protests and appeals must follow the policies and procedures stated in Section 6 of this policy.
- iii. Authorize the City's use of any cooperative purchases based outside the State of Utah.
- iv. Certify sole source and special opportunity purchases.
- v. Approve contracts exceeding five (5) years in any sequence of renewal options.
- vi. Perform other specific duties or authority elsewhere described in this policy.

- b. The Purchasing Committee shall be comprised of an odd number of members with a minimum of three (3) members. Membership shall be comprised of one member from the following Departments:
    - i. One (1) member from the Office of the City Attorney, appointed by the City Attorney.
    - ii. One (1) member from the Office of the City Manager, appointed by the City Manager.
    - iii. One (1) member from the Finance Department, appointed by the Chief Financial Officer/Budget Officer.
    - iv. Additional members may be added on a permanent or as needed basis, appointed by the City Manager.
  - c. The Purchasing Committee will be a standing committee that will meet as necessary. The committee will establish its own rules and processes at its discretion for performing the duties established in this policy.
2. *Request for Information (RFI)* - this solicitation method can be used to obtain information, comments, or suggestions from potential bidders or vendors before issuing a Request for Bid (RFB) or Request for Proposal (RFP). An RFI can be useful in order to prepare to issue an RFB or RFP for an unfamiliar or complex purchase or in other instances as identified in this section. Each RFI will be released by the Purchasing Agent through the City's preferred purchasing tool for any specified period of time determined reasonable to gather the requested information.
- a. An RFI is NOT a purchasing process and may not be used to:
    - i. Solicit cost, pricing, or rate information;
    - ii. Negotiate fees;
    - iii. Make a purchase; or
    - iv. Enter into a contract.
  - b. A response to an RFI is not an offer and may not be accepted to form a binding contract.
  - c. An RFI may seek a wide range of information including, but not limited to:

- i. Availability of a purchasing commodity;
  - ii. Delivery schedules;
  - iii. Industry standards and practices;
  - iv. Product specifications;
  - v. Training;
  - vi. New technologies;
  - vii. Capabilities of potential vendors of a purchasing commodity; and
  - viii. Alternate solutions.
- d. The City may use the information obtained through the RFI process in other bid processes required by this policy. The information may not be used as an alternative to following this policy.

**3. *General Bid Guidelines***

- a. This policy establishes the following monetary limits and method of competitive purchasing. Except as otherwise allowed by this policy, the City shall follow the following bid limits:
- i. Purchases not exceeding \$5,000.00 may be made with the Department Director or designee's approval, with or without competitive sealed bids or quotes. However, it is recommended that Departments take reasonable steps to assure fair pricing.
  - ii. Purchases of or exceeding \$5,000 but not exceeding \$25,000 shall be made only after:
    - a) Soliciting at least three (3) formal quotes, or
    - b) Completing the competitive sealed bidding process.
  - iii. All purchases of or exceeding \$25,000.00 shall be made only after completing the competitive sealed bidding process.

- iv. Recurring purchases that exceed \$25,000.00 in a twelve (12) month fiscal period shall be made only after completing the competitive sealed bidding process.
  - v. Subdividing contracts, purchases, or professional services for the purpose of evading the requirements for formal quotes or competitive sealed bidding is prohibited.
- b. Formal Quote
- i. Any purchase under \$25,000.00 may be made utilizing this formal quote process. Requests for formal quotes will be sent to a minimum of three (3) vendors requesting the vendor send a written quote with pricing by the timeframe identified in the solicitation. This quote shall be signed by an authorized individual who has the authority to bind the company to pricing submitted or be approved by the Purchasing Agent. Formal quotes must comply with the following policies and procedures:
    - a) A minimum of three (3) quotes are required or the purchase must go through the competitive sealed bidding process, unless otherwise allowed for elsewhere in this policy.
    - b) A public notice for formal quotes is not required.
    - c) All formal quotes will be solicited by the Purchasing Agent or through another process agreed upon by the Purchasing Agent and Department Director.
    - d) Selection and awarding will be based on the vendor with the lowest cost and is responsive to requirements in the formal quote documents without material exception, and who is responsible and capable of providing the commodities or services to be purchased.
    - e) All formal quote documentation must be submitted to the Purchasing Agent prior to awarding the quote.

c. Bidding Methods

i. Competitive Sealed Bidding and Proposals - any purchase may go through the competitive bidding method, but purchases of \$25,000.00 or more are required to go through the competitive sealed bidding/proposal process. Contracts or agreements made for purchases of goods or services or other commodities exceeding \$25,000.00 shall only be made after fair and open competition, specifications prepared and submitted to potential vendors using the City's preferred purchasing tool, and receipt of bids/proposals. All purchases must comply with the following policies and procedures:

- a) The bid period shall be no less than five (5) business days, unless otherwise required by State law. Bid periods should take into account the overall size and complexity of the project, the project schedule, and the current bidding climate;
- b) Bids shall be made based on the bid/proposal documents and specifications;
- c) Bids shall be received in a sealed manner, and not opened until the time established in the formal solicitation. This may be done electronically if the City's preferred purchasing tool allows.

d. Request for Bid (RFB) or Invitation for Bid (IFB) - used when price is the primary factor for awarding a contract. Each RFB or IFB shall be commenced by the Purchasing Agent or designee, and must include specifications and all contractual terms and conditions applicable to the purchase.

i. Specifications - seek to promote the overall economy and best use for the purposes intended, encourage competition, and shall not be unduly restrictive.

ii. Evaluation of bids - limited to cost, determination of compliance with the specifications and conditions specified in the bid documents, and the responsibility of the potential vendor.

- a) Negotiations are not permitted.
- b) This method does not permit comparison of the relative specifications of competing potential vendors, but only comparison to the specifications contained in the bid documents, unless explicitly stated in the RFB.

- iii. Awards - shall be made to the potential vendor offering the lowest cost who is responsive to the requirements of the bid documents, without material exception, and who is responsible and capable of providing the commodity(s) to be purchased.
- e. Request For Proposal (RFP) - this method can be used whenever detailed specifications cannot be determined, whenever several possible methods may satisfy the City's requirements, or whenever the nature of the requirements is such that subjective evaluation of criteria other than cost is necessary, or when the Purchasing Agent and Department Director determine it is in the best interest of the City.
  - i. Specifications - this method can be utilized when definite specifications cannot be determined in advance, when a scope of work is required which makes comparison of competing proposals relative to each other appropriate, or when it is in the interest of the City to have a vendor design a public improvement. Specifications shall seek to promote the overall economy and best use for the purposes intended, encourage competition, and shall not be unduly restrictive.
  - ii. Evaluation Process - all RFP awards shall be made by a selection committee comprised of no less than three (3) members. Subjective criteria may be used in the evaluation of competing proposals. Within the RFP it shall state the relative importance of price and other evaluation factors, including the quantitative basis for evaluation. No criteria may be used in an RFP evaluation that was not set forth in the RFP.
  - iii. Negotiation and discussions with competing vendors is permitted with responsible vendors who submit proposals determined to have a reasonable chance of being selected to clarify and assure full understanding of, and conformance to, the solicitation requirements. Vendors shall be accorded fair and equal treatment to discuss and revise proposals in writing and such written revisions may be permitted by the selection committee after submission, but prior to award, to obtain best and final offers. Proposals may be revised or modified at the request of the City.
    - a) No information taken from proposals received shall be disclosed to any competing vendor.
  - iv. Award - shall be made to the potential vendor who is most responsive to the criteria established in the RFP documents. A recommendation memo must be sent to the Purchasing Agent and placed in the purchasing file.

- v. Separation of Cost Requirement - any Request for Proposal where the contract or purchase is reasonably expected to cost \$25,000.00 or more is required to evaluate cost separately. Cost is to be evaluated separately by an independent person (separate) from the Selection Committee or after the Committee has evaluated all other criteria.
  - a) The City will evaluate cost by using a cost formula determined by the Purchasing Agent and Department Director or designee. The weight assigned to cost must be clearly specified in the RFP.
  - b) Each member of the Selection Committee and the Purchasing Agent should take all reasonable steps to restrict any information relating to cost, or the scoring of the cost of a proposal until after the Selection Committee submits its final recommended scores and all other criteria to the Purchasing Agent.
  
- f. Pre-Qualification/Request for Qualification (RFQ) - when deemed appropriate by the City, potential vendors may be pre-qualified for particular types of supplies, services, and construction. In such cases, the City will follow the following guidelines:
  - i. Bidding Process -
    - a) An RFQ shall be submitted through the City's preferred purchasing tool and shall include all factors stated below and any other relevant factors related to the particular types of supplies, services, and construction deemed necessary.
    - b) RFQ's shall include the following:
      - i) Timeframe of the pre-qualification, specific expiration date of the pre-qualification, and any options for renewal;
      - ii) Specific requirements or qualifications that a potential vendor must possess to be considered qualified;
      - iii) Selection process;
      - iv) Any limitation to the number of potential vendors the City may pre-qualify; and
      - v) Information regarding the second step of the selection process.

- c) The RFQ shall be open for no less than five (5) business days.
- ii. Selection Process -
  - a) The RFQ must describe the selection process for awarding the bid or proposal to the pre-qualified vendors for the particular supplies, services, and/or construction.
  - b) Selection and award will be made by a selection committee of no less than three (3) individuals. The selection process will be based on a vendor's responsiveness to the qualifications set forth in the RFQ. No qualification or criteria may be used in the evaluation process that is not identified in the RFQ. A recommendation memo and all supporting documentation must be sent to the Purchasing Agent and placed in the purchasing file.
  - c) Before making a final list of prequalified vendors, the selection committee may request additional information to clarify responses.
  - d) Negotiation or discussions with potential vendors is not permitted during the RFQ process.
- iii. Second Step -
  - a) All RFQs will be followed by an RFP or RFB released to prequalified vendors through the City's preferred purchasing tool unless otherwise stated below.
  - b) If explicitly stated in the RFQ, agreed upon by the Department Director, and upon recommendation from the Purchasing Agent, the City may decide to establish a fair and equitable system that divides up work equally among qualified vendors if in the best interest of the City. Examples include but are not limited to:
    - i) Formal quotes; or
    - ii) A rotation system that is organized alphabetically, numerically, randomly, or as otherwise designed and designated in the RFQ.

- iv. All RFQs submitted do not constitute an exclusive agreement that would prevent the City from submitting an RFP or RFB to any and all potential vendors if in the City's best interest.
  - v. Except as noted above, all other bid guidelines and processes set forth in this policy apply to the prequalification process.
- g. Additional Bid Guidelines
- i. The following additional bidding guidelines apply to all RFBs, RFPs, and RFQs released by the City:
    - a) Receipt of Bids - bids and proposals shall not be accepted or received after the time set in the bid documents.
    - b) Withdrawal of Bids - bids or proposals may be revised, modified, or withdrawn by the potential vendor at any time prior to opening. Any such revision, modification, or withdrawal shall be in writing and given to the Purchasing Agent or follow the process allowed by the City's preferred purchasing tool. After the bids are opened, they shall be irrevocable for the period specified in the bid documents. Correction or withdrawal of erroneous bids after opening, or cancellation of awards or contracts based on such bid mistakes, shall not be permitted except as authorized elsewhere in this policy or as stated in the bid documents.
    - c) Relief Due to Computation Error - any potential vendor who seeks to withdraw or modify a bid because of computational error shall notify the Purchasing Agent no later than three (3) business days following the bid closing. The potential vendor shall provide worksheets and other information as appropriate or required by the City to substantiate the claim of inadvertent error. Failure to do so may bar such relief. The decision(s) to permit corrections or withdrawals of bids after the bid has been opened will be made by the Department Director, upon consultation with the Purchasing Agent.
    - d) Tie Bids - in the event two or more bids are equal in evaluation criteria or price, submitted by responsive and responsible vendors, the Department Director, after approval from the Purchasing Committee, may negotiate with the bidders and obtain the best bid possible.

- e) Immaterial Errors - the Department Director, in consultation with the Purchasing Agent, may allow a vendor to correct an immaterial error in response to a solicitation process but may not allow a vendor to do any of the following after the bid has closed:
  - i) Correct any deficiency, inaccuracy, or mistake in a solicitation response that is not an immaterial error;
  - ii) Correct incomplete submission of documents required in the solicitation;
  - iii) Correct a failure to submit a timely solicitation response;
  - iv) Substitute or alter a required form or other document specified in the solicitation;
  - v) Remedy a cause for a vendor being considered to be not responsible or a solicitation response not responsive; or
  - vi) Correct a defect or inadequacy resulting in a determination that a vendor's solicitation response does not meet the mandatory minimum requirements or evaluation criteria.

Immaterial errors may be corrected by a vendor if responses are received within the timeline specified by the Department Director. Written documentation will be sent to the Purchasing Agent and placed in the purchasing file by the Department Director supporting the reason to allow the correction.

- f) Clarifying Information – after a bid has closed, the Purchasing agent or Department Director may at any time make a written request to a vendor clarifying information contained in a responsive solicitation response. Responses by vendors in writing or a printed document are allowed, as long as received within the timeframe established by the Purchasing Agent or Department Director. A vendor's response or a request for clarification under this policy:
  - i) May only explain, illustrate, or interpret the contents of the vendor's original solicitation response;

- ii) May not be used to address criteria or specifications not contained in the vendor's original solicitations response; and
- iii) May not be used to correct a deficiency, inaccuracy, or mistake in a solicitations response that is not an immaterial error as identified elsewhere in this policy.

Any information requested and received must be made part of the purchasing file.

- g) Non-Disclosure and Conflict of Interest Requirement - all participants involved in the selection and awarding process of any RFB, RFP, or RFQ where the purchase amount is expected to exceed \$25,000.00, must sign a non-disclosure agreement and a conflict of interest disclosure.
- h) Non-Responsive or Unacceptable Bids - the Department Director, in consultation with the Purchasing Agent, may reject any bid or proposal which is materially non-responsive to the requirements set forth in the bid documents. Any RFB, RFP, RFQ, or formal quote may be cancelled prior to the award at the City's discretion. Such re-solicitation shall not be for the purpose of directing the award to a particular vendor.
  - i) The rejection reason shall be made part of the purchasing file.
- i) Cancellation and Rejection of Bids - an RFB, RFP, RFQ or formal quote may be canceled or may be rejected in whole or in part as specified in the solicitation or if it is in the best interest of the City. Any cancellations or rejections can be made at the reasonable discretion of the Department Director responsible for the purchase, upon consultation with the Purchasing Agent.
  - i) The cancellation reason shall be made part of the purchasing file.
- j) Right to Disqualify - the City reserves the right to disqualify any vendor or subcontractor as stated in this policy. The City also reserves the right to review and consider all subcontractors individually when hired by a general contractor and consider their qualifications as outlined in this policy. The City reserves the right to deny any or all bids with or without cause. All disqualifications will be approved by Department Director, upon consultation with the Purchasing Agent.

- k) Determination of a Non-Responsible Vendor - written determination of a non-responsible vendor shall be made in accordance with this section. The unreasonable failure of a vendor to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to the vendor's bid or offer. Information furnished by a potential vendor pursuant to this section shall not be disclosed to other potential vendors without prior written consent by the potential vendor, in accordance with the Government Records Access and Management Act (GRAMA). After reasonable notice to the person(s) involved, the Department Director, in consultation with the Purchasing Agent, may disqualify a vendor from consideration for the award of a contract(s).
  - i) The determination of non-responsibility shall be made in writing to the Purchasing Agent and will be made part of the purchasing file.
  
- l) Ineligibility - in addition to all other remedies permitted by law, the Department Director, in consultation with the Purchasing Agent may declare a potential vendor ineligible to bid on City purchases and public service contracts for a period not to exceed five (5) years in circumstances identified in this section. In such circumstances the Department Director must submit written support for the determination of ineligibility to the Purchasing Agent. The City shall take all reasonable steps to declare a potential vendor ineligible before a bid/proposal is submitted but may declare a potential vendor ineligible after a bid has been submitted. A potential vendor can be declared ineligible for any of the following grounds:
  - i) Two or more claims of computational errors in bid submissions within a two (2) year period;
  - ii) An unjustified refusal to provide or execute contract documents;
  - iii) Unsatisfactory performance of a contract;
  - iv) Unjustified refusal to perform or complete contract work or warranty performance;

- v) Unjustified failure to honor or observe contractual obligations or legal requirements pertaining to the contract;
- vi) Conviction under state or federal statutes for fraud or bribery;
- vii) Theft, falsification, or destruction of records;
- viii) Receiving stolen property or any other similar crimes;
- ix) Offense indicating a lack of business integrity and which would directly affect the reliability and credibility of the performance of such a vendor with future contracts with the City;
- x) Not a responsible bidder or vendor.

**4. Bid Exceptions**

- a. The competitive purchasing requirements of this policy need not be followed in the following circumstances:
  - i. Gift or Bequest - in complying with the terms and conditions of any gift or bequest to the City, if such action is approved by the City Manager in writing and is otherwise consistent with law, the Department buyer may procure without competitive bids.
  - ii. Federal or State Funds - in cases where federal or state funds are being used where federal or state purchasing laws or procedures govern the types of goods or services being procured, the City shall follow the applicable federal or state purchasing law or procedures in lieu of the procedures set forth in this policy.
  - iii. State Contract Purchasing - the Department buyer may procure without competitive bids any supplies or services which are the subject of contracts with the state, as set forth in Utah Statute. The state contract number and information for the purchase shall be included in the requisition or contract and sent to the Purchasing Agent for approval. Departments must make sure that the purchase complies with all aspects of the state contract.
    - a) In the event that state contracted vendor(s) are unable to fulfill the contract in a reasonable timeframe, the City may purchase from another potential vendor willing to honor all aspects of the state

contract. All of the following provisions must be followed before the City can purchase using this exception:

- i) Written documentation must be obtained and sent to the City Purchasing Agent from the State Purchasing Agent over the contract confirming the delay and any suggestions made for purchasing through the existing contract or another existing contract;
  - ii) Written documentation must be obtained and sent to the Purchasing Agent from the potential vendor willing to honor and accept all conditions of the state contract signed by an individual authorized to bind the company to the agreement; and
  - iii) The Department Director or designee requesting the exception will also provide written documentation detailing the event and why the purchase is needed.
- iv. Utah Intergovernmental Purchasing - the department buyer may procure, without competitive bids, supplies and services which are the subject of contracts with other government agencies located in the state of Utah. In such cases the Department Director shall submit a copy of the bid documents and contract from the local agency to the City Manager and Purchasing Agent, along with any written documentation supporting why normal competitive bidding requirements should be bypassed. The City Manager may authorize the purchase without requiring competitive bidding.
- v. Cooperative Purchasing- the City may join with federal, state, or local governments, or with special districts, school districts, and other such similar agencies in purchasing commodities or services. In such cases the City is not required to follow the competitive bidding process when purchasing commodities, services, or construction. The City Council or City Manager by resolution or order direct, depending on the requirements, must approve joining the cooperative.
- a) All contracts to enter into cooperative purchases must be pre-approved by the Purchasing Committee.
    - i) All purchases of \$25,000.00 or more must be pre-approved by the Department Director.

- b) Notwithstanding the foregoing, cooperative purchases shall be made in accordance with applicable State laws.
  - c) A copy of the cooperative contract shall be submitted with the requisition or contract.
- vi. Professional Services - contracts for professional services reasonably expected to cost less than \$15,000 per project for a fiscal year may be awarded at the discretion of the Department Director. In such cases, written documentation shall be made to the Purchasing Agent.
- vii. Insufficient Response - in an instance where there are insufficient responses to an RFB, RFQ, or RFP, the Purchasing Committee, in consultation with the Purchasing Agent, may elect to re-release the RFB, RFQ, or RFP or bypass the competitive bidding process set out in this policy.
  - a) Written documentation shall be included with the requisition.
  - b) In the event there are no bids submitted, the bid will be re-released, canceled, or the Purchasing Committee may agree to allow the Department Director to negotiate terms with a potential vendor.
- viii. Emergency Purchasing - notwithstanding other provisions of this policy, purchases may be made in emergencies by the Department Director or designee in instances where the purchase could not reasonably have been made pursuant to this policy, provided that purchases shall be made with as much competition as practical under the circumstance.
  - a) Within two (2) business days after the purchase, the Department Director shall provide a signed written statement to the Purchasing Agent and the Purchasing Committee, setting out in reasonable detail the purchase, price, cause, and basis for the emergency, and why the procedures set out in this policy were not followed.
  - b) A copy of the statement shall be included in the purchasing file.
  - c) Failure to anticipate a need or situation(s) created by improper planning or negligence is not to be considered an emergency unless such failure creates an imminent risk to public health and/or safety.

- ix. Declared Emergency Purchasing- under a declared local “state of emergency” the Mayor may temporarily suspend the City-Wide Purchasing Policy for the first seventy-two (72) hours, or as long as deemed necessary and in the best interest of the City, to provide emergency related response initiatives and activities.
  
- x. Sole Source Purchasing - in the event a Department Director or designee determines commodities or services meet the definition of a sole source listed in this policy, written notification will be sent to the Purchasing Agent with documentation supporting the determination. This documentation shall include all research and steps taken to verify that the purchase meets the definition of sole source. The Purchasing Committee, in consultation with the Purchasing Agent, will then certify the sole source in writing.
  - a) A notice containing the nature of the purchase may be posted for a minimum of three (3) business days using the City’s preferred purchasing tools stating that the City intends to award a contract without competition. The notice invites any companies who believe they can provide the goods and services to contact the Purchasing Agent within the specified timeframe stated in the notice.
    - i) If there are no companies that respond to the notice within the given timeframe, the purchase can be deemed as sole source.
    - ii) If a company can demonstrate they can provide the goods or services, the City will then follow the competitive bidding guidelines established in this policy.
  
- xi. City Council Determinations - the City Council may, by resolution, authorize any purchase without complying with the provisions of this policy.
  - a) Documentation of the City Council’s decision shall be placed in the purchasing file.
  
- xii. Special Opportunity Purchases - where substantial savings will be realized in the purchase of commodities, non-professional services, or professional services, a Department Director or designee may bypass competitive bidding or the formal quote requirements set out in this policy by following the procedures outlined below, provided other applicable provisions of this section are met before the purchase is made.

- a) The Department Director or designee shall, in his or her reasonable discretion, obtain offers from competing sources in a manner most likely to meet the purpose of this section;
  - b) The Department Director shall disclose the proposed purchase in a signed written memorandum to the Purchasing Committee and Purchasing Agent setting out in reasonable detail the reason the purchase is recommended, the reason normal purchasing procedures are not recommended, the efforts made to obtain competitive offers, and the proposed savings; and
  - c) The Purchasing Committee, upon consultation with the Purchasing Agent, may certify that the purchase is justified. A copy of the signed memorandum shall be sent to the Purchasing Agent and will be made part of the purchasing file.
- xiii. Compatibility, Parts, Training - a Department Director or designee may procure without competitive bids equipment and supplies which, by reason of the training of City personnel who service such equipment, or which is an addition to or for the repair or maintenance of equipment owned by the City which may be more efficiently added to, repaired or maintained by a certain brand, person or firm. In such cases the Department Director shall submit written documentation to the Purchasing Agent.
- xiv. Miscellaneous Exception - procurements that by their nature are not adapted to award by the competitive bid process may be procured without competitive bid, as identified below in this section. In such cases the Department Director should submit written documentation to the Purchasing Agent and the Purchasing Committee. Listed below are specific qualified purchases that are allowed under this exception:
- a) Legal services including, but not limited to, legal counsel, expert witnesses, hearing officers, *etc.*;
  - b) The publication of legal notices, ordinances, resolutions, and other legal advertising;
  - c) Utility services such as water, electricity, heat, and telephone, except when alternative supplies or services are available;

- d) The private placement of bonds, tax anticipation notes, or other instruments of indebtedness, including credit ratings. Financial advisors are excluded from this exception;
  - e) The purchase of non-software subscriptions, magazines, books, trade journals, reference works, periodicals, examination or testing materials, and similar articles of an educational, informational or instructional nature that are relevant to the duties of City employees;
  - f) Goods, materials, supplies and services utilized by the City Recorder or the City for purposes of performing duties in regards to elections;
  - g) Goods and supplies purchased for authorized resale;
  - h) Engaging the services of Recreational Program Instructors resulting in recreational program agreements, provided that the Department adopts and follows an approved policy and procedure by which Recreational Program Instructors are selected;
  - i) Memberships, certifications, trainings, or any costs associated with accreditations required or relevant to the duties of City employees and is in the best interest of the City;
  - j) Drug testing, employee physicals, and fitness-for-duty evaluations;
  - k) Realtor(s), appraiser(s), or title work for City purposes;
  - l) Musical performer(s), promoters/agents, and license holder(s) for City events; and
  - m) Acquisition of art, including but not limited to paintings, sculptures, photographs, video productions, and artistic performances. For the purposes of this policy, architectural services are not classified as art.
- xv. Engineering and Architectural Exception - the City may procure engineering and architectural services through a modified method consistent with the Utah Administrative Code Rules.
- a) The City Manager or designee will perform all duties identified as being performed by the "chief procurement officer or head of a procurement unit" overseeing the purchase.

- b) The Department Director shall submit written documentation to the Purchasing Agent prior to the bid being awarded documenting the following:
  - i) The process for selection and scoring,
  - ii) Certifying the Department followed the Utah Administrative Code, and
  - iii) The award recommendation.

5. *Miscellaneous Purchasing Policies*

- a. Construction Project Awards - in the event that the lowest responsive and responsible bid for a construction project exceeds available funds as certified by the Chief Financial Officer/Budget Officer, and the bid does not exceed such funds by more than ten percent (10%), the Department Director is authorized in situations where time or economic considerations preclude solicitation of work of a reduced scope, to permit the negotiation and adjustment of the bid price, and changes in the bid requirements, with the lowest responsive and responsible bidder in order to bring the bid within the amount of available funds.
- b. Performance and Bid Bonds - performance and bid bonds in such amounts as the Project Manager along with the Purchasing Agent determine are needed to protect the best interest of the City may be required. The nature, form and amount of such bonds shall be described in the RFB, RFP or RFQ.
- c. Purchase Orders (PO) - a purchase order is required for all purchases of or greater than \$5,000.00. Departments will submit a requisition through the City's financial software *before* making the purchase. Once approved, the requisition will be converted to a PO that can be used to initiate a purchase with a vendor, as long as it has gone through the proper bid process determined in this policy.
- d. Contracts - in any situation where a contract is required or in the best interest of the City instead of a PO, Departments must follow the procedures established by the Office of the City Attorney for entering into, negotiating, and approving contracts. All relevant bid documents must be supplied to the Office of the City Attorney for review prior to any agreement.

- i. Approval of Contract as to Form- No contract shall be entered into unless and until approved as to form by the Office of the City Attorney. The Office of the City Attorney may establish procedures by which specified contracts may be pre-approved as to form.
- e. Payment - vendors that performed work for the City must submit an invoice to the City upon completion, unless prepayment options have been agreed upon by contract. Payment to these vendors will follow the processes established by the Finance Department for payment of invoices.
- f. Disclosure of Information - unauthorized disclosure of information pertaining to any bid, purchase, contract, or other any other agreement of is prohibited, except as allowed under the Utah Governmental Records Access Management Act (GRAMA). Such disclosures by public officers or employees shall be considered cause for disciplinary action consistent with the City's policies and procedures and may result in corrective remedies as indicated in the "Remedies for Solicitations or Awards in Violation of the Law" section of this policy.
- g. Right to Inspect Place of Business or Financial Records - the City may, at reasonable times, inspect the part of the plant or place of business or financial records of a contractor, or any subcontractor that is related to the performance of any contract as stated in the contract, or if stated in the solicitation.
- h. Cost-Plus-Percentage-of-Cost Contract Normally Prohibited - subject to the limitations of this section or other applicable laws, any type of contract that will promote the best interests of the City may be used. Normally, a cost-plus-a-percentage-of-cost contract is prohibited, except where a determination is made in writing by the Department Director or designee, and approved by the City Manager, that such a contract is likely to be less costly to the City than any other type, or that it is impracticable to obtain the commodities or construction required except under such a contract.
- i. Failure to Follow Policy - failure to follow any provisions of this policy shall neither render a purchase invalid, nor give a potential vendor a claim or right against the City. Disciplinary action for failure to follow this policy shall follow the guidelines established in the City's Employee Handbook.
- j. Period of Time for Contracts - unless otherwise provided by law, a contract for supplies or services that through any combination of renewals exceeds five (5) years, will need to be approved by the Purchasing Committee based on the best interests of the City; provided that the term of the contract and conditions of renewal or expansion, if any, are included in the solicitation and funds are available for the first fiscal period at the

time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds.

- k. Records - procurement records shall be maintained in accordance with the State of Utah's Municipal Retention Schedule for purchasing records by the Department making the purchase. All contracts and required documents must be submitted to the City Recorder prior to execution of the contract.
- l. Collusion - any agreement or collusion among potential vendors is deemed to be contrary to the best interest of the City. Any agreement to bid a fixed price, or other similar actions among prospective vendors, shall render the response of such vendors void.

## 6. *Protests and Appeals*

- a. Written Protest - any person who has standing and is aggrieved in connection with a purchase or an award of a contract may protest the purchase by filing a written statement with the City Recorder, which will be forwarded to the Purchasing Committee.
  - i. Filing a Written Statement - the written statement shall contain the following information:
    - a) The protesting party's name, mailing address, e-mail address and daytime telephone number, the signature of the protesting party or the attorney for the protesting party, and the date the protest is signed; and
    - b) A concise statement of the facts and evidence;
      - i) Leading the protestor to claim that the protestor has been aggrieved in connection with a purchase and providing grounds for the protestor's protest; and
      - ii) Supporting the protestor's claim of standing.

- ii. **Deadline for Filing** - a protest relating to an RFB, RFP, RFQ, or formal quote shall be filed before the closing date for the RFB, RFP, RFQ, or formal quote.
  - a) A protest shall be filed within five (5) business days after the person filing the protest knew or should have known the facts. It is the responsibility of the person filing the protest to prove that they did not know and should not have known the facts which would give rise to a protest prior to the closing date.
- iii. **Suspension of the Purchase** - the City may proceed with the protested purchase except that the Purchasing Committee may suspend the purchase process for so long as the Purchasing Committee determines appropriate.
- iv. **Review of the Written Protest** - the Purchasing Committee will review the written protest and may request any of the following:
  - a) That another individual assist in reviewing the matter, which assistance may include finding facts, analyzing the protest, and making recommendations; and
  - b) Request additional information from the protesting party or from other City staff to make a determination. The protesting party shall provide all information reasonably needed to decide the protest except information which is protected from disclosure by law, or which could reasonably be expected to result in unfair, competitive injury to the protestor in spite of the protections for the protestor provided by law, including the Utah Governmental Records Access Management Act (GRAMA).
- v. **Written Determination** - the Purchasing Committee will issue a written determination to the protesting party within fifteen (15) days of receipt of the protest.
  - a) If the Purchasing Committee fails to issue a decision within fifteen (15) days after the receipt of the protest, said failure shall be considered the equivalent of an order denying the written protest.
- b. **Appeal of Written Protest** - the protesting party may appeal the written decision of the Purchasing Committee by filing a written appeal with the City Recorder that will be sent to the City Manager. At the time of the appeal, the protesting party must pay the required security deposit or post a bond to start the appeal process.

- i. The notice of appeal - shall contain the following information:
  - a) The petitioner's name, mailing address, e-mail address, day-time telephone number, the signature of the petitioner or of the attorney for the petitioner, date; and
  - b) A concise statement of the facts and evidence sufficient to permit review:
    - i) Leading the protestor to claim that the protestor has been aggrieved in connection with a purchase and providing grounds for the protestor's protest; and
    - ii) Supporting the protestor's claim of standing.
- ii. Deadline for filing - the appeal and bond or security deposit must be completed within five (5) days of receipt of the Purchasing Committee's decision or defacto denial.
- iii. Security Deposit or Bond Requirements - a security deposit or bond is required:
  - a) Payment and Returning of Bond/Security Deposit - the City Recorder shall retain the security deposit or bond until the appeal of the protest decision is final. If a security deposit is given, after any appeal of the protest decision becomes final, return of the security deposit will be given to the person or entity that paid the security deposit, unless the security deposit is forfeited to the general fund. If a bond is given, the City will retain the bond until the appeal of the protest decision becomes final. A security deposit that is paid, or a bond that is posted, under this section shall forfeit to the general fund if:
    - i) The person who paid the security deposit or posted the bond fails to ultimately prevail on the appeal; and
    - ii) The City Manager or designee, after advice from the Office of the City Attorney, finds that the protest or appeal is frivolous or that its primary purpose is to harass or cause delay.

- b) Amount - the amount of a security deposit or bond required when filing a written appeal will be as follows:
  - i) 100% of the total contract value up to \$20,000;
  - ii) \$20,000 if the total contract value is \$20,000 or more but less than \$500,000;
  - iii) \$25,000 if the total contract value is \$500,000 or more but less than \$1,000,000;
  - iv) \$50,000, if the total contract value is \$1,000,000 or more but less than \$2,000,000;
  - v) \$95,000, if the total contract value is \$2,000,000 or more but less than \$4,000,000;
  - vi) \$180,000, if the total contract value is \$4,000,000 or more but less than \$8,000,000;
  - vii) \$320,000, if the total contract value is \$8,000,000 or more but less than \$16,000,000; and
  - viii) \$600,000, if the total contract value is \$16,000,000 or more but less than \$32,000,000.
  - ix) In the event that an estimated contract value cannot be determined the security deposit or bond required will be \$20,000.
  
- c) Estimating Contract Value - for appeals relating to an RFB, RFP, or RFQ the estimated total contract value shall be based on one of the following methods to be determined by the City in a reasonable manner:
  - i) The bid/proposed cost submitted by the protesting party for the entire term of the contract, excluding any renewal periods,
  - ii) The total budget of the purchase commodity over the entire term of the contract, excluding any renewal period, or

- iii) If the contract is being reissued, the historical usage and amount spent on the contract over the life of the contract that is being reissued.
  - iv. Hearing - the City Manager or designee shall review and schedule a hearing no later than five (5) days after receiving a notice of appeal. Unless otherwise agreed to by the City and the petitioner, the hearing shall be held no sooner than five (5) business days and no later than thirty (30) business days from the date of the filing of the appeal. At the hearing, the appellant and the City's representative(s) shall be allowed to testify, present evidence, and comment on the issues. The rules of evidence do not apply to this hearing. The City Manager may allow other interested persons to testify, comment or provide evidence on the issues.
  - v. Written Determination - no later than fifteen (15) business days after the hearing, the City Manager shall issue a signed order either granting the petition in whole or in part, or upholding the determination of the Purchasing Committee in whole or in part. If the City Manager fails to issue a decision within fifteen (15) business days after the hearing, said failure shall be considered the equivalent of an order denying the decision.
- c. Appeal to Utah District Court - any final action or order may be appealed by either the potential vendor or the City to the Utah District Court by filing with the court a notice of appeal.

**7. Remedies for Solicitations or Awards in Violation of the Law**

- a. Prior To Bid Opening Or Closing Date For Receipt Of Proposals - if prior to the bid opening or the closing date for receipt of bids, the Purchasing Committee determines that a solicitation is in violation of federal, state, local law, or this policy, the solicitation or proposed award shall be canceled or revised to comply with applicable law.
- b. Prior To Award - if after a bid opening or the closing date for receipt of proposals, the Purchasing Committee determines that a solicitation or a proposed award of an agreement is in violation of federal, state, local law, or this policy, the solicitation or proposed award shall be canceled.
- c. After Award - if after an award, the Purchasing Committee determines that a solicitation or award of an agreement was in violation of applicable laws or this policy, then:
  - i. If the person awarded the agreement has not acted fraudulently or in bad faith:

- a) The agreement may be ratified and affirmed, provided it is determined that doing so is in the best interests of the City;
- b) The agreement may be terminated and the person awarded the agreement shall be compensated for the actual costs reasonably incurred under the agreement, plus a reasonable profit, prior to the termination; or
- c) If the person awarded the agreement has acted fraudulently or in bad faith the agreement may be declared null and void or voidable, if such action is in the best interests of the City.

APPROVED AND PASSED THIS 17 DAY OF May, 2016.

CITY OF SOUTH JORDAN COUNCIL

  
\_\_\_\_\_  
DAVID ALVORD, MAYOR

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney's Office

