

PURCHASING POLICY

Sec. 1 PURCHASING POLICY ESTABLISHED: In accordance with provisions of the Charter and Code of Ordinances of the City of Lewiston, Maine, the Finance Committee, with the approval of the City Council, hereby establishes this Purchasing Policy to set forth the duties and responsibilities of the Finance Director or his/her designee and establishes purchasing procedures.

Sec. 2 DEFINITIONS: For the purpose of this policy, the following terms, phrases, words and derivations shall have the meaning given herein unless the context in which they are used clearly requires a different meaning.

- 2.1 PURCHASING:** Purchasing includes purchasing, renting, leasing or otherwise obtaining supplies or services.
- 2.2 SUPPLIES:** Supplies shall mean and include all supplies, materials and equipment.
- 2.3 SERVICES:** Services shall mean and include all laundry and cleaning service, insurance, leases or rentals of all grounds, buildings, offices, space or equipment required by the using agency, or leased or rented by the City to others, the repair or maintenance of real property owned by, or the responsibility of the City, infrastructure repair, replacement or construction, building construction, building repair or renovation.
- 2.4 USING AGENCY:** Using agency shall mean any department, division, agency, committee or other units in the City government excluding self-governed joint entities, using supplies or procuring services.
- 2.5 RESPONSIVE:** Bid is submitted in the required format and with the appropriate bid security when required by the bid documents.
- 2.6 RESPONSIBLE BIDDER:** Bidder has the ability and resources to perform the work called for in the bid documents. Further defined in Section 3.1.6.1 Lowest Responsible Bidder.
- 2.7 PUBLIC EXIGENCY:** Sudden and unexpected happening requiring immediate attention.
- 2.8 NON-FEDERAL ENTITY:** 2CFR 200.69 Means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or sub-recipient.

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2.9 RECIPIENT: 2 CFR 200.86 Means a non-federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program.

2.10 PASS THROUGH ENTITY: 2 CFR 200.74 Means a non-Federal entity that provides a sub-award to a sub-recipient to carry out part of a federal program.

Sec. 3 PURCHASING PROCEDURES: The Finance Director or his/her designee shall be responsible to supervise the purchase or contracting of all supplies and contractual services requisitioned by any City Department or its divisions in accordance with purchasing procedures prescribed herein.

3.1 FORMAL COMPETITIVE BIDS: All supplies and contractual services except as otherwise provided herein, when the estimated cost thereof shall exceed twenty-five thousand dollars (\$25,000), shall be purchased by formal competitive bids from the lowest responsible bidder, after due notice inviting proposals.

3.1.1 PREPARATION: Preparation of the invitation for bids shall describe the requirements of the City clearly, accurately, and completely, but avoid unnecessarily restrictive specifications or requirements which might unduly limit the number of bidders. For Federally funded construction projects, an independent cost or price analysis must be performed with each procurement action, including each contract modification, where the cumulative amount of the original contract modifications exceeded the Simplified Acquisition Threshold (currently set at \$150,000). All responding bidders, regardless of monetary threshold, must provide their DUNS number in order to be considered a responsible bidder and such language must be included in request for proposal language.

3.1.2 NOTICES: Notices inviting bids shall be prominently displayed on a public bulletin board in the City building, on the City's website "Bid Specs and Awards" page, and shall be made available on request to news media. When deemed appropriate, or otherwise required, the Finance Director or designee shall place an advertisement in a local newspaper of general circulation in Lewiston and other newspapers or publications.

3.1.2.1 SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS:

All necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are included in all bid notifications shall be made. Further, bid specifications shall require language requiring the same affirmative steps of contractors who subcontract.

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- 3.1.3 BID DEPOSITS:** Bid bonds will be required on all construction projects when the estimated value of work to be done exceeds \$50,000 or when deemed necessary by the Finance Director or designee or required by federal regulations, and that said bid deposits shall be prescribed in the public notice inviting bids. Bid deposits shall be a minimum of ten (10%) percent for bids under \$500,000. Surety of the unsuccessful bidders shall be returned by the Director after the bid has been awarded. A successful bidder shall forfeit any surety required by the Director upon failure of bidder to enter into a contract within ten (10) days after the award.
- 3.1.4 PERFORMANCE AND PAYMENT BONDS:** When the estimated value of work to be done is in excess of \$100,000 or, when deemed necessary by the Finance Director or designee, a 100% performance bond and payment bond will be required and shall be prescribed in the public notice inviting bids or proposals.
- 3.1.5 BID OPENING PROCEDURE:** Bids shall be submitted to the Director and shall be identified as bids on the envelope. Openings shall be in public at the time and place stated in the public notices. A record shall be kept by the Director of all bids submitted and such record shall be open to public inspection during regular business hours.
- 3.1.6 AWARDS OF CONTRACT:** Upon recommendation of the Director, all formal bids shall be awarded by the Finance Committee.
- 3.1.6.1 LOWEST RESPONSIBLE BIDDER:** Contracts shall be awarded to the lowest responsible bidder. In addition to price, the following shall be considered in determining the lowest responsible bidder:
- 1.) The ability, capacity and skill of the bidder to perform the contract or provide the service required;
 - 2.) Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
 - 3.) The character, integrity, reputation, judgement, experience and efficiency of the bidder;
 - 4.) The quality of performance of previous contracts or services;
 - 5.) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;
 - 6.) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the services;
 - 7.) The quality, availability and adaptability of the supplies or contractual services to the particular use required;

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- 8.) The ability of the bidder to provide maintenance and service for the use of the subject of the contract; and
- 9.) The number and the scope of conditions attached to the bid.

When federally funded bids contain a variety of criteria to be evaluated, the selection process should include a matrix ranking the criteria by weight of importance. Evaluation and ranking criteria must be included in the RFP to prospective bidders

Prior to the award of any Federal funded bids, the Director's designee will check www.SAM.gov to confirm that the low bidder is not on the federal debarred or ineligible contractors list. Ineligible or debarred bidders cannot be awarded federally funded project contracts.

3.1.6.2 AWARD TO OTHER THAN LOW BIDDER: When the award is not given to the lowest bidder, a statement of reasons for placing the bid elsewhere shall be prepared and filed with the papers relating to the transaction.

3.1.6.3 PREFERENTIAL TREATMENT: Local vendors shall only be granted preferential treatment when all bids received are for the same total amount or on a unit cost basis reflect the same pricing with quality and service being equal.

3.1.6.4 TIE BIDS:

- A. Non-Federal funded bids: if all bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded first to a local bidder and second to an in-state bidder. If neither of the above applies, the contract shall be awarded to one of the tie bidders by drawing lots in public.
- B. Federal funded bids: If all bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded first to any identified local disadvantaged business and, if none, then by public drawing of lots to decide who receives the bid award.

3.1.6.5 REJECTION OF BIDS: The Finance Committee, upon recommendation of the Director or designee, shall have the authority to reject any and all bids when bids are deemed non-responsive, token, collusive or otherwise non-acceptable, and such action is in the best interest of the City.

3.1.6.6 CONFLICT OF INTEREST: Each bidder is required to state in his/her proposal his/her name and place of residence and the names of all persons or parties interested as principals with him/her, and that the proposal is made without

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any connection with any other bidder making any proposal for the same work, and that no person acting for, appointed by, or employed by the City of Lewiston is directly or Indirectly interested in the proposal or in any contract which may be entered into to which the proposal relates, or in any portion of the profits therefrom, except as provided by the City Charter. A statement of conflict or non-conflict should accompany all bids.

- 3.2 EMERGENCIES:** When the public exigency will not permit the time necessary to advertise and seek responsive bids, the City Administrator, acting with the advice of the Director, may authorize immediate negotiated purchases of supplies or services necessary to protect the best interest of the City. Awards done as emergencies shall be documented and forwarded to the Finance Committee.
- 3.3 FORMAL COMPETITIVE BIDS IMPRACTICAL:** Services for which it is impractical or impossible to obtain competition because of the specialized and professional nature of these services, their purchase shall be effected in accordance with the procedures set forth.
- 3.3.1 “WAIVER OF COMPETITION”:** Waivers may be authorized by the Finance Committee when the services or items are:
- 1.) A single source item;
 - 2.) Must meet compatibility requirements with existing equipment owned by the City or by a contracted third party;
 - 3.) A specialized service with only one vendor available; or
 - 4.) A product or service is unique and easily established as one of a kind.
 - 5.) A public exigency or emergency for the requirement did not permit a delay resulting from competitive solicitation
 - 6.) The Federal Agency awarding the grant or pass through federal entity expressly authorized noncompetitive proposals in response to a written request from the non-federal entity.
 - 7.) In the City’s best interest for bid pricing from a Federal, State, or other Competitive Purchasing Cooperative Organization.
- 3.3.2 “DOCUMENTATION”:** The Director or his/her designee will document such waiver in as much detail as possible to show justification for each waiver.
- 3.3.3 “AUTHORIZATION”:** After review of criteria and of documentation, the Finance Committee may authorize a waiver of competition.
- 3.3.4 FEDERAL GRANT SUB-RECIPIENT DESIGNATION:** For projects to be paid for in whole or in part with Federal Grant funds where a specific entity is

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being considered, staff must make a determination between Federal Grant sub-recipient and Contractor (vendor) status using the Federal Governments resources. Sub-recipient designated entities are prohibited from also being awarded a contract for the same grant they were designated sub-recipient status.

The Director or designee shall document any sub-recipient designations for services to be communicated to the Finance Committee.

- 3.4 NEGOTIATION PROCEDURES AND POLICIES:** Negotiated procurements shall be a competitive basis to the maximum practical extent. Whenever supplies or services are procured by negotiation, price quotation or other evidence of reasonable prices and other vital matters deemed necessary by the Director/designee shall be solicited from the maximum number of qualified sources of supplies or services, consistent with the nature of and requirements for the supplies or services to be purchased, in accordance with the basic policies set forth below.
- 3.4.1 DECENTRALIZED PURCHASES:** At the discretion of, and subject to, the review and approval of the Director/designee, department heads or their authorized representatives may make purchases in amounts not to exceed \$2,000. The Director shall issue such rules and regulations and prescribe such forms as deemed necessary to control such purchases. The Director/designee may also permit exceeding this monetary limitation in those instances where price, terms, conditions and/or contractors have been predetermined by establishing open-end (estimated requirement type) contracts.
- 3.4.2 PURCHASING CARD PROGRAM:** Upon the recommendation of a department head, and subject to, the review and approval of the Director, department employees may make purchases using a City of Lewiston purchasing card. The amount of any one purchase shall not exceed \$1,000 per transaction. The Director shall issue such rules and regulations and may prescribe such forms as deemed necessary to control such purchases. The purchasing card shall be used for the sole benefit of the City of Lewiston.
- 3.4.3 PURCHASES - NOT TO EXCEED \$2,000:** When the Director or designee considers prices to be fair and reasonable and the total amount of a purchase does not exceed \$2,000, procedures and documentation will be simplified to the maximum degree possible. The Director/designee shall establish such rules of procedure for such purchase as necessary to insure against abuse of the public's best interest. Note: Staff will continue to monitor transaction activity to ensure compliance.

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- 3.4.4 PURCHASES - \$2,000 - \$25,000:** Negotiated purchases exceeding \$2,000 but not exceeding \$25,000 in total cost will be supported by a record of price quotation from at least three (3) competitive sources or adequate explanations justifying the absence of such competition. Such quotation may be obtained in writing, verbally, or by such other means as may be prescribed by the Director or his/her designee as appropriate to the circumstances.
- 3.5 AUDITING, ARCHITECT, ENGINEER, AND CONSULTANT SERVICES - POLICY AND PROCEDURES:** It is the policy of the City to publicly announce all requirements for such services and to award contracts on the basis of demonstrated competence and qualifications for the type of professional services required, the technical merits of offers and the price for which services are to be rendered.
- 3.5.1 FEES:** Sealed fee statements shall be submitted at the same time as the proposal. No municipal contracts shall be awarded wherein the fee is stated as a percentage of the project cost. The preferred method of establishing a fee shall be that of a firm fixed fee. Other methods may, at the discretion of the Director, be employed if it is impossible to arrive at a firm fixed fee.
- 3.5.2 SELECTION:** The Director or his/her designee shall request firms engaged in the lawful practice of their profession to submit a statement of qualifications and performance data.
- 3.5.2.1 AUDITING:** If the anticipated fee exceeds \$50,000, the data shall be evaluated by the City Finance Committee. The Finance Committee shall conduct discussions with firms regarding their qualifications and audit methods of approach for furnishing the required services, and then shall select there from, firms deemed to be adequately qualified to provide the services required. Once the adequately qualified firms have been established, the City Finance Committee shall open the sealed fee statements of the firms deemed to be adequately qualified. It should be the practice that the contract will be awarded to the qualified firm with the lowest bid.
- 3.5.2.2 ARCHITECT, ENGINEER, AND CONSULTANT SERVICES:** If the anticipated fee exceeds \$25,000, the RFP and selection process shall be done in compliance with the “Brooks Act” which is hereby appended to the Purchasing Policy. The responses shall be evaluated by a Selection Review Committee consisting of the Director of the Department most directly involved in the required service (or that Director’s designee), two (2) members of the Finance

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Committee with one being a City Councilor, and a minimum of two (2) other individuals to be recommended by the City Administrator from members of City Staff, appointed members of other Boards and Commissions, and/or the general public who possess skills, knowledge, or abilities applicable to the project, and appointed by the Finance Committee. The Selection Review Committee shall conduct discussions with qualifying firms regarding anticipated scope of services and alternative methods of approach for furnishing the required services. The Selection Review Committee will rank the firms. The fee statement of the highest rated firm will be recommended to the Finance Committee for award of contract including a negotiated fee if applicable.

- 3.5.3 INSURANCE AND BONDS:** All firms selected as being adequately qualified must provide evidence of insurance covering their entire scope of operation for any “error or omissions” resulting from their endeavors. The amounts of such insurance coverage shall be commensurate with the magnitude of the project under consideration and shall be established by the Director/designee. Should timely performance be a matter of importance to the City, the firm selected may be requested to furnish an acceptable performance bond and/or such other form of surety as may be mutually agreed upon to insure adherence to a mutually agreed upon time schedule.
- 3.5.4 RECOMMENDATION OF CONTRACT FROM SELECTION REVIEW PROCESS:** Once the Selection Review Committee ranked firms, the Committee may negotiate with the top ranked firm and make a recommendation to the Finance Committee. The Finance Committee shall receive all documentation regarding the selection.
- 3.5.5 SMALL PROJECTS:** In those instances where the fee does not exceed \$25,000, the procedures outlined in Section 3.5.2.2 may be simplified by the Director after consultation with the City Administrator, selecting from no less than three (3) adequately qualified firms for the purpose of making an award. A complete record of the reasons for recommending a firm shall be part of the record reviewed by the Finance Committee if the contract exceeds \$25,000.
- 3.6 AWARD:** All contracts where the fee exceeds \$25,000 shall be reviewed and awarded by the Finance Committee.
- 3.7 AMENDMENTS TO CONTRACTS:** Amendments to contracts may be authorized by the Finance Committee when it can clearly document that the additional services are part of the original intent of the base contract and are made necessary by changes not known at the time of the base contract.

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- 3.8 DISQUALIFICATION OF BIDDERS:** The Finance Committee may authorize the disqualification of a bidder/vendor from bidding on City contracts for up to twelve (12) months upon the formal recommendation of the Director and in accordance with procedures set forth.
- 3.8.1 CITY DEPARTMENT OR CONSULTING, ENGINEER REQUEST DISQUALIFICATION OF BIDDER/VENDOR:** for one or more of the following:
- 1.) Default on their bid, quotation, contract or purchase order;
 - 2.) Failure to comply with specification of contract documents;
 - 3.) Failure to supply the item as required by the specifications.
 - 4.) Documented history of poor performance.
- * The Bidder/Vendor shall be notified, in writing, by the Director or his/her designee prior to a recommendation for disqualification being forwarded to the Finance Committee.
- 3.8.2 DISQUALIFIED BIDDER/VENDOR:** may apply for reinstatement after period of disqualification has elapsed. The Director shall recommend to the Finance Committee reinstatement of any Bidder/Vendor. Under no circumstance can a bidder on the SAM.gov list be awarded a contract funded with Federal grant dollars.
- 3.8.3 BIDDER/VENDOR:** shall have the right to appeal to the City Council for a reversal or reinstatement.
- 3.9 REQUISITION:** Purchases involving the immediate encumbrance of City funds shall be made only on a written/electronic requisition submitted by the department. Purchase of less than \$2,000 will not require purchase orders.
- 3.9.1 REVISORY POWER:** The Director or his/her designee shall examine each requisition and shall have the authority to revise it as to quantity, quality or estimated cost; but revision as to quality shall be only with the concurrence of the using party or, if agreement cannot be reached, with concurrence of the City Administrator.
- 3.10 APPROPRIATION REQUIRED:** No purchase of supplies or services not provided for in the annual appropriation resolve, be made unless by specific order of the City Council. Once the purchase has been authorized by the Director or his/her designee the funds shall be immediately encumbered.

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- 3.11 UNAUTHORIZED PURCHASES:** Except as herein provided, or as may be specifically authorized by the City Council or the Director, it shall be unlawful for any City employee or official to purchase any supplies or services other than in accordance with these policies for any personal use or benefit.

Sec. 4 MISCELLANEOUS PROVISIONS

- 4.1 GIFTS AND GRATUITIES:** Officers and employees of the City are expressly prohibited from accepting from any person, firm, corporation or organization, any rebate or gift that would directly affect the purchase of goods or services for the City.
- 4.2 COOPERATIVE PURCHASING:** The Director or his/her designee shall have the authority to join other units or government (federal, state, county, municipal subdivisions, including quasi-municipal agencies) in cooperative purchasing plans when the best interests of the City would be served thereby and such action is in accordance with and pursuant to law.