NOTICE OF LA MARQUE
CITY COUNCIL
SPECIAL MEETING
BY TELEPHONE CONFERENCE

In accordance with order of the Office of the Governor issued March 16, 2020, the La Marque City Council will conduct a Special Meeting on **Monday, October 26, 2020 beginning at 6:00 PM by telephone and video conference** in order to advance the public health goal of limiting face-to-face meetings to slow the spread of the Coronavirus/COVID-19. This Notice, the meeting agenda, and the agenda packet can be found online at:

https://ci.la-marque.tx.us/AgendaCenter

THERE WILL BE NO PUBLIC ACCESS TO CITY HALL DURING THE MEETING.

The public will be permitted to offer public comments telephonically as provided below and as permitted by the Mayor during the meeting. A recording of the telephonic meeting will be made and will be available to the public in accordance with the Open Meetings Act upon written request.

THE PUBLIC TOLL-FREE DIAL-IN NUMBER TO PARTICIPATE IN THE MEETING IS:
1 (346) 248-7799

ONCE YOU ARE CONNECTED, YOU MUST ENTER THE FOLLOWING:

Meeting ID: 92493940502

Press *6 to mute or unmute your phone line. You may also connect to the meeting on your smartphone, tablet or computer by going to the following internet address:

https://zoom.us/j/92493940502

Once you are on the website, you may need to enter the following:

Meeting ID: 924 9394 0502

If you require accommodation to participate in this meeting, contact the City Clerk at 409-938-9259 or cityclerk@cityoflamarque.org at least 48 hours prior to the meeting start time.

1111 Bayou Road
La Marque, Texas
409-938-9202

Mayor Bobby Hocking
Mayor Pro-Tem Keith Bell- District A *Councilmember Robert Michetich- District C*
Councilmember Chris Lane- District B *Councilwoman Casey McAuliffe- District D*
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CITY OF LA MARQUE
CITY COUNCIL
PUBLIC HEARING/SPECIAL MEETING
of
OCTOBER 26, 2020

Notice is hereby given that the City Council of the City of La Marque, Texas will conduct a Public Hearing/Special Meeting **via teleconference (ZOOM) on Monday, October 26, 2020, beginning at 6:00 p.m.,** purpose of considering the following agenda**:**

(1) CALL MEETING TO ORDER

(2) ROLL CALL

(3) PUBLIC HEARING
Conduct Public Hearing to hear public input regarding adopting Ordinance No. **O-2020-0015**, amending Chapter 2, "Administration," Article IV, "Purchasing," of the Code of Ordinances, of the City of La Marque, Texas and adopting an updated Procurement Policy

(4) OLD BUSINESS
a. Discussion/possible action regarding adopting Ordinance No. **O-2020-0015**, amending Chapter 2, "Administration," Article IV, "Purchasing," of the Code of Ordinances, of the City of La Marque, Texas and adopting an updated Procurement Policy *THIS IS THE SECOND AND FINAL READING*

(5) ADJOURNMENT

CERTIFICATION:
I hereby certify that the above notice of meeting was posted at 1109-B Bayou Road, La Marque, Texas on or before October 23**,** 2020, before 5:30 p.m.

____
Robin Eldridge, TRMC
City Clerk

This facility is wheelchair accessible and accessible parking spaces are available. Request for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Clerk's office at 409-938-9259, or Fax 409-935-0401, or e-mail cityclerk@cityoflamarque.org for further information.

CITY COUNCIL AGENDA FORM

Meeting Date:	October 26, 2020	Agenda item:	**4a**
Prepared by:	Derra Purnell	Reviewed by:	Charlene Warren/ Charles Jackson
Department:	Legal		

AGENDA ITEM DESCRIPTION: Discussion/possible action regarding adopting Ordinance No. **O-2020-0015,** amending Chapter 2, "Administration," Article IV, "Purchasing," of the Code of Ordinances, of the City of La Marque, Texas and adopting an updated Procurement Policy ***THIS IS THE SECOND AND FINAL READING***

☒

ATTACHMENTS FOR REFERENCE

1. Ordinance and Exhibit A – Procurement Policy

STAFF BRIEFING:

- As discussed at the previous Council meeting, an updated policy was required by the City's grant administrator
- The second reading was necessary to finalize this ordinance prior to the grant submission deadline
- Also as discussed at the previous Council meeting, the Finance Department will begin providing a monthly report of all purchases between $25,000 and $49,999 for the prior month

HISTORY:

2/10/20 - City Council adopted a new procurement policy

TARGET IMPLEMENTATION: 10/26/20 - Upon Second reading of Ordinance

SIGNIFICANT ACTION DATES:

10/12/2020 - First reading of Ordinance

10/26/2020 - Second and Final Reading of Ordinance

ACTION:

☒	Ordinance	☐	Resolution
☐	Special Presentation	☐	Proclamation
☐	Finance Report	☐	Public Hearing
☐	Other		
☒	Mark if this item does not conflict with any Resolution, Ordinance or City Charter, policies, procedures		

Cost Details:	
Budgeted	
Actual Bid	
Estimated Expenditure	
Acct. Name(s)	
Line Item #	
Other Funding	

CITY COUNCIL AGENDA FORM

STAFF'S RECOMMENDATION: Motion to adopt Ordinance No. **O-2020-0015**, amending Chapter 2, "Administration," Article IV, "Purchasing," of the Code of Ordinances, of the City of La Marque, Texas and adopting an updated Procurement Policy *THIS IS THE SECOND AND FINAL READING*

FISCAL IMPACT: **N/A**

ORDINANCE NO. O-2020-0015

AN ORDINANCE OF THE CITY COUNCIL OF LA MARQUE, TEXAS AMENDING CHAPTER 2, "ADMINISTRATION," ARTICLE IV, "PURCHASING," OF THE CITY CODE OF ORDINANCES; ADOPTING AN UPDATED PROCUREMENT POLICY; AND MAKING OTHER PROVISIONS RELATED TO THE SUBJECT; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the purchasing and contracting authority of municipalities is subject to numerous state and federal laws, including Local Government Code § 252.001 *et seq.*; and

WHEREAS, the City of La Marque Charter contains additional requirements for expenditures of City funds; and

WHEREAS, the City has been requested to adopt an updated procurement policy as part of the grant submittal process: and

WHEREAS, the City Council finds it to be in the best interests of the City to update the City Code and procurement policy to align with state and federal requirements and authorizations for purchases;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LA MARQUE, TEXAS:

Section 1. That, Article IV, "Purchasing," of Chapter 2, "Administration," of the City of La Marque Code of Ordinances is hereby amended to read as follows:

"**ARTICLE IV. - PURCHASES**

Sec. 2-180. - General provisions.

The procurment policy of the city and that which is to be followed by the finance department and the purchasing agent shall be to obtain the most goods and services at the least cost to the city, in compliance with state and federal law. The city manager shall promulgate a purchasing policy pursuant to Section 8.12 of the City Charter, subject to approval by city council. The City Manager shall promulgate procurement guidelines and manuals as needed to ensure compliance with this Article and the City's procurement policy.

Sec. 2-181. – Purchase authorization levels; Required approvals.

All purchases shall comply with the following authorization levels except as otherwise required by state or federal law:

Purchase Amount	Approvals Required
$0—$2,999	Department Director, Finance Director through requisition process, subject to oversight by City Manager and compliance with procurement and personnel policies

$3,000—$49,999	City Manager, Finance Director, Department Director through requisition, purchase order, check request or other formal advance approval processes, subject to compliance with procurement and personnel policies
$50,000 or more	City Council, City Manager, Finance Director, Department Director in compliance with state and federal procurement laws, City Charter, and procurement policies

Sec. 2-182. – Budget appropriation required.

Any commitment to acquire goods or services for which budgeted funds have not been appropriated, unless such purchase qualifies as an emergency purchase under the City's adopted procurement policy, is prohibited.

Sec. 2-183. - Partial purchases prohibited.

Partial purchases shall not be made for the purpose of placing any purchase or the contract for purchases within any cost bracket, and all purchases shall be in sufficient quantities to meet requisition needs.

Sec. 2-184. - Method of taking competitive quotations and bids.

(a) Competitive quotations shall be taken by the purchasing agent when required by this article or by the City's adopted procurement policy by informal cost quotations from uniform specifications from at least three vendors, when obtainable.
(b) Bids shall be taken for capital improvements costing more than $1,000.00 in accordance with section 8.14 of the Charter of the city.

Sec. 2-185. - Payment by credit card, processing fee and service charge.

(a) The finance director, or his/her designee, is hereby authorized to accept payment by credit/debit card for a fee, fine, court cost or other charge imposed by all city departments.
(b) The finance director shall set a processing fee in an amount that is reasonably related to the expense incurred in processing the payment by credit/debit card. The processing fee shall not exceed five percent of the amount of the fee, fine, court cost or other charge being paid.
(c) If a payment by credit/debit card of a fee, fine, court cost or other charge authorized herein is not honored by the credit/debit card company on which the funds are drawn, the finance director, or his/her designee, shall collect a service charge from the person who owes the fee, fine, court cost or other charge. The service charge is in addition to the original fee, fine, court cost, or other charge and is for the collection of that original amount. The amount of the service charge shall equal the fee charged for the collection of a check drawn on an account with insufficient funds.
(d) The finance director, or his/her designee, shall deposit all processing fees and service charges in the general fund of the city."

<u>Section 2</u>. Adoption of Procurement Policy. The "CITY OF LA MARQUE PROCUREMENT POLICY FOR GOODS, SERVICES AND CONTRACTS" attached as Exhibit "A" to this Ordinance and incorporated by reference is hereby adopted as the procurement policy for the City, pursuant to Section 2-180 of the City of La Marque Code of Ordinances.

<u>Section 3</u>. Repeal. This ordinance is intended to be cumulative and shall not repeal any provision of a previous ordinance or City Code provision, except to the extent that a provision is inconsistent and cannot be reconciled with this ordinance.

<u>Section 4</u>. Severability. In the event any clause, phrase, provision, sentence) or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it is the intention of the City Council that the invalidity or unconstitutionality of the one or more parts shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision other than the part declared to be invalid or unconstitutional; and the City Council of the City of La Marque, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

<u>Section 5</u>. Publication and Effective Date. This ordinance shall be effective immediately upon adoption, public hearing in accordance with Section 2.19 of the City Charter, and publication of this ordinance or a caption that summarizes the purpose of this ordinance and the penalty for violating this ordinance in accordance with Chapter 52 of the Texas Local Government Code and Article II of the City Charter.

PASSED, AND APPROVED by the City Council of the City of La Marque on First Reading this **<u>12th</u>** day of **<u>October</u>** 2020; and

PASSED, APPROVED, AND ADOPTED by the City Council of the City of La Marque on Second and Final Reading this ____ day of _____________, 2020.

CITY OF LA MARQUE, TEXAS

____
Bobby Hocking, Mayor

ATTEST:

____
Robin Eldridge, TRMC, City Clerk

APPROVED AS TO FORM:

____
Derra Leigh Purnell, City Attorney

Exhibit "A"

CITY OF LA MARQUE
PROCUREMENT POLICY
FOR GOODS, SERVICES AND CONTRACTS

Adopted February 10, 2020
Amended and adopted October 12, 2020

I. PURPOSE. The purpose of this Purchasing Policy is to obtain the highest quality goods and services for the City of La Marque at the lowest possible price or best value when allowed under state and federal law and appropriate to the type of good or service procured, to exercise financial control over the purchasing process, to clearly define authority for the purchasing function, to allow fair and equal opportunity among qualified suppliers, and to provide for increased public confidence in the procedures followed in public purchasing. This policy is adopted pursuant to Section 8.12 of the City Charter and Section 2-180 of the City of La Marque Code of Ordinances ("City Code") and is intended to be cumulative with the requirements of Chapter 2, Article IV "Purchasing" of City Codeand all applicable provisions of City Charter.

II. SMALL, MINORITY, WOMEN-OWNED, AND HISTORICALLY UNDERUTILIZED BUSINESSES: Whenever possible, qualified small, minority and women-owned businesses shall be included in the solicitation lists for bids or non-bid purchases. If the purchase is federally funded in whole or in part, minority and women-owned businesses must be included in the solicitation lists and all other affirmative action requirements outlined in the grant provisions must be followed. *The City may exercise a preference for local businesses for purchases funded exclusively by the City, but only if such a preference does not result in unreasonable prices or rates due to a lack of competition.* For purchases funded in whole or in part with federal funding, the City may not exercise a preference for local businesses. Provided, further, before the City makes an expenditure of $3,000 or more but less than $50,000, the City shall contact at least two historically underutilized businesses on a rotating basis, based on information provided by the comptroller pursuant to Chapter 2161, Government Code. *See also* Tex. Loc. Gov't Code Sec. 252.0215.

III. CODE OF CONDUCT. Employees, officers, and agents of the City who are involved in the procurement and selection of bids and purchases shall make reasonable efforts to avoid real, apparent, or potential conflicts of interest. No employee, officer or agent of the City shall participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- the employee, officer or agent,
- any member of his or her immediate family,
- his or her partner, or
- an organization that employs, or is about to employ, any of the above, has a financial or personal interest in the firm/vendor selected for an award. *See* Tex. Loc. Gov't Code Ch. 171; 2 CFR 200.318 – 2 CFR 200.326 and Appendix II to Part 200.

An employee, officer or agent of the City who is involved in the procurement and selection of a bid or purchase and who has a real or apparent conflict of interest must disclose that conflict of interest within the context of a duly-posted City Council meeting that occurs before the bid selection or purchase takes place. Such disclosure must be documented as required by law, including but not limited to disclosure in the minutes for the applicable Council meeting which shall be retained as part of the official record surrounding the bid or purchase. If required by state law, the officer or employee shall file an affidavit and/or conflict of interest questionnaire with the City Clerk disclosing the substantial interest or conflict of interest. *See* Tex. Loc. Gov't Code Sec. 171.004; Tex. Loc. Gov't Sec. 176.006.

Officers, employees, and agents of the City will not solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.

Officers, employees, and agents who fail to follow the above Code of Conduct may be sanctioned or disciplined, to the extent permitted by law, for violations of the above standards.

IV. DOCUMENTATION. Records documenting the procurement process for any Minor or Major purchases, as those terms are defined below, including the reason for the specific procurement method chosen, the basis for the award and contract pricing (showing evidence that the process was fair and equitable), as well as any other significant decisions that were part of the procurement process shall be maintained for a period of at least three years from the date of the submission to the Federal government of the final expenditure report if the purchase or project was funded with federal grants, or until the completion of any litigation, claim negotiation, audit, or other action involving the records, whichever is longer. Otherwise, records shall be maintained by the City in accordance with the retention and disposition schedules as set by the State of Texas or the City's local records retention schedule, whichever is greater.

V. AUTHORIZED PURCHASING AUTHORITY AND PROCEDURES.

Authorized Agents: Authorized Agents are responsible for ensuring that the best possible price and quality are obtained with each purchase and shall review all proposed procurements to avoid unnecessary or duplicative purchases of equipment, supplies, and services in accordance with 2 CFR 200.318(d). Agents shall also ensure that competition is not restricted with (i) limits on the geographic location of vendors unless otherwise allowed under state and federal law as applicable to the specific procurement of the good or service, (ii) with unreasonable requirements or qualifications placed on vendors, or (iii) by allowing vendors to be selected who have engaged in noncompetitive pricing practices.

Authorized Purchasing Methods: In accordance with 2 CFR Section 200.320 and state procurement law, all purchases by the City of La Marque shall follow one of the following methods, unless specifically state as an exception under state and federal law: (1) procurement by micro-purchases, (2) procurement by small purchase procedures, (3) procurement by sealed bids, (4) procurement by competitive proposals, or (5) procurement by noncompetitive proposals. A cost or price analysis must be conducted in connection with every procurement action more than the federal

Simplified Acquisition Threshold including contract modifications (2 CFR 200.323). The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, an independent estimate must be made before receiving bids or proposals. 2 C.F.R. § 200.323(a). Cost analysis is the evaluation of the separate elements (e.g., labor, materials, etc.) that make up a contractor's total cost proposal or price (for both new contracts and modifications) to determine if they are allowable, directly related to the requirement and ultimately, reasonable. Price analysis is essentially price comparison. It is the evaluation of a proposed price (i.e., lump sum) without analyzing any of the separate cost elements of which it is composed. Federal Guidelines require negotiations of profit as a separate element of the price for each contract and modification in which there is no price competition and, in all cases, where cost analysis must be performed. 2 C.F.R. § 200.323(b).

Micro-purchases. Department Directors may make purchases up to $2,999 with the prior approval of the Finance Director , provided those purchases are limited to the amount of the budget approved by the City Council and such purchases comply with this Policy. Department Directors shall review all proposed procurements to avoid unnecessary or duplicative purchases of equipment, supplies, and services in accordance with 2 CFR 200.318(d).

Small Purchases. The City Manager may make purchases up to $49,999 without prior approval from the City Council if within the amount of the budget approved by the City Council. Although not required except where expressly stated in this Policy, competitive quotes from at least three vendors should be obtained unless the purchase would fall under an exception to sealed bid requirements if it was over $50,000 or is an emergency purchase for which time to obtain quotes from multiple vendors would resulti in a danger to public health or safety. The City Manager should use a competitive bid process whenever practicable for purchases between $25,000 and $49,999.

All Other Purchases. All purchases at or over $50,000 require prior approval of the City Council, and any purchases for unbudgeted goods or services. The City Manager shall review all proposed procurements over $2,999. to avoid unnecessary or duplicative purchases of equipment, supplies, and services in accordance with 2 CFR 200.318(d). The City should ensure that competition is not restricted with limits on the geographic location of vendors, with unreasonable requirements or qualifications placed on vendors or bidders, or by allowing vendors to be selected who have engaged in noncompetitive pricing practices. Purchases with a value of $50,000.00 (which is the large purchase or simplified acquisition threshold under federal regulations) or more must follow a sealed bid process as outlined below, or one of the alternative procurement methods if the purchase qualifies. The simplified acquisition threshold for federal procurement actions is currently set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908 as $50,000, but this threshold is periodically adjusted for inflation. *See* 2 C.F.R. §200.88. A cost or price analysis must be conducted in connection with every procurement action more than the federal Simplified Acquisition Threshold including contract modifications (2 CFR 200.323). Purchases at or exceeding $50,000, and construction projects of any value that are funded with federal dollars, must follow a sealed bid process as outlined in 2 CFR 200.318-326 (see Appendix A) and follow any procurement guidance as outlined in any applicable grant agreement. In addition, for any grant agreement or construction project that is funded with federal or grant funds, a pricing analysis should be completed by a qualified consultant or professional prior to issuing as request for proposals to ensure that there is a reasonable estimate against which to compare bid proposal pricing.

Historically Underutilized Businesses. Provided, further, before the City makes an expenditure of $3,000 or more but less than $50,000, the City shall contact at least two historically underutilized businesses on a rotating basis, based on information provided by the comptroller pursuant to Chapter 2161, Government Code. *See* Tex. Loc. Gov't Code Sec. 252.0215. If federal funding is used for purchases between $3,000 ($2,000 in the case of construction projects subject to Davis Bacon requirements) and $150,000, price or rate quotes must be obtained from two or more qualified sources as described in Section II of this Policy. If the awarded vendor is a prime contractor and may use subcontractors, the following affirmative steps are required of the prime contractor:

a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

VI. SEALED BID PROCESS. The sealed bid process shall be initiated by the issuance of a Request for Bids prepared by the City Manager's office or its designee. Notice of the Request for Proposal/Qualifications shall be made by letters to known providers soliciting bid responses, advertisements posted in at least one public location within the City and on the City's website, and advertisements placed in a newspaper of general circulation in the region.

Bid Specifications. A list of bid specifications shall be prepared for each purchase and shall be available for inspection at City Hall. A vendor that intends to respond to the Request for Proposals, Request for Qualifications and/or Invitation for Bid may not participate in the development or drafting of specifications, requirements, statements of work, or invitations for bids or requests for proposals, including, but not limited to, the development of the scoring criteria, the final selection of firms to be contacted, or the scoring of proposals. Bid specifications shall include:

a. Bid name.
b. Bid submission deadline.
c. Date, location, and time of bid opening.
d. Specifications for the project or services including quantity, design, and performance features.
e. Bond and/or insurance requirements.
f. Any special requirements that are unique to the project or purchase.
g. Delivery or completion date.

h. For construction projects, the language that sets a requirement for a bid guarantee in the amount of 5% of the bid price from all bidders, as well as performance and payment bonds in the amount of 100% of the contract price from the contractor awarded the bid. If federally grant-funded, the bidders must also include costs for Davis Bacon compliance if that is a requirement of the federal agency providing the funding.
i. For construction projects over $2,000, a statement that contractors will be provided with a copy of the most current wage determination (from the DOL website at http://www.wdol.gov/dba.aspx) and must comply with the Davis Bacon Act.
j. Language that reserves for the selection committee the right at its sole discretion to reject any and all bids, wholly or in part, to waive any informalities or any irregularities therein, to accept any bid even though it may not be the lowest bid, to call for rebids, to negotiate with any bidder, and to make an award which in its sole and absolute judgment will best serve the City's interest. The selection committee reserves the right to investigate the financial condition of any bidder to determine his or her ability to assure service throughout the term of the contract. Once a Request for Bids has been issued, the bid specifications will be available for inspection at City Hall.
k. If a "brand name" product is specified, an equal or like product is acceptable, provided the product performs and is manufactured to the same specifications as the listed product.

Bid Submission. All bids must be submitted in sealed envelopes, addressed to the City in care of the City Clerk, and plainly marked with the name of the bid and the time of the bid opening. Bid proposals will be date stamped on the outside of the envelope immediately upon receipt. Any bid may be withdrawn in writing prior to the scheduled time for the opening of bids. Any bids received after the time and date specified shall not be considered and shall be returned to the bidder unopened.

Bidders shall bid to specifications and any exceptions must be noted by the bidder. A bidder submitting a bid thereby certifies that the bid is made in good faith without fraud, collusion, or connection of any kind with any other bidder for the same work and that the bidder is competing solely on his/her behalf without connection with or obligation to any undisclosed person or firm.

Bid Opening. Every bid received prior to the bid submission deadline will be publicly opened and read aloud by the City Clerk. The bid opening will include the name and address of bidder; for lump-sum contracts, the lump sum base bid and the bid for each alternate; for unit price contracts, the unit price for each item and the total, if stated; and the nature and the amount of security furnished with the bid if required.

Criteria For Bid Selection. In evaluating bids, the selection committee will consider the following criteria:

a. Price.
b. Bidder's ability to perform within the specified time limits.
c. Bidder's experience and reputation, including a past performance for the City.
d. Quality of the materials and services specified in the bid.
e. Bidder's ability to meet other terms and conditions, including insurance and bond requirements.

f. Bidder's financial responsibility.
g. Bidder's availability to provide future service, maintenance, and support.
h. Nature and size of the bidder.
i. Contract provisions that are acceptable to the City.
j. For construction projects over $2,000, the contractor's indication of acceptance of wages in the current wage determination provided as part of the Request for Bids.
k. Any other factors that the selection committee determines are relevant and appropriate in connection with a given project or service.

In addition to the above, in the case of a contract supported by federal funds, the additional criteria shall apply:

l. There shall be no preference exercised for local contractors or suppliers.
m. Minority and women-owned businesses must be included in the solicitation list for the request for proposal.
n. The City will not select a bidder who is listed on the Excluded Parties List System website (https: //www.sam.gov).

VII. **CHANGE ORDERS.** If specification changes are made prior to the close of the bid process, the Request for Bids will be amended and notice shall be sent to any bidder who already submitted a bid and a new bid process will be initiated. Once a bid has been accepted, if changes to the specifications become necessary, a change order specifying the scope of the change. Once approved, the contractor and an authorized agent of the City must sign the change order.

VIII. **EXCEPTIONS TO SEALED BID PROCESS.** The following exceptions may apply, however, there must be written documentation created and maintained that outlines the process and rationale for each use of such exceptions:

Competitive Proposals. If time does not permit the use of sealed bids, or the award will be made on the basis of non-price related factors pursuant to an alternative purchasing method authorized under State law, a competitive proposal process shall be initiated by the issuance of a Request for Proposal (RFP) or Request for Qualifications (RFQ).RFQs / RFPs shall include the factors that will be used to evaluate and compare the proposals or qualifications. Proposals or qualifications shall be obtained from an adequate number of qualified sources (at least three vendors) to ensure that the City has received a fair and reasonable price and all notification and record-keeping requirements of the sealed bid process shall be followed. If architectural or engineering services are being solicited, this process should be used with the most qualified firm or individual awarded the bid and price or fees negotiated after the award. If competitive proposals are used, all of the above steps in the sealed bid process should be followed except that: 1) the bid submission need not be sealed, and 2) price will not be the primary factor in the proposal selection.

Sole Source Purchases. If it is determined that there is only one possible source for a proposed purchase, the City Council, or the City Manager to the extent the purchase is within the City Manager's purchasing authority as delegated by City Council, may waive the bid process and authorize the purchase from the sole source. Justification for all sole source purchases should be provided with the requisition, including:

a) Other entities that offer similar products or services;
b) Reasons the competing products or services do not meet the required specifications;
c) At least 2 other entities contacted regarding availability of this product or service:
d) Features or functions of the product or service that are essential to the need; and
e) How the stated features or functions are essential to the need and use of the product or service.

Recurring Purchases. If the total value of a recurring purchase of a good or service is anticipated to exceed $50,000.00 during any fiscal year, where practicable the bid process shall be utilized and shall specify the recurring nature of the purchase. Once a bid has been accepted, all future purchases shall be made from that bidder(s) without the necessity of additional bids, until such time as the City Council votes to initiate a new bid process.

Emergency Purchases. The City Council may award contracts and make purchases for the purpose of meeting the public emergency without complying with the bid process. Emergency purchases should be made in accordance with state law provisions applicable to the emergency. Emergency expenditures may include immediate repair or maintenance of City property, vehicles, or equipment if the delay in such repair or maintenance would endanger persons or property or result in substantial impairment of the delivery of important City services. The bid process, subject to accelerated timelines, should be complied with to the extent practicable based on the nature of the public emergency and the information known at the time the purchase is initiated. Contracts, including emergency contracts, must include the required contract clauses (2 C.F.R. 200.326 & Appendix II);
• Contracts must include the Federal and state bonding requirements if the contract is for construction or facility improvement (2 C.F.R. 200.325) or public works (Chapter 2253, Tex. Gov't Code);
• Contracts must be awarded to a responsible contractor (2 C.F.R. 200.318(h));
• a cost or price analysis must be completed to determine that the cost or price of the contract is fair and reasonable; (2 C.F.R. 200.323(a) and (b));
• The use of cost-plus-percentage-of-cost contracting is prohibited (2 C.F.R. 200.323(c)); and
• Use of time and materials contracts are strongly discouraged, but if used, must comply with 2 C.F.R. 200.318(j).

Professional Services. The bid process shall not apply to the selection of providers for services that are characterized by a high degree of professional judgment and discretion including legal, financial, auditing, risk management, and insurance services.

Federally funded non-competitive purchases for $150,000 or more require a cost analysis to determine the reasonableness of the proposed pricing and should be completed in accordance with the requirements of the federal or state agency issuing the grant funding.

2 CFR 200, Appendix A:

All departments shall follow the established CFR 200 Uniform Administrative Guidance Procurement Standards sections 200.317 through 200.326 and will work in conjunction with the local, state, and federal entities to ensure compliance.

During and or after an emergency/disaster, the City will follow policy in accordance with CFR 200 Uniform Administrative Guidance Procurement Standards sections 200.317 through 200.326.

§200.318 General procurement standards.

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also §200.213 Suspension and debarment.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of: (i) The actual cost of materials; and (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 80 FR 43309, July 22, 2015]

§200.319 Competition.

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must the from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive contracts to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient

requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§200.320 Methods of procurement to be followed.

The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(i) A complete, adequate, and realistic specification or purchase description is available;

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

(i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(e) [Reserved]

(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

(1) The item is available only from a single source;

(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or

(4) After solicitation of a number of sources, competition is determined inadequate.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 80 FR 54409, Sept. 10, 2015]

§200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

§200.322 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§200.323 Contract cost and price.

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§200.324 Federal awarding agency or pass-through entity review.

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a “brand name” product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§200.325 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

§200.326 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.