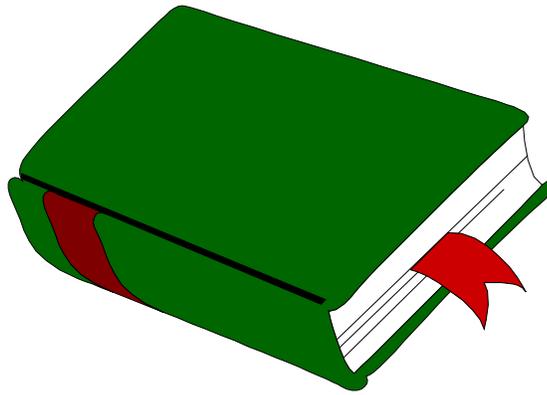


PROCUREMENT

Administrative Guidelines



MATERIALS MANAGEMENT

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Article 100: GENERAL PROVISIONS

R-12-101 WRITTEN DETERMINATION

Each written determination shall specify the reasons for the determination.

Materials Management is authorized to prescribe methods and operational procedures to be used in preparing written determinations.

Each written determination shall be stored in the applicable solicitation or contract file.

R-12-102 DEFINITIONS

In this Section, unless the context otherwise requires:

"Adequate Evidence" means cause sufficient that a reasonable person may conclude that an act has occurred. Consideration shall be given to the amount of credible information available, reasonableness in view of surrounding circumstances, corroboration, and other inferences that may be drawn from the existence or absence of affirmative facts.

"Affiliate" means any person whose governing instruments require it to be bound by the decision of another person to cause or prevent action, whether or not the power is exercised. It may also include persons doing business under a variety of names, or where there is a parent-subsidary relationship between persons.

"Area Award" means the division of a contract for one or more similar materials or services into geographic areas.

"Best Interests of this City" means advantageous to the City of Peoria.

"Bid Sample" means an item furnished by a bidder to show the characteristics of the item offered in this bid.

"Brand Name or Equal Specifications" means specification that uses one or more manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet City requirements, and that provides for the submission of equivalent products.

"Brand Name Specifications" means a specification limited to one or more items by manufacturers' names or catalogue numbers.

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"Capability" means capability at the time of contract award.

"City Governmental Unit": includes all departments and offices of the City of Peoria, whether under the supervision of the City Manager or the Mayor and Council; together with all boards and commissions, unless otherwise provided by the Arizona Revised Statutes.

"Construction": The process of building, altering, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property, including but not limited to the preventative maintenance of existing structures, buildings and streets.

"Contract Modifications": Any written alteration in the terms and conditions of any contract accomplished by mutual action of the parties to the contract.

"Contractor": Any person having a contract with the City.

"Cooperative Purchasing": Procurement conducted by, or on behalf of, more than one (1) public procurement unit.

"Cost Analysis" means the evaluation of cost data.

"Cost Data" means information concerning the actual or estimated cost of tangibles as labor, material, overhead, and other cost elements that have been actually incurred or that are expected to be incurred by the contractor in performing the contract.

"Cost-Plus-a-Percentage-of-Cost-Contract" means a contract that, prior to completion of the work, the parties agree that the fee will be a predetermined percentage of the total cost of the work.

"Days" means business days and shall be computed pursuant to A.R.S. 1-243.

"Debarment" means an action taken by the Materials Manager to prohibit a person from participating in City procurement.

"Defective Data" means data that is inaccurate, incomplete or non-current.

"Descriptive Literature" means information available in the ordinary course of business that shows the characteristics, construction, or operation of an item offered in a bid or proposal.

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"Direct Transfer" means the transfer of surplus or excess property by the Materials Manager from one Governmental Unit to another without physically moving the property to the Materials Management Department.

"Discussions" means an exchange of information or any form of negotiation.

"Emergency Purchase": Procurement when supplies, or services are needed for a situation where the health, safety or welfare of the public is endangered if immediate corrective or preventative action is not taken.

"Established Markets" means those places where materials are regularly bought and sold at prices set by open competition.

"Excess Materials" means any materials which have a remaining useful life but which are no longer required by the using agency in possession of the materials.

"Fair Market Value" means the price at which sales have been consummated for assets of like type, quality, and quantity in a particular market at the time of acquisition.

"Filed" means delivery to the Procurement Officer. A time/date stamp affixed to a document by the Materials Manager, their designee, or approved electronic method shall be determinative of the time of delivery for purposes of filing.

"Governing Instruments" means those legal documents that establish the existence of an organization and define its powers including articles of incorporation or association, constitution, charter and by-laws.

"Incremental Award" means an award or portions of a definite quantity requirement to more than one contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity required.

"Interested Party" means an actual or prospective bidder or offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract, or by the failure to award a contract. Whether an actual or prospective bidder or offeror has an economic interest will depend upon the circumstances of each case.

"Local Vendor": A vendor having an office within the corporate limits of the City or within the water and sewer service area of the City.

"Minor Informality" means mistakes, excluding judgmental errors, that have negligible effect on price, quantity, quality, delivery, or other contractual terms and waiver or correction of such mistake does not prejudice other bidders or offerors.

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"Multiple Award" means an award of separate contracts for one or more similar materials or services to more than one bidder or offeror.

"Offer Acceptance Time" means the time during which the City may accept an offer of a bid or proposal.

"Plan" means a design or the representation of anything drawn on a plan.

"Posted Prices" means the sale price determined by the Materials Manager.

"Price Analysis" means the evaluation of price data.

"Price Data" means information concerning prices, including profit, for materials, services, or construction substantially similar to those being procured under a contract or subcontract. In this definition, "prices" refers to offered or proposed selling prices, historical selling prices or current selling prices of the items being purchased.

"Procurement Officer" means the person(s) holding the position of Buyer or Contracting Agent within Materials Management.

"Procurement": The purchasing, renting, leasing, or otherwise obtaining any supply, or service. The term includes all functions that pertain to the obtaining of any supply, or service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

"Professional Services" are services of those who through special learning or attainment have acquired intellectual skills and qualifications in a particular area of endeavor that has been generally accepted as a profession and which requires a prolonged course of specialized instruction and study, including: architects; attorneys; certified public accountants; clergy; dentists; engineers; geologists; physicians; nurses; psychologists; teachers; veterinarians and health care facilities which provide a combination of professional and para-professional services.

"Proprietary Specification" means a specification that describes a material made and marketed by a person having the exclusive right to manufacture and sell such material and excludes other material with similar quality, performance of functional characteristics from being responsive to the solicitation.

"Purchase Requisition" means that document, or electronic transmission, whereby a using agency requests that a contract be entered into for a specific need, and may include, but is not limited to, the description of the requested item, delivery schedule, transportation data, criteria for evaluation, and suggested sources of supply.

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"Qualified Products List" means an approved list of materials described by model or catalogue numbers, that, prior to competitive solicitation, the City has determined will meet the applicable specifications requirements.

"Responsible Bidder or Offeror": A bidder or offeror who has the capability to perform fully the contract requirements, and the reliability which will assure good faith performance.

"Responsive Bidder or Offeror": A bidder or offeror who has submitted a bid or proposal which conforms in material requests to the solicitation.

"Service": The furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term does not include "Professional Services" such as architects, lawyers, certified public accountants, consultants, appraisers, and engineers.

"Solicitation" means an Invitation for Bids, a Request for Technical Offers, a Request for Proposals, a Request for Quotations, or any other invitation or request by which the City invites a person to participate in a procurement.

"Specification": Any description of the physical or functional characteristics, or of the nature of, a supply, or service item. The term may include a description of any requirements for inspecting, testing, or preparing a supply, or service item for delivery.

"Specification for a Common or General Use Item" means a specification that has been developed and approved for repeated use in procurement pursuant to R-12-303.A.

"Standard Commercial Material" means material that, in the normal course of business, is customarily maintained in stock or readily available by a manufacturer, distributor or dealer for the marketing of such material.

"Substantial Evidence" means a preponderance of the evidence that a reasonable person might accept as more likely than not indicating a particular conclusion.

"Supply": All personal property.

"Surplus Supplies": Any supplies no longer having any use to the City. This term includes obsolete, scrap, and nonexpendable supplies that have completed their useful life cycle.

"Surplus Materials" means any materials that no longer have any use to the City. This includes obsolete materials, scrap materials, scrap metals and nonexpendable materials that have completed their useful life cycle.

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"Suspension" means an action taken by the Materials Manager temporarily disqualifying a person from participating in City procurement.

"Technical Offer" means unpriced written information from a prospective contract stating the manner in which the prospective contractor intends to perform certain work, its qualifications, and its terms and conditions.

R-12-103 CONFIDENTIAL INFORMATION

If a person believes that a bid, proposal, offer, specifications or protest contains trade secrets or other proprietary data that should remain confidential, a statement advising the procurement officer of this fact and precisely why it should be withheld shall accompany the submission and the information.

The information identified by the person as confidential shall not be disclosed until the Materials Manager makes a written determination, or until after award of contract.

The Materials Manager shall review the statement and information and shall determine in writing whether the information shall be withheld.

R-12-104 MINORITY, DISADVANTAGED AND WOMAN BUSINESS ENTERPRISES

The Materials Manager shall take steps to strive to locate small, minority, disadvantaged, and woman business enterprises interested in doing business with the City of Peoria. The policy will include local vendors.

R-12-105 ABANDONED, UNCLAIMED SURPLUS PROPERTY DISPOSAL

The Materials Manager shall take possession of and dispose of all abandoned, unclaimed and surplus property that comes into the possession of any City Department. The Materials Manager will turn over to the Police Department any and all abandoned, unclaimed and found items of value such as bicycles, skateboards, jewelry, cash, vehicles, electronic equipment and serialized items. The Police department will follow city code in final disposition of those items. All other abandoned, unclaimed and found items with limited values such as lawn chairs, baseball gloves, bats, balls, furniture, misc. sports equipment, and small electronics shall be turned over to Materials Management for disposal.

The sale, lease or disposal of all abandoned, unclaimed and found items turned over to Materials Management will be accomplished by sale, public auction, competitive sealed bidding or other appropriate method determined by the Materials Manager to be most advantageous to the City.

All City of Peoria surplus materials, excess supplies, obsolete materials, equipment, vehicles, and recycled metals will be will be turned over to Materials Management for disposal. Disposal will be accomplished by public auction, competitive sealed bidding or other appropriate method determined by the Materials Manager to be most advantageous to the City.

The Materials Manager may authorize the transfer of excess supplies, obsolete materials, equipment, and vehicles for use by other City departments.

The Materials Manager may authorize the trade-in of surplus materials, excess supplies, obsolete materials, equipment, and vehicles as part of any authorized purchase that the Materials Manager deems appropriate.

The Materials Manager is tasked with the management of supplies during their entire life cycle and all departments within the city must give access to Materials Management for inspection, observation, and inventory of any and all supplies in their possession.

No City surplus or obsolete property may be converted for personal use by City employees unless fair market value is received for such property and the property is disposed of in a commercially reasonable manner.

City employees and/or the disposing agency are prohibited from purchasing any surplus supplies unless approved by the Materials Manager.

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The Materials Manager may donate City excess supplies, obsolete materials, equipment, and vehicles to other governmental agencies, non-profit agencies or private agencies when an appropriate need has been demonstrated such as: Hurricane damage, tornado, flooding, or some form of catastrophic infrastructure failure. Such donation shall be approved by City Council if the value of the donation exceeds \$50,000 dollars. If the value is under \$50,000 dollars the Materials Manager shall be the final approving authority.

The Materials Manager may sell City excess supplies, obsolete materials, equipment, and vehicles to other governmental agencies, non-profit agencies or private agencies for a nominal fee when an appropriate need has been demonstrated such as: lack of funding for the purchase of new equipment, breakdown of existing equipment, as goodwill gesture by the city to that entity in order to help them through some specific need or crisis. The nominal fee shall be at least \$1.00, which shall be deposited in the City's general fund. The approval to sell to another agency for a nominal fee shall be approved by City Council if the value of the item(s) exceeds \$50,000 dollars. If the value is under \$50,000 dollars the Materials Manager shall be the final approving authority.

R-12-106 MAILROOM AND COPY CENTER OPERATIONS

- A. The Materials Manager oversees the operation of all Mailroom activities. The Materials Manager has delegated the direct supervision of the day to day operations to the Materials Management Supervisor.
1. The mailroom picks up, sorts and delivers to all city departments all incoming us postal mail, interoffice mail and small packages for the City of Peoria.
 2. All mail for the City of Peoria shall be addressed to the 8401 West Monroe address for security reasons. Mail should be addressed with the appropriate designator (Attn:) for each department or specific person.
 3. Purchase orders for large items or shipments shall use the Inventory Control address for all such deliveries unless prior permission is received from Materials Management.
 4. For financial and auditing control purposes, no department shall receive their own mail or install their own mailbox for deliveries or for mail to be delivered directly to them at any location other than at the 8401 W Monroe address.
 5. The mailroom will process all incoming us postal service mail, meter and deliver the mail to the United State Post Office on a daily basis. Hours for pick up and delivery of mail are set by specific routing and number of stops, but are generally done once in the morning and once in the afternoon for most departments on the

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main campus at 8401 W. Monroe. For most off campus departments, the pick up is accomplished once daily.

6. UPS, FedEx and other small package deliveries received by the mailroom will be delivered at the time of normal mail delivery, or if larger than can be handled at that time will be delivered separately as soon as practical. For larger bulk deliveries, mailroom staff shall alert the department that their shipment is in and that the department must assign someone to pick it up.
- B. The Materials Manager oversees the operation of all Copy Center activities. The Materials Manager has delegated the direct supervision of the day to day operations to the Materials Management Supervisor.
1. The Copy Center is tasked with providing copy services for all City departments and for all walk up clients both public and private.
 2. The hours of operation for the Copy Centers are 8:00 am to 5:00 pm Monday through Friday. There may be occasions when the copy center will be closed during normal business times for a few hours for in service training or special projects.
 3. The Copy Centers are located on the first floor in the main City Hall building and on the first floor of the DCSB building.
 4. Services available at the copy center consist of 8 ½ X 11 and 11 X 17 black and white copies, color copies and black and white engineering copies on a per square foot basis. Padding, folding, stapling, small booklets, GBC (Spiral) binding, laminations, and the production of Council Packets.
 5. Due to the legal nature of Council Packets, the Council Packets will take first priority over any copy job being produced. The copy center will work closely with the City Clerk's office in producing and delivering the Council Packets within the published timeframes.
 6. The Copy Center assists in the delivery of new copiers, catalogs and tracks all copiers and DocSends in the City.
 7. Customer service is the number one goal for the Copy Centers and as such will annually survey their customers to see how well they are accomplishing their mission.
 8. Copy Center personnel are not authorized to work overtime unless the department requesting the work provides an account number to charge the overtime against and prior approval is authorized by the Materials Manager or Materials Management Supervisor.
 9. Materials Management will standardize the purchase of replacement or new copiers to have fax, print and scan capabilities where feasible. The functionality and sustainability as well overall costs will be taken into consideration for such purchases.

Article 200: SOURCE SELECTION AND CONTRACT FORMATION

R-12-201 GENERAL PROVISIONS

A procurement officer shall not award a contract or incur an obligation on behalf of the City if sufficient funds are not available or reasonably anticipated to be available.

Any bid or proposal that is conditioned upon award to the bidder or offeror of both the particular contract being solicited and another City contract shall be deemed non-responsive or unacceptable.

R-12-202 PROSPECTIVE BIDDER'S OR OFFEROR'S CONFERENCES

A procurement officer may conduct a prospective bidders conference within a reasonable time prior to the bid opening to explain the procurement requirements.

R-12-203 AMENDMENTS TO SOLICITATIONS

A solicitation amendment shall be issued if necessary to:

Make changes in the solicitation;

Correct defects or ambiguities; or

Furnish to other bidders information given to one bidder if the information will assist the other bidders in submitting bids, or if the lack of the information will prejudice the other bidders.

Amendments shall be so identified and shall be sent to all persons to whom the Procurement Officer distributed a solicitation.

Amendments will require that the bidder acknowledge receipt of the amendment by signing and returning the amendment at the bid due time and date.

Amendments shall be issued within a reasonable time before bid opening to allow prospective bidders to consider them in preparing their bids. If the time and date set for bid opening does not permit sufficient time for bid preparation, the time and date for bid opening shall be extended in the amendment or, if necessary, by telegram or telephone and confirmed in the amendment. Should time not permit an amendment

release, the bid opening may be postponed until such release is possible or the bid may be canceled and re-bid as determined by Materials Management.

R-12-204 PRE-OPENING MODIFICATION OR WITHDRAWAL OF BIDS

A bidder may modify or withdraw their bid at any time before the bid opening if the modification or withdrawal is received by Materials Management before the time and date set for bid opening.

All documents concerning a modification or withdrawal of a bid shall be retained in the appropriate procurement file.

Telegraphic, mailgram or electronic modification or withdrawals shall not be considered.

R-12-205 LATE BIDS, LATE WITHDRAWALS AND LATE MODIFICATIONS

A bid, modification, or withdrawal is late if it is received by Materials Management after the time and date set for bid opening.

A late bid, late modification, or late withdrawal shall be rejected unless the bid, modifications, or withdrawal is received before contract award by Materials Management and would have been timely received but for the action or inaction of City Personnel directly serving Materials Management.

Bidders submitting bids, modifications or withdrawals that are rejected as late shall be so notified as soon as practicable.

Documentation concerning a late bid, late modification, or late withdrawal shall be retained in the appropriate procurement file.

R-12-206 LATE PROPOSALS, MODIFICATIONS OR WITHDRAWALS

A proposal received after the proposal due date and time is late and shall not be considered except under the circumstances set forth in R-12-205. A best and final offer received after the due date and time for receipt of best and final offers is late and shall not be considered except under the circumstances set forth in R-12-205.

A modification of a proposal received after the proposal due date and time is late and shall not be considered except under the circumstances set forth in R-12-205.

A modification of a proposal resulting from an amendment issued after the proposal due date and time or a modification of a proposal resulting from discussions during negotiations shall be considered if received by the due date and time set forth in the amendment or

by the due date and time for submission of best and final offers, whichever is applicable. If the modifications described in this Subsection are received after the respective date and time described in this Subsection, the modifications are late and shall not be considered except under the circumstances set forth in R-12-205.

A proposal may be withdrawn at any time before the due date and time for receipt of best and final offers. Withdrawal of a proposal after submission of best and final offers is permissible only in accordance with R-12-208.

R-12-207 MISTAKES IN BIDS

A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in R-12-204.

After bid opening, a bid mistake based on an error in judgment may not be corrected or withdrawn. Other bid mistakes may be corrected or withdrawn pursuant to Subsections C through E of this Regulation.

After bid opening, the Procurement Officer shall either waive minor informalities in the lowest responsive responsible bid or allow the bidder to correct them if correction is advantageous to the City.

After bid opening, the bid may not be withdrawn and shall be corrected to the intended bid, if a bid mistake and the intended bid are evident on the face of the bid.

After bid opening, the Materials Manager may permit a bidder to withdraw a bid if:

A nonjudgmental mistake is evident on the face of the bid but the intended bid is not evident; or

The bidder establishes by clean and convincing evidence that a nonjudgmental mistake was made.

Mistakes shall not be corrected after award of the contract except where the Materials Manager makes a written determination that it would be unconscionable not to allow the mistake to be corrected.

If correction or withdrawal of a bid after bid opening is permitted or denied under Subsections D and E, the Materials Manager shall prepare a written determination showing that the relief was permitted or denied under these Administrative Regulations.

R-12-208 MISTAKES IN PROPOSALS

Prior to the time and date set for receipt of best and final offers, any offeror may withdraw the proposal or correct any mistake by modifying the proposal.

After receipt of best and final offers, an offeror may withdraw a proposal or correct a mistake in accordance with R-12-206.

R-12-209 BID EVALUATION AND AWARD

The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and evaluation criteria set forth in the Invitation for Bids.

A product acceptability evaluation shall be conducted solely to determine whether a bidder's product is acceptable as set forth in the Invitation for Bids and not whether one bidder's product is superior to another bidder's product. Any bidder's offering that does not meet the acceptability requirements shall be rejected as non-responsive.

Bids shall be evaluated to determine which bidder offers the lowest cost to the City in accordance with the evaluation criteria set forth in the Invitation for Bids. Only objectively measurable criteria that are set forth in the Invitation for Bids shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, transportation cost, energy cost, ownership cost and other identifiable costs or life cycle cost formulae. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible the evaluation factors shall be reasonable estimates based upon information the procurement officer has available concerning future use.

A contract may not be awarded to a bidder submitting a higher quality item than that designated in the Invitation for Bids unless the bidder is also the lowest bidder as determined under Subsection C of this Guideline. This Regulation does not permit negotiations with any bidder.

If there are two or more low responsive bids from responsible bidders that are identical in price and that meet all the requirements and criteria set forth in the Invitation for Bids, award may be made by drawing lots.

A record showing the basis for determining the successful bidder shall be retained in the procurement file.

A written notice of award shall be sent to the successful bidder. Notice of award shall be made available to the public.

R-12-210 EVALUATION OF PROPOSALS

Evaluation of the proposals shall be based on the evaluation factors set forth in the Request for Proposals.

For the purpose of conducting discussions, the procurement officers shall select for further consideration those proposals determined to be reasonably susceptible of being selected for award. If the procurement officer determines that an offeror's proposal is not reasonably susceptible of being selected for award, the offeror shall not be afforded an opportunity to amend its offer.

R-12-211 PROPOSAL AWARD

The Materials Manager shall award a contract to the offeror whose proposal is determined in writing to be most advantageous to the city for those procurements which do not exceed the limits for Council approval. If it exceeds the limits, it will be recommended to City Council that award of a contract to the offeror whose proposal is determined in writing to be most advantageous to the City based on the factors set forth in the Request for Proposals. The determination shall explain the basis of the recommended award.

After contract award, or after rejection of all proposals, the proposals may be open for public inspection except to the extent that the withholding of information is permitted or required by law. If the offeror designates a portion of its proposal as confidential, it shall isolate and identify in writing the confidential portions in accordance with R-12-103.

R-12-212 RECEIPT OF PROPOSALS

Each proposal received shall be time stamped and retained in a secure place until the closing date and time for receipt of proposals. A register of proposals shall be prepared and shall set forth the name of each offeror and the identity of the Request for Proposals for which the proposal was submitted.

Proposals shall not be opened publicly but shall be opened in the presence of two or more procurement officials. The contents of the proposals shall not be disclosed to unauthorized persons. Proposals and modifications may be furnished to persons assisting Materials Management in the evaluation.

If only one proposal is received in response to a Request for Proposals, the procurement officer may either make an award in accordance with R-12-212 or, if time permits, resolicit.

R-12-213 EXTENSION OF OFFER ACCEPTANCE TIME

After receipt of bids or proposals, the Procurement Officer may extend the offer acceptance time. If the offer acceptance time is extended, the Procurement Officer shall request the written concurrence of the bidders or offerors. It is not necessary to receive a concurrence from all bidders or offerors to award a contract.

R-12-214 PURCHASE REQUESTS

If a City Governmental Unit determines the need for a material or service, it shall prepare a purchase request or other acceptable form.

Upon receipt of a purchase request from a City Governmental Unit, a procurement officer is authorized to determine the form and manner in which the procurement shall be solicited except as otherwise provided in this Section.

The Procurement Officer shall reject the purchase request, if after consultation with the requesting City Governmental Unit, the procurement officer determines that it is not advantageous to the City or that the purchase request is outside the city governmental unit's adopted budget authority. The determination shall state the reasons for the rejection and shall accompany the returned purchase request.

Disagreements between a using Governmental Unit and the Materials Manager concerning actions taken shall be brought to the City Manager for resolution.

Purchase requests for capital outlay will follow the guidelines established by the Budget Office.

R-12-215 ASSIGNMENT OF RIGHTS AND DUTIES

The rights and duties of a City contract are not transferable or otherwise assignable without the written consent of the Materials Manager.

R-12-216 CHANGE ORDER PERCENTAGE

Change orders may be administratively approved by the Materials Manager if the following requirements are met:

- 1) the Materials Manager determines in writing that the change order is advantageous to the City of Peoria (field approvals may take place for small dollar changes with documentation to follow), and
- 2) the budgeted funds are available, and

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- 3) the change is within the original scope of the project as delineated in the CIP or adopted line item budget, and
- 4) the cumulative change orders do not exceed the following parameters:
 - a) for all contracts over \$500,000, the cumulative change orders are less than One-Million Dollars (\$1,000,000) or 10% of the contract amount, whichever is less,
 - b) for all contracts \$500,000 and less, the cumulative change orders are less than \$50,000.

Change orders must be approved by Council if the above requirements are not met.

Contracts may provide for contingency funding to cover costs pertaining to that contract.

Properly approved change orders may be paid out of the contingency funding so long as the payments do not result in additional expenditures above the contingency amount approved by Council.

The change order limits described above do not apply to the initial phased awards of contracts as follows:

- 1) Guaranteed Maximum Price (GMP) awards.
- 2) Pre-Construction Services awards
- 3) Professional Services for Construction Administration Services awards
- 4) Professional Services for Post Design Services awards

R-12-217 CITY OF PEORIA CONTRACTS

City Governmental Units shall use existing City, Arizona State, Federal or Authorized intergovernmental contracts to satisfy their needs for those materials and services covered by such contracts.

If a City Governmental Unit believes that a particular City contract does not satisfy its needs, the City Governmental Unit may not purchase the material or service without the written approval from the Materials Manager. A copy of the approval shall be filed in the corresponding purchase order file maintained by the City Governmental Unit.

Personal purchases from contracts entered into by the City are prohibited unless prior approval is given by the Materials Manager.

R-12-218 PROSPECTIVE BIDDERS LIST

Materials Management does not maintain a prospective bidders list, but does publish a public notice detailing specific bid requests. Other forms of notice are newspaper advertisement, periodical advertisement, and the internet (specifically the City's web page).

R-12-219 INVITATION FOR BIDS

In all competitive sealed bidding procurement, Materials Management shall issue an Invitation for Bids on a form approved by the Materials Manager.

An Invitation for Bids shall be issued at least five (5) days before the closing date and time for receipt of bids unless a shorter time is determined necessary in writing by the Materials Manager.

Materials Management shall provide notices of the availability of Invitations for Bids.

Telegraphic bids, mailgrams, or facsimile bids will not be considered, except as allowed under Guidelines 233 (Emergency Procurements).

R-12-220 ONLY ONE BID RECEIVED

If only one responsive bid is received in response to an Invitation for Bids, an award may be made to the single bidder if the procurement officer determines that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for resolicitation. Otherwise the bid may be rejected at the discretion of Materials Management.

New bids may be solicited; or

The proposed procurement may be canceled.

R-12-221 RECEIPT, OPENING, AND RECORDING OF BIDS

Each bid and modification shall be time-stamped upon receipt and stored unopened in a secure place until the time and date set for bid opening.

Bids and modifications shall be opened publicly in the presence of one or more witnesses at the time, date, and location designated in the Invitation for Bids. The name of each bidder, the bid price, and other information deemed appropriate by the Materials Manager shall be recorded on a bid abstract. The name of the required witness shall also be recorded. The bid abstract shall be available for public inspection.

After contract award, the bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with R-12-103.

When the City participates in third party development of infrastructure, the process must follow ARS Title 34 for public works contracts. The bids must be advertised and sealed bids received. The bids will be opened and read publicly in the presence of a City designated witness.

R-12-222 MULTI-STEP SEALED BIDDING

The multi-step sealed bidding method may be used.

The procurement officer may hold a conference with bidders before submission or at any time during the evaluation of the unpriced technical offers.

R-12-223 PHASE ONE OF MULTI-STEP SEALED BIDDING

Multi-step sealed bidding shall be initiated by the issuance of an Invitation to Submit Technical Offers. The Invitation to Submit Technical Offers shall be issued according to R-12-219(IFB) with the following additional information:

Notice that the procurement shall be conducted in two phases;

The best description of the material or services desired;

A statement that unpriced technical offers only shall be considered in phase one;

The criteria for evaluating technical offers;

A statement that discussions may be held; and

A statement that only bids based on technical offers determined to be acceptable in phase one shall be considered for award.

Unpriced technical offers shall not be opened publicly but shall be opened in the presence of two or more procurement officials. The contents of unpriced technical offers shall not be disclosed to unauthorized persons.

Unpriced technical offers shall be evaluated solely in accordance with the criteria set forth in the Invitation to Submit Technical Offers and shall be determined to be either acceptable for further consideration or unacceptable.

R-12-224 PHASE TWO OF MULTI-STEP SEALED BIDDING

Upon completion of phase one, the procurement officer shall issue an Invitation for Bids and conduct Phase Two as a competitive sealed bidding procurement, except that the

Invitation for Bids shall be issued only to bidders whose technical offers were determined to be acceptable in Phase One.

Unpriced technical offers of unsuccessful bidders shall be open to public inspection except to the extent set forth in R-12-221.

R-12-225 COMPETITIVE SEALED PROPOSALS

The Materials Manager may determine that competitive sealed bidding is either not practicable or not advantageous to the City.

Competitive sealed bidding may not be practicable or advantageous if it is necessary to:

Use a contract other than a fixed price type; or

Conduct oral or written discussions with offerors concerning technical and price aspects of their proposals; or

Afford offerors an opportunity to revise their proposals; or

Compare the different price, quality, and contractual factors of the proposals submitted; or

Award a contract in which price is not the determining factor.

R-12-226 REQUEST FOR PROPOSALS

A Request for Proposals shall set forth those factors listed in R-12-219 that are applicable and shall also state:

The type of services required and a description of the work involved;

Type of contract to be used;

An estimate duration that the service will be required;

That offerors may designate as proprietary portions of the proposals;

That discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without such discussions;

The minimum information that the proposal shall contain; and

The closing date and time for receipt of proposals.

A Request for Proposals shall be issued at least five (5) days before the closing date and time for receipt of proposals unless a shorter time is determined necessary in writing by the Materials Manager.

Request for Proposal forms shall be approved by the Materials Manager.

Notice of the Request for Proposals shall be issued in accordance with R-12-219.

Bidders lists, if applicable, and/or public notices compiled and maintained in accordance with R-12-218 shall serve as a basis for soliciting competitive sealed proposals. The internet may also be utilized.

Before submission of initial proposals, amendments to Requests for Proposals shall be made in accordance with R-12-203.

R-12-227 DISCUSSIONS WITH INDIVIDUAL OFFERORS

The purpose of discussions is for clarification of the proposal to assure full understanding of, and responsiveness to, the solicitation requirements.

The Materials Manager shall establish procedures and schedules for conducting discussions. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. Disclosure of one offeror's price to another and any information derived from competing proposals is prohibited. Any clarification of a proposal by the offeror shall be in writing. The Materials Manager shall keep a record of all discussions.

R-12-228 BEST AND FINAL OFFERS

If discussions are conducted pursuant to R-12-227, the procurement officer shall issue a written request for best and final offers. The request shall set forth the date, time and place for the submission of best and final offers. Best and final offers shall be requested only once, unless the Materials Manager makes a written determination that it is advantageous to the City to conduct further discussions or change the City's requirements. The request for best and final offers shall inform offerors that, if they do not submit a notice of withdrawal or a best and final offer, their immediate previous offer will be construed as their best and final offer.

R-12-229 SMALL DOLLAR PURCHASES

If practical, purchases estimated to cost between Five Thousand Dollars (\$5,000.00) and Fifty Thousand Dollars (\$50,000.00) shall be made in accordance with the following procedures:

For purchases estimated to cost between Five Thousand Dollars (\$5,000.00) and Twenty Five Thousand Dollars (\$25,000.00), at least three bidders shall be solicited to submit informal quotations.

For purchases estimated to cost between Twenty Five Thousand Dollars (\$25,000.00) and Fifty Thousand Dollars (\$50,000.00), a request for quotation shall be issued to a reasonable number of vendors, or suppliers may submit quotes on their letterhead.

When requested, bidders shall submit quotes on a form approved by the Materials Manager and the quotes shall be recorded and placed in the procurement file.

Quotations need not be solicited from all vendors, but shall be solicited from any vendor who specifically requests to submit a quotation.

Award shall be made to the responsible bidder submitting the quotation which is most advantageous to the City and conforms to the solicitation.

If only one responsive quotation is received, a statement shall be included in the contract file setting forth the basis for determining that the price is fair and reasonable. This determination may be based on a comparison of the proposed price with prices found reasonable on previous purchases or current price lists.

For purchases of less than Five Thousand Dollars (\$5,000.00), Materials Management shall utilize procedures providing for adequate records to facilitate auditing.

If material or service is available from only one vendor, and the purchase is estimated to cost less than Fifty Thousand Dollars (\$50,000.00), the Procurement Officer shall make the justification determination that it is not practical to obtain three quotations.

R-12-230 PETTY CASH PURCHASES AND PROCUREMENT CARDS

Petty cash may be made for expendable items only. Such expenditures shall not exceed Fifty Dollars (\$50.00). Petty cash vouchers shall be forwarded to Finance for approval. A request for petty cash reimbursement shall be accompanied by a valid receipt for the purchase.

Procurement cards can be used for goods or services as established by the program. All policies and procedures for the program must be followed (see specific procedures).

R-12-231 SINGLE SOURCE PROCUREMENT

Except as provided in R-12-229, the Materials Manager shall determine in writing that a single source procurement is required. Single source procurement is a method to accomplish well thought out procurements, without competition, when the advantages and overriding considerations are paramount to the City's interest. Single source procurement shall not be used unless there is a preponderance of the evidence (i.e., more likely than not) that a noncompetitive award is most advantageous to the City. The using Governmental Unit requesting single source procurement shall provide written evidence to support a single source procurement.

The procurement officer shall negotiate with the single supplier, to the extent practicable, to derive a contract advantageous to the City.

The provisions of this Regulation apply to all single source procurement unless emergency conditions exist as defined in Peoria City Code.

R-12-232 SOLE SOURCE PROCUREMENT

Except as provided in R-12-229, the Materials Manager shall determine in writing that a sole source procurement is required. Sole source procurement shall not be used unless there is a preponderance of the evidence (i.e., more likely than not) that there is only one reasonable source. The using Governmental Unit requesting sole source procurement shall provide written evidence to support a sole source procurement.

The procurement officer shall negotiate with the single supplier, to the extent practicable, to derive a contract advantageous to the City.

The provisions of this Regulation apply to all sole source procurement unless emergency conditions exist as defined in Peoria City Code.

A Sole Source Procurement request that is less than Fifty Thousand (\$50,000.00) dollars shall be submitted to the Materials Manager for approval.

A Sole Source Procurement request which exceeds Fifty Thousand (\$50,000.00) shall be submitted in writing and limited to the approval of the City Council.

R-12-233 EMERGENCY PROCUREMENT

An emergency condition may arise by reason of floods, riots, epidemics, or equipment failures. An emergency condition creates an immediate and serious need for materials or services that cannot be met through normal procurement methods and seriously threatens the functioning of City government, the preservation or protection of property or the public health or safety.

An emergency procurement shall be limited to those materials or services necessary to satisfy the emergency need.

R-12-234 EMERGENCY PROCUREMENT PROCEDURE

A City Governmental Unit seeking an emergency procurement shall prepare a written request documenting the existence of an emergency condition and explaining the procurement need. The request shall be signed by the department head or other designated official of the using Governmental Unit.

The request shall be submitted to the Materials Manager.

The Materials Manager shall determine in writing whether to grant the request. If the request is approved, except as provided in paragraphs E and F, the determination shall state the manner in which the procurement is to be effected, whether procurement authority is delegated to the City Governmental Unit and the limits of the determination.

A copy of each request and determination processed under these procedures shall be kept on file in the Materials Management Department.

If the nature of the emergency does not permit submission of a written request, the using agency may make a verbal request to the Materials Manager who may make a verbal determination and delegation. A written request pursuant to Subsection A shall be submitted to the Materials Manager within two (2) days of the verbal request.

The Materials Manager may approve a written request subsequent to the procurement if all of the following conditions are met:

The emergency necessitated immediate response and it was impracticable to contact the Materials Manager.

The procurement was made with as much competition as was practicable under the circumstances.

The price paid was reasonable.

A timely written request pursuant to this section was submitted.

R-12-235 COMPETITIVE SELECTION PROCEDURES FOR CERTAIN PROFESSIONAL SERVICES

Professional services, as specified in Peoria City Code, shall be procured in accordance with R-12-235 through R-12-240, except as authorized under Peoria City Code.

Price shall be an evaluation factor in the procurement of the services specified in Subsection A unless the procurement officer determines that price as an evaluation factor is either restricted, not practicable, or not advantageous to the City.

Professional services involving the retention of outside legal counsel to represent the City shall be procured only after the City Attorney and City Manager have determined that the procurement is in the best interest of the City. All procurement involving the retention of outside legal counsel shall indicate the City Attorney's and City Manager's determination in writing.

R-12-236 STATEMENT OF QUALIFICATIONS

If the services specified in R-12-235 are needed on a recurring basis, the procurement officer shall solicit persons engaged in providing the services to submit periodic (approximately every 2 years) statements of qualifications on a prescribed form that shall include the following information:

Technical education and training;

General or special experience, certifications, licenses, and memberships in professional associations, societies, or boards;

An expression of interest in providing a particular service; and

Any other pertinent information requested by the procurement officer.

Persons who have submitted statements of qualifications may amend those statements at any time by filing a new statement. From these statements a short list will be developed for such services. The short list can be added to or deleted from with justification.

R-12-237 REQUEST FOR PROPOSALS

The Request for Proposals shall be in accordance with R-12-226. The Requests for Proposals shall also be distributed to persons per provisions set for under R-12-236 for the particular services sought.

R-12-238 DISCUSSIONS WITH INDIVIDUALS OFFERORS

Materials Management may conduct discussions with an offeror. Discussions shall be conducted in accordance with R-12-237.

R-12-239 EVALUATION AND CONTRACT AWARD WHERE PRICE IS AN EVALUATION FACTOR

If price is one of the evaluation factors for contract award set forth in the Request for Proposals, the procurement officer or by committee, shall evaluate proposals and award the contract in accordance with R-12-210, R-12-211 and R-12-228.

R-12-240 SELECTION AND CONTRACT WHERE PRICE IS NOT AN EVALUATION FACTOR

If price is not a factor, the procurement officer or by committee, shall evaluate the proposals submitted. After evaluation, Materials Management shall determine in writing the acceptable proposals and rank the three most qualified offerors.

The offeror determined to be best qualified shall submit cost or pricing data to Materials Management.

Materials Management shall negotiate a contract with the best qualified offeror at compensation determined in writing to be fair and reasonable.

If Materials Management and the best qualified offeror fail to negotiate a contract, Materials Management shall notify the offeror in writing of the termination of negotiations. Materials Management may then enter into negotiations with the next most qualified offeror. If negotiations fail, they shall be terminated, the offeror given notice and negotiations commenced with the next most qualified offeror.

If Materials Management is unable to negotiate a contract with any of the offerors initially selected as the best qualified offerors, proposals may be resolicited or additional offerors may be selected based on original, acceptable proposals in the order of their qualification ranking. Negotiations may continue until a contract is awarded.

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If a multiple award is to be made, Materials Management shall evaluate the proposals submitted, rank the most qualified offerors, and award contracts to as many offerors as is determined advantageous to the City. The basis for award shall be maintained in the procurement file.

A written record in a manner prescribed by the Materials Manager shall be maintained in the procurement file.

R-12-241 CANCELLATION OF SOLICITATIONS; REJECTION BIDS OR PROPOSALS

Each solicitation issued by the City shall state that the solicitation may be canceled or bids or proposals rejected.

R-12-242 BID AND PERFORMANCE BONDS FOR MATERIAL OR SERVICE CONTRACTS

Bid, performance, and payment bonds or other security may be required for material or service contracts if the Procurement Officer determines that such requirement is advantageous to the City. The requirement for bonds or other security shall be included in the solicitation.

Bid, performance, and payment bonds shall not be used as a substitute for a determination of bidder responsibility.

If a bid is withdrawn at any time before bid opening, any bid security shall be returned to the bidder.

R-12-243 MULTI-TERM CONTRACTS

The City may enter into a multi-term contract for a period of time up to five years, provided that, such action is approved by the Materials Manager.

A multi-term contract for a period of time exceeding five years may be entered into, provided that, the action is approved by the Materials Manager and authorized by law.

R-12-244 RECORD OF PROCUREMENT ACTIONS

All contracts shall be on file in the office of the City Clerk.

Article 300: SPECIFICATIONS/SCOPE OF WORK

R-12-301 PREPARATION OF SPECIFICATIONS/SCOPE OF WORK

Specifications/scope of work shall be prepared by Materials Management or by using Governmental Units pursuant to R-12-304 or by contract pursuant to R-12-306.

In an emergency procurement, any necessary specifications may be utilized by Materials Management or using Governmental Unit without regard to the provisions of this Section.

R-12-302 CONTENT OF SPECIFICATIONS/SCOPE OF WORK

A specification/scope of work may provide alternate descriptions of materials or services, or construction items where two (2) or more design, functional, or performance criteria will satisfactorily meet the City's requirements.

To the extent practicable, a specification/scope of work shall not include any solicitation term or condition or any contract term or condition.

If a specification/scope of work for a common or general use item has been developed in accordance with R-12-303 or a qualified products list has been developed in accordance with R-12-303 for a particular material, service, or construction item, it shall be used unless the Materials Manager makes a determination that its use is not advantageous to the City and that another specification shall be used.

To the extent practicable, a specification/scope of work shall emphasize functional or performance criteria. To facilitate the use of such criteria, using departments shall use reasonable efforts to include the principal functional or performance requirements as a part of their purchase requisitions.

R-12-303 TYPES OF SPECIFICATIONS/SCOPE OF WORK

Specifications/scope of work for Common or General Use Items. To the extent practicable, a specification/scope of work for common or general use item shall be prepared and utilized when:

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A material, service or construction item is used in common by several using Governmental Units or used repeatedly by one using Governmental Unit, and the characteristics of the material, service, or construction item, as commercially produced or provided, remain relatively stable while the frequency or volume of procurement is significant;

The City's recurring needs require uniquely designed or specially produced items; or

The Materials Manager finds it to be advantageous to the City.

Brand Name or Equal Specification

A Brand Name or Equal Specification may be used when the Procurement Officer determines that use of a Brand Name or Equal Specification is advantageous to the City and that;

No specification for a Common or General Use Item or Qualified Products List is available;

Time does not permit the preparation of another form of specification, other than a Brand Name Specification; or

The nature of the product or the City's requirements makes use of a Brand Name or Equal Specification suitable for the procurement.

Brand Name Specifications

A Brand Name Specification may be prepared and utilized only if the Materials Manager makes a written determination that only the identified brand name item will satisfy the City's needs.

If a Brand Name Specification is utilized the Procurement Officer shall, to the extent practicable, identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve the maximum practicable competition.

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Qualified Products List. A Qualified Products List may be prepared and utilized when:

The Procurement Officer authorized to develop a Qualified Products List determines that testing or examination of the materials or construction items prior to issuance of the solicitation is desirable or necessary in order to best satisfy City requirements.

The Procurement Officer shall solicit as many potential suppliers as practicable to submit products for testing and examination to determine acceptability for inclusion on a Qualified Products List. Any potential supplier, even though not solicited, may offer its products for consideration in accordance with the schedule or procedure established for this purpose. The qualified products lists shall not be modified after the solicitation is issued.

Inclusion on a Qualified Products List shall be based on results of test or examinations conducted in accordance with requirements published by the Materials Manager.

Such determination may be made for categories of materials, services, or construction items or in appropriate circumstances, for an entire procurement action even though a number of different items are being procured.

A Brand Name or Equal Specification shall designate as many different brands as are practicable as "or equal" references.

A Brand Name or Equal Specification shall include a description of the particular design, functional, or performance characteristics that are required unless the Materials Manager determines that the essential characteristics of the brand names designated in the specifications are commonly known.

A solicitation that uses a Brand Name or Equal Specification shall explain 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. The solicitation shall state that products substantially equivalent to those brands designated shall qualify for consideration.

R-12-304 PREPARATION AND UTILIZATION OF SPECIFICATIONS/SCOPE OF WORK BY CITY GOVERNMENTAL UNITS

The Materials Manager may request the using Governmental Unit to assist in preparing specifications/scope of work.

Using Governmental Units delegated the authority to prepare and utilize specifications/scope of work shall comply with the requirements of these regulations and the City Code.

Notwithstanding the provisions of this Regulation or R-12-306, the Materials Manager retains the authority to approve or disapprove all specifications/scope of work.

R-12-305 REQUIREMENTS OF NONRESTRICTIVENESS

Nonexclusive Specifications/Scope of Work

To the extent practicable and unless otherwise permitted by this Section, all specifications/scope of work shall describe the City requirements in a manner that does not necessarily exclude a material, service, or construction item.

Proprietary specifications/scope of work shall not be used unless the Materials Manager determines in writing that such specifications are required by demonstrable technological justification and that it is not practicable or advantageous to use a less restrictive specification. Past success in the materials performance, traditional purchasing practices, or inconvenience of drawing specifications do not justify the use of proprietary justifications.

To the extent practicable, the City shall use accepted commercial specifications and shall procure standard commercial materials, including recycled materials when feasible.

R-12-306 PREPARATION OF SPECIFICATIONS/SCOPE OF WORK OR PLANS BY PERSONS OTHER THAN CITY PERSONNEL

The requirements of this Section shall apply to all specifications/scope of work or plans prepared by other than City personnel, including, but not limited to, those prepared by consultants, designers, and draftsman of specifications. Contracts for the preparation of specifications/scope of work by other than City personnel shall require the specification or plan writer to adhere to such requirements.

R-12-307. CONFLICT OF INTEREST

No person preparing specifications/scope of work or plans pursuant to R-12-306 shall receive any direct or indirect benefit from the utilization of such specifications/scope of work or be eligible to bid on those same specifications/scope of work or plans when issued.

The Materials Manager may contract for the preparation of specifications/scope of work or plans with persons other than City personnel, including, but not limited to consultants, designers, and other draftsmen of specifications.

If a person prepares a specification/scope of work or plan pursuant to Paragraph 1 of this Regulation, such person shall comply with the requirements of this Section.

Notwithstanding the provisions of these Procurement Guidelines, the Materials Manager retains the authority to approve or disapprove all specifications/scope of work or plans.

R-12-308 MATERIALS MANAGEMENT

The Materials Manager shall ascertain or verify that materials and services, or construction items procured by such officer conform to specifications/scope of work as set forth in the solicitation. The Materials Manager may establish inspection and testing facilities, employ inspection personnel, enter into arrangements for the joint or cooperative use of laboratories and inspection and testing facilities, and contract with others for inspection or testing work as needed. The Materials Manager may delegate authority for inspection and testing.

R-12-309 DISPOSITION

The Materials Manager will act on behalf of the City in all matters pertaining to the disposition of excess and surplus materials.

No Using Governmental Unit shall transfer, sell, trade-in, condemn, or otherwise dispose of materials owned by the City without written permission of the Materials Manager.

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Using Governmental Units shall notify the Materials Manager of all excess and surplus materials on such forms and at such times prescribed. The Materials Manager shall determine the fair market value of excess and surplus property.

The Materials Manager shall facilitate the transfer of excess or surplus materials to or between other City Governmental Units, other units of government and eligible nonprofit institutions.

Disposition of Surplus Materials

Surplus materials shall be offered through competitive sealed bids, public auction, obtaining 3 quotes, established markets, or posted prices. If unusual circumstances render the above methods impractical, the Materials Manager may employ other disposition methods, including appraisal or barter, provided such officer makes a written determination that such procedure is advantageous to the City. Only United States Postal Money Orders, certified checks, cashiers' checks or cash shall be accepted for sales of surplus property unless approved by the Materials Manager or for sales of less than One Hundred Dollars (\$100.00).

Competitive Sealed Bidding

A Request For Sealed Bids shall be publicly available from the Materials Manager at least Fourteen (14) days before the date set for opening bids. The Request for Sealed Bids shall be mailed to prospective bidders including those bidders on lists maintained by the Materials Manager pursuant to this Regulation. The Request for sealed Bids shall list the materials offered for sale, their locations of sale and instruction to bidders including the place, date and time set for bid opening. Bids shall be opened publicly pursuant to the requirements of R-12-221.

The award shall be made in accordance with the provisions of the Notice for Sales of Bids to the highest responsive and responsible bidder, provided that the price offered by such bidder is acceptable to the Materials Manager. If the Materials Manager determines that the bid is not advantageous to the City, such officer may reject the bids in whole or in part, and may re-solicit bids or negotiate the sale, provided that the negotiated sale price is higher than the highest responsive and responsible bidder's price.

Auctions shall be advertised in a commercially reasonable manner prior to the auction date. All the terms and conditions of any sale shall be available to the public at least ten (10) day prior to the auction date.

Before surplus materials are disposed of by trade-in to a vendor for credit on an acquisition, the Materials Manager shall approve such disposal. The Materials Manager shall base this determination on whether the trade-in value is expected to exceed the value realized through the sale or other disposition of such materials.

An employee of the owning or disposing governmental unit shall comply with the Arizona Statutes pertaining to conflict of interest and the Code of Ethics on Governmental Procurement contained in the City Code.

R-12-310 LOST, STOLEN OR DESTROYED NONEXPENDABLE MATERIAL

The theft of nonexpendable material shall be immediately reported to the City of Peoria, Police Department. The governmental unit shall also within ten (10) days after discovery submit all documentation on the loss to the Risk Manager.

All lost, stolen or destroyed nonexpendable material shall be reported by the Governmental Unit within ten (10) days after discovery of the loss to the Materials Manager. The Materials Manager may authorize in writing the deletion of such nonexpendable material from the inventory. Any such material deleted from the inventory that is subsequently located shall be added to the inventory.

Article 400: LEGAL AND CONTRACTUAL REMEDIES

R-12-401 RESOLUTION OF BID PROTESTS

The Materials Manager shall have the authority to resolve bid protests. Appeals from the decisions of the Materials Manager may be made to a third party hearing officer.

R-12-402 FILING OF A PROTEST

Any interested party may protest a solicitation issued by the City; or the proposed award or the award of a City contract. All protests will be considered, however, the ultimate decision is at the discretion of the City.

Content of Protest. The protest shall be in writing and shall include the following information:

The name, address and telephone number of the protestor;

The signature of the protestor or its representative;

Identification of the Governmental Unit and the solicitation or contract number;

A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; AND

The form of relief requested.

R-12-403 TIME FOR FILING PROTESTS

Protests concerning improprieties in a solicitation.

Protests based upon alleged improprieties in a solicitation that are apparent before the bid opening shall be filed before bid opening. Protests based upon alleged improprieties in a solicitation that are apparent before the closing date for receipt of initial proposals shall be filed before the closing date for receipt of initial proposals.

In procurement requesting proposals, protests concerning improprieties that do not exist in the initial solicitation but that are subsequently incorporated into the solicitation shall be filed by the next closing date for receipt of proposals following the incorporation.

In cases other than those covered in Subsection A of this Regulation, the protestor shall give written notice of the protest to the Materials Manager within five (5) days of contract award.

The Procurement Officer shall immediately give notice of the protest to the successful contractor if award has been made or, if no award has been made, to all interested parties. An interested party has the right of intervention.

R-12-404 DECISION BY THE MATERIALS MANAGER

The Materials Manager shall issue a written decision within fifteen (15) days after a protest has been filed pursuant to R-12-402. The decision shall contain an explanation of the basis of the decision.

The Materials Manager shall furnish a copy of the decision to the protestor, by certified mail, return receipt requested, or by any other method reasonably calculated to provide notice.

The time limit for decisions set forth in Subsection A of this Procedure may be extended by the Materials Manager for good cause for a reasonable time not to exceed thirty (30) days. The Materials Manager shall notify the protestor in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.

If the Materials Manager fails to issue a decision within the time limits set forth in Subsection A or C of this Procedure, the protestor may proceed as if the Materials Manager has issued an adverse decision.

R-12-405 REMEDIES

If the Materials Manager sustains the protest in whole or part and determines that a solicitation, proposed contract awards, or contract award does not comply with the procurement statutes, City Code and regulations, the officer shall implement an appropriate remedy.

In determining an appropriate remedy, the Materials Manager shall consider the circumstances surrounding the procurement or proposed procurement including, but not limited to, the seriousness of the procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent of performance, costs to the City, the

urgency of the procurement and the impact of the relief on the City and Materials Manager's mission.

An appropriate remedy may include one or more of the following:

Decline to exercise an option to renew under the contract;

Terminate the contract;

Reissue the solicitation;

Issue a new solicitation;

Award a contract consistent with procurement code, administrative regulations and procedures; or

Such other relief as is determined necessary to ensure compliance with procurement code, administrative regulations and procedures.

R-12-406 APPEALS TO A HEARING OFFICER

An appeal from a decision entered or deemed to be entered by the Materials Manager shall be filed with a Hearing Officer within five (5) days from the date the decision is received. The appellant shall also file a copy of the appeal with the Materials Manager.

Content of Appeal. The appeal shall contain:

The information set forth in R-12-403, including identification of protected information in the manner set forth in R-12-404.

A copy of the decision of the Materials Manager; and

The precise factual or legal error in the decision of the Materials Manager from which an appeal is taken.

R-12-407 NOTICE OF APPEAL

The Materials Manager shall immediately give notice of the appeal to the successful contractor and to interested parties.

The Hearing Officer shall upon request furnish copies of the appeal to those named in Subsection A of this Procedure subject to the provisions of R-12-404.

Hearing Officer shall make a recommendation to the Council/City Manager with copies furnished to all parties involved.

R-12-408 RESOLUTION OF CONTRACT CLAIMS AND CONTROVERSIES

The Procurement Officer administrating the contract shall have the authority to settle and resolve contract claims and controversies subject to this Regulation. Appeals from decisions of the Materials Manager may be made to the Hearing Officer pursuant to R-12-406.

R-12-409 AUTHORITY TO DEBAR OR SUSPEND

- (1) *Authority.* After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Chief Procurement Officer or the head of a Purchasing Agency, after consultation with the Using Agency and the [Attorney General], shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than [three yers]. The same officer, after consultation with the Using Agency and the [Attorney General], shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding [three months]. The authority to debar or suspend shall be exercised in accordance with regulations.
- (2) *Causes for Debarment or Suspension.* The causes for debarment or suspension include the following:
 - (a) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
 - (b) 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 [State] contractor;
 - (c) conviction under State or federal antitrust statutes arising out of the submission of bids or proposals,
 - (d) violation of contract provisions, as set forth below, of a character which is regarded by the Chief Procurement Officer or the head of a Purchasing Agency 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;
 - (e) any other cause the Chief Procurement Officer or the head of a Purchasing agency determines to be so serious and compelling as to affect responsibility as a [State] contractor, including debarment by another governmental entity for any cause listed in regulations; and
 - (f) for violations of the ethical standards set forth in Article 12 (Ethics in Public Contracting).
- (3) *Decision.*** The Chief Procurement Officer or the head of a Purchasing Agency shall issue a written decision to debar or suspend. The decision shall:
- (a) state the reasons for the action taken; and
 - (b) inform the debarred or suspended person involved of its rights to judicial* or administrative* review as provided in this Article.

Notice of Decision. A copy of the decision under Subsection (3) of this Section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

- (4) *Finality of Decision.*** A copy of the decision under Subsection (3) of this Section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.
- (a) the debarred or suspended person commences an action in court in accordance with Section 9-403(2) (Waiver of Sovereign immunity in Connection with Contracts, Debarment or Suspension); or
 - (b) the debarred or suspended person appeals administratively to the Procurement Appeals Board in accordance with Section 9-507 (Suspension or Debarment Proceedings).*

*Language between asterisks to be enacted if Article 9, part E (Procurement Appeals Board) is enacted.

Article 500: GENERAL PROCUREMENT STANDARDS APPLICABLE TO THIRD-PARTY FTA PROCUREMENTS

R-12-501 PROCUREMENT POLICIES AND PROCEDURES

Conformance with State and Local Law. Grantees and subgrantees shall use their own procurement procedures that reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law, including the requirements and standards identified in the FTA Circular 4220.1F or most recent version, its amendments/supplementals or any more recent version. If there is no State law on a particular aspect of procurement, then Federal contract law principles will apply.

Note: Prior to any solicitation being issued, a review of the FTA Circulars pertaining to the transaction shall be reviewed and incorporated into the solicitation. Furthermore, the FTA Appendix C checklist shall be completed and documented in the procurement file.

R-12-502 WRITTEN STANDARDS OF CONDUCT

Grantees shall maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, agent, immediate family member, or Board member of the grantee shall participate in the selection, award, or administration of a contract supported by FTA funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when any of the following has a financial or other interest in the firm selected for award:

The employee, officer, agent, or Board member,

Any member of his/her immediate family,

His or her partner, or

An organization that employs, or is about to employ, any of the above.

The grantee's officers, employees, agents, or Board members will neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantees may set minimum rules when the financial interest is not substantial or the gift is an unsolicited item

of nominal intrinsic value. To the extent permitted by state or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary action for violation of such standards by the grantee's officers, employees, or agents, or by contractors or their agents.

R-12-503 CONTRACT ADMINISTRATION SYSTEM

Grantees shall maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

R-12-504 WRITTEN PROTEST PROCEDURES

Grantees shall have written protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding protests to FTA. All protest decisions must be in writing. A protester must exhaust all administrative remedies with the grantee before pursuing a protest with FTA.

Reviews of protests by FTA will be limited to:

a grantee's failure to have or follow its protest procedures, or its failure to review a complaint or protest; or violations of Federal law or regulation.

An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester learned or should have learned of an adverse decision by the grantee or other basis of appeal to FTA.

R-12-505 SYSTEM FOR ENSURING MOST EFFICIENT AND ECONOMIC PURCHASE

Ensuring Most Efficient and Economic Purchase. Grantee procedures shall provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.

Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach.

R-12-506 AWARD TO RESPONSIBLE CONTRACTORS

Grantees shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.

Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

- (a) No contract shall be awarded to firms that are listed as debarred or suspended under the Excluded Parties List System at www.epls.gov. The Excluded Parties List System shall be used to verify eligibility for award before any FTA funded contract is approved for award and executed.

R-12-507 WRITTEN RECORD OF PROCUREMENT HISTORY

Grantees shall maintain records detailing the history of each procurement. At a minimum, these records shall include:

- (1) the rationale for the method of procurement,
- (2) selection of contract type,
- (3) reasons for contractor selection or rejection, and
- (4) the basis for the contract price.

All FTA files shall be retained for a minimum of three (3) years after disposal of the FTA asset. Once the 3 year timeframe has lapsed, the file for that FTA asset is eligible for destruction.

R-12-508 USE OF TIME AND MATERIALS TYPE CONTRACTS

Grantees will use time and material type contracts only:

- (1) After a determination that no other type of contract is suitable; and
- (2) If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.

R-12-509 CONTRACT TERM LIMITATION

Grantees shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options. All other types of contracts (supply, service, leases of real property, revenue and construction, etcetera) should be based on sound business judgment. Grantees are expected to be judicious in establishing and extending contract terms no longer than minimally necessary to accomplish the purpose of the contract. Additional factors to be considered include competition, pricing, fairness and public perception. Once a contract has been awarded, an extension of the contract term

length that amounts to an out of scope change will require a sole source justification.

R-12-510 FULL AND OPEN COMPETITION

All procurement transactions will be conducted in a manner providing full and open competition. Some situations considered to be restrictive of competition include, but are not limited to:

- (1) Unreasonable requirements placed on firms in order for them to qualify to do business;
- (2) Unnecessary experience and excessive bonding requirements;
- (3) Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;
- (4) Specifying only a "brand name" product instead of allowing "an equal" product to be offered without listing its' salient characteristics.
- (5) Written Procurement Selection Procedures. Grantees shall have written selection procedures for procurement transactions. All solicitations shall:
 - (a) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient characteristics of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.
 - (b) Identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.

- (6) Any arbitrary action in the procurement process.

R-12-511 PROHIBITION AGAINST GEOGRAPHIC PREFERENCES

Grantees shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

R-12-512 PREQUALIFICATION CRITERIA

Grantees shall ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. Also, grantees shall not preclude potential bidders from qualifying during the solicitation period, which is from the issuance of the solicitation to its closing date.

R-12-513 METHODS OF PROCUREMENT

The following methods of procurement may be used as appropriate:

- a. **Procurement by Micro-Purchases.** Micro-purchases are those purchases under \$2,500. Purchases below that threshold may be made without obtaining competitive quotations. Such purchases are exempt from Buy America requirements. There should be equitable distribution among qualified suppliers and no splitting of procurements to avoid competition. The Davis-Bacon Act applies to construction contracts between \$2,000 and \$2,500. Minimum documentation is required: A determination that the price is fair and reasonable and how this determination was derived. The other requirements of paragraph 7(i) do not apply to micro-purchases.
- b. **Procurement by Small Purchase Procedures.** Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that cost more than \$2,500 but do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. § 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

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- c. Procurement By Sealed Bids/Invitation For Bid (IFB). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.
- (1) In order for sealed bidding to be feasible, the following conditions should be present:
 - (a) A complete, adequate, and realistic specification or purchase description is available;
 - (b) Two or more responsible bidders are willing and able to compete effectively for the business;
 - (c) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price; and
 - (d) No discussion with bidders is needed.
 - (2) If this procurement method is used, the following requirements apply:
 - (a) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids;
 - (b) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services sought in order for the bidder to properly respond;
 - (c) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
 - (d) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest;

Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

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- (e) Any or all bids may be rejected if there is a sound documented business reason.
 - (3) The sealed bid method is the preferred method for procuring construction if the conditions in paragraph 9c(1) above apply.
- d. Procurement By Competitive Proposal/Request for Proposals (RFP). The competitive proposal method of procurement is normally conducted with more than one source submitting an offer, i.e., proposal. Either a fixed price or cost reimbursement type contract is awarded. This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. If this procurement method is used the following requirements apply:
 - (1) Requests for proposals will be publicized. All evaluation factors will be identified along with their relative importance;
 - (2) Proposals will be solicited from an adequate number of qualified sources;
 - (3) Grantees will have a method in place for conducting technical evaluations of the proposals received and for selecting awardees;
 - (4) Awards will be made to the responsible firm whose proposal is most advantageous to the grantee's program with price and other factors considered; and
 - (5) In determining which proposals is most advantageous, grantees may award (if consistent with State law) to the proposer whose proposals offer the greatest business value to the Agency based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposal represents the "best value" to the Procuring Agency as defined in Section 6, Definitions. If the grantee elects to use the best value selection method as the basis for award, however, the solicitation must contain language which establishes that an award will be made on a "best value" basis.
- e. Procurement Of Architectural and Engineering Services (A&E). Grantees shall use qualifications-based competitive proposal procedures (i.e., Brooks Act procedures) when contracting for A&E services as defined in 40 U.S.C. §541 and 49 U.S.C. §5325(d). Services subject to this requirement are program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services.

Qualifications-based competitive proposal procedures require that:

- (1) An offeror's qualifications be evaluated;

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- (2) Price be excluded as an evaluation factor;
- (3) Negotiations be conducted with only the most qualified offeror; and
- (4) Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee.

These qualifications-based competitive proposal procedures can only be used for the procurement of the services listed above. This method of procurement cannot be used to obtain other types of services even though a firm that provides A&E services is also a potential source to perform other types of services.

These requirements apply except to the extent the grantee's State adopts or has adopted by statute a formal procedure for the procurement of these services.

- f. **Procurement By Noncompetitive Proposals (Sole Source).** Sole Source procurements are accomplished through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. A contract change that is not within the scope of the original contract is considered a sole source procurement that must comply with this subparagraph.
 - (1) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:
 - (a) The item is available only from a single source;
 - (b) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - (c) FTA authorizes noncompetitive negotiations—e.g., if FTA provides a joint procurement grant or a research project grant with a particular firm or combination of firms, the grant agreement is the sole source approval;
 - (d) After solicitation of a number of sources, competition is determined inadequate; or
 - (e) The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(1) that is procured directly from the original

manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to FTA:

- 1 that such manufacturer or supplier is the only source for such item; and
 - 2 that the price of such item is no higher than the price paid for such item by like customers.
- (2) A cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.
- g. Options. Grantees may include options in contracts. An option is a unilateral right in a contract by which, for a specified time, a grantee may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. If a grantee chooses to use options, the requirements below apply:
- (1) Evaluation of Options. The option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.
 - (2) Exercise of Options.
 - (a) A grantee must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.
 - (b) An option may not be exercised unless the grantee has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.

R-12-514 CONTRACT COST AND PRICE ANALYSIS FOR EVERY PROCUREMENT ACTION

Grantees must perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a

starting point, grantees must make independent estimates before receiving bids or proposals.

- a. **Cost Analysis.** A cost analysis must be performed when the offeror is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost, (e.g., under professional consulting and architectural and engineering services contracts, etc.).

A cost analysis will be necessary when adequate price competition is lacking and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.

- b. **Cost Plus Percentage of Cost Prohibited.** The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

R-12-515 BONDING REQUIREMENTS

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the grantee, provided FTA determined that the policy and requirements adequately protect the Federal interest. FTA has determined that grantee policies and requirements that meet the following minimum criteria adequately protect the Federal interest:

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified;
- b. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract; and
- c. A payment bond on the part of the contractor. A payment bond is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts determined to adequately protect the federal interest are as follows:
 - (1) Fifty percent of the contract price if the contract price is not more than \$1 million;

- (2) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (3) Two and a half million dollars if the contract price is more than \$5 million.
- d. A Grantee may seek FTA approval of its bonding policy and requirements if they do not comply with these criteria.

R-12-516 PAYMENT PROVISIONS IN THIRD PARTY CONTRACTS

- a. Advance Payments. FTA does not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA. There is no prohibition on a grant recipient's use of local match funds for advance payments. However, advance payments made with local funds before a grant has been awarded, or before the issuance of a letter of no prejudice or other pre-award authority, are ineligible for reimbursement.
- b. Progress Payments. Grantees may use progress payments provided the following requirements are followed:
 - (1) Progress payments are only made to the contractor for costs incurred in the performance of the contract.
 - (2) The grantee must obtain adequate security for progress payments. Adequate security may include taking title, letter of credit or equivalent means to protect the grantee's interest in the progress payment.

R-12-517 LIQUIDATED DAMAGES PROVISIONS

A grantee may use liquidated damages if it may reasonably expect to suffer damages and the extent or amount of such damages would be difficult or impossible to determine.

The assessment for damages shall be at a specific rate per day for each day of overrun in contract time; and the rate must be specified in the third party contract. Any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise.

R-12-518 CONTRACT PROVISIONS

All contracts shall include provisions to define a sound and complete agreement. In addition, contracts and subcontracts shall contain contractual provisions or conditions that allow for:

- a. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, including sanctions and penalties as may be appropriate. (All contracts in excess of the small purchase threshold.)
- b. Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000.)

R-12-519 FTA ASSET DISPOSAL PROCEDURES FOR RECIPIENTS AND A SUB-RECIPIENTS

The retention period for asset records is three years from the date of disposition.

- a. Public Transit Department (PTD) Dispositions – When PTD disposes of a FTA funded asset, the division that owns the asset must first approve the disposal, and then the asset is sent to the City’s Surplus Property for sale at the next Surplus Property auction. After the asset is sold at auction, PTD receives the information from Surplus Property as to the amount it was sold for and the date it was sold. The Fixed Asset Clerk then updates the fixed asset database with this information. The FTA has various rules concerning the disposal of assets at the end of, or before the end of, their useful lives, transfer to other agencies, refund of federal share or re-investment in like-kind assets. FTA circulars should be reviewed before disposal to ensure compliance with FTA rules and regulations.
- b. Sub-recipient Dispositions - When a sub-recipient disposes of a FTA funded asset the sub-recipient should complete the Asset Disposal form and send it to the PTD Fiscal Services Section. The Fixed Asset Clerk then updates the fixed asset database with this information. If the asset is being sold at auction the form is completed shortly after the auction, when the actual sales price is known. The FTA has various rules concerning the disposal of assets at the end of, or before the end of, their useful lives, transfer to other agencies, refund of federal share or re-investment in like-kind assets. FTA circulars should be reviewed before disposal to ensure compliance with FTA rules and regulations. If there are any questions about the disposal of a FTA funded asset, PTD staff can be of assistance to the sub-recipient.