



CITY OF WINTER GARDEN PURCHASING MANUAL

Adopted by Resolution No. 09-13 as amended by Resolution No.11-08

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City of Winter Garden
Purchasing Manual

I. Introduction

A. Purpose:

The purpose of this manual is to assist all departments in understanding and executing the City's policies and procedures to be employed in the City's purchase of goods and services, including but not limited to construction services and materials.

These policies and procedures are intended to accomplish the following:

1. To avoid and mitigate legal liability arising from the use of inappropriate purchasing methods or procedures.
2. To provide for the fair treatment of all eligible persons and business entities interested in providing goods and services, including but not limited to construction services and materials, to the City.
3. To assure that City funds are spent toward goods and services, including but not limited to construction services and materials, in the most effective and efficient manner possible under the circumstances.

B. Scope:

The policies and procedures provided in this manual shall apply, unless otherwise required by general law, to all instances in which the City seeks to procure goods and services.

C. Objective:

To ensure that the City's purchasing needs are met while adhering to both the Florida Statutes regarding public procurement and the City's purchasing policies and procedures; and to assure that all purchasing decisions will best serve the interests of the City.

II. Definitions

City Manager – shall mean the City Manager or his/her designee.

Competitive Sealed Bidding – method for acquiring goods, services, and construction for public use in which the City invites and receives two or more bids and awards the sale or project to the lowest responsive and responsible bidder.

Competitive Sealed Proposals - method for acquiring goods, services, and construction for public use in which the City invites and receives two or more proposals and awards the sale or project based on several specified factors in addition to price.

Competitively Awarded – contracts awarded based on the submission of sealed bids or proposals submitted in response to a request for proposals, or proposals submitted in response to a request for qualifications.

Continuing Contract – a contract for “professional services,” as such term is defined in § 287.055, Fla. Stat., which is entered into in accordance with all the procedures of the Consultants’ Competitive Negotiation Act between the City and a firm, whereby such firm provides professional services to the agency for projects in which the estimated construction cost of each individual project under the contract does not exceed \$2 million, for study activity if the fee for professional services for each individual study under the contract does not exceed \$200,000, or for work of a specified nature as outlined in the contract required by the City, with the contract being for a fixed term or with no time limitation except that the contract must provide a termination clause. Firms providing professional services under continuing contracts shall not be required to bid against one another.¹

Design-Build Contract – a single contract with a design-build firm for the design and construction of a public construction project.

Invitation For Bid – a formal request to prospective vendors soliciting price quotes or bids; contains the specifications or scope of work and all contractual terms and conditions.

Procurement Officer – the individual/committee responsible for the solicitation, evaluation, selection, and negotiation of bids, responses, and proposals, unless otherwise noted in this manual or otherwise required by applicable law. Unless the City Manager instructs otherwise, the head of the department responsible for a particular project shall serve as the procurement officer for the duration of such project and may delegate his/her authority as the procurement officer for such project to his/her designees, bureau(s), agency(s) or other official(s) as the circumstances require. If seeking procurement of professional services, property or other contractual services

¹ Because the threshold figures are subject to change on an annual basis, the Florida Statutes should always be consulted to ensure that threshold amounts are current. If a project does exceed one of the threshold costs, then such project must be bid competitively in accordance with the Consultants’ Competitive Negotiation Act.

valued in excess of \$50,000.00 that are not otherwise exempt from competitive selection requirements, the City Manager shall appoint a procurement committee consisting of three or a greater odd number of individuals to oversee the solicitation, evaluation, selection, and negotiation of bids, responses, and proposals. If such a committee is appointed, the committee shall serve in lieu of the procurement officer, carry out all duties as required of a procurement officer, decide matters based upon affirmative vote of a majority of its members, and shall be dismissed and disbanded upon successful completion of the procurement process.

Project Manager – The department head of the department from which the project originates, the City Engineer, or any other person designated by the City Manager. A project manager's duties may, if required, include acting as the procurement officer for such project.

Request For Proposal ("RFP") – All documents utilized for soliciting competitive proposals.

Responsible Bidder – A bidder who has the capability to perform fully the contract requirements, and the experience, integrity, perseverance, reliability, capacity, facilities, equipment and credit which will assure good faith performance.

Responsive Bidder – a vendor who has submitted a bid that conforms to the requirements stated in the invitation for bid.

III. Procedures

A. General Policies

1. All purchases must be within the limits of the current budget or covered by an addendum to the budget.
2. All purchases, whenever permissible, are to be tax-exempt.
3. The use of purchase orders is encouraged.
4. Federal laws and statutes take precedence when purchases are made with federal funds.
5. Whenever a State or other Governmental Entity has a pre-existing contract, which is already in effect concerning the goods, services, or construction the City wishes to acquire, the City should, where appropriate, consider piggybacking onto such contract where such contract has been approved pursuant to a competitive selection process that is substantially equivalent to that of the City, provided that the terms, including the scope, of such contract remain substantially the same as adopted by the City.² No such contract shall be required to be subjected to the competitive solicitation requirements contained in this manual unless otherwise required by general law.
6. To the extent not prohibited by general law, a contract may be awarded for goods or services on the basis of informal quotes and a review of the quality or suitability of such goods or services when the City Manager has conducted a reasonable inquiry into the available goods and/or services and determines in writing that there are only four (4) or less sources for the required goods and/or services.
7. Gifts from vendors, with the exception of items of minimal value such as advertising novelties, shall not be accepted. An employee shall not negotiate or participate in the selection process concerning any City transaction from which such employee may personally profit.
8. The policies and procedures in this manual do not preempt the procedures outlined in the City's Purchasing Card Policy Manual, nor do they preempt the policies and procedures outlined in the City's Accounting Manual.
9. Pursuant to § 287.087, Fla. Stat., whenever two or more bids, proposals, or replies that are equal with respect to price, quality and service are received for the procurement of commodities or contractual services, a bid, proposal, or reply received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process.
10. In the event of a conflict between these enumerated procedures and those statutory bidding requirements expressly applicable to municipalities, such statutory bidding requirements shall control to the extent that such conflict exists.

² See Accela, Inc. v. Sarasota County, 993 So. 2d 1035, 1043-44 (Fla. 2d DCA 2008).

11. To the extent not prohibited by general law, the City Commission may, by majority vote, waive the formal procurement procedures contained in this purchasing manual for the procurement of a particular good, material, equipment or service if the City Commission deems such waiver to be in the best interest of the City.

B. Small Purchases (Purchases under \$25,000)

1. Purchases of \$0.00 to \$2,500

Goods, services and construction in this category may be purchased outright (no competitive pricing required); however, purchasing personnel shall make a good faith attempt to obtain quality products from a reputable vendor at a reasonable price.

2. Purchases exceeding \$2,500 but not more than \$10,000

At a minimum, three (3) informal comparative quotes shall be obtained via telephone, catalog, and/or the Internet. Purchasing personnel must maintain a log of all such quotes received for each such purchase.

3. Purchases exceeding \$10,000 but not more than \$25,000

A minimum of three (3) quotes shall be obtained from three different sources either in writing, by facsimile or electronically.

C. Large Purchases (Purchases \$25,000 and over)

1. Commission Approval: All purchases in excess of \$50,000 must receive final approval from the City Commission.

2. Insurance and Bonds (Guaranty):

- a. All businesses or individuals performing any contractual service for the City shall furnish adequate insurance coverage. The project manager shall be responsible for determining the need, types and limits of insurance coverage and ensure delivery of documentation of insurance coverage.
- b. Any business or individual entering into a construction contract with the City where costs are estimated to exceed \$200,000 shall be required to provide Performance and Payment Bonds equal to 100% of the contract price. For construction under \$200,000, whether performance and payment bonds are to be furnished shall be at the discretion of the project manager. If a Performance and/or Payment Bond is required, such shall be specified in the Request for Proposal, Request for Qualifications, Request for Competitive Negotiation, or Invitation for Bid, whichever is applicable.

- c. Any business or individual entering into a construction contract with the City in which costs are estimated to exceed \$500,000 shall be required to furnish a Bid Bond or Bid Guaranty in the amount of 5% of the bid price. For construction under \$500,000, the project manager shall decide if a bid bond/guaranty is to be provided. If a Bid Bond or Bid Guaranty is required, such shall be specified in the Request for Proposal, Request for Qualifications, Request for Competitive Negotiation, or Invitation for Bid, whichever is applicable.

3. Goods and Contractual Services

- a. Purchases of goods and contractual services estimated to cost \$25,000.00 or more shall be awarded by competitive sealed bidding. An Invitation For Bids (IFB) shall be issued concurrently to all vendors to include a detailed description of the goods or services required; the time and date for the receipt of bids and of the public opening; and **all contractual terms and conditions relevant to the purchase**. If renewal of the contract is a possibility, such must be indicated in the IFB. No bid shall be evaluated on any criteria not otherwise specified in the IFB. Evaluation of bids shall include consideration of the total cost for each year as submitted by the vendor. Award shall be made to the lowest responsible and responsive bidder.
- b. If the project manager has determined in writing that an IFB is impractical, the City may issue a request for Competitive Sealed Proposals in lieu of an Invitation for Bids. Such Request for Proposal (RFP) shall be issued simultaneously to all vendors and shall include a detailed description of the goods or services sought; the time and date for the receipt of proposals and of the public opening; and all contractual terms and conditions applicable to the procurement, including the criteria, which must include but need not be limited to price, to be used in determining acceptability of the proposal. A proposal shall not be evaluated on any criteria not otherwise included in the RFP. Award shall be made to the responsible vendor whose proposal is determined to be the most advantageous to the City.

The following items shall not be subject to competitive solicitation unless otherwise required by law:

- i. Academic program reviews
- ii. Artistic services
- iii. Auditing services
- iv. Health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration
- v. Lectures by individuals
- vi. Medicaid services

- vii. Services or commodities provided by governmental agencies
 - viii. Legal services, including attorney, paralegal, expert witness, appraisal, or mediator services
 - ix. Proprietary computer software
- c. In the event of an emergency, goods and services may be procured in accordance with those procedures established in Section D, of this manual unless otherwise prohibited by general law.

4. Procurement of Professional Services

For the purposes of this section, “professional services” means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined in the Florida Statutes, or those services performed by any architect, or registered surveyor and mapper in connection with his or her professional employment or practice. General law obligates the City to follow those specific procedures contained in § 287.055, Fla. Stat., concerning the procurement of professional services as defined therein. The policies contained herein are a mere summarization of the rules contained in Section 287.055, Fla. Stat., and City personnel are instructed to refer to such provision for additional detail.

a. PUBLIC ANNOUNCEMENT

- i. A public announcement must be made for each occasion when professional services are sought for a planning or study activity where fees are estimated to exceed \$25,000 or during a construction project with estimated costs exceed \$250,000. The public announcement must include a description of the project and must indicate how interested consultants may apply for consideration.
- ii. The City shall encourage firms engaging in the lawful practice of their professions and who desire to provide such services to the City to annually submit statements of qualifications and performance data for review.
- iii. Any firm or individual desiring to provide professional services to the City must first be certified by the City as qualified to provide such services. The City must find that the firm or individual to be employed by the City is fully qualified to render the required service. Among the factors to be considered in making such determination are the capabilities, adequacy of personnel, past record, and experience of such firm or individual.
- iv. The City is required to evaluate professional services, including capabilities, adequacy of personnel, past record, experience,

whether the firm is a certified minority business enterprise as defined by the Florida Small and Minority Business Assistance Act, and other factors determined by the City to be applicable to its particular requirements. When securing professional services, the City must endeavor to meet the minority business procurement goals stated in sec. 287.09451, Fla. Stat.

- v. The public is not to be excluded from the proceedings carried out under this section. Thus, all discussions and negotiations with respondents proposing professional services shall be conducted at duly noticed public meetings.

b. **COMPETITIVE SELECTION**

- i. For each proposed project, the project manager shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with, and may require public presentations by, no fewer than three (3) firms regarding their qualifications, approach to the project, and ability to furnish the required services.
- ii. The project manager shall select, in order of preference, no fewer than three (3) firms deemed to be the most highly qualified to perform the required services. In determining whether a firm is qualified, the project manager shall consider the following factors:
 - 1. The ability of the firm's professional personnel;
 - 2. Whether the firm is a certified minority business enterprise;
 - 3. Past performance;
 - 4. The firm's willingness to meet time and budget requirements;
 - 5. The location of the firm;
 - 6. The recent, current, and projected workloads of the firms;
 - 7. The volume of work previously awarded to each firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selecting only the most highly qualified firms

At this stage of the selection process, the City cannot request, accept or consider proposals for the compensation to be paid pursuant to the contract. Such activity is reserved for the Competitive Negotiation Process.

c. COMPETITIVE NEGOTIATION

- i. Having completed the Competitive Selection process, the procurement officer shall negotiate a contract with the most qualified firm for professional services at compensation which the procurement officer determines is fair, competitive, and reasonable. In making such a determination, the procurement officer shall conduct a detailed analysis of the cost of the professional services required in addition to considering the scope and complexity of the services required.
- ii. Should the procurement officer be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the procurement manager determines to be fair, competitive, and reasonable, negotiations with the firm must be formally terminated. The City shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the City must terminate negotiations with such firm and subsequently undertake negotiations with the third most qualified firm. If the City is unable to negotiate a satisfactory contract with any of the selected firms, the City shall select additional firms in the order of their competence and qualification and continue negotiations until an agreement is reached.
- iii. For any lump-sum or cost-plus-a-fixed-fee professional service contract exceeding \$150,000.00,³ the City shall require the firm receiving award of the contract to execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract under which such a certificate is required must contain a provision that the original contract price and any additions thereto will be adjusted to exclude any significant sums by which the agency determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments must be made within 1 year following the end of the contract.

³ Check § 287.017, Fla. Stat., to ensure that this amount is still equivalent to the Category Four amount established under such statute.

- d. Each contract for professional services shall contain a prohibition against contingent fees pursuant to Section 287.055(6) of the Florida Statutes. Such statute states that any City official who offers to solicit or secure, or solicits or secures, a contract for professional services and to be paid (or is paid), any fee, commission, percentage, gift, or other consideration contingent upon the award or making of such a contract for professional services between the City and any individual person, company, firm, partnership, or corporation shall, upon conviction by a court of competent authority, be found guilty of a first degree misdemeanor
- e. Nothing stated in the paragraphs above shall be interpreted to forbid or prevent a continuing contract between a firm and the City. Continuing contracts for professional services provide a timely and efficient means to acquire services to support the operations of the City.
- f. In the event of a public emergency, defined as an event or occurrence of a temporary and non-recurring nature posing immediate and substantial danger to the public health, safety, or welfare of the City and its citizens, the City Manager may, pursuant to § 287.055(9)(c)6., Fla. Stat., and upon written certification of such emergency, authorize immediate negotiations with the best qualified firm immediately available to the City.

5. Construction Contracts

For purposes of this section, contracts for construction shall include construction of a public building, a public work, or for repairs upon existing public buildings or public works.

- a. Contracts for construction shall be competitively awarded to an appropriately licensed contractor. Bid and proposal guidelines are set forth in subsection c.
- b. To assure the greatest degree of competition, the solicitation for competitive bids or proposals must be publicly advertised at least once in a newspaper of general circulation in the county where the project is located subject to these parameters:
 - (1) When project costs are estimated to exceed \$200,000, the solicitation for such must be advertised at least twenty-one (21) days prior to the established bid opening and at least five (5) days prior to any scheduled pre-bid conference. See § 255.0525, Fla. Stat. (2008).
 - (2) If the project costs are estimated to exceed \$500,000, the solicitation for such must be advertised at least thirty (30) days prior

to the opening and at least five (5) days prior to any scheduled pre-bid conference. See § 255.0525, Fla. Stat. (2008)

- (3) Pursuant to § 255.0525, Fla. Stat., a construction project may not be divided into more than one project for the purpose of evading the advertising requirements.

The solicitation shall include:

- (1) A description of the project;
 - (2) Explanation of how long bids/proposals will be accepted;
 - (3) Explanation of how interested parties may obtain a bid/proposal package and any applicable costs or fees to obtain the package;
 - (4) Pricing method bids will be based on;
 - (5) The time and date of the mandatory pre-bid meeting where applicable;
 - (6) The time and date of the bid opening [open to the public]; and
 - (7) Detailed criteria upon which the City will rely in awarding such bid.
- c. Bid packages shall be provided to potential bidders at a fair and reasonable price and shall include a complete set of plans/drawings and a book of specifications. Proposal packages shall include information concerning the project goal and any parameters that need to be met.
- d. Any contractor pre-qualified and considered eligible by the Department of Transportation to bid to perform the type of work described under the contract shall be presumed to be qualified to perform the work described.
- e. Any contractor behind by ten (10) percent on completing an approved progress schedule for the City shall be ineligible to bid.
- f. **Construction of Public Utilities pursuant to Chapter 180, Florida Statutes:**
- (1) In addition to those ordinary procedures required for construction contracts, the City, if engaged in contracting for the construction or extension of any of the utilities described in Chapter 180, Fla. Stat., must adhere to the following additional requirements:
 - i. Any such construction contracts must be in writing;

- ii. The Contractor selected MUST provide bond, which bond shall be executed by a surety company authorized to do business in the State of Florida;
 - iii. If the Contract is in excess of \$25,000.00, such shall be advertised by the publication of a notice in a newspaper of general circulation located in Orange County, Florida, at least once each week for 2 consecutive weeks OR by posting 3 notices in 3 conspicuous places within the City, one of which shall be on the door of City Hall. At least 10 days must elapse between the date of the first publication or posting of such notice and the date of receiving bids and the execution of such contract documents. For municipal construction projects identified in § 255.0525, the notice provision of such section supersedes and replaces the notice provisions described herein.
 - iv. All contracts for the purchase, lease, or renting of materials or equipment to be used in the accomplishment of any or all of the purposes of Chapter 180, Fla. Stat., by the City, shall be in writing; provided, however, that where said contract for the purchase, lease, or renting of such materials or equipment is in excess of \$ 10,000, notice or advertisement for bids on the same shall be published in accordance with the provisions of § 180.24(1), Fla. Stat. (i.e. subsection iii above).
- g. In the event of an emergency see Emergency Purchases section (Section “D”) on page 18.

6. Design-Build Contract

The City may use the design-build method for the construction of a public building, a public work, or for repairs upon existing public buildings or public works. Design-build procedures follow:

- a. Design-Build Consultant: The City shall hire a design-build consultant to provide professional assistance throughout the execution of the design-build project. Solicitation for statements of qualifications from design-build consultants shall be publicly advertised at least once in a newspaper of general circulation in the county where the project is located. Such request for qualifications shall include general information concerning the project site, project scope, and other information that may assist potential design-build consultants in submitting a request for qualifications package. The design-build consultant shall be chosen in accordance with those

procedures set forth in § 287.055(4)-(5), Fla. Stat., and based upon an applicant's demonstrated abilities and qualifications. The role of the design-build consultant shall include:

- (1) Preparation, production and sealing of a design criteria package to be used by the City;
- (2) Evaluation of each bidder's contract proposals;
- (3) Review and evaluation of the design and construction plans and specifications;
- (4) Making oneself available during construction work for consultation regarding compliance and conformance.

A design build consultant who has been selected to prepare a design criteria package shall not be eligible to render services under a design – build contract executed pursuant to the design criteria package prepared by such consultant.

- b. Request for Proposal: Upon selection of a design-build consultant and such consultant's completion of a design criteria package, the City shall solicit competitive proposals from design-build firms. Such solicitation will be publicly advertised at least once in a newspaper of general circulation in the county where the project is located. The Request for Proposal shall contain the design criteria package prepared by the design-build consultant, the scope of services to be provided, the evaluation criteria to be used in evaluating proposals, and explicit qualification instructions.
- c. The bid and proposal process for a design build contract shall be identical to the bid and proposal process utilized to procure professional services as described in Section 4 of this guide and in § 287.055(3)-(5), Fla. Stat., with the exception that the design-build consultant shall be responsible for the evaluation of each bidder's contract proposals.
- d. In the event of a public emergency, defined as an event or occurrence of a temporary and non-recurring nature posing immediate and substantial danger to the public health, safety, or welfare of the City and its citizens, the City Manager may, upon written certification of such emergency, bypass the bidding process described herein and authorize immediate negotiations with the best qualified firm immediately available to the City.

7. Push-Button Contract

For non-site specific and on-going contractual services, push-button contracts may be utilized. The need for services shall be publicly advertised at least once

in a newspaper of general circulation in the county where the services will be performed and competitively awarded to the lowest responsible and responsive bidder. Because push-button contracts are based on approximate quantities representing estimated requirements based on historical or specific project needs, the City does not guarantee any maximum or minimum quantity, any range of quantities, or the exact quantities shown for each bid item. The City's estimated quantities and the Contractor's bid price will be used to calculate a total bid amount. This total bid amount will then be used to determine a low bidder; however, actual payment under the awarded contract will be based on actual quantities completed.

Push-button contracts have a renewable option and may be renewed for a period that may not exceed 3 years or the term of the original Contract, whichever period is longer. The renewal will be subject to the same bid prices, associated quantities and other terms and conditions set forth in the original Contract and supplemental agreement(s) determined by the project manager to continue into the renewal period. Renewals will be made at the sole discretion and option of the City and must be agreed to, in writing, by both parties.

8. General Bid and Proposal Procedures

Unless otherwise required by statute or applicable law or exempted by a provision contained in this manual, the following procedures are to be utilized for the procurement of products and services costing \$25,000.00 or more.

- a. Bid/Proposal Opening: Bid and proposal openings shall be open to the public and all interested bidders. Bids/proposals shall be received and opened at the location, date, and time stated in the bid/proposal advertisement. If the location, date or time of the bid/proposal opening changes, a written notification of the change must be provided to all persons registered to receive any addenda to the plans and specifications.
- b. Rejection of Bid/Proposal Submittals: In determining the lowest responsible and responsive bidder, in addition to price, the City shall have the discretionary power to render decisions on and may accept or reject bids or proposals on the basis of any one or more of the following:
 - (1) The ability, capacity, skill and sufficiency of resources of the bidder to perform the contract and provide the requested materials or service.
 - (2) The bidder's ability to perform the contract within the time specified.
 - (3) The character, honesty, integrity, reputation, judgment, experience and efficiency of the bidder.
 - (4) The quality of performance and conduct of the bidder on previous contracts with the City or any other reference or party that the bidder has performed work or services.

- (5) A bidder's propensity to request change orders based on bidder's conduct under previous contracts with the City.
- (6) A bidder's previous failure to meet specified substantial completion dates or other milestone dates on previous contracts with the City.
- (7) A bidder's current workload and projected workload during the performance of the contract.
- (8) The previous and existing compliance by the bidder with federal, state and local laws, regulations and ordinances applicable, relating or similar to the contract or work to be performed; to include, but not limited to laws, regulations and ordinances of State of Florida, local governments, FDEP, FDOT, Water Management District, and OSHA.
- (9) The quality, availability and adaptability of the supplies or professional or contractual services to the particular use required.
- (10) The ability of the bidder to provide future maintenance and service on the matter procured and the financial impact upon the City to receive future maintenance and services.
- (11) The bidder's pecuniary ability and financial stability.
- (12) The ability to meet the City's stated requirements for bonding and insurance in order to fully protect the interests of the City.
- (13) Whether the bidder is in arrears to the City on a debt, is a defaulter on any bond or to any surety, whether the bidder's taxes or assessments are delinquent, and/or whether bidder has failed to render payments to subcontractors, suppliers, employees or material men.
- (14) Whether bidder is involved in a recent past (within past three years) or a current dispute with the City involving threatened or pending litigation regarding a previous contract with the City.
- (15) The proximity of bidder's labor force, equipment and business operation in relation to the City.
- (16) Proportional amount of the work or services bidder intends to perform with its own organization as compared with the portion it intends to subcontract and the qualifications of subcontractors whom the bidder proposes to use.
- (17) Whether the bidder submitted a bid or proposal that conforms to the requirements stated in the request for bids or proposal issued by the City.
- (18) Any other circumstances or factors deemed in the best interest of the City as determined by the City's discretion.

The above factors may be determined by bidder's past performance with the City, information obtained from other project owners, information submitted as part of the bid/proposal or in response to an inquiry by the City, and/or information otherwise known or discovered by the City. The City may conduct detailed examinations of bidders, including of bidders' personnel, place of business and facilities, compliance with federal, state, and local laws and all relevant licensing and permitting requirements, and other matters of responsibility germane to the procurement process. The failure of a bidder to supply information in connection with an inquiry in a

timely manner, at the City's discretion, may be grounds for rejecting such bidder. Until the final award and execution of a contract, the City reserves the right to reject any and all bids and proposals and to waive technical errors and irregularities as may be deemed best for the interests of the City.

- c. Modification or Withdrawal: A vendor may correct a mistake, modify or withdraw their bid before bid-opening. However, once the bid-opening has taken place, no change to the bid shall be permitted so as to remain fair to other bidders. A mistake discovered after the award does not relieve the vendor from performance according to the agreed upon contract.
- d. Late Response: Bids received late shall be rejected as untimely and returned unopened to the vendor's listed address.
- e. One Response or No Response: If only one response is received, the procurement officer for a particular project has the following options:
 - (1) Determine whether the bid-opening date shall be extended; if so, the one bid response shall be returned to the vendor unopened.
 - (2) Poll other known or registered vendors as to their reasons for lack of response.
 - (3) Accept the bid if time is of essence and the bidder has made a reasonable and responsible bid or proposal.
 - (4) Reject the bid and re-solicit.
 - (5) Reject the bid, close the solicitation and utilize City resources for the project when feasible.
 - (6) Negotiate on best terms and conditions. If such course of action is chosen, the project manager must document the reasons as to why such action is in the best interest of the City in lieu of resoliciting competitive sealed bids, proposals, or replies.

If there are no responses, the following options are available to the procurement officer:

- (1) Extend the bid-opening date;
- (2) Contact known and registered vendors to determine their reasons, if any, for a lack of response;

- (3) If the bid is to be closed and rebid, a thorough review of the specifications and bid list must occur before re-soliciting.
 - (4) Close the solicitation and utilize City resources when feasible.
 - (5) Negotiate on best terms and conditions. If such course of action is chosen, the procurement officer must document the reasons as to why such action is in the best interest of the City in lieu of resoliciting competitive sealed bids, proposals, or replies.
- f. Evaluation and Selection: The procurement officer shall review the responses submitted and disqualify any responses that do not meet the mandatory minimum requirements. From the remaining responses and depending upon the type of request, selection shall be made on the basis of either the lowest responsive and responsible bidder, or the highest rated technical proposal within a set financial budget. The contract file shall contain documentation supporting the basis upon which an award was made. Such documentation shall include a short plain statement that explains the basis for vendor/servicer selection and that sets forth the vendor's/servicer's deliverables/services and price, pursuant to the contract, with an explanation of how these deliverables/services and price provide the best value to the City.
- g. Tie Bids: If two or more bids are received that are equal in price and there is no evidence of price-fixing or collusion between or among such bidders, first choice may be awarded in the following order:
- (1) Quality of service(s) and/or product(s) offered;
 - (2) Drug-free workplace [Section 287.087, Florida Statutes];⁴
 - (3) Bidder's proximity to the City (see §§ 287.084 and §§ 287.092, Fla. Stat.);
 - (4) Bidder's ability to deliver services in a timely manner.
- h. Noncompetitive bids/offers: If, after reasonable inquiry, the Procurement Officer determines that the lowest responsible and responsive bids received are not competitive with known "off-the-shelf," listed, market, or manufacturer's suggested retail pricing, the City may opt to either cancel the bid process and rebid the project, goods, or services, or, if not otherwise prohibited by law, the City may cancel the bidding process, reject all bids, and acquire like services through conventional means at a price that is lower than the lowest responsive and responsible bid.
- i. Public Disclosure: Sealed bids and proposals are not immediately subject to Florida's Public Records Act. Chapter 119.071 of the Florida Statutes

⁴ A drug free workplace preference is warranted only when two or more bids, proposals, or replies are equal with respect to price, quality, and service.

exempts the City from allowing interested parties to examine sealed bids or proposals until such time as the City provides notice of a selection or intended selection or within ten (10) days after the bid or proposal opening, whichever is earlier.

- j. Awards: The procurement officer must notify a successful bidder/proposer of an award in writing within three (3) days of reaching such decision. The contract file must contain a short simple statement that explains the basis for vendor selection that states the vendor's promised product/service and price, pursuant to the contract, with an explanation of how the promised product/service and price provide the best value to the City.

D. Emergency Purchases⁵

Emergency conditions may arise whereby purchases must be made immediately to protect the health, safety, or security of persons or property. Justifiably, these purchases may have to be made without adhering to the traditional purchasing procedures. Emergency conditions include hurricane or other severe storm conditions, similar catastrophes or disorders, equipment failures, public employee strikes, civil disorders or any other condition that may be declared an emergency by the City Commission.

To authorize procurement pursuant to an emergency, the City Manager, unless the City Commission has already declared a state of emergency, must determine in writing that an immediate danger to the public health, safety, or welfare or other substantial loss to the City warrants bypassing the ordinary bid proposal procedures contained herein and requires emergency action. Authority to make emergency purchases shall be granted as follows:

1. Under \$10,000. The department head may authorize emergency purchases in this category.
2. \$10,000 and Over. Emergency purchases over \$10,000 must be authorized and approved by the City Manager and/or the City Commission.

E. Disposition of Consumable and Non-Consumable Goods

Goods purchased by the City are to be used exclusively to achieve the goals of the City. Consumable goods are intended to be entirely utilized by the City. Both consumable and non-consumable goods purchased by the City that have become obsolete must be disposed of in a manner that is most beneficial to the City. Procedures for the disposing of goods, not including fixed assets, follow:

⁵ Please see Article II, § 21 of the City of Winter Garden Charter for additional guidance concerning emergency purchases.

1. When possible, such goods should be returned to their manufacturer for a refund or credit to be issued to the City.
2. If a refund or credit cannot be obtained, the goods shall be transferred to Public Works. Public Works shall make an attempt to sell the goods on behalf of the City through public auction or in another manner that approved by the City Manager or Commission.
3. If Public Works is unable to sell the goods on behalf of the City, the City shall offer such property to such other governmental units or private nonprofit agencies as approved by the City Manager or Commission.

[Note: this section excludes fixed assets. Procedures for disposition of fixed assets are located in the City's Accounting Manual].

F. Bid Protest Procedures

1. Written Protest. Any actual or prospective bidder/responder who is allegedly aggrieved in connection with the solicitation or pending award of a contract may file a protest with the City Manager. A protest shall be valid only if such is submitted in writing to the City Manager no later than 5:00 p.m., local time on the fifth business day after the City issues a notice of award recommendation and if such complies with the content requirements specified herein. **Failure to timely submit a written protest shall constitute a waiver and invalidation of any protest to the applicable solicitation, bid, or award.** The written protest shall contain the following:
 - i. Identify and provide the contact information for the protestor;
 - ii. The IFB number and title;
 - iii. Clearly state the factual basis upon which the protest is based;
 - iv. State all statutes, laws, ordinances, or other legal authorities supporting such protest; and
 - v. Identify the relief to which the protestor is entitled.
2. Bid Protest Fee: A person or entity filing a protest must render along with their written protest payment of a bid protest fee in the form of a certified check, cashier's check, attorney's trust account check or money order made payable to the City of Winter Garden in the amount of (i) \$500.00 where the notice of award recommendation relates to a bid of less than \$100,000; (ii) \$1,000.00 where the notice of award recommendation relates to a bid of \$100,000 to \$500,000; or (iii) \$2,500.00 where the notice of award recommendation relates to a bid exceeding \$500,000. Failure to render timely payment of the bid protest fee shall result in the

bid protest being rejected and of no force and effect. In the event the protesting party ultimately prevails in the protest proceeding before the City, the bid protest fee will be returned to such party.

3. Notice to Other Bidders: A protestor must mail or hand deliver copies of all notices of protests and formal written protests to all other bidders/responders within three (3) business days of filing the written protest with the City and shall provide the City with evidence of such mailing or delivery, which may be in the form of a certified mail receipt or affidavit of delivery.
4. Stay of Award. Upon timely receipt of a protest, and in the absence of emergency circumstances, the City Manager shall ensure that the award is suspended until such protest is resolved. If the City Manager, after consultation with the head of the requisitioning department, determines that a bid or contract must be awarded without delay in order to protect the public health, welfare or safety, to comply with an existing regulatory, permitting or contractual obligation, or to prevent the loss of a funding source, a bid protest shall not delay or otherwise impede the award of such bid or contract.
5. City Manager Review. After receipt of a timely written protest, the City Manager shall consider and attempt to resolve the protest. For the purposes of investigating, reviewing, and resolving a protest, the City Manager may appoint a designee of his/her choosing to represent and act on behalf of the City Manager at all stages of the bid protest review and proceedings. Such designee should have adequate experience and background in public procurement matters and be familiar with the City's procurement procedures. Prior to rendering a decision, the City Manager shall schedule and conduct a meeting in order to hear the arguments from the protestor and other interested bidder/responders. The time, date and location of the protest meeting will be noticed by the City to the protestor and other bidders/responders.
6. Protest Meeting. At the protest meeting, the protestor and any other interested bidders/responders who may be affected by the City's procurement decision or award recommendation, or their designated legal counsel, will be allowed to make a brief oral presentation of evidence and argument. However, neither direct nor cross examination of witnesses will be permitted, although the City Manager or his/her designee may make whatever inquiries deemed pertinent to a determination of the protest. Submission of written or physical materials, objects, statements, affidavits and arguments relevant to the protested matters may be submitted prior to or at the protest meeting. The City Manager or his designee may solicit and receive input from City employees, consultants and other persons not a party to the protest proceeding. The statutory and judicial rules of

evidence shall not apply to the proceedings. Any party may arrange for the proceedings to be stenographically recorded and shall bear the expense of such recording.

7. City Manager's Decision. In making his/her decision on the protest, the City Manager or his/her designee shall have the authority to uphold the award recommendation, cancel the pending procurement process, re-bid the contract, revise the award recommendation, and take other such actions that are within city's procurement authority. After conducting the protest meeting, the decision of the City Manager or his designee may be orally announced at such meeting. However, after the protest meeting the City Manager's office shall promptly issue a written decision stating the reason for the action taken with a copy furnished to the protesting party and all other interested bidder/responders. The decision of the City Manager's office shall be final and conclusive as to any contract award not requiring City Commission approval. For contracts requiring City Commission approval, the decision of the City Manager's office may be appealed to the City Commission, if such appeal is timely filed.
8. Appeal to City Commission: Bidders/responders who are adversely affected by the Office of the City Manager's decision with respect to a contract award requiring City Commission approval, may appeal the City Manager's decision by filing a written appeal with the City Clerk, no later than 5:00 p.m. on the third (3rd) business day following the date of the written decision issued by the City Manager or his/her designee. The written appeal shall substantially conform to the written protest notice content requirements of Section F. 1. and shall be sent by the appealing party to all other bidders/responders within three (3) business days of filing the written appeal with the City in the same manners as provided in Section F. 3. **Failure to timely file a written appeal shall constitute a waiver and invalidation of any protest to the applicable solicitation, bid, or award.**
9. Appeal hearing. If an appeal is timely received, the appeal shall be heard by the City Commission at a public meeting. The time, date and location of the City Commission meeting shall be noticed by the City in the same manner as its notices regular City Commission meetings. The City Commission's review of the City Manager's decisions shall be a *de novo* review. The procedure for the City Commission's review will be similar to the process specified for the protest meeting in Section F. 5. After conclusion of the presentations, the City Commission shall conduct public deliberations, and, upon completion thereof, hold a vote as to the resolution of the appeal. The outcome of such vote and reasons provided therefore shall constitute the City's final determination of the matter.

10. Exclusive method of protest, objection, and appeal. There is a compelling City interest in procuring goods and services in a timely manner so as to provide City residents and visitors with efficient, cost-effective, and operationally effective City infrastructure, facilities, and services in a timely manner. Consequently, procurement disputes must be resolved with minimal delays. Therefore, the procedure set forth herein is the sole means by which a bidder/responder aggrieved by a decision of the City may seek recourse. Refusal or failure by any aggrieved bidder/responder to pursue its right of protest under these procedures shall constitute a waiver of its right to pursue any further remedies or appeals, either administratively or judicially. Any judicial proceedings that may or could be filed against the City by an aggrieved or adversely affected party shall be filed within thirty (30) days after the City's final decision on a procurement matter. **Failure to timely file a judicial action in accordance with these procedures shall constitute a waiver and invalidation of any protest to the applicable solicitation, bid, or award.**

G. Appendix – Applicable Statutes

The following statutes expressly apply to the City's procurement of goods and services, and it is advised that personnel review such statutes in conjunction with this manual:

§ 180.24, Fla. Stat., Contracts for [utility] construction; bond; publication of notice; bids.

§ 255.20, Fla. Stat., Advertising for competitive bids or proposals [construction projects].

§ 255.0525, Fla. Stat., contains notice requirements concerning the solicitation of competitive bids for projects costing over \$200,000.00.

§ 287.055, Fla. Stat., Acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services; definitions; procedures; contingent fees prohibited; penalties.

§ 287.084, Fla. Stat., Preference to Florida businesses.

§ 287.087, Fla. Stat., Preference to businesses with drug-free workplace programs.

§ 287.092, Fla. Stat., Preference to certain foreign manufacturers.