



**CITY OF DELRAY BEACH**  
**100 NW 1<sup>st</sup> Avenue**  
**Delray Beach, Florida 33444**  
**PURCHASING DEPARTMENT**



## **PURCHASING POLICIES AND PROCEDURES MANUAL**

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*May 2017*

## PURCHASING DEPARTMENT

### VISION STATEMENT

To contribute ethically, quantitatively, and qualitatively to the strategic goals of the City by employing technology and best practices to achieve efficiency, transparency, cost savings, and fairness in the City's procurement efforts.

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### MISSION STATEMENT

The Purchasing Department is committed to the fair, equitable, and timely acquisition of goods and services for the City of Delray Beach. Using technology, competition, and best practices, we strive to bring the greatest value to the City and its residents in an efficient and cost-effective manner.

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### VALUES STATEMENT

The primary objectives of a first-class procurement organization extend beyond the traditional belief that procurement's primary role is to obtain goods and services in response to internal needs. These primary objectives include:

- *Support operational requirements*
- *Manage the purchasing and contracting process equitably, efficiently, and effectively*
- *Develop strong relationships with other functional groups and stakeholders*
- *Support organizational goals and objectives*

The Purchasing Department is committed to the fair, equitable, and timely acquisition of goods and services for the City of Delray Beach, and to cultivating an ethical and professional environment. Using technology, competition, and best practices, we strive to bring the greatest value to the City and its residents in an efficient and cost-effective manner. The Department embraces the Values and Guiding Principles of Public Procurement, which are:

- *Accountability*
- *Ethics*
- *Impartiality*
- *Professionalism*
- *Services*
- *Transparency*

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## INTRODUCTION

This policy and procedural manual is intended to provide basic orientation information for the operational activities of the Purchasing Department of the City of Delray Beach, Florida. It is not intended to be a detailed guide describing each aspect of all of the department's internal specific procedures. However, this manual is intended to provide sufficient procedural detail to enable City departments, other governmental entities, and the vendor community to:

- a. be fully aware of, and comply with, City purchasing policies, and
- b. effectively participate in the City's purchasing program.

In the event there is any contradiction between these guidelines and City, County, State or Federal legislation, the legislation shall prevail. The funding source(s) of procurement action may determine which legislation shall be adhered to, as applicable.

The basic purchasing policies of the City of Delray Beach are conducted on the basis of full and open competition to the greatest extent possible, with award being made to:

- i. the lowest responsive responsible bidder under Invitations to Bid;
- ii. the best value proposer under Requests for Proposals that involve pricing as a competitive selection factor;
- iii. the highest ranked technical proposer(s) with which a fair and reasonable price may subsequently be negotiated under solicitations that do not involve pricing as an initial competitive selection factor;
- iv. that all specifications or statements of work included in City purchasing actions accurately describe the essential needs of the City, and contain no artificial or arbitrary requirements that limit competition or increase cost;
- v. that each purchasing action is conducted in accordance with the best interests of the City, and with the highest level of integrity and fairness to all involved parties throughout the acquisition cycle;
- vi. that all City purchasing operations be conducted in compliance with federal, state, and local laws as applicable and ensure the highest degree of ethical standards;
- vii. and that transparency and community inclusion be sustained throughout the purchasing process.

## **VENDOR ENROLLMENT AND REGISTRATION**

The City of Delray Beach does not require vendors or any firm, individual or organization to register with the City in order to do business. However, vendors are encouraged to visit the Purchasing Department's webpage at [www.mydelraybeach.com/business/purchasing\\_department](http://www.mydelraybeach.com/business/purchasing_department) and enroll online by joining the Vendors List to receive bid notifications when solicitations are advertised by the City. The Finance Department also requires that vendors complete a Vendor Registration Form ([www.mydelraybeach.com/business/supplier\\_resources](http://www.mydelraybeach.com/business/supplier_resources)), to receive a Vendor ID to allow for the processing of Purchase Orders and invoice payments. The City also uses the vendor database maintained by BidSync, and vendors are encouraged to visit the Bidsync website at [www.bidsync.com](http://www.bidsync.com) to register with those companies to receive notices of City solicitations.

## **PURCHASING ORGANIZATION AND AUTHORITY**

### **GENERAL INFORMATION AND POLICY**

The Purchasing Department is the central purchasing agency of the City of Delray Beach government. It is the responsibility of the Purchasing Department to issue and maintain purchasing policies, procedures and guidelines for the City's departments. It is also the responsibility of the Purchasing Department to issue solicitations and prepare contracts at the authorization levels established within the purchasing guidelines.

The Purchasing Department's goal is to provide the City with the required goods and services in the most cost effective manner and at the time and place necessary to help ensure that the City provides the public timely and quality service. The following policies and procedures, including stated approval authorization levels, apply equally to expenditure and revenue producing contracts.

Technical specification reviews, prior to solicitation advertisement, must be completed by the requesting departments and returned to the Purchasing Department in a timely manner. Additionally, the review of bid or proposal responses during the evaluation phase shall also be completed and returned to the Purchasing Department by the requesting department no later than ten (10) working days after receipt of the bids. If additional time is required for either review, the request must be made in writing (email is acceptable) by the Department Head (or designee) of the requesting department to the Purchasing Director.

To obtain the best value for the taxpayer and to promote equitable economic participation by all segments of our community, the Purchasing Department is mandated to utilize a competitive bidding process, with the award being made to the lowest, responsive and responsible bidder. Section 2-295 of the City's Code of Ordinances establishes purchasing procedures for the competitive bidding process and associated alternative processes. These procedures also allow for the use of other than full and open competition should it be determined to be in the best interest of the City.

All purchases shall be made in compliance with Florida Statutes, the City Code of Ordinances, these purchasing guidelines and public procurement best practices. No person may make any purchase

utilizing City funds unless specifically authorized to do so by the City Code of Ordinances, resolution, or designation by the City Commission or the City Manager. Payment for any unauthorized purchase may be the responsibility of the person placing the order (see "Unauthorized Purchases" section of these guidelines for further information).

The Purchasing Director is appointed by the City Manager and is the City's Chief Procurement Officer (CPO). As such, the Purchasing Director is the City Manager's designee for all procurement actions governed by the City Ordinance.

The Purchasing Director is responsible for implementing programs and initiatives to improve competition. This includes, but is not limited to, assuring effective and efficient market research, ensuring contracting opportunities for small business entities, scrutinizing sole source and bid waiver requests, reviewing change orders, and challenging specifications and statements of work (SOWs) to ensure no artificial barriers limit or reduce competition.

#### **EXCEPTIONS**

**A.** Certain purchases made by the City are authorized for direct payments. The current list of purchases authorized for direct payment is shown below:

- i. Utilities
- ii. Casualty and Property Insurance
- iii. Life, Health and Dental Insurance
- iv. Employee Benefits/Contracts with Third Parties for Payroll Deduction
- v. Services Procured with Non-City Funds that are a "pass-through" (Developer Deposits, etc.)
- vi. Debt Service Payments
- vii. Pension Payments
- viii. Unemployment Compensation
- ix. Tax Withholding Payments
- x. Section 457 (Deferred Compensation) Contributions
- xi. Memberships, Dues, Subscriptions, Publications

- xii. Seminars and Travel Expenses
- xiii. Retirement Plan Contributions
- xiv. Investments
- xv. Postage
- xvi. Recording Fees
- xvii. Automobile License Plates
- xviii. Advertisements

B. Certain purchases made by the City are exempt from the competitive processes outlined in this Manual. The current list of purchases exempt from the competitive process is shown below:

- i. Legal Services
- ii. Items Purchased for Re-Sale
- iii. Recreational Programs provided by Independent Contractors
- iv. Lobbying Services
- v. Training (where a provider is contracted by the City to provide the training)
- vi. Art and talent/artistic services.
- vii. Medical services.

When appropriate, the City shall encourage and actively promote local, minority and small business enterprises to bid on City purchases.

The purchasing guidelines may not govern every purchasing situation that may arise. In the event a specific purchase is not covered by these guidelines, the purchase shall be made based on these objectives following consultation with the Purchasing Director.

Goods and services to be procured, which are funded by a Federal Grant Program, must be procured in accordance with 2 CFR §200.318 through §200.326 (aka Federal Super Circular), current version as may be amended by the Federal government.

## **RESPONSIVENESS AND RESPONSIBILITY DETERMINATIONS**

The City shall award its contracts to the responsive, responsible vendor offering the best value, and whose offer or proposal is technically compliant with the City's requirements. Award shall be made to the bidder or proposer offering the lowest price, being the highest ranked, or as otherwise prescribed in the solicitation or by prevailing legislation. The use of the term bidder shall be understood to include any participant in the City's procurement process and the term bid shall be understood to include any offer in response to a solicitation. The following is intended to be used as general guidelines:

1. Bidder responsiveness refers to a bidder's unequivocal promise, as shown on the face of its offer, to provide the items or services called for by the material terms of the solicitation. A responsive bid means one submitted at the correct time and place, in the correct format, containing all required information, signatures, and affidavits. A bid that deprives the government of the assurance that the contract will be entered into in accordance with its terms is not responsive. Any omission is normally not curable, as a bidder submitting an incomplete or qualified bid could opt in or out of the process at its will, depriving the City of a valid offer and placing that bidder at a material advantage over other bidders who have made firm offers.

The determination of responsiveness is based on the application of bid requirements and legal precedent to facts provided by City staff or developed in the course of a bid protest. In consultation with the City Attorney, the Purchasing Director has the authority to decide whether a bid is responsive or non-responsive.

2. Bidder responsibility refers to whether the bidder can perform as provided in the bid. In general, solicitation requirements for information relating to a bidder's financial condition, capability, experience and past performance pertain to a bidder's responsibility. The term responsibility is not limited in its meaning to financial resources and ability. Under its definition, the City has discretionary power to make determinations upon the honesty and integrity of the bidder necessary to a good faith performance of a contract, upon a bidder's skill and business judgment, its experience and its facilities for carrying out the contract, the bidder's previous conduct under other contracts, and the quality of its previous work. The type of information bearing on a bidder's ability to perform may be furnished up to the time of recommendation to award.

In the event the City has knowledge of facts which may exist that would render a bidder non-responsible, the Purchasing Director shall conduct a responsibility review and inquiry as may be reasonably required to make the affirmative finding of responsibility as a condition of recommending the bidder for award. City departments shall advise in a timely manner, the

Purchasing Director, of knowledge of any facts that may render a bidder non-responsible. Given the variety of goods and services purchased by the City, and the unique issues that may arise, the issues of responsibility must be addressed on a case-by-case basis.

A determination of bidder responsibility shall be made, on a contract-by-contract basis. A responsible bidder is a bidder which the City affirmatively determines (prior to the award of a contract) has the ability, capability and skill to perform under the terms of the contract; can provide the materials or service promptly within the time specified, without delay or interference; and has a satisfactory record of integrity and business ethics.

- a. In making the determination of whether the bidder has the capability to perform the contract the City may consider factors including, but not limited to, the following:
  - i. past performance of the bidder, its principals, affiliates, or supervisory personnel in the execution of prior City contracts;
  - ii. any information which the City may obtain relating to the performance of the bidder, its principals, affiliates, or supervisory personnel on contracts with third parties, including without limitation, contracts with other governmental entities;
  - iii. financial performance and capability, including without limitation, pending and unsatisfied claims;
  - iv. qualifications and past performance of the personnel who will have supervisory responsibility for the performance of the specific City contract;
  - v. licensing, certifications and other permits; and
  - vi. any significant changes in the bidder's financial position or business organization.
- b. In making the determination whether the bidder has a satisfactory record of integrity and business ethics, the City may consider factors including, but not limited to, the following:
  - i. pending criminal charges against the contractor, its principals, affiliates, or supervisory personnel;
  - ii. criminal conviction of bidder, its principals, affiliates, or supervisory personnel;
  - iii. debarment of the bidder, its principals, affiliates, or supervisory personnel in the City of Delray Beach or any other jurisdiction;

- iv. pending disciplinary proceedings against the bidder, its principals, affiliates, or supervisory personnel;
- v. pending enforcement cases, civil judgments, citations, or notices of violation of regulatory authorities with jurisdiction over the goods or services to be rendered, or any adverse determination resulting therefrom, including, but not limited to, those related to environmental protection, the health and safety of labor, and determinations by any government entity;
- vi. pending investigation related to, or arising from allegations of dishonesty illegal or fraudulent business practices;
- vii. efforts by the bidder to redress any breach of prior contracts, and compliance with settlement agreements to redress any contract deficiency;
- viii. inaccurate, incomplete, or fraudulent accounting practices;
- ix. efforts by the bidder to remediate any of the adverse conditions mentioned herein, including compliance with the terms and conditions of any compliance agreement; and
- x. the preponderance of the evidence, nature and credibility of any and all facts underlying any of the above-cited investigations, allegations, charges, accusations, proceedings or indictments.

In evaluating the factors above, the City shall give priority to acts or legal proceedings occurring within the past five (5) years, and any violation or deficiency that is continuous or uncured. Additionally, at any time, the City may require that the bidder submit documentary evidence and other proof necessary to evaluate the factors identified above.

The City shall be entitled to rely on information of the type reasonable persons rely on, in the conduct of business affairs. If the bidder is unable to furnish such documentary evidence or other proof, or if the City is otherwise unable to make an affirmative determination that the bidder is responsible to perform the work as required, the bidder shall be determined non-responsible. Failure of the bidder to provide requested information to determine responsibility in response to a solicitation may cause such bid or proposal to be rejected.

Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors. Determinations of prospective subcontractor responsibility may affect the City's determination of the prospective prime contractor's responsibility. A prospective contractor may be required to provide written evidence of a proposed interest to

do so, and the City may directly determine a prospective subcontractor's responsibility. In this case, the same standards used to determine a prime contractor's responsibility shall be used.

All meetings considering the responsibility determination shall be recorded. Specific questions relevant to the unique responsibility issues of the procurement will be developed in advance. In the event a bidder is determined to be non-responsible, the Purchasing Director shall make, sign, and place in the contract file a determination of non-responsibility, which shall state the basis for the determination. All documents, reports, recordings of meetings, supporting a determination of non-responsibility shall also be included in the contract file.

3. In addition to responsiveness and responsibility determinations, the Purchasing Department, in collaboration with the City requesting department, shall ensure that the goods or services to be procured are technically compliant with the specifications and requirements of the City's solicitation. The requesting department (or consultant, as may be the case) shall act as subject matter experts in determination whether the offered goods or services are technically compliant with the specifications of the solicitation.

### **ADVANCED ACQUISITION PLANNING**

The Purchasing Department, in collaboration with the various City departments, procures a wide range of supplies and services for the on-going and future operations of the City. In the past, the Purchasing Department's function essentially commenced upon receipt of requisitions and relevant supporting documentation from the requesting departments. While this approach may be sufficient for some purchases, it may not be appropriate for most major acquisitions. Advance acquisition planning is especially necessary for major procurements, and should be conducted in accordance with sound business practices and in a timely manner. Advance acquisition planning involves the Purchasing Department, in collaboration with the requesting departments, reviewing specifications and statements of work to determine that the purpose of the acquisition is clear, and that the minimum requirements are clearly defined and stated in terms of performance and/or functionality when possible. It should also include market research and analysis to determine sources of supply and available solutions in the market place.

Advanced acquisition planning results in effective competitive solicitations, accurate budgetary projections, timely procurement of goods and services, consideration of multiple products or solutions, and enhanced competition.

It is often the case that procurement actions are delayed due to circumstances such as conflicting or unanticipated workloads, redundant requirements, repetitive after-the-fact revision of specifications or solicitation provisions, or initially unconsidered competition or business utilization issues. The best to minimize the potential for such delays is to identify and resolve such concerns during the initial planning phases for a given purchase.

It is the Purchasing Department's desire, intent, and goal to work with departments at the earliest point possible in the acquisition cycle. The acquisition cycle begins when a department perceives a need for a

given product or service and decides to purchase that good or service. The Purchasing Department can provide a significant value-added service by working collaboratively with requesting departments in the early phases of the acquisition cycle. Such early coordination will minimize or even eliminate procurement pitfalls such as those addressed above. It is the Purchasing Department's mission to ensure that City purchases are completed in the most effective and timely manner possible. The Purchasing Department considers Advance Acquisition Planning to be a major element towards achieving that goal. Actions and policies intended to effect such planning are in progress, and will be expanded in coordination with all City departments.

### **CONE OF SILENCE**

Pursuant to Section 2-355 of the Palm Beach County Ordinance No. 2011-039, and the purchasing policies of the City of Delray Beach, all solicitations, once advertised and until the appropriate authority has approved an award recommendation, are under the "Cone of Silence". This limits and requires documentation of communications between potential bidders and/or bidders on City solicitations, the City's professional staff, and the City Commission members.

The Purchasing Department may issue an addendum in response to any inquiry received, prior to the close of the solicitation period, which changes, adds, or clarifies the terms, provisions, or requirements of the solicitation. The vendor should not rely on any representation, statement, or explanation whether written or verbal, other than those made in the solicitation document or in the addenda issued. Where there appears to be a conflict between the solicitation and any addenda, the last addendum issued shall prevail.

It is the vendor's responsibility to ensure receipt of all addenda, and any accompanying documentation. The vendor is required to submit with its bid or proposal a signed "Acknowledgment of Addenda" form, when any addenda have been issued.

### **NON-COLLUSION AFFIDAVIT**

Any bidder or proposer which submits a bid or proposal in response to a City solicitation shall submit an affidavit under the penalty of perjury, on a form provided by the City stating either that the contractor is not related to any other parties bidding in the competitive solicitation or identifying all related parties with which it has colluded in offering a bid in the solicitation; or attesting that the contractor's proposal is genuine and not sham or collusive or made in the interest or on behalf of any person not therein named, and that the contractor has not, directly or indirectly, induced or solicited any other proposer to put in a sham proposal, or any other person, firm, or corporation to refrain from proposing, and that the proposer has not in any manner sought by collusion to secure to the proposer an advantage over any other proposer. In the event a recommended contractor identifies related parties in the competitive solicitation its bid shall be presumed to be collusive and the recommended contractor shall be ineligible for award unless that presumption is rebutted to the satisfaction of the City.

Any person or entity that fails to submit the required affidavit shall be ineligible for contract award. The Non-Collusion Affidavit will be included in all solicitations and bidders or proposers may submit the executed document with their bid proposals, or during the bid evaluation period.

### **DISPUTE RESOLUTION**

Any dispute arising out of or relating to City contracts shall be resolved by following the procedure below:

- a. The department and/or vendor shall bring details of dispute to the attention of the Purchasing Director or designee;
- b. The Purchasing Director shall obtain details of the dispute from both parties and develop a reasonable and fair solution acceptable to both parties, which shall be incorporated into an agreement;
- c. The agreement shall contain details as to the responsibilities of each party to include:
  - i. Actions to be taken;
  - ii. Follow-up schedule;
  - iii. Assessment of damages, penalties, or fees;
  - iv. Periodic monitoring must be done by City staff to ensure that disputes are dealt with in a timely manner and closed out.
- d. If the dispute cannot be resolved through the previous steps, the City Attorney will be consulted for appropriate legal action (litigation, arbitration, mediation).

### **REQUISITIONS**

When there is a need for goods and/or services which are not available from an existing City contract, and which exceed the dollar limits of the small purchase order, an electronically generated requisition must be submitted to the Purchasing Department. Requesting department staff should evaluate the need for goods and services, determine expected usage, and plan their purchases to effectively meet program and operational demands.

Before submitting a requisition, the requesting departments must ensure that:

- a. Valid requirements have been established;
- b. Funds are available to cover the purchase;
- c. Sufficient data is available to determine the best method to secure the purchase;

- d. Quotations or contract information are attached;
- e. Specifications are available; and
- f. Estimated total dollar value of procurement should be identified.

The Purchasing Department will review the Eden requisition for accuracy and compliance with purchasing guidelines and procedures.

### **TECHNICAL SPECIFICATIONS, SCOPE OF SERVICES, AND STATEMENTS OF WORK**

Technical Specifications, Scope of Services, or Statements of Work should be stated in terms of function, performance or design. The type of specifications selected is to be based on the requesting department's minimum requirements and the market available to satisfy those requirements. Design specifications are the least desirable type of specifications. Functional or performance types of specifications are preferred to increase the potential for full and open competition.

Requesting departments should consider the following factors in developing specifications:

- a. Does it describe the needs in terms of function or performance required?
- b. Does it clearly state the minimum requirements acceptable to the City?
- c. Does it indicate the end usage or expected results?
- d. Is it clear, concise, and understandable?
- e. Does it encourage competition by considering more than one source of supply?
- f. Are standard specifications available?
- g. Are the specifications tailored to more than one vendor?
- h. If a specific brand and model are referenced, have you included the term "or approved equal"? If not, have you included a reason why an equal is not acceptable?
- i. Is there anything unusual to be considered?

### **PURCHASING AUTHORIZATION LEVELS**

**\*\*\*All purchasing limits are based upon total expenditure during a single fiscal year\*\*\***

**PURCHASES EQUAL TO OR LESS THAN \$2,500**

These acquisitions may be made by those city employees who have been designated such authority in writing by their respective department heads. Single or multiple purchases of goods, commodities and services that are equal to or less than \$2,500 require departmental approval and may be made using the City of Delray Beach purchasing card, check request or petty cash. These purchases are to be made from vendors who supply the item at a reasonable price and with an appropriate quality level, using sound purchasing practices and common sense. These purchasing practices may include, but are not limited to, verbal quotations or written records of telephone/e-mail quotations. For purchases that will not be immediately paid with a purchase card, the department must issue an appropriate purchase order through the Eden system, which will constitute the City's authorization for the vendor to perform the work or provide the goods.

All policies and procedures governing the use of the purchasing card can be found in the City of Palm Beach Garden's Purchasing Card Policies and Procedures Manual.

Each department may establish more stringent rules to govern purchases up to \$2,500, as they deem appropriate.

#### **PURCHASES GREATER THAN \$2,500 BUT LESS THAN \$10,000**

Department Head approval is required. Single or multiple purchases of goods, commodities and services that are greater than \$2,500 and less than \$10,000 require a Purchase Requisition with at least three (3) documented quotations as provided below.

Quotations may be solicited by telephone or fax. In cases when the requirements cannot adequately be expressed orally, a written request for quotation must be sent to potential bidders. Documentation of the quotations requested and received must be attached to the Purchase Requisition.

If at least three (3) or more bidders cannot be identified, or if other than the lowest quote is being recommended for purchase, the reasons shall be documented on the Purchase Requisition.

The completed Purchase Requisition shall be submitted to the Purchasing Department or designee for approval prior to making the purchase. In certain emergency circumstances, a purchase may be made after receiving oral approval from the Purchasing Director. Any requisition receiving verbal approval must be delivered or faxed to the Purchasing Department by the end of business that day. The purchase requisition shall be approved by the Department Head or his/her designee.

Purchases ordered per an existing piggybacked contract must include the vendor name, contract number, and contracting entity on the Purchase Requisition (i.e., State of Florida, SNAPS, Other Governmental Entity, Southeast Co-Op, etc.)

The person responsible for receiving purchases must check vendor invoices to ensure that quantities match the purchase order prior to approving the invoice for processing.

#### **PURCHASES GREATER THAN OR EQUAL TO \$10,000 BUT LESS THAN \$65,000**

City Manager, or written designee, approval is required. Single or multiple purchases of goods and commodities that are greater than or equal to \$10,000 but less than \$65,000 require a Purchase Requisition. A minimum of three (3) quotes must be obtained as provided below.

Bidsync may be used to obtain quotes. Additional quotes may be obtained from vendors that are not members of Bidsync.

All quotations must be documented and a copy attached in Eden prior to submitting the request for approval. In certain emergency circumstances, a purchase may be made after receiving oral approval from the Purchasing Director. Any requisition receiving verbal approval must be delivered or faxed to the Purchasing Department by the end of business that day. The purchase requisition shall be approved by the Department Head or designee.

Persons responsible for receiving purchases must check vendor invoices to ensure that quantities match the purchase order prior to approving the invoice for processing.

Written agreements shall be reviewed by the Purchasing Director, the City Attorney, and executed by the City Manager or designee when applicable.

#### **PURCHASES GREATER THAN OR EQUAL TO \$65,000**

For all purchases of \$65,000 or more, formal bids or quotations shall be obtained as provided in Section IV, "Formal Bid/RFP Process".

A market research summary will be conducted by the Purchasing Department for all purchases that fall within this authorization level. Requesting departments should also conduct their own market research to supplement the market intelligence that influences the purchasing decision.

Quotations shall be solicited using a bidders' list and by publishing notice of request for bids in a newspaper of general circulation throughout the City.

Advertisement for bids shall be published at least two weeks in advance of the bid opening date. Any bids that require a pre-bid conference shall be advertised at least 30 days in advance of the bid opening date.

All contracts to be awarded pursuant to Requests for Proposals or formal bids shall be approved by the City Manager or the City Commission, as applicable.

## **REVENUE GENERATING CONTRACTS**

Contracts with any Person where it the City estimates the City will receive revenue in the amount of \$65,000 or greater over the term of the contract (including revenue during renewal periods) shall require approval by the City Commission and shall be subject to a Sealed Competitive Method, unless the City utilizes one of the direct acquisition methods provided in Sec. 36.02(C)(6), (7), (8) or (10). This Section shall not apply to the sale or lease of the City's real or non-real property.

## **SOLICITATION PREPARATION**

Requesting departments shall be involved in the preparation of solicitations to ensure that project or product specific requirements are adequately addressed in the solicitation document. Requesting departments may also be involved after solicitation issuance in the conducting of pre-bid (or pre-proposal) conferences, and the preparation of any requisite solicitation addenda. All solicitations shall be reviewed and approved by the City Attorney, or designee, prior to advertisement.

## **SOLICITATION ADVERTISEMENT**

The City Clerk shall publish all announcements and advertisements for solicitations falling within the purchasing authorization levels in accordance with City policies and procedures, and all related directives and ordinances. This requirement applies to all Requests for Proposals actions regardless of dollar value.

## **PRE-BID AND PRE-PROPOSAL CONFERENCES**

A pre-bid conference shall be scheduled for Invitations to Bid where it is deemed advisable to allow potential proposers to consult with Purchasing staff and the requesting department(s) to ensure clarity of the required goods or services and, if applicable, to view the site where the work is to be performed. A pre-proposal conference shall be scheduled under all Requests for Proposal solicitations. This conference shall be scheduled roughly in the middle of the solicitation period to allow enough time for vendors to prepare for the conference, and to consider the information provided during the course of the conference.

Attendance at Pre-bid and Pre-proposal conferences by vendors is generally optional. However, vendor attendance at such conferences may be made mandatory depending upon the specific requirements of the project. Mandatory conferences may serve to limit competition and shall be the exception to the procedure. The "Cone of Silence" is not applicable during pre-bid and pre-proposal conferences and/or site visits.

#### **ADDENDA TO SOLICITATION DOCUMENTS**

There may be occasions when it will be necessary to change the specifications, terms, or conditions of a given solicitation during the course of the bid (or proposal) period. Such changes may be required in response to requesting department requests or clarifications, contractor questions (submitted in writing per the "Cone of Silence"), or other reasons. Such changes shall be formalized by the issuance of solicitation addenda by the Purchasing Department, to all potential vendors that have obtained the solicitation document. The addenda become part of, and supersedes, the solicitation document.

#### **OPENING OF BIDS AND CLOSING OF PROPOSALS**

Sealed bids under the Invitation to Bid process shall be opened by the City Clerk's Office at the place, date and time specified in the solicitation or any subsequent addendum. Proposals submitted under the Requests for Proposals process shall be opened at the time and place specified in the solicitation or any subsequent addendum. No further proposals from a given vendor will be accepted after the first proposal from that vendor is opened.

#### **LATE BIDS OR PROPOSALS**

The City will not accept late bids or proposals. All late bids or proposals will be returned to the sender unopened.

#### **OFFER (BID OR PROPOSAL) REQUIREMENTS**

Each offer shall meet all the requirements of the specific solicitation, unless waived as an irregularity or informality by the Purchasing Director or designee. Affidavits mandated by City Ordinance(s) or Resolution(s) can be waived only by provisions contained within the Ordinance(s) or Resolution(s) of the City Commission.

#### **TIED BIDS**

Tied bids are offers where one or more responsive and responsible bidders offer the same low price for an item or group of items, depending on the method of award. In such instances, the Purchasing Department will request best and final offers (BAFOs) from the bidders that offered the same price. The BAFOs must be requested at the same time or soon after the preliminary bid tabulation is provided to all responding bidders. This allows all bidders to see the prices that were bid, and the bidders that offered the same pricing.

Request for best and final offers must include a due date (close of business is acceptable) and may be emailed directly to the Purchasing Director or delivered to the Office of the Clerk. In the event responses to best and final offers result in another tied bid, the tie shall be broken by the City Manager or designee flipping a coin in the presence of the Purchasing Director and/or the City Clerk.

### **RECOMMENDATION FOR AWARD**

Recommendation for award(s) within the purchase authorization levels shall be made to the responsive and responsible vendor(s) offering the lowest price, whenever possible (note: the RFP process is based on a "best value" evaluation). The City Manager or designee, subject to further delegation of authority, shall have the authority to recommend and award such contracts. All such awards shall be completed in accordance with the City's established internal purchasing policies and procedures.

### **APPEAL AND PROTEST PROCEDURES**

#### **BID/PROPOSAL PROTEST PROCEDURE - NOTICES**

Immediately after the Evaluation Committee or others convened for the purpose of selection make a determination of the intended award of contract, the City Clerk or designee shall post a tabulation of the bid/proposal evaluation results with intended award recommendations. Posting shall be in the Office of the City Clerk or in such other public place in City Hall designated for postings and shall be on display for public viewing. All bidders, proposers, offerors or contractors affected by the proposed award of contract shall also be notified by the Purchasing Department at the time of posting, via facsimile or email, of the intended award.

Any person adversely affected by the decision of award may file a formal written protest within seventy-two (72) consecutive hours (excluding Saturdays, Sundays and legal holidays) from the time of initial posting by the City Clerk's Office. Protestors shall file their written protests with the City between the hours of 8:00 a.m. and 5:00 p.m. Written protests shall contain, at a minimum:

- i. The name of the petitioner;
- ii. The petitioner's address and phone number, and fax number;
- iii. The name of the petitioner's representative, if applicable;
- iv. The title and bid number of the solicitation;
- v. A plain clear statement of the grounds on which the protest is based; and
- vi. Specific information regarding the relief to which the petitioner deems itself entitled and/or the remedy requested.

Formal written protests shall not exceed fifteen (15) type-written pages and in all other respects shall comply with the formatting requirements for an appellate brief as set forth in the Florida Rules of Appellate Procedure. A written protest is considered received by the City when it is delivered to and received by the City Clerk or designee. Delivery to and receipt by any other City employee or staff member shall not constitute receipt by the City of Delray Beach. Protests submitted via email do not meet the requirements of this section.

Failure to file a timely formal written protest within the time period specified shall constitute a waiver by the vendor of all rights of protest under the Bid/Proposal Protest Procedure.

In the event of a timely protest and/or appeal, the City shall not proceed further with the solicitation or with the award of the bid/contract until all administrative remedies have been exhausted, unless the City Manager determines that the award of the contract without delay is immediately necessary to protect the public health, safety, and welfare.

Within seven (7) days (excluding Saturdays, Sundays and legal holidays) of receipt of the formal written protest, the Purchasing Director and the City Attorney shall attempt to settle or resolve the dispute, with or without a hearing at the City Attorney's sole discretion. A decision will be rendered in writing and shall: (1) state the reasons for the action taken; and (2) inform the protestor of its right to appeal as provided herein. A copy of the decision of the Purchasing Director and the City Attorney shall be mailed or otherwise furnished immediately to the protestor.

Any person aggrieved by the decision of the Purchasing Director and the City Attorney, may appeal to the City Manager within seven (7) days from the date of the written decision. The appeal shall be in writing and shall state with specificity the grounds therefore and also the action requested of the City Manager. The City Manager shall attempt to settle or resolve the matter, with or without a hearing at his/her sole option. The City Manager shall render a decision, in writing, within seven (7) calendar days following receipt of the appeal.

A decision of the City Manager under this section shall be final and conclusive on the protestor.

Failure to follow the protest procedures or failure to meet any deadline set forth herein shall automatically nullify any protest or claim brought by an aggrieved bidder, offeror, or contractor. The City is not subject to or bound by the requirements and/or procedures set forth in Chapter 120, *Florida Statutes*.

#### **FORMAL ITB AND RFP PROCESS**

All purchases to be made through a formal ITB or RFP process shall be conducted at the discretion of the Purchasing Director or designee.

All specifications must be reviewed and approved by the Purchasing Director or designee.

The City Clerk shall be authorized to publish an advertisement for the solicitation of bids or proposals.

Piggybacking on State, County and other municipality's bids is permitted within the approval thresholds of the City Manager or City Commission, as applicable in accordance with the purchasing criteria set forth herein. The department must specifically identify the contract being piggybacked and include that information in the documents to be sent to the Purchasing Department. Any piggybacking on an out-of-state contract must also be reviewed by the Purchasing Director and the City Attorney.

#### **AUTHORITY TO EXERCISE OPTIONS TO RENEW (OTR)**

An Option to Renew (OTR) contract contains a provision providing for the option to renew at the expiration of the initial term of the contract. The City Commission must authorize the award of any contract where the cumulative value of the initial term of the contract and any option to renew terms will exceed Sixty-Five Thousand Dollars (\$65,000). Authorization to exercise future OTRs of contracts must be contained in the language of the Resolution approving the contract, if applicable, or the contract itself.

#### **REQUEST FOR INFORMATION (RFI)**

A Request for Information (RFI) is a written solicitation prepared and issued for the purpose of seeking information, comments, or reactions from the industry by a certain date and time. A RFI may be used during the market research phase of an acquisition to assist the City in identifying potential proposers, approaches, prices, or other relevant information. The RFI precedes the issuance of a Request for Proposals or Request for Qualifications. Contract awards cannot be made on responses to an RFI.

#### **REQUEST FOR QUALIFICATIONS (RFQ)**

A Request for Qualifications (RFQ) is used to obtain statements of qualifications from proposers when the scope of services cannot, or has not, been completely established by the City. That situation requires the identification of specific qualifications in order to evaluate responding proposers. A Request for Qualifications includes, but is not limited to, a brief explanation of the purpose of the Request for Qualifications, a description of the service to be purchased, required qualifications, instructions for response, and evaluation and selection criteria. These types of contract awards are generally not based solely upon price. Instead, there is an extensive evaluation, which may include such criteria as qualifications and experience of principals and staff, technical superiority, financial stability, experience and history of the firm, and references.

#### **REQUEST FOR PROPOSALS (RFP)**

A Request for Proposal (RFP) is a solicitation whose associated award evaluation and vendor selection process is predicated on a best value evaluation, rather than strictly upon award to the lowest priced

responsive and responsible vendor. This type of evaluation is a sensitive and demanding process, and detailed guidelines have been developed to ensure such evaluations are conducted in an appropriate and accurate manner. The following section provides an overview of those procedures to enable departments to prepare for, and participate in, negotiated acquisitions in conjunction with the Purchasing Department.

### **FORMATION AND PERFORMANCE OF EVALUATION/SELECTION COMMITTEES**

The Purchasing Director, or designee, is responsible for the review of all proposals for responsiveness before distributing them to the Selection Committee. A proposer is considered responsive if the proposal conforms in all material respects to the terms and conditions in the solicitation.

#### **SELECTION COMMITTEE TEAM MEMBERS**

The Deputy City Manager will determine the number and makeup of the Selection Committee.

- a. Each member must have no personal or financial interest in any vendor or firm which has submitted a proposal to the City.
- b. Each member must have a professional interest that the recommendations of the Committee can be supported and defended legally and ethically.
- c. Each member must have a professional interest that the recommendations of the Committee will lead to the selection of a vendor which will provide goods or services that is the best value for the City.

The Purchasing Director, or designee, shall serve as the Selection Committee Chairperson, and may not award points for proposals.

#### **INITIAL MEETING OF THE SELECTION COMMITTEE**

The Purchasing Director, or designee, shall conduct an initial meeting (Kick-Off Meeting) with the Selection Committee to ensure that each member has a clear understanding of their duties and responsibilities in the selection process. A copy of these guidelines, the solicitation and any addenda, each proposer's submittal, and a copy of the evaluation criteria will be distributed to Committee members.

#### **CONFLICT OF INTEREST**

Once proposals have been received, and it is known which proposers are involved in the evaluation competition, each member of the Selection Committee will be informed. Each member will be asked if the member has a personal or financial interest in any proposer, and if the member understands and can perform impartially within the Selection Committee guidelines. If a conflict of interest exists or appears to exist, that member will be disqualified from the Committee. An Evaluator's Statement of

Independence and Non-Conflict of Interest form (see attached) must be signed by each Committee member prior to the commencement of the evaluation of the proposals.

#### **COMMITTEE RULES AND PROCEDURES**

All evaluators on the Selection Committee—are required to apply sound and unbiased judgment in awarding points to the proposals for the purpose of ranking them.

It is very important that all Selection Committee members read the solicitation thoroughly and have a clear understanding of the requirements and evaluation criteria before attempting to evaluate the proposals. All questions should be directed to the Purchasing Director, the Chairperson of the Selection Committee.

- a. The Selection Committee meetings must follow the requirements of Florida Statute 286.011 for public meetings and meetings must be noticed at least 72 hours in advance. These meetings are open to the general public, which may include proposers which have submitted responses to the City's solicitations. Meetings will be recorded and all recordings are available for the general public to listen to upon scheduling an appointment with the City Clerk's office.
- b. Selection Committee members are prohibited from communicating with anyone, either verbally or in writing, regarding the proposals, outside of the scheduled and publicly noticed Selection Committee meetings. Violations of FS 286.011 are very serious and have legal and ethical ramifications. If a vendor or proposer contacts a Committee member, the member must refer the vendor or proposer to the Purchasing Department. Selection Committee members are prohibited from participating in individual meetings, informal consultations, lunches, entertainment or any other direct or indirect contact with vendors or proposers.
- c. After receipt of proposals, each Committee must review and evaluate each proposal independently, without discussing their evaluation with other Committee members.
- d. Evaluations must be based on the criteria established in the solicitation. All criteria must be scored. If a member elects to score only some of the proposals or criteria, the evaluations completed by that member will be thrown out in order to prevent skewing of the final scores.
- e. Evaluations must be both qualitative and quantitative based on the evaluation criteria outlined in the solicitation. If a member scores a zero (0) in any category, that member must identify the deficiency and provide a written explanation for the zero (0) score. All scores and comments become part of the solicitation and contract file and are subject to disclosure under the Florida Public Records Law. Committee members should have a reasonable, rational, and consistent basis for their scores, and be prepared to explain their scores in the event of a protest or inquiry.
- f. Prior to the Selection Committee meeting in a public forum, any questions, clarifications, or

additional information requested from a proposer by a member must be submitted in writing through the Purchasing Department. The Purchasing Department is responsible for obtaining a written response from the proposer and sharing the response with all Committee members prior to the first publicly advertised meeting.

- g. Score sheets must be completed prior to the Committee meeting where rankings will be determined. After the Selection Committee members have independently completed the initial review and scoring of all proposals, the Committee will convene at a publicly posted meeting to openly discuss the proposals. Members may adjust their initial scoring based on their interpretation of any additional information gained from the Committee's discussions. After all discussions have been completed each Committee member shall finalize their scores. Each member is required to sign the score sheet and any note pages and submit them to the Chairperson as part of the public record.
- h. Score sheets will be tabulated and ranked from the highest to the lowest by the Chairperson.
- i. Depending on the outcome of the scoring, the Committee will recommend one of the following:
  - a. Award the contract to the highest ranked proposer; or
  - b. Short-list the top ranked proposers and request scheduling of oral presentations
- j. If the Committee recommends awarding the contract to the highest ranked proposal, no further action is required by the Selection Committee.
- k. If oral presentations are requested, the Selection Committee shall identify which proposers will be asked to provide oral presentations. The Selection Committee may request oral presentations from as many proposers as necessary; however, it is recommended that the Committee come to a consensus and request presentations only from the top-ranked proposers.
- l. When oral presentations are requested by the Selection Committee, the members shall submit a written request to the Chairperson for specific areas needing additional explanation and/or clarification or any other information the Committee would like the proposers to provide during the oral presentations.
- m. All proposers selected for oral presentations will be notified in writing of the publicly posted meeting by the Committee Chairperson or designee, identifying the date, time, location, with a uniform script listing the specific questions or information requested by the Selection Committee to be addressed at the presentation.
- n. Prior to the oral presentations, the Chairperson will provide the evaluation criteria and score

sheets to the Selection Committee.

- o. During the oral presentations, Committee members will be able to ask questions of the proposers for a clear understanding of each proposer's position.
- p. After oral presentations are completed, the Committee will have the opportunity to continue discussions among themselves. After discussions are completed, each member shall finalize their scores. Each member is required to sign the score sheet and any note pages, and submit them to the Chairperson as part of the public record.
- q. Score sheets will be tabulated and ranked from the highest to the lowest by the Chairperson. The award recommendation will be for the proposer with the highest ranked score.
- r. The Selection Committee Chairperson shall work with the City department on a recommendation to award for processing through the City Manager and/or the City Commission, as appropriate.
- s. Florida Statutes require that all internal workings of the Selection Committee be kept confidential until the Committee has completed its work and all proposers have been officially notified of the selection.

## **NEGOTIATIONS**

The Purchasing Director shall manage the negotiation process for all City procurement projects. However, this shall not preclude the use of consultants or legal assistance in developing negotiation strategy and conduction negotiations and discussions with vendors. In general, negotiations shall be conducted under the principle of "win-win", where the City and vendor share benefits from the process and subsequent contracts.

All negotiations shall follow the requirements of Florida Statutes, and must be conducted with the highest ethical standards, fairness and equity; and with the understanding that the City shall not be placed in an unfair or unreasonable position to the vendor's. All negotiation meetings with vendors must be recorded and conform to the public records requirements of applicable laws.

The Purchasing Director, in consultation with the City Manager or designee, have the option to appoint a Negotiation Team to assist with various aspect of developing negotiation strategy and conducting negotiations with the vendor(s). The Team shall comprise stakeholders and individuals who are familiar with the project, and have the ability to describe fully the scope of the project and articulate clearly the City's position. All negotiating team meetings at which negotiation strategies are developed or discussed shall be recorded in accordance with Section 286.0113 Florida Statutes.

In general, the ability to negotiate, and the process to be followed are restricted as follows:

- a. **INVITATIONS TO BID; INVITATIONS TO QUOTE; INFORMAL QUOTATIONS**  
Negotiations on price only with the responsive and responsible bidder offering the lowest price.
  
- b. **REQUESTS FOR PROPOSALS**  
Negotiations on price, scope, and terms, based on the conditions for negotiations established in the Solicitation.
  
- c. **REQUESTS FOR QUALIFICATIONS**  
Negotiations on price only, based on the procedures established in the Solicitation.

### **REJECTION OF BIDS OR PROPOSALS**

The City Manager, or designee, may reject any and all bids or proposals or parts of all bids or proposals when such rejection is in the best interest of the City. Rejection of bids or proposals may also be protested. A bid or proposal may be rejected if any of the following conditions exist:

- a. The bid or proposal does not conform to the technical specifications and/or solicitation documents;
  
- b. Insufficient financial resources and/or lack of technical ability, physical capacity and/or skill of the vendor to perform the contract or the service required;
  
- c. Inability of the vendor to perform the contract or provide the service within the time specified without delays or interference;
  
- d. Previous and existing non-compliance by the vendor with laws and ordinances relating to the contract or services;
  
- e. Inadequate quality or performance on previous contracts for goods and/or services;
  
- f. Vendor has been declared to be in default on any City or public entity contract, or debarred or suspended by any public entity;
  
- g. Taking exceptions to the terms, conditions and specifications of the bid or proposal;
  
- h. Non-conformance with minority business and/or disadvantaged business enterprise provisions and requirements, where applicable;
  
- i. When the City determines that the price quoted is not fair and reasonable;
  
- j. Insufficient competition;

- k. Any other cause in the best interest of the City.

### **VENDOR POOL CONTRACTS**

Vendor Pool contracts are contracts that have been awarded to multiple vendors which have met the basic qualifying requirements established for the contract, but do not contain within the contract itself all of the data needed to establish firm pricing for a specific product or specific service to be provided under the contract. Examples of these contracts include, but are not limited to:

- a. Pre-qualification contracts awarded by the City. These contracts simply specify a pool of contractors who are authorized to provide the required product or service to the City;
- b. Contracts awarded by the City that include pricing information relating only to hourly rates, or discount rates from catalogs or otherwise established commercial pricing sources, may be determined to be Vendor Pool contracts. Contracts structured in this manner often do not include all the information necessary to determine the firm price for a given product or service from the information contained in the contract. Contracts that do not contain sufficient information in that regard are considered to be Vendor Pool contracts;
- c. Contracts awarded by other Government Agencies and not-for-profit organizations that include pricing information relating only to hourly rates, or discount rates from catalogs or otherwise established commercial pricing sources, may be determined to be Vendor Pool contracts.

Vendor Pool contracts require additional competitive action prior to award of a specific purchase to a specific vendor listed on the contract. Specific quoting and award procedures (i.e.; a "road map") for use of each Vendor Pool contract will be developed on a case-by-case basis by the Purchasing Department in coordination with the requesting departments. These procedures shall be structured to provide the competitive structure and documentation necessary to clearly support the award of a specific purchase to a specific vendor.

### **ADDITION OF VENDORS TO POOL CONTRACTS**

A pre-qualification contract that establishes a pool of vendors based on minimum requirements may allow for additional vendors to be added to the pool at any time during the contract term. If this is allowed, it must be specifically stated in the contract terms and conditions. Additional qualified vendors must meet the minimum qualifications established in the original solicitation to be added to the pre-qualified vendor pool.

### **ACCESSING CONTRACTS FROM OTHER GOVERNMENT AGENCIES AND NOT-FOR-PROFIT ORGANIZATIONS**

The City may award a contract by accessing the goods or services from any State of Florida contract, or contracts from any subdivisions, or from any other governmental entity (other than the Federal

government), and from Not-For-Profit Organizations; provided the item or service is not available through an existing City contract, and was competitively solicited.

Before any purchase controlled by this section can be made, vendors shall comply with all City requirements, (including but not limited to City affidavits), prior to recommendation of approval by the Purchasing Department, the City Manager, or the City Commission. A copy of the contract or award documents shall be obtained from the government agency. If these documents are not available, copies of specific pages with information on the contract number and its expiration date, terms and conditions, the item(s) description and price, warranty period, payment terms, FOB terms, and other pertinent information shall be obtained. Contracts awarded by other government agencies and not-for-profit organizations, can be used on a direct award basis when those contracts were awarded based on full and open price competition. Use of pool-type contracts awarded by other governmental agencies (or not-for-profit organizations) is also authorized, but such contracts are subject to further competitive action by the Purchasing Department on a case-by-case basis.

When accessing another entity's contract, staff is to carefully review the terms and conditions of that contract, noting that vendors can provide services only in those categories in which they were awarded on the competitively solicited proposal or bid.

### **LIMITED OR NO COMPETITION ACQUISITIONS**

#### **POLICY**

It is the policy of the City of Delray Beach to purchase its goods and services through a full open and competitive process. However, when competition is not available or when it is determined in the best interest of the City to utilize other than full and open competition, City legislation authorizes the execution of purchases by other methods, such as a Bid Waiver, Sole Source or Emergency basis (specific guidance on emergency actions is contained in a separate section of this guide - this section pertains only to bid waiver and sole source acquisitions).

One of the Purchasing Department's primary goals is to foster full and open competition in the acquisition of goods and services for the City departments. The Purchasing Director will review all Sole Source, Bid Waiver, and City Standard purchase requests to determine the appropriate acquisition approach. The Department will also perform industry and product market research to determine if alternative sources of supply are available. The Purchasing Department will work closely with requesting departments to ensure that contract scope and work requirements are expressed in terms of performance or functionality whenever practical.

When the requesting department has decided internally that full and open competition is not in the City's best interests, the appropriate justification for that decision must be submitted to the Purchasing Department for approval to waive the competitive process. Using the appropriate justification form, the requesting department must indicate the purpose of the acquisition, the uniqueness of the item or service, why waiving the competitive process is in the City's best interests, that market research has

been performed by the requesting department to support its decision, and what proposed actions will enhance competition in future acquisitions.

#### **DEFINITIONS**

A sole source purchase is the acquisition of a good or service for which there is only one source that can provide the good or service, and an equal product or service is not available from any other source.

A bid waiver is a purchase of a good or service without formal competitive bidding, when it is determined to be in the best interest of the City. In a non-competitive bid waiver only one quote is sought. In a competitive bid waiver (limited informal competition) more than one quote is sought.

A city standard purchase is the acquisition of a good when the City has determined that a particular style, brand, make or model is the only type that meets the City's requirements for performance, consistency, compatibility, or other salient characteristics, and such determination has resulted in there being only one source available to the City.

The Purchasing Department may negotiate with the vendor(s) to obtain the best possible contractual arrangements for the City.

#### **PROCESS**

The Purchasing Department will review all justifications to determine the appropriate acquisition approach. This will include evaluating specifications and statements of work to ensure that no artificial barriers or unnecessary restrictions prohibit or reduce competition. The Department will work closely with requesting departments to ensure that minimum requirements are expressed in terms of performance or functionality. The Department shall perform product and industry market research in order to determine if alternative sources of supply may be available to meet the requirements.

To make the administration of non-competitive acquisition effective and efficient, and to avoid redundant efforts, requesting departments must submit a completed sole source, bid waiver, or city standard justification form to the Purchasing Department for review and approval prior to entering into any type of negotiations with a proposed supplier. Both advance acquisition planning, and early Purchasing Department involvement in the planning process, are key to a successful procurement, competitive or otherwise.

It is the responsibility of the requesting department to justify in writing to the Purchasing Department why it is in the City's best interest to waive the competitive process. For all sole source, bid waiver, or city standard requests, the requesting department must submit a fully completed justification form to the Purchasing Department supported by:

- a. Specifications or statement of work that clearly establishes the minimum performance or functional requirements of the product(s) or service(s);

- b. Description of the requesting department's unique need that precludes full and open competition;
- c. For sole source requests, evidence that the supplier is the exclusive distributor or authorized repair or service center or has exclusive territorial rights (if applicable);
- d. Evidence of proprietary rights (if applicable);
- e. Vendor proposal and quote (if any); and
- f. Any other supporting documentation.

#### **SOLE SOURCES**

Upon receipt of a signed justification for a sole source, the Purchasing Department shall make a determination, through a review of the material and appropriate market research. If it is determined that more than one source is present in the market, the Department will provide the requesting department with a written market research summary and a recommendation on the appropriate procurement process to follow.

If the Purchasing Department determines that there is only one source, and competition is not available, and the dollar value of the action is less than \$65,000; the Purchasing Department, with the support of, and in collaboration with the requesting department, will negotiate a contract with the vendor that represents the best interest of the City, including terms and conditions, and price. The Purchasing Department will then issue the appropriate contract award, subject to the applicable authorization levels.

#### **BID WAIVERS**

Upon receipt of a signed justification for a bid waiver, the Purchasing Department shall make a determination, through a review of the material and appropriate market research. If it is determined that a bid waiver is appropriate, the Purchasing Department with the support of and in collaboration with the requesting department, negotiates a contract with the vendor in the best interest of the City, including terms and conditions, and pricing. Upon completing negotiation, the Purchasing Department will then issue the appropriate contract award, subject to the applicable authorization levels.

#### **CITY STANDARD**

Upon receipt of a signed justification for a city standard purchase, the Purchasing Department shall make a determination, through a review of the material and appropriate market research. If it is determined that a city standard purchase is appropriate, the Purchasing Department with the support of and in collaboration with the requesting department, negotiates a contract with the vendor in the best interest of the City, including terms and conditions, and pricing. Upon completing negotiation, the

Purchasing Department will then issue the appropriate contract award, subject to the applicable authorization levels.

#### **AWARD**

When all requirements are met, and the Purchasing Director or designee is satisfied that there is only one source of supply, or determines that a non-competitive situation exists for goods or services to be purchased, full and open competition may be waived by the Director. When the expenditure exceeds \$65,000, the Purchasing Director shall forward an appropriate recommendation to the City Manager. If the City Manager is satisfied that a no competition or limited competition purchase request is in the best interests of the City, he/she shall forward the subject request to the City Commission for award. All vendors must comply with all City requirements prior to award. Additional funds and/or extensions of time that may be requested during the resultant contract period are subject to the authority levels for all such contract modifications.

In addition to the above described limited competition actions, there may be certain exceptional situations where full and open competition procedures cannot be used in association with a given administrative requirement. Such actions are hereby identified as "Administrative Purchases". The only administrative situations that justify processing "Administrative Purchases" on a limited competition basis are as follows:

- a. Post-expiration fund disbursement: This authorized Administrative Purchase is defined as an administrative function which allows for the disbursement of funds after the expiration date of a contract period or which allows additional funds to be allocated in order to effectuate previously executed lease agreements. This category of Administrative Purchase shall only be approved by the Purchasing Director in consultation with the Finance Administrator in accordance with the authority limits established herein and only then to satisfy a financial commitment made under a previously approved contract that has expired. Administrative Purchases are necessary primarily to facilitate lease agreements and other type arrangements that may out live the original contract term.
  
- b. Unauthorized/Confirmation purchases: This administrative purchase is defined as a ratification of an unauthorized purchase executed by a requesting department that is not in compliance with the policies contained in the City's purchasing and contracting policies and guidelines. A Confirmation Purchase requires retroactive approval (if appropriate) of an unauthorized purchase. A confirmation purchase requires retroactive approval by the City Manager for actions over \$2,500 up to \$65,000, and by the City Commission for commitments exceeding that amount. Payment for any unauthorized purchase may be the responsibility of the person placing the order. The department director having responsibility over the unauthorized purchase shall provide to the Purchasing Department a complete written justification for the specific unauthorized purchase and the corrective action intended to prevent recurrence of the incident. A copy of this justification shall be included or attached to the Confirmation Purchase Form.

## **EMERGENCY PURCHASES**

An emergency purchase shall be defined as an unforeseen or unanticipated urgent and immediate need for equipment, supplies, or services where the protection of life, health, safety or welfare of the community or the preservation of public properties would not be possible using normal purchasing procedures.

### **EMERGENCY PURCHASES**

Before any purchase controlled by this section is made, the requesting department shall contact the Purchasing Department for concurrence, explain the nature of the emergency, and provide a written certification of the emergency. Unless precluded by the nature of the emergency situation, vendors are to comply with all City purchasing requirements, including but not limited to City affidavits, prior to recommendation of approval by the Purchasing Director, City Manager or the City Commission.

If the item or service cannot be obtained from a vendor with an existing City contract, the requesting department should obtain four (4) quotations, whenever possible, from active City vendors. The requesting department shall be responsible for obtaining from the contracted vendor the necessary affidavits, insurance certificates, proof of proper licenses, trade certificates, permits, etc., as the emergency work may require.

As soon as possible, the requesting department shall submit to the Purchasing Department the following documentation:

- a. Emergency input document with appropriate signatures;
- b. Vendor(s)'s written quotation(s);
- c. Department's justification and/or explanation of circumstances for emergency purchase, to include a clear definition of the products and/or services sought and how and where it will be used; and
- d. Any other supporting documentation, as may be applicable.

### **AUTHORITY TO AWARD EMERGENCY PURCHASES**

In the event a Department Director, or an authorized designee, determines that an emergency situation exists which requires an immediate response, a contract may be awarded regardless of the amount of expenditure. A purchase order will be issued by the Purchasing Department upon receipt of acceptable supporting documentation from the requesting department. If the expenditure is in excess of \$65,000, the City Manager shall present the circumstances to the City Commission for its ratification.

### **MONITORING EMERGENCY PURCHASE REQUESTS**

The Purchasing Department shall report to the City Manager, through the Purchasing Director, any City requesting department procurement practices that reflect poor operational planning or management and have the potential effect of defeating the purpose of the procurement process.

#### **EMERGENCY DISASTER PURCHASES**

Emergency disaster purchases are those purchases needed due to unforeseen acts of nature, to include but not limited to: hurricanes, tornados, floods, fire, etc.; and only when the City Manager or designee declares that a state of emergency exists.

For acquisitions of this type, the following procedures apply:

- a. The Requesting Department Director or designee, after verbal consultations with the Purchasing Director and the City Manager, shall have the authority to enter into any contract when the Director determines, based on his/her expertise, that such work is necessary to preserve the life and safety of City residents and the wider community;
- b. The Requesting Department Director or designee shall first contract with vendors which are already on City contracts for the goods or services needed;
- c. All disaster purchases that are acquired without full and open competition or under an existing contract must be subsequently ratified by the City Manager or City Commission, as appropriate.

#### **REQUEST TO MODIFY A CONTRACT OR PURCHASE ORDER**

When a requesting department requires a change to a purchase order or to modify a contract, the request must be submitted to Purchasing Department for review and approval. Before submitting a request to modify a purchase order or contract, the requesting department should review the following conditions:

- a. Valid requirements have been established;
- b. Funds are available to cover the purchase; and
- c. Appropriate justification is included with the request package.

The requesting department shall submit its request, together with all supporting documentation, to the Purchasing Department for review and determination as follows:

- d. Justification and/or explanation for request to modify the purchase order or contract. If goods and/or services are going to be used for the first time, state what the department was using before; and
- e. Any other supporting documentation as may be applicable.

Modifications and change orders to contracts and purchase orders require approval at the established authorization levels. Requesting departments may not proceed with any action on modified contracts or purchase orders until approval has been received from the Purchasing Director, the City Manager, or the City Commission, as appropriate.

### **MONITORING AND REPORTING VENDOR PERFORMANCE**

Vendor performance is any action or inaction by a vendor under a contract, purchase order or other binding agreement with the City of Delray Beach. Any action or inaction by a vendor, which does not comply with the contractual terms and conditions, will be considered nonperformance and is to be documented and reported to the Purchasing Department. Nonperformance includes but is not limited to, late or non-deliveries, substandard or unacceptable goods and/or service levels, habitual under or over shipments, and unauthorized subcontracting or contract assignments.

The requesting department shall appoint project managers, who shall be responsible for monitoring vendor performance as it relates to the terms and conditions of the contract(s) and/or purchase order(s) issued. Vendor nonperformance actions are to be documented and reported to the Purchasing Department for appropriate action aimed at correcting vendor performance, placing the vendor on probation for a period of time, suspension from bidding on City contracts, vendor debarment, and/or contract termination.

#### **ACTION BY REQUESTING DEPARTMENT**

The non-performing vendor should first be contacted by telephone to discuss the problems being experienced. A mutual understanding should be reached, if possible, and a time frame for corrective action established.

The requesting department should convene a meeting with the vendor to help resolve problems, whenever possible. Should the vendor continue to not meet the requirements, the requesting department should submit a memo to the Purchasing Director, attach any available documentation to substantiate the problem, including a copy of any letters sent to the vendor or records of meetings (as applicable).

After receiving the vendor nonperformance, the Purchasing Department will review the documentation to determine the appropriated course of action. This action may include: calling the vendor, sending vendor a "Notice to Cure", or scheduling a meeting with the vendor.

Where progressive steps aimed at correcting vendor performance have proven futile, the Purchasing Department may hold a hearing to determine the next course of action. The vendor and the requesting department will be invited to this meeting, where the Purchasing Director or designee will act as a hearing officer. After listening to all parties, the hearing officer may:

- a. Establish a probation period for the vendor to correct all noncompliance problems;
- b. Terminate the contract for default;
- c. Terminate the contract for convenience; or
- d. Find no action necessary.

A copy of all written actions or documents will be provided to the requesting department. The final decision and formal action will be filed in the contract e-folder for future use in determining vendor responsibility in future award recommendations.

For contracts up to \$65,000, the Purchasing Director may terminate the vendor for convenience or default in accordance with the relevant provisions of the contract. For contracts greater than \$65,000, the City Manager will recommend to the City Commission the best course of action to safeguard the interests of the City.

### **OFFER GUARANTEE, PERFORMANCE AND PAYMENT BONDS, AND INSURANCE**

#### **BID OR OFFER GUARANTEE**

A bid deposit to guarantee the vendor's intention to enter into a contract with the City, not to exceed ten percent (10%) of the estimated total bid price, may be required by the Purchasing Department. If a bid or offer deposit or bid or offer bond is required, it shall be in the form and amount specified in the solicitation.

#### **PERFORMANCE AND PAYMENT BONDS**

The Purchasing Department may require performance and payment bonds from the vendor selected for contract award in such amounts as may be deemed reasonably necessary to protect the best interests of the City. The bonds shall be in the form supplied by the City (no other form will be accepted) and in the amounts required by the solicitation.

#### **INSURANCE**

The Purchasing Department may require insurance coverage from the vendor selected for award as may be deemed reasonably necessary to protect the best interest of the City. The insurance coverage shall be in the form and amount(s) as required by the solicitation.

Awards may be contingent upon submission of required insurance coverage and performance and payment bonds. If the vendor selected for award fails to fulfill these requirements the following default actions will be followed.

- a. For contracts up to \$65,000, the City Manager or designee, in consultation with the City Attorney, may render the vendor in default, re-award the contract to the next lowest responsive/responsible vendor, and subject the defaulted vendor to re-procurement charges or to forfeiture of the bid/offer bond, or security in an amount equal to the damages sustained by the City as a result of the default.
- b. For contracts greater than \$65,000, the City Manager, in consultation with the City Attorney, may declare the vendor in default. The City may re-award to a new vendor who participated in the solicitation, but was not awarded any portion of the contract. The City Manager will obtain approval from the City Commission.

## **MARKET RESEARCH**

Market research must be conducted in anticipation of City procurement in order to ensure that specifications are suitable for fair and open competition. Market research is the foundation for developing an effective solicitation and successful contract that includes terms and conditions consistent with sound business practices and procurement laws.

### **PURPOSE OF MARKET RESEARCH**

The primary purpose of market research in public procurement is to determine the availability of sources of supply or alternatives solutions that will meet minimum requirements. Market research should always begin with the intent to satisfy a legitimate City requirement or need. The need should be stated in terms of performance or functionality whenever practical. This means that the minimum requirements must be clearly understood and defined before market research can begin. Once the need has been established, market research must be conducted in order to determine the capability of the marketplace to meet the need of the City.

Market research includes identifying the attributes of existing products, processes or services that meet minimum requirements, or identifying the characteristics that of a yet to be identified product, process or service must possess. Effective market research should provide adequate information regarding existing products or services, qualified sources, industry trends, pricing, and what other entities are doing to meet the same or similar requirements. Failure to conduct thorough market research may result in requests for sole source or bid waiver purchases that cannot be adequately justified.

It is extremely important that the integrity of the procurement process be sustained at the highest standards and that suppliers are given a fair opportunity to compete for City business. In anticipation of a City procurement, market research must be conducted to ensure that specifications are not exclusionary, restrictive or favor any one vendor or proposer.

## **WHEN TO CONDUCT MARKET RESEARCH**

When planning for a purchase (prior to or during the development of specifications or statements of work) of any dollar amount, the requesting department should conduct market research. Contact, whenever possible, a minimum of three different sources to determine if existing products or services are available to meet requirements or if existing products or services can be modified to meet requirements.

## **MARKET RESEARCH TECHNIQUES**

Research should include, whenever practical:

- a. The industry trends and customary terms and conditions regarding warranties, acceptance and inspection;
- b. Buyer financing – method and best practices;
- c. Standard maintenance support;
- d. Capable sources (including small businesses)
- e. General pricing information and availability of product(s);
- f. Competitive factors such as quality, product features, speed of technology and typical lead time;
- g. Commercial practices, other government entities practices; and industry support capabilities and practices; and
- h. Environmental issues – recovery and disposal of products and energy efficiency standards as might be appropriate.

## **EXTENT OF MARKET RESEARCH**

As indicated before, a minimum of three potential sources must be sought prior to or during the planning of a pending acquisition. However, the extent of market research may vary depending on factors such as urgency, the estimated dollar value, complexity, past experience and the amount of information already available. In some circumstances, the Purchasing Department may perform the market research.

It is important to remember that market research is not a substitute for full and open competition. It is not to be used to determine which product or service, supplier or proposer is best. Market research is

conducted to determine the availability of products or services that meet the City's minimum requirements and to ensure that specifications are not exclusionary or otherwise restrictive.

#### **SOURCES OF RESEARCH DATA**

There are a variety of sources for information. However, perhaps the first place to start is with the City's (or Public Purchase's or DemandStar's) own database of vendors. Using commodity codes, departments may find firms with the ability to meet their requirements. Departments may also contact one or more of the following:

- a. Subject matter experts within the City, other governments or private industry;
- b. Publications and trade journals from industry;
- c. Marketing organization, professional associations and tradeshows;
- d. Colleagues from other jurisdictions;
- e. NIGP website: [www.NIGP.org](http://www.NIGP.org); or
- f. Web searches using Internet search engines like Yahoo, Google, etc.

#### **BLANKET PURCHASE ORDERS**

A blanket purchase order is utilized for the recurring acquisition of particular goods from a particular vendor for multiple small purchases (generally not exceeding \$2,500 each) and may be established within the guidelines below. This purchase method is typically utilized for the acquisition of goods or services on an "as needed" basis (a requirements contract) with vendors who do not accept P-cards.

- a. The blanket purchase order must indicate the maximum permitted expenditure for the particular budgeted line item, which may not exceed \$20,000 for the fiscal year. The blanket purchase order may not exceed the total amount budgeted for that line item account.
- b. Blanket purchase orders expire on September 30, at the end of the fiscal year.
- c. Blanket purchase orders are subject to the same review process outlined for all other purchase orders.

#### **COOPERATIVE PURCHASING**

The City Manager or designee shall have the authority to join with other units of government in cooperative purchasing plans when the best interests of the City would be served thereby, subject to

the requirement that any purchase in excess of sixty-five thousand dollars (\$65,000) shall require City Commission approval.

## **PURCHASE OF USED EQUIPMENT**

Used equipment may be purchased within the following guidelines.

**a. PURCHASE AT AUCTION**

The appropriate Department Head shall submit a written request to the Purchasing Director and City Manager requesting authority to purchase an item at auction. The request shall include:

- i. An estimated cost and a maximum bid amount.
- ii. A justification for purchasing used, rather than new equipment.
- iii. The result of an inspection by a mechanic or other qualified technician, indicating the condition of the equipment, estimated repair cost if not operational, annual maintenance costs, and expected life of equipment after acquired by the City.

If the maximum bid is expected to be more than \$65,000, the City Commission must approve a bid waiver prior to the auction.

If the maximum bid amount is expected to be less than \$65,000, the Purchasing Director and City Manager must approve the request in writing, and indicate the approved maximum bid amount prior to the auction.

After approval, the Department Head may bid up to the maximum bid amount to purchase the equipment.

A purchase requisition must be prepared as part of this procedure.

**b. PURCHASE FROM OTHER AGENCIES/ENTITIES**

The Department Head shall submit a written request to the Purchasing Director and City Manager requesting authority to negotiate the purchase of an item from another agency or entity. The request shall include:

- i. An estimated cost and a maximum offer amount.

- ii. A justification for purchasing used, rather than new equipment.
- iii. The result of an inspection by a mechanic or other qualified technician, indicating the condition of the equipment, estimated repair cost of not operational, annual maintenance costs and expected life of equipment after acquired by the City.

If the maximum offer is more than \$65,000, the City Commission must approve a bid waiver.

If the maximum offer is \$65,000 or less, the Purchasing Director and City Manager must approve the request in writing and indicate the approved maximum offer amount prior to the commencement of negotiations.

After approval, the Department Head shall negotiate a price with the agency or entity, not offering more than the maximum as approved above.

The Department Head shall prepare a purchase requisition as part of this procedure.

Under no circumstances shall an unauthorized employee offer to purchase used equipment from an individual, including an employee of the City.

#### **CHANGE ORDERS AND AMENDMENTS**

Contracts must be amended in the same manner in which they were executed, and at the requisite authorization levels, unless the contract provides for an alternative method of amendment.

#### **PETTY CASH**

Petty cash accounts may be established, with the approval of the Finance Administrator, to expedite miscellaneous small purchases. Petty cash can be used by all departments for facilitating the transaction of City business, but shall not normally be authorized for purchases in excess of \$50. Petty cash reimbursements greater than \$50 must be approved by the Finance Administrator or designee.

The use of petty cash shall be limited to:

- a. The purchase of items that are not ordinarily on hand in the City.
- b. The payment of handling or C.O.D. charges for goods delivered.
- c. Small purchases that must be made from vendors who do not offer the City a credit account.

- d. Meals for local seminars, conferences and other business meetings.
- e. Toll receipts and mileage reimbursement.

Petty cash requests must be accompanied by a receipt and approved by a petty cash custodian. Each department that manages a petty cash box must provide the Finance Administrator with a list of authorized custodians, designating each as a primary or alternate custodian.

#### **SALES TAX EXEMPTION**

The City of Delray Beach is exempt from paying Florida State Sales Tax. All employees who purchase goods or services on behalf of the City shall supply each vendor with a copy of the City's tax exemption certificate or number to avoid being assessed state sales taxes. Employees will not be reimbursed for the payment of state sales tax, except for travel outside the State of Florida.

The Sales Tax Exemption privilege is for the purchase of goods exclusively for use of the City of Delray Beach. City employees are expressly prohibited from purchasing goods or supplies for personal use using the City's tax exemption number/certificate.

#### **REFERENCES AND ENDORSEMENTS**

Only Department Heads or senior management staff may provide references for City vendors. These vendors must be very general in scope and information, and should provide information in a non-emotional and non-inflammatory manner. Department Heads and senior management staff may decline to provide a reference on any City vendor for any reason whatsoever.

City staff shall not give endorsements or make statements on behalf of the City to vendors for use in vendor advertising, sales brochures, website promotions, etc. Such requests must be referred to the Purchasing Director for review and discussion with the City Manager.



The Purchasing Department of the City of Delray Beach embraces and subscribes to the professional standards of the Code of Ethics of the National Institute for Governmental Purchasing. Those professional standards are:

- Seeks or accepts a position as head (or employee) only when fully in accord with the professional principles applicable thereto and when confident of possessing the qualifications to serve under those principles to the advantage of the employing organization.
- Believes in the dignity and worth of the service rendered by the organization, and the societal responsibilities assumed as a trusted public servant.
- Is governed by the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the organization and the public being served.
- Believes that personal aggrandizement or personal profit obtained through misuse of public or personal relationships is dishonest and not tolerable.
- Identifies and eliminates participation of any individual in operational situations where a conflict of interest may be involved.
- Believes that members of the Institute and its staff should at no time, or under any circumstances, accept directly or indirectly, gifts, gratuities, or other things of value from suppliers, which might influence or appear to influence purchasing decisions.
- Keeps the governmental organization informed, through appropriate channels, on problems and progress of applicable operations by emphasizing the importance of the facts.
- Resists encroachment on control of personnel in order to preserve integrity as a professional manager.
- Handles all personnel matters on a merit basis, and in compliance with applicable laws prohibiting discrimination in employment on the basis of politics, religion, color, national origin, disability, gender, age, pregnancy and other protected characteristics.
- Seeks or dispenses no personal favors. Handles each administrative problem objectively and empathetically, without discrimination.



## **HOW TO DO BUSINESS WITH THE CITY OF DELRAY BEACH**

Each year, the City of Delray Beach contracts with various vendors for more than \$20 million of different types of goods, services, and commodities for the benefit of the residents of Delray Beach. The Purchasing Department is the City's central purchasing unit with the responsibility for managing the City's purchasing and contracting processes. The City welcomes and encourages qualified vendors and contractors, including local businesses, minority-owned firms, small business enterprises, veteran-owned companies, to respond to solicitations by submitting offers and proposals.

Delray Beach does not require vendors or any firm, individual or organization to register with the City in order to do business. However, vendors are encouraged to visit the City's website at [www.mydelraybeach.com](http://www.mydelraybeach.com) and join the Vendors List to receive email notifications when solicitations are advertised. City solicitations are advertised in the Palm Beach Post, and are also available on Demand Star and Public Purchase. Vendors are encouraged to visit the Demand Star and Public Purchase websites at [www.bindsync.com](http://www.bindsync.com) to register with those companies to receive notices of City solicitations. When a vendor is awarded a contract with the City, the Finance Department contacts the vendor to obtain a copy of the vendor's W-9 and to register the vendor in the financial system for invoice processing and payment. Vendors may choose direct-deposit for payments, as this process results in quicker payment of invoices.

Palm Beach Gardens awards contracts and agreements to responsible and responsive bidders and proposers, and whose offers or proposals represent the lowest price or best value for the City. The City has a strict **No Gifts Policy**, observes a **Cone of Silence** on all advertised solicitations, and has a **Vendor Code of Conduct**, which outline expected ethical and professional behavior. The Purchasing Department also reviews vendor performance on City contracts, and other public entity contracts, in arriving at a determination if a bidder or proposer meets the definition of a responsible vendor and may be recommended for award.

For more information on the City's purchasing policies and procedures, and to learn more about doing business with Delray Beach, please visit City's website at [www.mydelraybeach.com](http://www.mydelraybeach.com) or telephone (561) 243-7000 x-1810 to speak directly with the Purchasing Department.



*May 2017*

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