



City of Lebanon - City Council Policy

Purchasing Policy

Policy Number: #06-02-C Effective Date: July 5, 2006

(Replaces Policy #99-04-C adopted April 7, 1999; Amended June 8, 2010 and August 13, 2015 – See Section 01-103)

PURPOSE: To ensure the fair and equitable treatment of all persons who deal with the purchasing system of the City; to maximize to the fullest extent practicable the purchasing value of public funds; to obtain in a cost-effective and responsive manner the materials, services and construction required by the City in order to better serve the City's businesses and residents.

POLICY: *General Application.* This Policy applies to the expenditure of public funds for public purchasing irrespective of the source of the funds. When purchasing involves the expenditure of federal or state assistance or contract funds, purchasing shall be conducted in accordance with any mandatory applicable federal and state law and regulations. This Policy also applies to the disposal of City supplies. Nothing in this Policy shall prevent the City from complying with the terms and conditions of any grant, gift, bequest or cooperative agreement.

Exceptions. Certain purchases are not readily adaptable to the open market and formal competitive selection process. Exceptions from this Policy shall be considered on a case-by-case basis by the City Manager.

Competition. Fair and open competition reduces the opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically. Since the marketplace is different for various supplies, services and construction items this Policy authorizes a variety of source selection techniques designed to provide the best competition for all types of purchasing. It also permits less formal competitive procedures where the amount of the contract does not warrant the expense and time otherwise involved.

Purchasing Methods. Unless otherwise deemed in the best interest of the City all City contracts shall be awarded by one of the following

methods: 02-202 Competitive Sealed Bidding; 02-203 Competitive Sealed Proposals; 02-204 Small Purchases; 02-205 Sole Source Purchasing; 02-206 Emergency Purchasing; 02-207 Special Purchases; and 02-208 Purchasing Consultative and Professional Services Including Legal, Architectural and Engineering Services.

PROCEDURE:

Please refer to the following Policy.



CITY OF LEBANON, NEW HAMPSHIRE PURCHASING POLICY

Adopted: July 5, 2006
Policy No.: #06-02-C
Amended: June 8, 2010
Amended: August 13, 2015

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PURCHASING POLICY

[Reserved]

PURCHASING POLICY

01 GENERAL PROVISIONS

01-101 PURPOSE

To ensure the fair and equitable treatment of all persons who deal with the purchasing system of the City; to maximize to the fullest extent practicable the purchasing value of public funds; to obtain in a cost-effective and responsive manner the materials, services and construction required by the City in order to better serve the City's businesses and residents.

01-102 SCOPE

01-102.01 *General.* This Policy applies to the expenditure of public funds for public purchasing irrespective of the source of the funds. When purchasing involves the expenditure of federal or state assistance or contract funds, purchasing shall be conducted in accordance with any mandatory applicable federal and state law and regulations. This Policy also applies to the disposal of City supplies. Nothing in this Policy shall prevent the City from complying with the terms and conditions of any grant, gift, bequest or cooperative agreement.

01-102.02 *Exceptions.* Certain purchases are not readily adaptable to the open market and formal competitive selection process. Exceptions from this Policy shall be considered on a case-by-case basis by the City Manager.

01-102.03 *Computer and Computer-Related Purchases.* Computer and computer-related purchases must be approved beforehand by the Information Services Division. Software programs installed on a local hard drive may interact negatively with existing programs. All employees must therefore consult with the Information Services Division before purchasing or installing any software. If during normal service/support activities unapproved software is found on a workstation the Information Services Division will remove the unapproved software and notify the department manager of the policy violation. Any software modifications or installation on City file servers will be modified or installed by the Information Services Division. If an employee desires to install personally acquired software on their assigned equipment they must obtain approval from the department manager and the Information Services Division. In addition, a copy of the license agreement must be kept on file with the Information Services Division.

01-103 AMENDMENT TO AND DEVIATION FROM POLICY

The City Manager may make amendments to, or approve deviations from, this Policy if deemed in the best interest of the City.

01-103.01 June 8, 2010 –

- ▶ Revised section 02-101.04 to reflect change in State law.

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- ▶ Added the following language to sections 02-202.03, 02-203.03, 02-204.01 and 02-301.02: “Reasonable steps shall be taken to ensure that local businesses (businesses that maintain their principal office and place of business in the City) qualified to provide required supplies, services and construction are notified of relevant solicitations.”

01-103.02 August 13, 2015 –

- ▶ Section 204 SMALL PURCHASES indicates that the City Manager shall establish small purchase limits that are practicable, provide that competition is obtained and that the small purchase system is not abused. Reference is made to the Purchase Agreements Policy, an Administrative Policy. The following sections are therefore deleted as redundant: *Competition for Small Purchases of Supplies, Services or Construction Items*; 02-201.03 *Adequate and Reasonable Competition for Certain Small Purchases*; and 02-201.04 *Small Purchases of Consultative, Legal, Architectural, Engineering and Land Surveying*.

01-104 EFFECTIVE DATE

Adopted by the City Council July 5, 2006 as City Council policy #06-02-C, effective upon passage, replacing a previous policy #99-04-C adopted April 7, 1999.

01-201 AUTHORITY TO ENTER INTO PURCHASE AGREEMENTS

01-201.01 *NH RSA 31:3*. Towns may purchase and hold real and personal estate for the public uses of the inhabitants, and may sell and convey the same; may recognize unions of employees and make and enter into collective bargaining contracts with such unions; and may make any contracts which may be necessary and convenient for the transaction of the public business of the town.
Source. RS 31:3. CS 32:3. GS 34:3. GL 37:3. PS 40:3. PL 42:3. RL 51:3. RSA 31:3. 1955, 255:1, eff. July 14, 1955.

01-201.02 *NH RSA 44:2*. All provisions of statutes, now made or hereafter enacted relating to towns, shall be understood to apply to cities; and all provisions relating to the selectmen and town clerks of towns shall be construed to apply to the mayor and aldermen and clerks of cities, respectively, unless a different intention appears.
Source. GS 40:2. GL 44:2. PS 46:2. PL 50:2. RL 62:2.

01-301 FINANCIAL AND BUDGETARY CONTROL

01-301.01 *City Charter Section 419:37 Financial Control*. The department of finances shall maintain accounting control over the finances of the City, make financial reports and perform such other duties as may be required by the administrative code. No bill against the City shall be approved by the City Manager until the department of finance has audited and approved the same and certified that said bill was lawfully

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contracted, that the prices charged for all goods and materials are reasonable, that the goods or materials were actually received by the City and that it is in favor of a person legally entitled to receive payment for the same.

01-301.02 *City Charter Section 419:38 False Certification, Penalty.* If the Department of Finance or any member thereof provided for under Section 37 above, shall knowingly make a false certification in any case provided for in Section 37 or approve any bill when the appropriation, as provided for in Sections 42 and 43 of this chapter, for which the same should be paid is exhausted, such false certification shall constitute a misdemeanor, and he shall be fined not exceeding two hundred dollars or imprisoned not exceeding six months or both.

01-301.03 *City Charter Section 419:39 Unauthorized Payment, Penalty.* If the disbursing officer of the City shall pay out any money from the City treasury except on order of the City Manager after approval by the department of finance, such unauthorized payment shall constitute a misdemeanor and he shall be fined not exceeding two hundred dollars or imprisoned not exceeding six months, or both, and shall be personally bound to refund to the City any sum so paid.

01-401 RESTRICTIONS

01-401.01 *City Charter Section 419:20 Dealings of Council with City.* No councilor, or other official of the City, shall sell to or buy from the City any goods or commodities while in office other than by open competitive public bid.

01-401.02 *City Charter Section 419:63 Private Use of Public Property.* No officer or employee shall devote any City property or labor to private use except as may be provided by law or ordinance.

01-501 GLOSSARY

- (1) *Advantageous* connotes a judgmental assessment of what is in the City's best interest.
- (2) *Construction* means the process of building, altering, repairing, improving or demolishing any public infrastructure facility including any public structure, public building or other public improvements of any kind to real property. It does not include the routine operation, routine repair, or routine maintenance of any existing public infrastructure facility including structures, buildings or real property.
- (3) *Invitation for Bids* means all documents utilized for soliciting bids.
- (4) *Offer* means proposal and *offeror* means a person submitting a proposal when a purchase is made by a source selection method other than competitive sealed bidding.
- (5) *Practicable* denotes what may be accomplished or put into practical application.
- (6) *Purchase Description.* See *Specification*.

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- (7) *Request for Proposals* means all documents utilized for soliciting proposals.
- (8) *Responsible Bidder or Offeror* means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good fair performance.
- (9) *Responsive Bidder* means a person who has submitted a bid which conforms in all material respects to the Invitation for Bids.
- (10) *Services* means the furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance.
- (11) *Solicitation* means an Invitation for Bids, a Request for Proposals, a Request for Quotations or any other document issued by the City for the purpose of soliciting bids or proposals to perform a City contract.
- (12) *Specification* means any description of the physical or functional characteristics or of the nature of a supply, service or construction item.
- (13) *Supplies* means all property, including but not limited to equipment, materials, printing, insurance and leases of real property, excluding land or a permanent interest in land.
- (14) *Technical Proposal* means solicited or unsolicited submission of information from a prospective contractor which states how that party intends to perform certain work; its technical and business qualifications; and its proposed delivery, warranty and other terms and conditions as those might differ from or supplement the City's solicitation requirements. It shall include such pricing information as may be required.

02 SOURCE SELECTION

02-101 GENERAL

- 02-101.01 *Cancellation of Invitation for Bids or Requests for Proposals* An Invitation for Bids, a Request for Proposals, or other solicitation may be cancelled, or any or all bids or proposals rejected in whole or in part as may be specified in the solicitation when it is in the best interest of the City.
- 02-101.02 *Extension of Time for Bid or Proposal Acceptance.* After opening bids or proposals the City may request bidders or offerors to extend the time during which the City may accept their bids or proposals.
- 02-101.03 *One Bid/Proposal Received.* If only one responsive bid is received in response to an Invitation for Bids an award may be made to the single bidder if the City finds that the price submitted is fair and reasonable and that either other prospective bidders had reasonable opportunity to respond or there is not adequate time for resolicitation. If the supply or service continues but the price of the one bid is not fair and reasonable and there is no time for resolicitation or resolicitation would likely be futile the purchase may then be conducted as a Sole Source (02-205) or Emergency Purchase (02-206) as appropriate. If only one proposal is received in

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response to a Request for Proposals the City may either make an award or, if time permits, resolicit.

- 02-101.04 *Bid Security and Performance and Payment Bonds for Supply, Service or Construction Item Contracts.* Bid, performance and payment bonds or other security may be required for supply, service or construction item contracts when in the best interest of the City and as required by New Hampshire law including RSA 447:16:

Officers, public boards, agents or other persons who contract in behalf of the state or any political subdivision thereof for the construction, repair or rebuilding of public buildings, public highways, bridges or other public works shall if said contract involves an expenditure of \$35,000, and may if it involves an expenditure of less amount, obtain as a condition precedent to the execution of the contract, sufficient security, by bond or otherwise, in an amount equal to at least 100 percent of the contract price, or of the estimated cost of the work if no aggregate price is agreed upon, conditioned upon the payment by the contractors and subcontractors for all labor performed or furnished, for all equipment hired, including trucks, for all material used and for fuels, lubricants, power, tools, hardware and supplies purchased by said principal and used in carrying out said contract, and for labor and parts furnished upon the order of said contractor for the repair of equipment used in carrying out said contract.

Source. 1927, 88:2. RL 264:26. 1943, 182:1, par. 26. 1949, 71:1. 1953, 253:3. RSA 447:16. 1979, 28:1. 1981, 4:5, eff. Mar. 6, 1981. 2009, 8:1, eff. June 16, 2009.

- 02-101.05 *Conditioning Bids or Proposals Upon Other Awards Not Acceptable.* Any bid or proposals conditioned upon receiving award of both the particular contract being solicited and another City contract shall be deemed nonresponsive and not acceptable.
- 02-101.06 *Unsolicited Offers.* To be considered for evaluation an unsolicited offer must be in writing; must be sufficiently detailed to allow a judgment to be made concerning the potential utility of the offer to the City; must be unique or innovative to City use; must demonstrate that the proprietary character of the offering warrants consideration of the use of Sole Source (02-205) purchasing method; and may be subject to testing under terms and conditions specified by the City.
- 02-101.07 *Novation.* No City contract is transferable, or otherwise assignable, without the written consent of the City.

02-201 METHODS OF SOURCE SELECTION

- 02-201.01 *Competition.* Fair and open competition reduces the opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically.

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Since the marketplace is different for various supplies, services and construction items this Policy authorizes a variety of source selection techniques designed to provide the best competition for all types of purchasing. It also permits less formal competitive procedures where the amount of the contract does not warrant the expense and time otherwise involved.

02-201.02 *Purchasing Methods.* Unless otherwise deemed in the best interest of the City all City contracts shall be awarded by one of the following methods: 02-202 Competitive Sealed Bidding; 02-203 Competitive Sealed Proposals; 02-204 Small Purchases; 02-205 Sole Source Purchasing; 02-206 Emergency Purchasing; 02-207 Special Purchases; and 02-208 Purchasing Consultative and Professional Services including Legal, Architectural and Engineering Services.

02-202 COMPETITIVE SEALED BIDDING

02-202.01 *General.* Competitive Sealed Bidding does not permit discussions with competing bidders and changes in their bids including price; and does not allow comparative judgmental evaluations to be made when selecting among acceptable bids for award of the contract. Alterations in the nature of a bid, and in prices, may not be made after bids are opened (except to the extent allowed in the first phase of multi-step sealed bidding). Unless it is anticipated that a contract can be awarded solely on the basis of information submitted by bidders at the time of opening, Competitive Sealed Bidding is not practicable or advantageous. Competitive Sealed Bidding is not practicable unless the nature of the procurement permits award to a low bidder who agrees by its bid to perform without condition or reservation in accordance with the purchase description, delivery or performance schedule, and all other terms and conditions of the Invitation for Bids. Competitive Sealed Proposals may be used if it is determined that it is not advantageous to the City, even though practicable, to use Competitive Sealed Bidding.

02-202.02 *Invitation for Bids.* Invitation for Bids shall include a purchase description and all contractual terms and conditions applicable to the purchase.

02-202.03 *Public Notice.* Adequate public notice of the Invitation for Bids shall be given a reasonable time prior to the date set for the opening of bids. Reasonable steps shall be taken to ensure that local businesses (businesses that maintain their principal office and place of business in the City) qualified to provide required supplies, services and construction are notified of relevant solicitations.

02-202.04 *Bid Opening.* Bids shall be opened publicly at the time and place designated in the Invitation for Bids.

02-202.05 *Bid Acceptance and Evaluation.* Bids shall be unconditionally accepted without alteration or correction except as otherwise authorized in this Policy. Bids shall be evaluated based on the requirements in the Invitation for Bids. The Invitation for Bids shall include the requirements and criteria which will be used to determine the

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lowest responsive bidder.

- 02-202.06 *Correction or Withdrawals of Bids: Cancellation of Awards.* Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the City or fair competition shall be permitted.
- 02-202.07 *Award.* The contract is to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria in the Invitation for Bids.
- 02-202.08 *Multi-Step Sealed Bidding.* When it is considered impractical to initially prepare a purchase description to support an award based on price, an Invitation for Bids may be issued requesting the submission of unpriced offers to be followed by an Invitation for Bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.
- 02-203 COMPETITIVE SEALED PROPOSALS
- 02-203.01 *General.* Competitive Sealed Proposals permit discussions with competing offerors and changes in their proposals including price; and allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of the contract. Competitive Sealed Proposals alterations in the nature of a proposal, and in prices, may be made after proposals are opened. Where evaluation factors involve the relative abilities of offerors to perform, including degrees of technical or professional experience or expertise, use of Competitive Sealed Proposals is the appropriate purchasing method. Where the types of supplies, services or construction item may require the use of comparative judgmental evaluations to evaluate them adequately, use of Competitive Sealed Proposals is the appropriate method.
- 02-203.02 *Requests for Proposals.* Proposals shall be solicited through a Request for Proposals.
- 02-203.03 *Public Notice.* Adequate public notice of the Request for Proposals shall be given in the same manner as for Competitive Sealed Bids. Reasonable steps shall be taken to ensure that local businesses (businesses that maintain their principal office and place of business in the City) qualified to provide required supplies, services and construction are notified of relevant solicitations.
- 02-203.04 *Receipt of Proposals and Evaluation.* Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. Request for Proposals shall state all of the evaluation factors, including price, and their relative importance.
- 02-203.05 *Discussions with Responsible Offerors and Revisions to Proposals.* Discussions

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may be conducted with responsible offerors who submit proposals that are acceptable or potentially acceptable for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. Auction techniques (revealing one offeror's price to another) and disclosure of any information derived from competing proposals are prohibited.

02-203.06 *Award.* Award shall be made to the responsible offeror whose proposal conforms to the solicitation and is determined to be the most advantageous to the City taking into consideration price and the evaluation factors in the Request for Proposals.

02-204 SMALL PURCHASES

02-204.01 *General.* The City Manager shall establish (see Purchase Agreements Policy) small purchase limits that are practicable, provide that competition is obtained and that the small purchase system is not abused. Purchase requirements shall not be artificially divided so as to constitute a small purchase. Reasonable steps shall be taken to ensure that local businesses (businesses that maintain their principal office and place of business in the City) qualified to provide required supplies, services and construction are notified of relevant solicitations.

02-205 SOLE SOURCE PURCHASES

Sole Source procurement is not permissible unless a requirement is available from only a single supplier. In cases of reasonable doubt, competition should be solicited. The City shall conduct negotiations, as appropriate, as to price, delivery, and terms.

02-206 EMERGENCY PURCHASES

An emergency condition is a situation which creates a threat to public health, welfare, or safety. The existence of such condition creates an immediate and serious need for supplies, services or construction items that cannot be met through normal purchasing methods and the lack of which would seriously threaten the functioning of City government; the preservation or protection of property; or the health or safety of any person. Emergency purchases shall be limited to those supplies, services and construction items necessary to meet the emergency. Such competition as is practicable shall be obtained.

02-207 SPECIAL PURCHASES

The City may initiate a purchase above the small purchase amount where it is determined that an unusual or unique situation exists that makes the application of all requirements of Competitive Sealed Bidding (02-202) or Competitive Sealed

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Proposals (02-203) contrary to the public interest. Any special purchase shall be made with such competition as is practicable under the circumstances.

02-208 PURCHASING CONSULTATIVE AND PROFESSIONAL SERVICES INCLUDING LEGAL, ARCHITECTURAL AND ENGINEERING SERVICES

02-208.01 *General.* It is the policy of the City to negotiate consultative and professional services including legal, architectural and engineering services contracts on the basis of demonstrated competence and qualification for the type of service required at fair and reasonable prices.

02-208.02 *Discussions and Selection of the Most Qualified Firms.* The City shall hold discussion with the firms selected regarding the proposed contract in order to: determine each firm's general capabilities and qualifications for performing the contract; and explore the scope and nature of the required services and the relative utility of alternative methods of approach. After discussions the City shall reevaluate and select, in order of preference, contractors which it deems to be the most highly qualified to provide the required services.

02-208.03 *Negotiation of Contract.* The City shall negotiate a contract with the most qualified firm for the required services at compensation determined to be fair and reasonable to the City. Contract negotiations shall be directed toward: making certain that the firm has a clear understanding of the scope of the work, specifically, the essential requirements involved in providing the required services; determining that the firm will make available the necessary personnel and facilities to perform the services within the required time; and agreeing upon compensation which is fair and reasonable, taking into account the estimated value, scope, complexity, and nature of the required services. If fair and reasonable compensation, contract requirements, and contract documents can be agreed upon with the most qualified firm, the contract shall be awarded to that firm.

02-301 QUALIFICATIONS AND DUTIES

02-301.01 *Determination of Nonresponsibility.* A bidder or offeror shall supply information requested by the City in order to make a determination concerning their responsibility. If a bidder or offeror fails to supply the requested information, the City shall base the determination of responsibility upon any available information or may find the bidder or offeror nonresponsible.

02-301.02 *Prequalification of Suppliers.* Prospective contractors may be prequalified for particular types of supplies, services and construction items. Reasonable steps shall be taken to ensure that local businesses (businesses that maintain their principal office and place of business in the City) qualified to provide required supplies, services and construction are notified of relevant solicitations.

02-301.03 *Substantiation of Offered Prices.* The City may request factual information

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reasonably available to the bidder or offeror to substantiate that the price or cost offered, or some portion of it, is reasonable, if the price is not based on adequate price competition, based on established catalogue or market prices or set by law or regulation.

02-401 TYPES OF CONTRACTS

Any type of contract which will promote the best interests of the City may be used provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited.

03 SPECIFICATIONS

03-101 PURPOSE

03-101.01 *General.* The purpose of a specification is to serve as a basis for obtaining supplies, services and construction items that are adequate and suitable for the City's needs in a cost effective manner, taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs. It is the policy of the City that specifications permit maximum practicable competition consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the City's requirements.

03-101.02 *Preference for Commercially Available Products.* It is the general policy of the City to purchase standard commercial products whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided, to the extent practicable.

03-201 REQUIREMENTS OF NONRESTRICTIVENESS

All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the City's needs, and shall not be unduly restrictive. All specifications shall be written in such a manner as to describe the requirements to be met, without having the effect of exclusively requiring a proprietary supply, service, or construction item, or procurement from a sole source, unless no other manner of description will suffice.

04 SUPPLY MANAGEMENT

04-101 SUPPLY MANAGEMENT AND DISPOSITION

The objectives of supply and equipment management include preventing waste; continuing utilization of supplies and equipment; and obtaining a fair return of value upon disposal of supplies (tangible personal property owned by the City) and equipment.

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04-201 DISPOSITION OF SURPLUS SUPPLIES

04-201.01 *General.* Surplus supplies and equipment shall be offered through competitive sealed bids, public auction, established markets, or posted prices. It is recognized, however, that some types and classes of items can be sold or disposed of more readily and advantageously by other means, including barter.

04-201.02 *Transfer of Excess and Surplus Supplies.* Insofar as feasible and practical the City may transfer excess supplies to other units of government or charitable organizations as defined by existing law. The price of the supply transferred shall be the fair market price based, where possible, on previous sales of similar products in the open market or on an appraised value and shall be approved by the City Manager. When a supply is transferred the City may require the recipient to not transfer title or otherwise dispose of the supply within a specified period of time without prior approval of the City Manager.

05 INTERGOVERNMENTAL RELATIONS

The City may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services, or construction with one or more government entities.

06 ETHICS IN PUBLIC CONTRACTING

Public employment is a public trust. City employees must discharge their duties impartially so as to assure fair competitive access to City purchasing by responsible contractors. Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of a City employee's duties is a breach of a public trust. Any effort to influence any City employee to breach the standards of ethical conduct is also a breach of ethical standards.