

**CITY OF HAYS COMMISSION MEETING  
CITY HALL, 1507 MAIN STREET, HAYS, KS  
THURSDAY, JUNE 13, 2019 – 6:30 P.M.  
AGENDA**

1. Call to order by Chairperson.
2. **MINUTES:** Consider approval of the minutes from the regular meeting held on May 23, 2019. (PAGE 1)
3. **CITIZEN COMMENTS:** (non-agenda items).
4. **EMPLOYEE PROMOTIONS AND NEW HIRES**
5. **CONSENT AGENDA:** (Items to be approved by the Commission in one motion, unless objections are raised).

**UNFINISHED BUSINESS**

(No business to review)

**NEW BUSINESS**

6. **2019 LEGISLATIVE SESSION RECAP:** Hear from Representative Barbara Wasinger and Senator Rick Billinger in regard to the 2019 State of Kansas Legislative Session. (PAGE 11)
7. **PURCHASING POLICY REVISIONS:** Approve the revised Purchasing Policy as presented. (PAGE 13)
8. **PROGRESS REPORT**
9. **COMMISSION INQUIRIES AND COMMENTS**
10. **EXECUTIVE SESSION (IF REQUIRED)**
11. **ADJOURNMENT**

**ANY PERSON WITH A DISABILITY NEEDING SPECIAL ACCOMMODATIONS TO ATTEND THIS MEETING SHOULD CONTACT THE CITY MANAGER'S OFFICE 48 HOURS PRIOR TO THE SCHEDULED MEETING TIME. EVERY ATTEMPT WILL BE MADE TO ACCOMMODATE ANY REQUESTS FOR ASSISTANCE.**



MINUTES OF A MEETING  
OF THE GOVERNING BODY OF  
THE CITY OF HAYS, KANSAS  
HELD ON MAY 23, 2019

**1. CALL TO ORDER BY CHAIRMAN:** The Governing Body of the City of Hays, Kansas met in regular session on Thursday, May 23, 2019 at 6:30 p.m.

Roll Call: Present: Henry Schwaller, IV

Shaun Musil

Sandy Jacobs

Ron Mellick

Eber Phelps

Mayor Schwaller declared a quorum was present and called the meeting to order.

**2. MINUTES:** There were no corrections or additions to the minutes of the regular meeting held on May 9, 2019; the minutes stand approved as presented.

**3. FINANCIAL STATEMENT:** Finance Director, Kim Rupp, reviewed the financial summaries of the revenue and expenditure activities of the City of Hays for the month ended April 30, 2019.

Month-to-date general fund sales tax collections were at \$531,126, which was an increase of \$4,636 or .88% as compared to last year. Year-to-date general fund sales tax collections are at \$2,397,499 up \$82,698 or 3.57%. The six month average is at 2.93% which is a 4.6% increase when compared to a year ago.

The portfolio of certificates of deposit on April 30, 2019 totaled \$57,750,000 with a weighted average interest rate of 2.46% up .91% from a year ago. The total balance of the Money Market account on April 30, 2019 was \$3,000,000 with a current yield of .90%. Total investments are up \$1,443,000 when compared to this time last year as we took our final draw on the revolving loan for the reconstruction of the waste water facility.

Ron Mellick moved, Shaun Musil seconded, to approve the Financial Statement for the month of April, 2019 as presented.

Vote: Ayes: Henry Schwaller, IV  
Shaun Musil  
Sandy Jacobs  
Ron Mellick  
Eber Phelps

**4. CITIZEN COMMENTS:** There were no comments.

**5. CONSENT AGENDA:** The following appointment was recommended at the May 9, 2019 City Commission meeting and is now being presented for approval.  
Hays Convention and Visitors Bureau Advisory Committee – three-year term  
John Griffith (Comfort Inn & Suites North) – unexpired term to expire December 1, 2021 (1st term)

Shaun Musil moved, Sandy Jacobs seconded, to approve the Consent Agenda as presented.

Vote: Ayes: Henry Schwaller, IV  
Shaun Musil  
Sandy Jacobs  
Ron Mellick  
Eber Phelps

## **NEW BUSINESS**

**6. AIRPORT MACK GRANITE 42FR TRUCK/PLOW – AWARD OF BID AND GRANT APPLICATION:** Jesse Rohr, Director of Public Works, reported that a plan to purchase snow removal equipment (SRE) for the Airport has been on the Airport Capital Improvement Plan (ACIP) for several years. In August 2018, the Federal Aviation Administration (FAA) provided notification indicating their intent to fund the project.

Bids for the acquisition of airport snow removal equipment were opened on April 16, 2019. This includes a dump truck, 16' front-mounted plow, and a

material spreader. The low and only bid from Bruckner Truck Sales Inc., of Hays, was for a total price of \$308,320. The FAA covers 90% of the cost out of the entitlement funds available to the Airport. The other 10% will be funded out of the Airport AIP fund.

Mr. Rohr added that one question raised during the process was the extreme difference between the engineer's estimate of \$185,000 and the actual low bid of \$308,320. The recommendation letter from Burns & McDonnell Engineering Company, Inc. stated the reasons for this disparity and how the estimate was arrived at. It has been determined that pricing received prior to the bid opening was inaccurate due to three major factors: unfamiliarity with airport equipment, Buy American Certification requirements, and a thriving sales market. Based on these factors, it appears due diligence was given to the engineers estimate.

Burns & McDonnell Engineering Company, Inc. was required to perform a single-bid analysis to satisfy the requirements of the FAA. This process included contacting non-bidders and determining the reasons for no bid. The proposal had to be deemed "fair and reasonable" for the equipment. It had to be shown that the specifications did not exclude any potential bidders for the equipment. Reasons for no-bid were unfamiliarity with airport equipment, Buy American Certification requirements, and a thriving sales market. Ultimately, this all led to a bid price of \$308,320.

Staff recommends awarding a bid that would not include the material spreader. The truck-mounted spreader is too large of a piece of equipment for the needs of the airport. A pick-up mounted spreader would be utilized rather than a truck mounted spreader. By not including the spreader, that reduces the bid price to \$271,039 with the City share being \$27,103.90.

Sandy Jacobs moved, Ron Mellick seconded, contingent upon FAA awarding a grant for federal funding, to accept the bid from Bruckner Truck Sales Inc. in the amount of \$271,039 with the City share being \$27,103.90, for the purchase of one Mack Granite 42FR truck and 16' snow plow for the Hays Regional Airport; authorize staff to submit a grant application to FAA for Federal

Assistance in funding this project; and authorize the City Manager to take all actions necessary to carry out this project including the execution of the FAA Grant when offered.

Vice-Mayor Musil asked if the FAA funding would be lost if we do not purchase the truck. Mr. Rohr stated that the purchase of the truck is not necessarily tied to the funding, but there is a need for the snow removal equipment at the Airport. He added that we have the funding available because of the Airport reaching 10,000 enplanements in previous years.

Vote: Ayes: Henry Schwaller, IV

Shaun Musil

Sandy Jacobs

Ron Mellick

Eber Phelps

## **7. CONTRACT SEWER CLEANING AND CCTV INSPECTION – AWARD OF**

**BID:** Jeff Crispin, Director of Water Resources, reported that the Department of Water Resources initiated a multi-year program to clean sewer mains in 2013 to ensure proper operation and maintenance of the collection system. Problems that can be caused by the lack of sewer cleaning include: sewer backups, manhole overflows, public exposure to raw sewage, and regulatory fines.

Staff received three proposals for the 2019 program and recommends accepting the low bid to perform light cleaning and video inspection of 105,759 linear feet of sanitary sewer at the unit price of \$.91 a linear foot for 8” pipe from Pro-Pipe not to exceed \$150,000. Mr. Crispin clarified that staff is asking for approval for Pro-Pipe to perform light cleaning for the project at a cost of \$97,854.51 with additional approval to spend up to the budget of \$150,000 for medium and heavy cleaning as well as removal of taps and roots that are unknown at this time. The 2019 program consists of performing the 2014 area again and to continue the five year cleaning cycle. Pro-Pipe was awarded the 2016 and 2018 contracts and staff has been very pleased with their performance.

Ron Mellick moved, Shaun Musil seconded, to authorize the City Manager to enter into a contract with Pro-Pipe to perform light cleaning and video

inspection of 105,759 linear feet of sanitary sewer at a price of \$97,854.51 with a budget not to exceed \$150,000, to be funded from the Repairs and Maintenance line item in the Water Reclamation & Reuse budget.

Commissioner Phelps asked what would determine the implementation of a fine for not properly cleaning the sewer lines. Mr. Crispin stated we could be fined for what is being discharged from the Wastewater Treatment Facility because of certain things coming through. Overflow of sewage due to lack of cleaning of sewer lines could also cause fines to be assessed if that sewage reaches a waterway.

Vote: Ayes: Henry Schwaller, IV  
Shaun Musil  
Sandy Jacobs  
Ron Mellick  
Eber Phelps

**8. WATER RESOURCES DUMP TRUCK – AWARD OF BID:** Jeff Crispin, Director of Water Resources, stated the 2019 Budget included \$130,000 for the purchase of one 4x2 Dump Truck for the Department of Water Resources Maintenance Department. Four bids were opened on April 23, 2019. The recommended low bid of \$101,717 from Summit Truck Group of Salina, Kansas is below the budget amount of \$130,000 and meets the required specifications.

Sandy Jacobs moved, Ron Mellick seconded, to award the bid for the purchase of one new Model HV607 International Truck with the Henderson Mark E Body from Summit Truck Group of Salina, Kansas in the amount of \$101,717 to be funded out of New Equipment Reserve.

Vote: Ayes: Henry Schwaller, IV  
Shaun Musil  
Sandy Jacobs  
Ron Mellick  
Eber Phelps

**9. NORTH VINE CORRIDOR IMPROVEMENTS – DISCUSSION OF 37<sup>TH</sup> STREET/SKYLINE/41<sup>ST</sup> STREET CONNECTION:** John Braun, Project Manager,

presented a detailed review of the North Vine corridor improvements, more specifically the 37<sup>th</sup>/Skyline/41<sup>st</sup> connection. He reviewed the options explored, as well as the underlying factors that led to the choice of this layout.

Mr. Braun stated the cost of this project is \$9.3 million with \$6 million of that to be funded through a Federal Build Grant and the remainder to be funded from a 2% transient guest tax.

Mr. Braun reviewed three options: close 41<sup>st</sup> Street, reroute 41<sup>st</sup> Street between Baymont Inn and the Phillips 66 gas station, or connect 37<sup>th</sup> Street to Skyline. He explained that since the 2012 Comprehensive Plan, the 37<sup>th</sup> and Skyline connection has been the chosen plan and the desired connection to Vine Street. This option allows for the best traffic flow, facilitates future development of adjacent properties, and does not impact existing businesses. He reviewed the pros and cons to extend 37<sup>th</sup> across Skyline Draw & Connect Skyline to 41<sup>st</sup> Street.

#### PROS

- Convenient Access to Vine Street from residential neighborhood
- Extending Skyline to 41<sup>st</sup> will better facilitate development of Stehno Property
- Improved traffic circulation
- Limits Right of Way acquisition to vacant properties/no taking of active business properties
- Less utility conflicts

#### CONS

- Higher construction cost than simply closing 41<sup>st</sup> Street
- More traffic on 37<sup>th</sup> Street west of Skyline
- More area of right of way to acquire

Mr. Braun also reviewed questions he has heard from residents recently.

- Why another thoroughfare? – *37<sup>th</sup> will not become another arterial. It will simply provide access to Vine.*
- Will the City acquire additional right of way and widen 37<sup>th</sup> Street? – *No.*

- Will the City remove parking on 37<sup>th</sup> Street? – *No. 37<sup>th</sup> Street is wide enough to handle current and future traffic volumes and parking along both sides.*
- Skyline cannot handle two-way traffic? – *Skyline handles two-way traffic just fine now, and will continue to do so in the future.*
- Will there be more traffic on 37<sup>th</sup> Street? – *More traffic is likely, but it will not be significantly more. Most people will continue using 33<sup>rd</sup> and 41<sup>st</sup> Streets as they do now.*
- 37<sup>th</sup> is not wide enough to handle more traffic? – *37<sup>th</sup> is the same width as 33<sup>rd</sup> Street, which handles significantly more traffic.*
- Truck traffic will increase? – *It is unlikely that trucks will access the area. There will be signs prohibiting truck traffic.*
- Is another bridge over Skyline Draw worth the expense? – *The box culvert through Skyline Draw is estimated to cost \$30K.*
- Does the current \$9.3M project cost include 37<sup>th</sup> and Skyline Streets– *Yes.*

Ryan Rymer, who lives at 114 West 37<sup>th</sup> Street, presented a petition with more than 100 signatures from residents of Hays that are against any connection of Skyline or 37<sup>th</sup> to Vine Street. Mr. Rymer, of the Hays 37<sup>th</sup> Street Association stated the group's chief concern is keeping the neighborhood safe from increased traffic. His presentation included information about traffic volume, crash frequency, crime, and other possible design options.

Daniel LaBarge, who lives at 200 West 37<sup>th</sup> Street, also gave a presentation expressing concerns regarding this proposal. He stated allowing Vine Street traffic to access the residential site of 37<sup>th</sup> Street does nothing to benefit Hays, it does allow 37<sup>th</sup> Street to become an arterial road with a straight unimpeded access from Vine Street to Hall Street. He asked that the City look into the Leaking Underground Storage Tank (LUST) trust fund to remediate the contamination on the Phillips 66 gas station ground to maintain the existing storm water and traffic patterns in the area at a cheaper cost, and eliminate the possibility of ground water contamination. He agreed that 41<sup>st</sup> Street needs to be

connected to Vine Street and they have seen other design options that do just that. They do not want to see their safe, quiet, residential neighborhood change.

Commissioner Mellick asked Project Manager, John Braun, if there would be flooding concerns with the box culvert in the ditch from Skyline to Vine Street. Mr. Braun stated there have been no issues with the box culvert that is under 41<sup>st</sup> Street and the design would be the same.

Bill Wasinger, who lives at 214 West 37<sup>th</sup> Street, commented that he does not think the box culvert would be big enough to handle large volumes of water. He also commented that Willow, Fort Street, and Skyline were all designed to go to 41<sup>st</sup> Street and those three streets would do that without making an arterial street out of 37<sup>th</sup> Street.

Commissioner Jacobs stated that she appreciates their comments, but she does not believe people will come down 37<sup>th</sup> Street from Hall Street when they have the opportunity to go around 41<sup>st</sup> Street with no stop signs.

Randy Jordan, Brian Ralph, Myrna Jordan, and Jordan Munsch also voiced their concerns about increased traffic, safety issues, and loss in property values.

Commissioner Mellick stated that 37<sup>th</sup> Street residents may be happy Skyline Drive doesn't currently connect to Vine Street, but others he has heard from on surrounding streets are in favor of the 37<sup>th</sup> Street project. He added that the residents at 32<sup>nd</sup> and 33<sup>rd</sup> would like the residents on 37<sup>th</sup> Street to help shoulder and share a little of the traffic load that they have.

Commissioner Jacobs stated that she has listened to each person who has contacted her, she has driven up and down those streets, she has done her homework, done fact-finding, and done a lot of soul-searching. She added that she trusts the City staff, the engineers, and the people who are bringing these plans before us to recommend what is best. With that said, she stated that she hasn't changed her mind about the value of the project and she is suggesting we move forward as planned.

Vice-Mayor Musil stated that he is not in favor of this proposal. He moved to support the option of rerouting 41<sup>st</sup> Street between the Phillips 66 gas station and Baymont Inn.

The motion died for lack of a second.

Commissioner Phelps recalled previous street projects in which residents feared an increase in traffic, accidents, and a decrease in property values. He stated in his opinion, with the proposed design of this project, he does not think it will happen.

Mayor Schwaller stated that it is possible that all of those things could happen, but the probability is low. He added that there are pros and cons to all of the options, and there are really no clear alternatives that will benefit everyone.

**10. COMMISSION INQUIRIES AND COMMENTS:** Commissioner Phelps stated that he had the honor of delivering the commencement address at NCK Tech and congratulated all of the graduates in Hays and their parents.

Commissioner Jacobs thanked everyone for coming to the meeting and suggested they consider running for office. She also requested that Senator Rick Billinger and Representative Barb Wasinger be invited to update the Commission on the legislative session.

Mayor Schwaller thanked everyone for attending the meeting and for their input.

The meeting was adjourned at 8:17 p.m.

Submitted by: \_\_\_\_\_

Brenda Kitchen – City Clerk



# CITY OF HAYS

## AGENDA ITEM COVER SHEET

COMMISSION AGENDA ITEM NO. 6

MEETING DATE: 6-13-19

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**TOPIC:**

2019 Legislative Session Recap

**ACTION REQUESTED:**

Hear from Representative Barbara Wasinger and Senator Rick Billinger in regard to the 2019 State of Kansas Legislative Session.

**NARRATIVE:**

N/A

**PERSON/STAFF MEMBER(S) MAKING PRESENTATION:**

Rick Billinger, Kansas Senate, District 40  
Barbara Wasinger, Kansas House of Representatives, District 111

**ADMINISTRATION RECOMMENDATION:**

N/A

**COMMITTEE RECOMMENDATION(S):**

N/A

**ATTACHMENTS:**

N/A



**CITY OF HAYS**  
**AGENDA ITEM COVER SHEET**

**COMMISSION AGENDA ITEM NO. 7**

**MEETING DATE: 6-13-19**

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**TOPIC:**

Purchasing Policy Revisions

**ACTION REQUESTED:**

Approve the revised Purchasing Policy as presented.

**NARRATIVE:**

The current Purchasing Policy is in need of updates. Revisions included in the proposed Purchasing Policy include the adjustment of purchasing limits, removal of references to a Purchasing Agent, addition of contractual provision language, the addition of a Service Calls section, and codification of the current process to purchase vehicles and large pieces of equipment from government contracts.

**PERSON/STAFF MEMBER(S) MAKING PRESENTATION:**

Toby Dougherty, City Manager

**ADMINISTRATION RECOMMENDATION:**

Approve the revised Purchasing Policy as presented.

**COMMITTEE RECOMMENDATION(S):**

N/A

**ATTACHMENTS:**

Memo from City Manager  
Final Purchasing Policy  
Redline Purchasing Policy  
Comparison of City Manager Spending Authority

# Commission Work Session Agenda

## Memo

**From:** Toby Dougherty, City Manager

**Work Session:** June 6, 2019

**Subject:** Purchasing Policy Revisions

**Person(s) Responsible:** Toby Dougherty, City Manager

### Summary

The current Purchasing Policy is in need of updates. Suggested updates include: adjustment of purchasing limits, removal of references to a Purchasing Agent, codifying of the current process to purchase vehicles and large pieces of equipment from government contracts.

### Background

The current Purchasing Policy was adopted in 2003. Minor revisions were made in 2007 and 2008. The policy remains largely unchanged in the 16 years since its adoption.

### Discussion

The current Purchasing Policy was adopted in 2003. The notable revisions to the policy are:

- Spending limits in the policy have been adjusted to better meet our operational needs. I have attached a document to this memo that compares spending authority for my peers.
- All references to a stand-alone Purchasing Agent have been removed. The City Manager is the Purchase Agent by Code and can delegate or assign that duty as they see fit. There is no need to have detailed language in this document.
- The City Attorney has inserted language regarding contractual provisions as spelled out in the Code of Ordinances.
- A new section titled “Service Calls” has been added
- A new section titled “Vehicle and Equipment Purchases from State/Federal Contracts” has been added. This section codifies the process that has been used since 2004.

The rest of the document contains minor edits and updated references.

### Legal Consideration

There are no known legal obstacles to proceeding as recommended by City Staff.

## **Financial Consideration**

There are no additional expenditures associated with these revisions. The revisions deal with how existing budget expenditures are made.

## **Options**

The City Commission has the following options:

- Adopt the Purchasing Policy as presented.
- Suggested modifications to the policy.
- Do nothing.

## **Recommendation**

Staff recommends the Commission adopt the Purchasing Policy as presented.

## **Action Requested**

Adopt the Purchasing Policy as presented.

## **Supporting Documentation**

Purchasing Policy – Redline Version  
Comparison of City Manager Spending Authority

SUBJECT	ISSUED BY	EFFECTIVE DATE	REVISION DATE
<b>PURCHASING POLICY</b>	City Commission	7-9-03	<b>6-13-19</b>

**SECTION 1. GENERAL PROVISIONS**

**Purpose.**

The Purpose of this policy, and a goal of the City Manager’s Office, is to provide for the fair and equitable treatment of all persons involved in public purchasing by the City; to maximize the purchasing value of public funds (taking into consideration the life cycle of the product); to standardize the purchasing procedures in order to provide orderly and efficient administration, monitor expenses, and provide safeguards for maintaining a purchasing system of quality and integrity; and to create a competitive environment through fair opportunity and equitable treatment.

**Application.**

This policy applies to contracts for the purchasing of all supplies and materials entered into by the City. It shall apply to every expenditure of public funds for supplies and materials by a public department for public purchasing irrespective of the source of the funds. If City staff or resources are used in any manner, this policy shall apply. When the purchase involves the expenditure of federal or state assistance or contract funds, the purchase shall be conducted in accordance with any mandatory applicable federal and/or state law and regulations. Nothing in this policy shall prevent any public department from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

**Public Access to Purchasing Information.**

Purchasing information shall be a public record to the extent provided by state statute and shall be available to the public as provided in such statute.

**SECTION 2. DEFINITIONS**

**City Employee** – An individual drawing a salary or wages from the City, whether elected or not; any noncompensated individual performing personal services for the City or any department, activity, commission, council, board, or any other entity established by the executive or legislative branch of the City; and any noncompensated individual serving as an elected official of the City.

**Contract** – Any agreement enforceable by law between the City and one or more outside parties, whether written or oral, regardless of form or title for the purchase of supplies, materials, services, professional services and construction.

**Contract Modification (bilateral change)** – Any change or alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract, whether written or oral or by acquiescence.

**Invitation for Bids** – All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

**Modification** – Any written alteration to a provision of any contract accomplished by mutual agreement of the parties to the contract.

**Request for Proposals** – All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

**SECTION 3. SOURCE SELECTION AND CONTRACT FORMATION**

**Purchasing Authority and Approval Table.**

The following table shows who has the authority to make purchases for their department or division.

<i>Amount of Purchase</i>	<i>Authority for Purchase</i>	<i>Purchase Methods</i>	<i>Authority for Approval</i>
\$1 - \$1,000	Exempt employees and nonexempt with Division Superintendent authorization	ProCard is preferred Purchase Order	Division Superintendent
\$1,001 - \$5,000	Department Head or his/her designee	ProCard is preferred Purchase Order from: Telephone quotes Electronic quotes Informal written quotes (2 quotes required)	Department Head (Reviewed by Finance)
\$5,001 - \$25,000	City Manager (or designee)	Purchase Order from: Telephone quotes Electronic quotes Informal written quotes (2 quotes required)	Department Head Finance City Manager
\$25,001 or more	City Manager (or designee) City Commission (awarded contracts of \$15,001 and above)	Purchase Order Formal Competitive Advertised Bid or Proposal	Department Head Finance City Manager

**Purchases of less than \$1,001.**

Purchases of under \$1,001 can be made by exempt employees or by non-exempt employees with approval by the division superintendent. The paid invoice/receipt detailing the transaction must be attached, approved, and signed by the department head before it is sent to the Finance Office for payment. Any agreement for purchases, the duration of which shall exceed one year, shall be subject to annual appropriation, and the alternative approved by the City Commission. Purchase orders under \$1,001 are reviewed by the Finance Director.

**Purchases of \$1,001 to \$25,000.**

Purchases of at least \$1,001 but less than \$25,000 require a purchase order. The requesting department will obtain at least two (2) competitive telephone, electronic, and/or informal written quotes, and an additional quote is required if the two quotes are not competitive. A vendor will be selected, and the requisition containing the quotes for the purchase should be prepared by the requesting department and (purchases of \$1,001 to \$5,000) will be reviewed by the Finance Director. Requisitions prepared for purchases of \$5,001 to \$25,000 will be sent to the Finance Director, and City Manager for approval. Once approved, a purchase order will be generated. If the item selected is not the lowest priced, an explanation must be given to the City Manager.

**Purchases of \$25,001 or more.**

Purchases exceeding \$25,001 will be awarded by advertised formal competitive sealed bid. Formal sealed bids shall not be required when a request has been submitted in writing to the City Manager stating the reasons that it is not practical or advantageous to call for a competitive bid, and the City Manager has, in writing, approved the request. Purchases of multiple items shall not be spilt so as to circumvent the spending limitations or the purchase order process.

*Invitation for bids.* An invitation for bids shall be issued and shall include specifications and all contractual terms and conditions applicable to the purchase.

*Public Notice.* Adequate public notice of the invitation for bids shall be given for a reasonable time, no less than ten calendar days prior to the date set forth therein for the opening of bids. Such notice shall include publication on the City's website. The public notice shall include:

- (1) A description of the work to be performed or the product to be purchased.
- (2) The location where copies of plans, specifications, and other contract documents may be examined.
- (3) The time and place where bids will be received and time and place where bids will be opened.
- (4) A statement that the City reserves the right to reject any or all bids and to waive any informalities or irregularities therein.
- (5) A statement that the City Manager may require that no bidder may withdraw a bid for a period of up to forty-five (45) days after the date and hour set for opening bids, but that a bid may be withdrawn up to twenty-four (24) hours prior to expiration of the deadline for submitted bids.
- (6) A statement setting forth requirements for bid and performance, labor, and materials, bonds, product liability coverage warranty, and worker's compensation insurance.
- (7) A statement that references City Code of Ordinances provisions regarding required and prohibited contractual provisions, per Section 2-576 through 2-580. Any invitation or request for bids or proposals that does not specifically waive or

establish alternatives to said requirements and prohibitions shall conform to the requirements of the Code of Ordinances.

*Bid Requirements.* Each bid submitted to the City shall be signed, enclosed in a sealed envelope, and filed as stated in the advertisement for the bid. The City Manager may require that no bid be withdrawn for up to forty-five (45) days after the date and time set for opening of bids, but a bid may be withdrawn up to twenty-four (24) hours prior to the expiration of the deadline for submitted bids. The City Manager may waive technical irregularities in the bid requirements in this Purchasing Policy, or in the advertisement for bids, if the City Manager finds that such waiver does not compromise the integrity of the bidding process.

*Late Bids.* Bids not submitted by the required deadline are ineligible for consideration and will not be opened. The City Manager may waive the deadline.

*Bid Openings.* Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such relevant information as the City Manager deems appropriate, together with the name of each bidder, shall be recorded. The record and each bid shall be open to public inspection. In the event of good cause, as determined by the City Manager, bid openings may be postponed.

*Bid Acceptance and Bid Evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized in this policy. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation and delivery costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the invitation for bids.

*Correction or Withdrawal of Bids; Cancellation of Awards.* Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written or facsimile notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, the following provisions shall apply:

- (1) A low bidder alleging a material mistake of fact may be permitted to correct its bid, if the mistake is clearly evident on the face of the bid document and the intended correct bid is similarly evident.
- (2) A low bidder alleging a material mistake of fact may be permitted to withdraw its bid: (1) if the mistake is clearly evident on the face of the bid but the intended correct bid is not similarly evident, or (2) if the mistake is not clearly evident on the face of the bid but the bidder submits evidence which clearly and convincingly demonstrates that a mistake was made, in which case the bidder must show the nature of the mistake and the bid price actually intended.

No changes in bid prices or other provisions of bids prejudicial to the interests of the City or fair competition shall be permitted. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on mistakes, shall be supported by a written determination made by the City Manager.

*Award.* The bid shall be awarded with reasonable promptness by written notice to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids, subject to the right of the City to reject all bids. If the lowest responsive and responsible bid exceeds budgeted funds and either time constraints or economic considerations preclude re-solicitation of work of a reduced scope, the City Manager is authorized to negotiate an adjustment of the bid price with the lowest responsive and responsible bidder or to modify the scope of the work, so as to bring the bid within the amount of available funds. In the event that a negotiated adjustment of the bid price with the lowest responsive and responsible bidder is accomplished, this bid shall be submitted to the City Commission for approval. In the event that after review of the bids, the decision is made to take other than the lowest responsive and responsible bid, this shall be referred to the City Commission for its approval. Awarded contracts of \$25,001 and above that were budgeted shall be forwarded to the City Commission for its approval and in that extent; it shall authorize execution of the contract. In the event that a purchase is necessary and is not budgeted, except in an emergency, prior approval of the City Commission to bid the purchase should be received prior to publication and bidding.

*Multi-Step Sealed Bidding.* When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers. An invitation for formal bids will then be submitted to those whose offers have been determined to be technically acceptable per the criteria set forth in the first solicitation.

#### **Cancellation or Rejection of Bids or Proposals.**

An invitation for bids, a request for proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part. Each solicitation issued by the City shall state that the solicitation may be cancelled and that any bid or proposal may be rejected. Notice of the cancellation shall be sent to all businesses solicited and shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar items. The City Manager, or his or her designee, shall have the authority to cancel or reject bids or proposals.

#### **Local Business Preferences.**

No provision is made in this policy for dollar percentage or other types of preferential considerations for local vendors or contractors. It is the policy, however, to solicit bids from local suppliers whenever competitive local sources exist, and where no sacrifice or loss in price or quality would result. In the event of a tie bid between a local vendor and an out-of-town vendor, award will be made to the local vendor, if all factors, including price, quality, terms, and method and cost of delivery are equal.

#### **Sole Source Purchases.**

A contract may be awarded or a purchase made without competition when, after conducting a good faith review of available sources, it is determined that there is only one source for the required product. The City Manager may then conduct negotiations, as appropriate, as to price, delivery, and terms.

Circumstances that require a sole source purchase may include, but are not limited to: (1) no competitive product or availability from only one supplier, (2) the purchase of a component or replacement part for which there is no commercially available product, and which can be obtained only from the manufacturer, (3) the purchase of an item where compatibility is the

overriding consideration, such as to maintain standardization or compatibility, or to match materials already in use to produce visual harmony, (4) the purchase of a used item, (5) the purchase of a product for trial or testing.

Sole source can refer to the supplier, as well as a product or service. Thus, the ability to meet a delivery date or to provide on-call repairs can create a sole supplier condition. Justification for a sole source purchase depends on a needed item being available from only a single supplier under the prevailing conditions. If the item may be obtained from more than one source, price competition shall be solicited.

### **Emergency Purchases.**

An emergency condition exists when there is a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failure, etc. The condition must create an immediate and serious need for supplies, equipment, materials, and/or services that cannot be met through normal procurement methods, and the lack of which would threaten the function of City government or its programs.

Any department may make emergency purchases when an emergency arises, however with such competition as is possible under the circumstances. Purchases shall be limited to only the quantity necessary to meet the emergency, and in no event shall the contract price exceed commercially reasonable prices.

If the emergency arises after normal working hours, the appropriate department shall notify the Finance Department on the next working day.

### **Service Calls and Diagnostic Repairs**

From time to time it may be necessary to obtain service calls for essential City services where the full extent of the service, repair, or problem is not yet defined. In this situation, the Department Head shall make the Finance Director and City Manager aware of the situation prior to initiating the service call. A quote or purchase order is not necessary at the time of the service call. When the full extent of the situation is known, a quote or estimate will be developed, prior to the service being completed.

### **Cooperative Bidding and State/Federal Bid Awards.**

It is sometimes beneficial to group the City's requirements with the like requirements of other cities, counties, or agencies. This results in lower costs to all parties while maintaining the integrity of each entity's bidding requirements.

The State of Kansas and Federal Government bid many common requirements and makes the award results available to any governmental agency. State/Federal bid awards enable government agencies to purchase goods and services at a reduced price due to quantity discounts and do not require the bidding process by individual agencies. When the City Manager approves the contract, State/Federal bids are considered to meet the sealed bid requirements.

### **Vehicle and Equipment Purchases from State/Federal Contracts**

Budgeted vehicles and equipment may be purchased via State/Federal award contracts if approved by the City Manager. In these instances, the State/Federal contract will be considered to meet the sealed bid requirements. If there is a local vendor that offers the vehicle or equipment being purchased, they will be given the opportunity to match the State/Federal

contract price. If the local vendor matches the State/Federal contract price, the item will be purchased from the local vendor.

**Responsibility of Bidders and Offerors.**

(1) *Determination of Nonresponsibility.* If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility, setting forth the basis of the finding, shall be prepared by the Department Head or City Manager. The unreasonable failure of a bidder or offeror to supply prompt information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror. A copy of the determination of nonresponsibility shall be sent promptly to the nonresponsible bidder or offeror. The final determination shall be made part of the contract file and be made a public record. In determining whether a bidder or offeror is responsible, the following shall be considered:

- (a) the ability, capacity and skill of the bidder or offeror to perform the contract or provide the services required;
- (b) whether the bidder or offeror can perform the contract or provide the service promptly and within the time specified without delay or interference;
- (c) the character, integrity, reputation, judgment, experience and efficiency of the bidder or offeror;
- (d) the quality of the bidder's or offeror's performance of previous contracts or services;
- (e) the previous and existing compliance by the bidder or offeror with laws and ordinances relating to the contract or service;
- (f) the sufficiency of the financial resources and ability of the bidder or offeror to perform the contract or provide the service;
- (g) the quality, availability and adaptability of the materials and services to the particular use required;
- (h) the ability of the bidder or offeror to provide future maintenance and service for the items related to the contract; and
- (i) any other circumstances which will affect the bidder's or offeror's performance of the contract.

(2) *Right of Nondisclosure.* Unless required by law, confidential information furnished by a bidder or offeror pursuant to this section shall not be disclosed by the City outside of the office of City Manager, or appropriate department, without prior written consent by the bidder or offeror. Information that is not identified as "confidential" by the subject bidder or offeror shall be made a public record.

(3) *Rejection of Bids.* The City Manager shall have the authority to reject all bids or proposals or any portions thereof. The City Commission shall have the authority to reject all bids or proposals or any portions thereof.

**Bid, Performance and Payment Bonds.**

When deemed necessary by the City Manager, bid bonds, performance bonds, payment bonds, or other equivalent security shall be required to protect the City's interests. Any such bonding requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility. Bonds shall be provided by a surety company authorized to do business in Kansas, or the equivalent in cash, or otherwise supplied in a form satisfactory to the City. Unsuccessful bidders or offerors shall be entitled to the return of any cash deposit. Unless a specific extension is granted in writing, a

successful bidder or offeror shall forfeit any bid bond or equivalent security required by the City Manager or this section upon its failure to enter into a contract within fifteen (15) days after the award.

**Types of Contracts.**

(1) *General Authority.* Subject to the limitations of this section, any type of contract which is appropriate to the procurement and which will promote the best interests of the City may be used, provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the City than any other type or that it is impracticable to obtain the supply, service, or construction item required except under such a contract.

(2) *Multi-Term Contracts.*

(a) Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the City, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting.

(b) Multi-term contracts shall be expressly contingent upon the annual budgeting and appropriation of sufficient funds on an annual basis.

(c) When funds are not appropriated or otherwise made available to support the continuation of the City's performance in a subsequent fiscal period, the contract shall be cancelled.

(3) *Multiple Source Contracting.* A multiple source award may be made when an award to two (2) or more bidders or offerors for similar supplies or services is necessary for adequate delivery, service or product compatibility.

**Contract Administration.**

A contract administration system shall be maintained that is designed to ensure that a contractor is performing in accordance with the solicitation, terms, and conditions under which the contract was awarded.

**Reporting of Anticompetitive Practices.**

When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the State Attorney General, upon review and approval of the City Manager and the City Attorney.

**City Purchasing Records.**

(1) *Contract File.* All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for the City in a contract file. All contracts shall be maintained for the City in a file by the City Clerk.

(2) *Retention of Purchasing Records.* All purchasing records shall be retained and disposed of by the City in accordance with records retention guidelines and schedules as required by Kansas statutes.

## **SECTION 4. SPECIFICATIONS**

### **Intent.**

All specifications, including but not limited to design, performance, combination, and brandname specifications, shall be drafted so as to provide a clear and concise description of the material, service or construction desired.

### **Approval.**

(1) Specifications prepared primarily for a purchase for a specific department or activity of the City shall be approved by the head of the appropriate department before being submitted for bid.

(2) The City Manager shall have authority to make a determination as to final specification.

### **Maximum Practicable Competition.**

All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the City's needs and shall not be unduly restrictive. The policy enunciated in this section applies to all specifications, including but not limited to, those prepared for the City by architects, engineers, designers, and draftsmen.

### **Brand Name or Equal Specification.**

(1) *Use.* Brand name or equal specifications may be used when the City Manager determines in writing that:

- (a) no other design or performance specification or qualified products list is available;
- (b) time does not permit the preparation of another form of purchase description, not including a brand name specification;
- (c) the nature of the product or the nature of the City's requirements makes use of a brand name or equal specification suitable for the procurement; or
- (d) use of a brand name or equal specification is in the City's best interests.

(2) *Designation of Several Brand Names.* Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.

(3) *Nonrestrictive Use of Brand Name or Equal Specifications.* Where a brand name or equal specifications is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

## **SECTION 5. DEBARMENT OR SUSPENSION**

### **Authority to Debar or Suspend.**

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the City Manager, after consulting with the City Attorney, is authorized to debar a person for cause from consideration for award of contracts. The debarment shall be for a period of not more than two years. After consultation with the City Attorney, the City Manager, or his or her designee, is authorized to suspend a person from consideration for award of contracts if there is

probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall be for a period not to exceed three months. The causes for debarment include:

(1) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a City contractor;

(3) conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(4) violation of contract provisions, as set forth below, of a character which is regarded by the City Manager to be so serious as to justify debarment action:

(a) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(b) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

(5) any other cause the City Manager, or his or her designee, determines to be so serious and compelling as to affect responsibility as a City contractor, including debarment by another governmental entity for any cause listed in this policy.

#### **Decision to Debar or Suspend.**

The City Manager shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of his rights concerning judicial or administrative review.

#### **Notice of Decision.**

A copy of the decision to debar or suspend shall be mailed or otherwise furnished immediately to the debarred or suspended person.

### **SECTION 6. APPEALS AND REMEDIES**

#### **Bid Protests.**

(1) *Right to Protests.* Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the City Manager. A protest with respect to an invitation for bids or request for proposals shall be submitted in writing prior to the opening of bids or the closing date of proposals, unless the aggrieved person did not know and should not have known of the facts giving rise to such protest prior to bid opening or the closing date for proposals. The protest shall be submitted within seven (7) calendar days after such aggrieved person knows or should have known of the facts giving rise thereto.

(2) *Stay of Purchase During Protests.* In the event of a timely protest under subsection (1) above, City Manager, or his or her designee, shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or a determination has been made, in writing, that the award of a contract without delay is necessary to protect substantial interest of the City.

## **SECTION 7. ETHICS IN PUBLIC CONTRACTING**

### **Criminal Penalties.**

To the extent that violations of the requirements set forth in this article constitute violations of Kansas State Statutes they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this article. Criminal, civil and administrative sanctions against employees or nonemployees, which are in existence on the effective date of this policy, shall not be affected.

### **Employee Conflict of Interest.**

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

Public employees must discharge their duties impartially so as to assure fair competitive access to governmental purchasing by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the City purchasing organization.

Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of a public trust.

### **Gratuities and Kickbacks.**

(1) *Gratuities.* It shall be unethical for any person to offer, give, or agree to give any City employee or former City employee, or for any City employee or former City employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or purchasing standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.

(2) *Kickbacks.* It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(3) *Contract Clause.* The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every contract and solicitation therefor.

**Prohibition Against Contingent Fees.**

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

**Contemporaneous Employment Prohibited.**

It shall be unethical for any City employee who is participating directly or indirectly in the purchasing process to become or to be, while such a City employee, the employee of any person contracting with the governmental body by whom the employee is employed.

**Use of Confidential Information.**

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

**Sanctions.**

(1) *Employees.* Employees found to have violated one or more of the ethical standards in this article shall be subject to the disciplinary sanctions prescribed in Article H. Discipline of the “*City of Hays’ Personnel Manual.*”

(2) *Nonemployees.* The Finance Director, with the approval of the City Manager, may impose any one or more of the following sanctions on a nonemployee for violations of the ethical standards:

- (a) written warnings or reprimands;
- (b) termination of contracts, not entered into by the City Commission; or
- (c) debarment or suspension

(3) *City Commission Contracts.* The City Commission may impose any one or more of the following sanctions on a nonemployee for violations of ethical standards:

- (a) written warnings or reprimands;
- (b) termination of contracts, or
- (c) shall cause debarment or suspension

**Recovery of Value Transferred or Received in Breach of Ethical Standards.**

(1) *General Provisions.* The value of anything transferred or received in breach of the ethical standards of this ordinance by a City employee or a nonemployee may be recovered from both City employee and non-employee.

(2) *Recovery of Kickbacks by the City.* Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the City and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

SUBJECT	ISSUED BY	EFFECTIVE DATE	REVISION DATE
PURCHASING POLICY	City Commission	7-9-03	<del>4-10-08</del> 6-13-2019

Deleted: 4-10-08

**SECTION 1. GENERAL PROVISIONS**

**Purpose.**

The Purpose of this policy, and a goal of the City Manager’s Office, is to provide for the fair and equitable treatment of all persons involved in public purchasing by the City; to maximize the purchasing value of public funds (taking into consideration the life cycle of the product); to standardize the purchasing procedures in order to provide orderly and efficient administration, monitor expenses, and provide safeguards for maintaining a purchasing system of quality and integrity; and to create a competitive environment through fair opportunity and equitable treatment.

**Application.**

This policy applies to contracts for the purchasing of all supplies and materials entered into by the City. It shall apply to every expenditure of public funds for supplies and materials by a public department for public purchasing irrespective of the source of the funds. If City staff or resources are used in any manner, this policy shall apply. When the purchase involves the expenditure of federal or state assistance or contract funds, the purchase shall be conducted in accordance with any mandatory applicable federal and/or state law and regulations. Nothing in this policy shall prevent any public department from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

**Public Access to Purchasing Information.**

Purchasing information shall be a public record to the extent provided by state statute and shall be available to the public as provided in such statute.

**SECTION 2. DEFINITIONS**

**City Employee** – An individual drawing a salary or wages from the City, whether elected or not; any noncompensated individual performing personal services for the City or any department, activity, commission, council, board, or any other entity established by the executive or legislative branch of the City; and any noncompensated individual serving as an elected official of the City.

Deleted: **Purchasing Agent** – According to the City of Hays Code of Ordinances, the City Manager shall, by virtue of his or her own office, be the City’s purchasing agent, unless he or she shall appoint some other City officer or employee to perform the duties assigned to such office.¶

**Contract** – Any agreement enforceable by law between the City and one or more outside parties, whether written or oral, regardless of form or title for the purchase of supplies, materials, services, professional services and construction.

**Contract Modification (bilateral change)** – Any change or alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract, whether written or oral or by acquiescence.

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**Invitation for Bids** – All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

**Modification** – Any written alteration to a provision of any contract accomplished by mutual agreement of the parties to the contract.

**Request for Proposals** – All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

**SECTION 4. SOURCE SELECTION AND CONTRACT FORMATION**

**Purchasing Authority and Approval Table.**

The following table shows who has the authority to make purchases for their department or division.

<b>Amount of Purchase</b>	<b>Authority for Purchase</b>	<b>Purchase Methods</b>	<b>Authority for Approval</b>
\$1 - <del>\$1,000</del>	Exempt employees and nonexempt with Division Superintendent authorization	ProCard is preferred Purchase Order	Division Superintendent
<del>\$1,001 - \$5,000</del>	Department Head or his/her designee	ProCard is preferred Purchase Order from: Telephone quotes <del>Electronic</del> quotes Informal written quotes (2 quotes required)	Department Head (Reviewed by Finance)
<del>\$5,001 - \$25,000</del>	City Manager (or designee)	Purchase Order from: Telephone quotes <del>Electronic</del> quotes Informal written quotes (2 quotes required)	Department Head Finance City Manager
<del>\$25,001 or more</del>	City Manager (or designee) City Commission	<del>Purchase Order</del> Formal Competitive Advertised Bid <del>or</del>	Department Head Finance City Manager

**Deleted: SECTION 3. OFFICE OF THE PURCHASING AGENT**

**Establishment**

The City Manager shall, by virtue of his or her own office, be the City purchasing agent, unless he or she shall appoint some other City officer or employee to perform the duties assigned to such office. The purchasing agent, pursuant to rules, regulations, or ordinance, shall contract for, purchase, store and distribute all supplies, materials, and equipment required by any office, department, or agency of the City government. (*City Code*, Section 2-269)

**Authority and Duties**

The City Manager, or his or her designee, shall in all cases establish rules and regulations governing the purchase and procurement of goods and/or services to be required by the City and all such rules shall be binding upon the officers and employees of the City. The City Manager shall also have power and shall be required to:

- (1) . Establish and enforce specifications with respect to supplies, materials and equipment required by the City government.
  - (2) . Inspect or supervise the inspection of all deliveries of supplies, materials, and equipment, and determine their quality, quantity and conformance with specifications.
  - (3) . Have charge of general City storerooms and warehouses.
- <#>Transfer to or between offices, departments or agencies or sell surplus, obsolete or unused supplies, material and equipment.
- <#>No officer or employee of the City shall be authorized to create any indebtedness or claim against the City except as provided in this chapter, or as may be authorized by regulations of the City Manager (*City Code*, Section 2-269)

**Delegation to Other City Employees**

The City Manager may delegate authority to purchase certain supplies and materials to other City employees.

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	(awarded contracts of \$15,001 and above)	<u>Proposal</u>	
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**Purchases of less than \$1,001.**

Purchases of under \$1,001 can be made by exempt employees or by non-exempt employees with approval by the division superintendent. The paid invoice/receipt detailing the transaction must be attached, approved, and signed by the department head before it is sent to the Finance Office for payment. Any agreement for purchases, the duration of which shall exceed one year, shall be subject to annual appropriation, and the alternative approved by the City Commission. Purchase orders under \$1,001 are reviewed by the Finance Director.

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**Purchases of \$1,001 to \$25,000.**

Purchases of at least \$1,001 but less than \$25,000 require a purchase order. The requesting department will obtain at least two (2) competitive telephone, electronic, and/or informal written quotes, and an additional quote is required if the two quotes are not competitive. A vendor will be selected, and the requisition containing the quotes for the purchase should be prepared by the requesting department and (purchases of \$1,001 to \$5,000) will be reviewed by the Finance Director. Requisitions prepared for purchases of \$5,001 to \$25,000 will be sent to the Finance Director, and City Manager for approval. Once approved, a purchase order will be generated. If the item selected is not the lowest priced, an explanation must be given to the City Manager.

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**Purchases of \$25,001 or more.**

Purchases exceeding \$25,001 will be awarded by advertised formal competitive sealed bid. Formal sealed bids shall not be required when a request has been submitted in writing to the City Manager stating the reasons that it is not practical or advantageous to call for a competitive bid, and the City Manager has, in writing, approved the request. Purchases of multiple items shall not be split so as to circumvent the spending limitations or the purchase order process.

*Invitation for bids.* An invitation for bids shall be issued and shall include specifications and all contractual terms and conditions applicable to the purchase.

*Public Notice.* Adequate public notice of the invitation for bids shall be given for a reasonable time, no less than ten calendar days prior to the date set forth therein for the opening of bids. Such notice shall include publication on the City's website. The public notice shall include:

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- (1) A description of the work to be performed or the product to be purchased.
- (2) The location where copies of plans, specifications, and other contract documents may be examined.
- (3) The time and place where bids will be received and time and place where bids will be opened.
- (4) A statement that the City reserves the right to reject any or all bids and to waive any informalities or irregularities therein.
- (5) A statement that the City Manager may require that no bidder may withdraw a bid for a period of up to forty-five (45) days after the date and hour set for opening bids, but that a bid may be withdrawn up to twenty-four (24) hours prior to expiration of the deadline for submitted bids.

(6) A statement setting forth requirements for bid and performance, labor, and materials, bonds, product liability coverage warranty, and worker's compensation insurance.

(7) A statement that references City Code of Ordinances provisions regarding required and prohibited contractual provisions, per Section 2-576 through 2-580. Any invitation or request for bids or proposals that does not specifically waive or establish alternatives to said requirements and prohibitions shall conform to the requirements of the Code of Ordinances.

*Bid Requirements.* Each bid submitted to the City shall be signed, enclosed in a sealed envelope, and filed as stated in the advertisement for the bid. The City Manager may require that no bid be withdrawn for up to forty-five (45) days after the date and time set for opening of bids, but a bid may be withdrawn up to twenty-four (24) hours prior to the expiration of the deadline for submitted bids. The City Manager may waive technical irregularities in the bid requirements in this Purchasing Policy, or in the advertisement for bids, if the City Manager finds that such waiver does not compromise the integrity of the bidding process.

*Late Bids.* Bids not submitted by the required deadline are ineligible for consideration and will not be opened. The City Manager may waive the deadline.

*Bid Openings.* Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such relevant information as the City Manager deems appropriate, together with the name of each bidder, shall be recorded. The record and each bid shall be open to public inspection. In the event of good cause, as determined by the City Manager, bid openings may be postponed.

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*Bid Acceptance and Bid Evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized in this policy. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation and delivery costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the invitation for bids.

*Correction or Withdrawal of Bids; Cancellation of Awards.* Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written or facsimile notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, the following provisions shall apply:

(1) A low bidder alleging a material mistake of fact may be permitted to correct its bid, if the mistake is clearly evident on the face of the bid document and the intended correct bid is similarly evident.

(2) A low bidder alleging a material mistake of fact may be permitted to withdraw its bid: (1) if the mistake is clearly evident on the face of the bid but the intended correct bid is not similarly evident, or (2) if the mistake is not clearly evident on the face of the bid but the bidder submits evidence which clearly and

convincingly demonstrates that a mistake was made, in which case the bidder must show the nature of the mistake and the bid price actually intended.

No changes in bid prices or other provisions of bids prejudicial to the interests of the City or fair competition shall be permitted. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on mistakes, shall be supported by a written determination made by the City Manager.

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*Award.* The bid shall be awarded with reasonable promptness by written notice to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids, subject to the right of the City to reject all bids. If the lowest responsive and responsible bid exceeds budgeted funds and either time constraints or economic considerations preclude re-solicitation of work of a reduced scope, the City Manager is authorized to negotiate an adjustment of the bid price with the lowest responsive and responsible bidder or to modify the scope of the work, so as to bring the bid within the amount of available funds. In the event that a negotiated adjustment of the bid price with the lowest responsive and responsible bidder is accomplished, this bid shall be submitted to the City Commission for approval. In the event that after review of the bids, the decision is made to take other than the lowest responsive and responsible bid, this shall be referred to the City Commission for its approval. Awarded contracts of \$25,001, and above that were budgeted shall be forwarded to the City Commission for its approval and in that extent; it shall authorize execution of the contract. In the event that a purchase is necessary and is not budgeted, except in an emergency, prior approval of the City Commission to bid the purchase should be received prior to publication and bidding.

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*Multi-Step Sealed Bidding.* When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers. An invitation for formal bids will then be submitted to those whose offers have been determined to be technically acceptable per the criteria set forth in the first solicitation.

**Cancellation or Rejection of Bids or Proposals.**

An invitation for bids, a request for proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part. Each solicitation issued by the City shall state that the solicitation may be cancelled and that any bid or proposal may be rejected. Notice of the cancellation shall be sent to all businesses solicited and shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar items. The City Manager, or his or her designee, shall have the authority to cancel or reject bids or proposals.

**Local Business Preferences.**

No provision is made in this policy for dollar percentage or other types of preferential considerations for local vendors or contractors. It is the policy, however, to solicit bids from local suppliers whenever competitive local sources exist, and where no sacrifice or loss in price or quality would result. In the event of a tie bid between a local vendor and an out-of-town vendor, award will be made to the local vendor, if all factors, including price, quality, terms, and method and cost of delivery are equal.

**Sole Source Purchases.**

A contract may be awarded or a purchase made without competition when, after conducting a good faith review of available sources, it is determined that there is only one source for the

required product. The City Manager may then conduct negotiations, as appropriate, as to price, delivery, and terms.

Circumstances that require a sole source purchase may include, but are not limited to: (1) no competitive product or availability from only one supplier, (2) the purchase of a component or replacement part for which there is no commercially available product, and which can be obtained only from the manufacturer, (3) the purchase of an item where compatibility is the overriding consideration, such as to maintain standardization or compatibility, or to match materials already in use to produce visual harmony, (4) the purchase of a used item, (5) the purchase of a product for trial or testing.

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Sole source can refer to the supplier, as well as a product or service. Thus the ability to meet a delivery date or to provide on-call repairs can create a sole supplier condition. Justification for a sole source purchase depends on a needed item being available from only a single supplier under the prevailing conditions. If the item may be obtained from more than one source, price competition shall be solicited.

#### Emergency Purchases.

An emergency condition exists when there is a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failure, etc. The condition must create an immediate and serious need for supplies, equipment, materials, and/or services that cannot be met through normal procurement methods, and the lack of which would threaten the function of City government or its programs.

Any department may make emergency purchases when an emergency arises, however with such competition as is possible under the circumstances. Purchases shall be limited to only the quantity necessary to meet the emergency, and in no event shall the contract price exceed commercially reasonable prices.

If the emergency arises after normal working hours, the appropriate department shall notify the Finance Department on the next working day.

#### Service Calls and Diagnostic Repairs,

From time to time it may be necessary to obtain service calls for essential City services where the full extent of the service, repair, or problem is not yet defined. In this situation, the Department Head shall make the Finance Director and City Manager aware of the situation prior to initiating the service call. A quote or purchase order is not necessary at the time of the service call. When the full extent of the situation is known, a quote or estimate will be developed, prior to the service being completed.

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#### Cooperative Bidding and State/Federal Bid Awards.

It is sometimes beneficial to group the City's requirements with the like requirements of other cities, counties, or agencies. This results in lower costs to all parties while maintaining the integrity of each entity's bidding requirements.

The State of Kansas and Federal Government bid many common requirements and makes the award results available to any governmental agency. State/Federal bid awards enable government agencies to purchase goods and services at a reduced price due to quantity discounts and do not require the bidding process by individual agencies. When the City Manager approves the contract, State/Federal bids are considered to meet the sealed bid requirements.

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**Vehicle and Equipment Purchases from State/Federal Contracts**

Budgeted vehicles and equipment may be purchased via State/Federal award contracts if approved by the City Manager. In these instances, the State/Federal contract will be considered to meet the sealed bid requirements. If there is a local vendor that offers the vehicle or equipment being purchased, they will be given the opportunity to match the State/Federal contract price. If the local vendor matches the State/Federal contract price, the item will be purchased from the local vendor.

**Responsibility of Bidders and Offerors.**

(1) *Determination of Nonresponsibility.* If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility, setting forth the basis of the finding, shall be prepared by the Department Head or City Manager. The unreasonable failure of a bidder or offeror to supply prompt information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror. A copy of the determination of nonresponsibility shall be sent promptly to the nonresponsible bidder or offeror. The final determination shall be made part of the contract file and be made a public record. In determining whether a bidder or offeror is responsible, the following shall be considered:

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- (a) the ability, capacity and skill of the bidder or offeror to perform the contract or provide the services required;
- (b) whether the bidder or offeror can perform the contract or provide the service promptly and within the time specified without delay or interference;
- (c) the character, integrity, reputation, judgment, experience and efficiency of the bidder or offeror;
- (d) the quality of the bidder's or offeror's performance of previous contracts or services;
- (e) the previous and existing compliance by the bidder or offeror with laws and ordinances relating to the contract or service;
- (f) the sufficiency of the financial resources and ability of the bidder or offeror to perform the contract or provide the service;
- (g) the quality, availability and adaptability of the materials and services to the particular use required;
- (h) the ability of the bidder or offeror to provide future maintenance and service for the items related to the contract; and
- (i) any other circumstances which will affect the bidder's or offeror's performance of the contract.

(2) *Right of Nondisclosure.* Unless required by law, confidential information furnished by a bidder or offeror pursuant to this section shall not be disclosed by the City outside of the office of City Manager, or appropriate department, without prior written consent by the bidder or offeror. Information that is not identified as "confidential" by the subject bidder or offeror shall be made a public record.

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(3) *Rejection of Bids.* The City Manager shall have the authority to reject all bids or proposals or any portions thereof. The City Commission shall have the authority to reject all bids or proposals or any portions thereof.

**Bid, Performance and Payment Bonds.**

When deemed necessary by the City Manager, bid bonds, performance bonds, payment bonds, or other equivalent security shall be required to protect the City's interests. Any such bonding requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility. Bonds shall be provided by a surety company authorized to do business in Kansas, or the equivalent in cash, or otherwise supplied in a form satisfactory to the City. Unsuccessful bidders or offerors shall be entitled to the return of any cash deposit. Unless a specific extension is granted in writing, a successful bidder or offeror shall forfeit any bid bond or equivalent security required by the City Manager or this section upon its failure to enter into a contract within fifteen (15) days after the award.

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**Types of Contracts.**

(1) *General Authority.* Subject to the limitations of this section, any type of contract which is appropriate to the procurement and which will promote the best interests of the City may be used, provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the City than any other type or that it is impracticable to obtain the supply, service, or construction item required except under such a contract.

(2) *Multi-Term Contracts.*

- (a) Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the City, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting.
- (b) Multi-term contracts shall be expressly contingent upon the annual budgeting and appropriation of sufficient funds on an annual basis.
- (c) When funds are not appropriated or otherwise made available to support the continuation of the City's performance in a subsequent fiscal period, the contract shall be cancelled.

(3) *Multiple Source Contracting.* A multiple source award may be made when an award to two (2) or more bidders or offerors for similar supplies or services is necessary for adequate delivery, service or product compatibility.

**Contract Administration.**

A contract administration system shall be maintained that is designed to ensure that a contractor is performing in accordance with the solicitation, terms, and conditions under which the contract was awarded.

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**Reporting of Anticompetitive Practices.**

When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the State Attorney General, upon review and approval of the City Manager and the City Attorney.

Deleted: Right to Inspect Plant.¶  
The City may, at reasonable times, inspect the part of the plant, place of business, or worksite of a contractor or subcontractor at any tier which is pertinent to the performance of any contract awarded or to be awarded by the City.¶

**City Purchasing Records.**

(1) *Contract File.* All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for the City in a contract file. All contracts shall be maintained for the City in a file by the City Clerk.

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(2) *Retention of Purchasing Records.* All purchasing records shall be retained and disposed of by the City in accordance with records retention guidelines and schedules as required by Kansas statutes.

## ARTICLE 5. SPECIFICATIONS

### Intent.

All specifications, including but not limited to design, performance, combination, and brandname specifications, shall be drafted so as to provide a clear and concise description of the material, service or construction desired.

### Approval.

(1) Specifications prepared primarily for a purchase for a specific department or activity of the City shall be approved by the head of the appropriate department before being submitted for bid.

Deleted: Preparation.¶  
Before any purchase, the purchasing agent shall cause to be prepared written specifications detailing the City's requirements for the materials, service or construction. The purchasing agent may request other departments or agencies of the City to prepare specifications for purchase to be made primarily for such department or agency.¶

(2) The City Manager shall have authority to make a determination as to final specification.

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### Maximum Practicable Competition.

All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the City's needs, and shall not be unduly restrictive. The policy enunciated in this section applies to all specifications, including but not limited to, those prepared for the City by architects, engineers, designers, and draftsmen.

### Brand Name or Equal Specification.

(1) *Use.* Brand name or equal specifications may be used when the City Manager determines in writing that:

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- (a) no other design or performance specification or qualified products list is available;
- (b) time does not permit the preparation of another form of purchase description, not including a brand name specification;
- (c) the nature of the product or the nature of the City's requirements makes use of a brand name or equal specification suitable for the procurement; or
- (d) use of a brand name or equal specification is in the City's best interests.

(2) *Designation of Several Brand Names.* Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.

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(3) . *Required Characteristics.* Unless the purchasing agent determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.¶

(3) *Nonrestrictive Use of Brand Name or Equal Specifications.* Where a brand name or equal specifications is used in a solicitation, the solicitation shall contain explanatory

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language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

## ARTICLE 6. DEBARMENT OR SUSPENSION

### Authority to Debar or Suspend.

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

(1) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a City contractor;

(3) conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(4) violation of contract provisions, as set forth below, of a character which is regarded by the City Manager to be so serious as to justify debarment action:

- (i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
- (ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

(5) any other cause the City Manager, or his or her designee, determines to be so serious and compelling as to affect responsibility as a City contractor, including debarment by another governmental entity for any cause listed in this policy.

### Decision to Debar or Suspend.

The City Manager shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of his rights concerning judicial or administrative review.

### Notice of Decision.

A copy of the decision to debar or suspend shall be mailed or otherwise furnished immediately to the debarred or suspended person.

#### Deleted: Brand Name Specification.¶

. (1) . *Use*. Since use of a brand name specification is restrictive of product competition, it may be used only when the purchasing agent makes a written determination that only the identified brand name item or items will satisfy the City's needs.¶

¶ (2) . *Competition*. The purchasing agent shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under the paragraph entitled Emergency Purchases. ¶

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**Deleted: Finality of Decision¶**  
A decision to debar or suspend shall be final and conclusive, unless the debarred or suspended person within 10 days after receipt of the decision takes an appeal to the City Manager.¶

## ARTICLE 7. APPEALS AND REMEDIES

### **Bid Protests.**

(1) *Right to Protests.* Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the City Manager. A protest with respect to an invitation for bids or request for proposals shall be submitted in writing prior to the opening of bids or the closing date of proposals, unless the aggrieved person did not know and should not have known of the facts giving rise to such protest prior to bid opening or the closing date for proposals. The protest shall be submitted within seven (7) calendar days after such aggrieved person knows or should have known of the facts giving rise thereto.

(2) *Stay of Purchase During Protests.* In the event of a timely protest under subsection (1) above, City Manager, or his or her designee, shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or a determination has been made, in writing, that the award of a contract without delay is necessary to protect substantial interest of the City.

## ARTICLE 8. ETHICS IN PUBLIC CONTRACTING

### **Criminal Penalties.**

To the extent that violations of the requirements set forth in this article constitute violations of Kansas State Statutes they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this article. Criminal, civil and administrative sanctions against employees or nonemployees, which are in existence on the effective date of this policy, shall not be affected.

### **Employee Conflict of Interest.**

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

Public employees must discharge their duties impartially so as to assure fair competitive access to governmental purchasing by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the City purchasing organization.

Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of a public trust.

### **Gratuities and Kickbacks.**

(1) *Gratuities.* It shall be unethical for any person to offer, give, or agree to give any City employee or former City employee, or for any City employee or former City employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content

of any specification or purchasing standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.

(2) *Kickbacks.* It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(3) *Contract Clause.* The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every contract and solicitation therefor.

**Prohibition Against Contingent Fees.**

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

**Contemporaneous Employment Prohibited.**

It shall be unethical for any City employee who is participating directly or indirectly in the purchasing process to become or to be, while such a City employee, the employee of any person contracting with the governmental body by whom the employee is employed.

**Use of Confidential Information.**

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

**Sanctions.**

(1) *Employees.* Employees found to have violated one or more of the ethical standards in this article shall be subject to the disciplinary sanctions prescribed in Article H, Discipline of the “*City of Hays’ Personnel Manual.*”

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(2) *Nonemployees.* The Finance Director, with the approval of the City Manager, may impose any one or more of the following sanctions on a nonemployee for violations of the ethical standards:

- (a) written warnings or reprimands;
- (b) termination of contracts, not entered into by the City Commission; or
- (c) debarment or suspension

(3) *City Commission Contracts.* The City Commission may impose any one or more of the following sanctions on a nonemployee for violations of ethical standards:

- (a) written warnings or reprimands;
- (b) termination of contracts, or
- (c) shall cause debarment or suspension

**Recovery of Value Transferred or Received in Breach of Ethical Standards.**

(1) *General Provisions.* The value of anything transferred or received in breach of the ethical standards of this ordinance by a City employee or a nonemployee may be recovered from both City employee and non-employee.

(2) *Recovery of Kickbacks by the City.* Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the City and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

Community

Lenexa

Garden City

Great Bend

Leavenworth County

Atchison

Dodge City

Prarie Villiage

Ellis County

Pittsburg

Baldwin City

Lansing

Derby

Emporia

Average

Manager Authority

\$75,000

\$50,000

\$25,000

\$25,000

\$25,000

\$25,000

\$20,000

\$20,000

\$20,000

\$20,000

\$15,000

\$10,000

\$10,000

\$26,154

Misc Provisions

\$5k - \$30k by quote. Over \$30k by bid

Administrator - \$10k. Strong Mayor - \$20k

Been in place for several years and CM is looking to double

Been in place 20+ years and in need of updating