

**THE CITY OF FREDERICK
BOARD OF ALDERMEN**

RESOLUTION NO. 23-05

A RESOLUTION concerning
Purchasing Policies

BACKGROUND

On November 18, 2021, via Resolution No. 21-17, the Board of Aldermen adopted new purchasing policies for the City of Frederick (the "Purchasing Policies"). Among other things, the Purchasing Policies established a minority and women business enterprise program (MWBE). The program was based on the results of a disparity study that found a statistically significant disparity between the percentage of available, qualified businesses owned by minorities and women in the relevant market and the percentage of dollars spent with such businesses by the City.

Since implementing the MWBE program, city staff have continued to evaluate the success thereof. Staff has proposed to amend the Purchasing Policies for the purpose of updating and clarifying certain aspects of the MWBE program. The Board of Aldermen finds that these amendments are in the best interests of the residents of the City of Frederick.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK, That a new document entitled "Purchasing Policies", attached hereto as Exhibit A and incorporated herein by this reference, is hereby adopted to govern the procurement of goods and services for The City of Frederick, as further described therein.


AND BE IT FURTHER RESOLVED, That the "Purchasing Policies and Procedures" of The City of Frederick, as the same were adopted on November 18, 2021, are hereby repealed and are of no further force or effect.

AND BE IT FURTHER RESOLVED, That this Resolution shall take effect on March 16, 2023.

ADOPTED AND APPROVED THIS 16th DAY OF MARCH, 2023

WITNESS




_____ **Michael C. O'Connor, Mayor**

Reviewed and approved for legal sufficiency:


_____ **City Attorney**

THE CITY OF FREDERICK PURCHASING POLICIES



FREDERICK

PURCHASING

**Mayor and Board of Aldermen of The City of Frederick
FREDERICK, MARYLAND**

**Approved
Resolution No. 23-05**

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MISSION STATEMENT

The mission of the Purchasing Department is to receive the maximum value for the taxpayer's dollar by obtaining goods and services at the best possible price and quality while assuring that all businesses have a fair and equal opportunity to participate in City procurement. In addition, the department strives to provide the highest quality of service to all City staff; conduct all purchasing duties in accordance with all applicable Federal, State and Local laws; to develop mutually beneficial relationships with all vendors; and to ensure that all purchasing personnel conduct their duties with the highest degree of ethical behavior.

FUNCTIONS

Purchasing Department functions include procurement of a variety of commodities and services, preparation of bid documents, facilitation of pre-bid conferences, evaluation of bid responses and the preparation of purchase orders. The department conducts assigned research and develops recommendations of purchasing feasibility and contract placement.

The Purchasing Department also oversees the disposition of surplus; maintains and operates a central supply warehouse of approximately 3,000 items; handles receiving, delivery, and shipping for the City; invoice payment; registration of City vehicles; ordering and receiving of City uniforms; ordering and receiving of City cell phones; management of the City fuel system and operation of the City mail facility.

SECTION I – GENERAL INFORMATION

A. INTRODUCTION

The Purchasing Policies are designed to explain and facilitate understanding of the functions of the Purchasing Department. Additionally, they will serve as a tool in personnel training.

1. Applicability

Policies contained herein are applicable to all City personnel involved in the requisitioning, receiving, transferring and replacement of supplies, materials, services, and equipment.

2. Responsibility and Functions

The Purchasing Department is responsible for administering The City of Frederick Purchasing Policies as approved by the Mayor and Board of Aldermen; establishing and administering purchasing policies; dealing fairly with all potential sources of supply; obtaining goods and services in an efficient and businesslike manner; consolidating purchases of like or common items; obtaining fair prices for materials, equipment, supplies and services; and generally defining how to effect cost saving and coordinate purchasing and contracting procedures for the City.

The primary function of the Purchasing Department is to purchase supplies, materials, equipment, and services required by the City and to ensure that maximum value is achieved for each dollar spent.

Specific responsibilities, duties, and functions include:

- a. Policies and Procedures: Develop purchasing objectives, policies, programs, and procedures for the purchase of (and contracting for) all materials, supplies, equipment, and services.
- b. Representation: Act as the City's representative on matters pertaining to purchasing and contracts.
- c. Specifications: The Purchasing Department will work with the using department/division to prepare and assemble specifications and technical requirements which are subsequently included in Invitations for Bid, Requests for Proposals, Requests for Information, and/or Requests for Qualifications.

The Purchasing Department will assist the using department/division in ascertaining the appropriate quality, quantity, and kind of materials requisitioned in order to serve the best interests of the City and ultimately determine the best method of acquisition.

- d. Standardization: Work with other departments/divisions to establish standardization of materials, supplies, and equipment where practicable within a competitive environment.
- e. Vendor Relations: Promote goodwill between the City and its suppliers. Encourage full and open competition. Assure fair and equitable business dealings with all vendors. All bidders shall be afforded equal opportunity to quote and compete in public bidding.

The City will avoid buying from suppliers who are not financially stable, do not have high ethical standards, and do not have a record of adhering to specifications, maintaining shipping promises, or giving full measure of service.

The City strives to maintain strong and enduring relationships with vendors of proven ability and those who desire to meet our needs. To accomplish this, our purchasing activities are conducted in such a manner that all vendors are treated equally, and awards are always based on specifications, quality, service, and price.

In interviews with salespersons, only employees of the Purchasing Department may commit the City to a preference for or purchase of any product or service, or give any information regarding performance or price, which might in any way compromise the City.

All correspondence with suppliers is to be through the Purchasing Department, except in special cases where the technical details involved make it advisable to delegate authority to others. In such cases, the Purchasing Department must receive copies of all correspondence.

All employees must comply with the City's Ethics Ordinance at all times.

- f. Purchasing Analysis: Keep informed of current developments in the field of purchasing, including but not limited to prices, market conditions and new products. Secure for the City the benefits of research conducted in the field of purchasing by other governmental jurisdictions, national technical societies, trade associations, and private businesses and organizations.

3. Procedures:

The following procedures shall govern the procurement of goods and services for the City.

All requests for goods and/or services and all purchases will be made through and by the Purchasing Department unless otherwise specified herein. In some instances, authority to request prices may be delegated to others.

Like purchases shall be combined for bidding and quantity discount pricing.

No contract, purchase, or group of requisitions shall be subdivided to avoid bid and quotation requirements.

A City employee may not order the purchase of any materials, supplies, equipment, or contractual services; or make any contract, other than through the Purchasing Department without prior written authority or as specifically delegated herein.

In cases of Emergency Purchases or extenuating circumstances, an exception to the above policy may be made under the provisions contained in Section III, Item H.

B. DEFINITIONS

Addendum: a written statement, which clarifies, corrects, or changes the bidding documents or the contract documents.

Agricultural Bio-Based Products: commercial or industrial products (other than food or feed) that utilize agricultural crops or residues but does not include products made from forestry materials.

Amendment: an addition to, deletion from, correction or modification of a solicitation or contract/agreement.

Annual Aspirational Goal: a non-mandatory annual aspirational percentage goal for overall MWBE Prime and Subcontractor participation in City contracts for Construction, Architecture and Engineering, Professional Services, Other Services, and Goods and Services contracts.

Architectural Services: professional or creative work in connection with the design and supervision of construction or alteration of a building or its parts, requiring architectural education, training, and experience in consultation, investigation, evaluation, planning, architectural design and preparation of related documents, and coordination of services furnished by structural, civil, mechanical, electrical engineers, and other consultants.

Award: the acceptance of a bid, offer, or proposal by the proper authority.

Bay-Friendly Landscaping: working with the natural ecosystems of the Chesapeake Bay area to foster soil health, to reduce runoff and pollution, prevent and reuse plant waste, conserve water and other natural resources.

Best Value: a technique, in a competitive bid/quote process, which permits the evaluation of objective criteria in addition to price to determine the best overall value to the City.

Bid: a formal price offer submitted by a prospective vendor to furnish specific goods and/or services to the City in response to an Invitation for Bid (IFB).

Bid Bond: insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the bidder will not withdraw the bid. The bidder will furnish bonds as required.

Bidder: a person who submits a response to an invitation for bids.

Blanket Purchase Order: a purchase order whereby a vendor provides to the City supplies, or services including maintenance work on demand or on a prescribed schedule, which shall not exceed a period of 12 consecutive months. A blanket purchase order may be used as a release and encumbrance document to authorize the City to order on an as-needed basis a predetermined amount of supplies, services, or construction work from an indefinite quantity contract.

Capital Improvement Project: any public improvement undertaken by the City, including the construction or reconstruction, in whole or in part, of any building, plant, structure, road or other facility necessary in carrying out the activities of the City government.

Capital Outlay: Capital Outlay are those assets purchased by the City having a utility which extends at least three years and estimated to be valued at or in excess of \$5,000.00.

Change Order: a written order issued on or after the effective date of the Contract/Agreement to correct errors, omissions, or discrepancies in purchase orders, to cover acceptable overruns and freight costs, incorporate requirements to expand or reduce the scope of commodities or services ordered, or to meet unforeseen field, regulatory or market conditions in accordance with the change order clause of a construction contract and signed by the authorized City personnel and Contractor.

Check Request: a request for the Finance Department to issue a check in payment of certain specific expenditures.

City: The City of Frederick.

City Business: a business entity that (i) For at least one year immediately preceding the issuance of the relevant request for quotes or formal solicitation, has its headquarters, a manufacturing facility, a locally owned franchise, or an operating branch physically located within the City; (ii) For the most recent tax year, has paid all business or real property tax due to the City; and (iii) Will use only subcontractors who meet the criteria of (i) and (ii).

Chlorine free: products processed without chlorine or chlorine derivatives.

Collusion: a secret agreement or cooperation for an illegal or deceitful purpose related to a bid. Also known as “bid rigging.” These acts are expressly illegal and forbidden.

Commodities: all personal property, including but not limited to supplies, goods, equipment, materials, and printing, which are purchased, leased, or otherwise contracted for by the City.

Commodity Codes: a system of words and numbers designed to identify and list commodities or services by class and sub-class.

Construction: the process of building, improving, altering, or demolishing improvements. Construction shall not include the operation, repair, or maintenance of improvements.

Consultant: a person who agrees to provide certain services under a contract with the City. He/she works according to their own methods, is not subject to the direction and control of the City, except as to the results of the work, does not receive a salary from the City, does not accrue annual or sick leave, frequently does the majority of the work in their own office instead of in a City office, and does not receive City benefits.

Contract: any agreement enforceable by law between the City and one or more outside parties, regardless of form or title, for the procurement of materials, services or construction or the disposal of materials.

Contract Amendment: any written alteration to the terms and conditions of any contract accomplished by mutual action of the parties of the contract.

Contractor: any person having a contract with the City.

Contractual Services: the rendering by a contractor of its time and efforts rather than the furnishing of specific commodities, supplies, materials, goods, equipment, and other personal property. The term applies only to those services rendered by individuals and firms who are independent contractors.

Cooperative Purchases: formal procurement conducted by or on behalf of more than one governmental entity, typically resulting in multiple awarded contracts.

Cooperative Purchasing: procurement conducted by, or on behalf of, more than one public procurement entity.

Days: calendar days unless otherwise specified.

Designee: a duly authorized representative of another person.

Dioxins and furans: a group of chemical compounds that are classified as persistent, bio accumulative and toxic by the Environmental Protection Agency.

Discussions: communication with an offeror, bidder, or respondent for the purpose of:

1. eliminating minor irregularities, informalities, or apparent clerical mistakes in the offer or response;
2. clarifying any offer or response to assure full understanding of, and responsiveness to, solicitation requirements;
3. resolving minor variations in contract terms and conditions; or
4. establishing the competency or financial stability of any offeror, bidder, or respondent.

Electronic: electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

Emergency: shall exist when a breakdown in machinery occurs and/or a threatened termination of essential services or a dangerous condition develops, or when unforeseen circumstances arise causing curtailment, diminution, or delay of an essential service.

Encumbrance: the act of setting aside budget dollars for an expected purchase in order to show the user an accurate up to the minute available budget balance. For example, if you had a total budget of \$500.00 and had \$100.00 left, then you ordered a \$70.00 item; the budget balance would reflect that only \$30.00 was available, even though a bill for the \$70.00 had not been paid yet.

Energy Star: the U.S. EPA's energy efficiency product labeling program.

Energy Efficient Product: a product that is in the upper 25% of energy efficiency for all similar products, or that is at least 10% more efficient than the minimum level that meets Federal standards.

Engineering Services: professional or creative work in connection with public or private utilities, structures, buildings, machines, equipment and processes for projects requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical and engineering sciences to such professional service or creative work as consultation, investigation, evaluation, planning, design, and supervision of construction for the purpose of assuring compliance with specifications and design.

Evaluation Committee: group of persons selected to rank, in preferential order, those professional firms or individuals interested in providing services on a particular project and to negotiate a final contract with the highest ranked firm.

Federal Energy Management Program: a program of the Department of Energy that issues a series of *Product Energy Efficiency Recommendations* that identify recommended efficiency levels for energy-using products.

Forest Stewardship Council: a global organization that certifies responsible, on-the-ground forest management according to rigorous standards developed by a broad variety of stakeholder groups.

Formal Bid Process: the use of an Invitation for Bids or Request for Proposals pursuant to this policy.

Good Faith Efforts: the voluntary actions of a Bidder or Participant undertaken in good faith to ensure that it does not discriminate in its contracting practices and to explain any failure to meet a contract Goal set in accordance with the relevant City policies or legislation.

Goods: any tangible personal property other than services or real property.

Governmental Agency: any agency of the Federal, State, or local government.

Improvements: any structure, building, street, utility, or other valuable addition to real property amounting to more than mere repairs or partial replacement and intended to enhance its value or utility or to adapt it for new or further purposes.

Indefinite Quantity Contract: a master contract for completion of a project or provision of services or materials on an as-needed basis establishing all terms and conditions requested by the City except those contained in the task (work) orders to be issued pursuant to the indefinite quantity contract.

Indemnify: to protect against hurt of loss.

Integrated Pest Management (IPM): an ecosystem-based strategy that focuses on long-term prevention of pests or their damage through a combination of techniques such as biological control, habitat manipulation, modification of cultural practices, and use of resistant varieties. Pesticides are used only after monitoring indicates they are needed according to established guidelines, and treatments are made with the goal of removing only the target organism. Pest control materials are selected and applied in a manner that minimizes risks to human health, beneficial and non-target organisms, and the environment.

Inventory: goods in stock in the Central Warehouse.

Invitation for Bid (IFB): a written solicitation for competitive sealed bids with the title, date, and time of the public bid opening; specifically defining the commodities and contractual services for which bids are sought.

Landscape Architect Services: professional or creative work such as consultation, investigation, research, planning, design, and preparation of drawings and specifications. "Landscape architect services" may also mean responsible supervision of the development of land areas when the objective is to preserve, enhance, or determine the following:

1. Proper land uses;
2. Natural land features;
3. Planting;
4. Natural and aesthetic values;
5. Settings and approaches to structure or other improvements;
6. Settings of grades and determining drainage;
7. Providing for storm drainage systems when these systems do not require the hydraulic design, structural design, or system components and are restricted to the use, when relevant, of any standards prescribed by local or State authorities; and
8. Determination of environmental problems of land, including erosion, blight, and other hazards.

LEED™ Rating System: the self-assessing system developed by the U.S. Green Building Council designed for rating new and existing commercial, institutional, and high-rise residential buildings.

Local Preference: City policy formulated in order to encourage purchases from businesses located within The City of Frederick or the State of Maryland.

Maintenance: acts of repair, replacement, or other acts necessary to keep any improvements or personal property in proper condition and good working order; to prevent decline in, failure or cessation of the existing condition of the improvement or personal property or to restore any improvement to its original condition after partial failure or destruction. This term shall not include improvements.

Materials: all personal property, including but not limited to supplies, equipment, parts, printing, and insurance; excluding, however, leases of a permanent interest in real property, securities, and financial paper.

Negotiations: an exchange of information or any form of cooperation during which the offeror and the City may alter or otherwise change the conditions, terms, and price, unless prohibited, of the proposed contract.

NIGP: National Institute of Governmental Purchasing

Per Diem Allowance: an amount of money granted to employees who are traveling to cover their meal expenses.

Performance Bond: a bond executed subsequent to award by a successful bidder, to protect the City from loss due to the bidder's inability to complete the contract as agreed.

Petty Cash: an amount of money kept secured in a given centralized location that can be used for small dollar purchases.

Piggybacking: a procedure of procuring goods or services without formal bid procedures utilizing another public entity's award of an Invitation to Bid or Request for Proposal. City procedure permits piggybacks off contracts awarded by the State of Maryland, and contracts and awarded bids by local, and state government agencies and cooperative purchasing organizations or purchasing associations and, schedules allowable by law of national government agencies such as the General Services Administration (GSA).

Postconsumer Material: a finished material which would normally be disposed of as a solid waste, having reached its intended end-use and completed its life cycle as a consumer item, and does not include manufacturing or converting wastes.

Practical: whenever possible and compatible with local, state, and federal law, without reducing safety, quality, or effectiveness and where the product or service is available at a reasonable cost in a reasonable period of time.

Pre-consumer Material: material or by-products generated after manufacture of a product is completed but before the product reaches the end-use consumer. Pre-consumer material does not include mill and manufacturing trim, scrap, or broke which is generated at a manufacturing site and commonly reused on-site in the same or another manufacturing process.

Pricing Agreement: an agreement by which procurements are conducted by or on behalf of more than one governmental body.

Procurement: the purchasing, renting, leasing or other acquisition of any materials, services, professional services, or construction. It shall also include all functions that pertain to obtaining any supplies or services (including professional services or construction), including the description of requirements, the selection and solicitation of sources and the preparation and award of contract.

Procurement Card: a credit card that has been set up with certain limits and arrangements that allows employees easier access to purchase goods and services and reduces the need for petty cash reimbursements.

Professional Services: the furnishing of labor, time, effort, or expertise by a contractor with specialized knowledge in a field, including but not limited to architecture, engineering, medicine, finance, accounting, appraisal, and land surveying.

Proposal: the documents submitted in response to an RFP to be used as the basis of negotiation, and/or to become incorporated in a contract upon acceptance by the City.

Proposer: a person who submits a proposal in response to a request for proposals.

Public Bid Opening: the process of opening and reading bids at the time and place specified in the Invitation for Bid.

Public Notice: any publication reasonably calculated to inform responsible bidders or offerors. Public notice shall occur for a reasonable time and may be disseminated through any means of mass communication, including but not limited to newspapers, other written publications, posting, television, radio, other broadcasting media, web publishing and electronic billboards.

Purchase Order (PO): a City document used to authorize a purchase transaction with a vendor. It should contain provisions for goods and/or services ordered; applicable terms as to payment, discounts, date of performance and transportation and other factors or conditions relating to the transaction. Acceptance by vendor of a City purchase order shall constitute a contract.

Purchase Requisition: the formal (electronic) process of obtaining approval to make a purchase on behalf of the City.

Qualifications Based Selection: a process for selecting professional services based on qualifications and experience.

Quick Pay Commitment: An agreement or policy commitment that a Prime Contractor makes to pay all Subcontractors participating in a Contract within twenty (20) days after the Prime Contractor confirms that the subcontracted work has properly performed and properly completed. Such agreement or commitment exists outside of any Prompt Pay requirements, meaning that payment to the subcontractors pursuant to such agreement is not contingent on the Prime Contractor receiving payment from the City.

Quotation: a document containing cost information for goods and services submitted in response to a solicitation from a contracting authority.

Recovered Material: fragments of products or finished products of a manufacturing process, which has converted a resource into a commodity of real economic value and includes pre-consumer and postconsumer material but does not include excess resources of the manufacturing process.

Recycled Content: the percentage of recovered material, including pre-consumer and postconsumer materials, in a product.

Recycled Content Standard: the minimum level of recovered material and/or postconsumer material necessary for products to qualify as “recycled products.”

Recycled Product: a product that meets the City’s recycled content policy objectives for postconsumer and recovered material.

Remanufactured Product: any product diverted from the supply of discarded materials by refurbishing and marketing said product without substantial change to its original form.

Reused Product: any product designed to be used many times for the same or other purposes without additional processing except for specific requirements such as cleaning, painting, or minor repairs.

Request for Information (RFI): a solicitation of responses which will satisfy a need, rather than a firm specification, and in which the respondent is given latitude in order to develop a product and/or service which will fulfill the need.

Request for Letter of Interest (RLI): a solicitation of responses from vendors whereby vendors are invited to state their interest in performing a specific job or service for the City. Requests for letters of interest are usually issued with requests for qualifications and utilized by the City to determine which vendors shall be short listed, interviewed, and selected for final contract negotiations.

Request for Qualifications (RFQ): a formal written solicitation for sealed qualifications with the title, date and time of the closing designated. A request for qualifications may be used when the City is soliciting services or should the City determine the need to pre-qualify contractors for services prior to obtaining pricing.

Request for Quotation: an informal request to prospective vendors soliciting pricing for goods and services.

Request for Proposal (RFP): a formal written solicitation for sealed proposals with the title, date and time of the closing designated. A request for proposal may be used when the City is incapable of specifically defining the scope of work for which the commodities or services are required.

Responsible Bidder or Offeror: contractor, supplier, or vendor, qualified on the basis that it (1) has adequate financial resources to perform a contract, (2) is able to comply with the associated legal or regulatory requirements, (3) is able to deliver according to the contract schedule, (4) has a history of satisfactory performance, (5) has good reputation regarding integrity, (6) has or can obtain necessary data, equipment, and facilities, and (7) is otherwise eligible and qualified to receive award if its bid is chosen.

Responsive Bidder or Offeror: a person whose bid or offer conforms in all material respects to the requirements set forth in the invitation for bids or request for proposals.

Services: the furnishing of labor, time or effort by a contractor, consultant, subcontractor, or sub-consultant which does not involve the delivery of a specific end product other than required design documents or reports and performance. Services do not include employment agreements or collective bargaining agreements. The definition of services includes, but is not limited to, consulting, personal, professional, legal counsel, auditing, technical, professional design, and construction services.

Short List: a reduced list of candidates narrowed by the application of an approved process applying uniform criteria. They have been selected from a longer list (all proposers) for further consideration for award, and from this group the successful offeror will be chosen.

Single Source: competition is available, but a contract is awarded without competition for a justifiable reason.

Sole Source: a contract awarded for a material, service, or construction item without competition.

Source Reduction: products that result in a net reduction in the generation of waste compared to their previous or alternate version and includes durable, reusable, and remanufactured products; products with no, or reduced, toxic constituents; and products marketed with no, or reduced, packaging.

Specification: any description of the physical or functional characteristics of or the nature of the material, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a material, service or construction item for delivery or a procedure for determining whether the requirements are satisfied.

Standardization: the process of setting generally uniform characteristics for a particular good or service; a product that conforms to specifications resulting from the same or equivalent technical requirements. There are at least four levels of standardization: compatibility, interchangeability, commonality, and reference. These standardization processes create compatibility, similarity, measurement, and symbol standards.

State Business: a business entity that (i) For at least one year immediately preceding the issuance of the relevant request for quotes or formal solicitation, has its headquarters, a manufacturing facility, a locally-owned franchise, or an operating branch physically located within the State of Maryland; (ii) For the most recent tax year, has paid all business tax or real property tax due to a political subdivision of the State of Maryland; and (iii) Will use only subcontractors who meet the criteria of (i) and (ii).

Subcontractor or Sub-consultant: a person who contracts to perform work or render service to a contractor or consultant as defined by this section or to another subcontractor or sub-consultant as a part of a contract with the City.

Toxics Release Inventory (TRI): a publicly available U.S. EPA database that contains information on toxic chemical releases and other waste management activities reported annually by certain covered industry groups as well as federal facilities.

U.S. EPA Guidelines: the Comprehensive Procurement Guidelines established by the U.S. Environmental Protection Agency for federal agency purchases as of May 2002 and any subsequent versions adopted.

Water-Saving Products: those that are in the upper 25% of water conservation for all similar products, or at least 10% more water-conserving than the minimum level that meets the federal standards.

C. EZ REFERENCE

Quotes or Bid?

Purchases (total requisition) amounting to less than \$10,000.00 shall be made by obtaining a price from a qualified vendor and submitting a requisition; between \$10,000.00 and \$49,999.99 shall require three written price quotes from solicited suppliers (explain circumstances fully if less than three (3) quotes were obtained); \$50,000.00 and over must be advertised for formal solicitation. However, when a pricing advantage may be obtained by piggybacking on other governmental contracts, a City of Frederick formal solicitation is not required. In the event there is only a single source of supply and the cost exceeds \$49,999.99, the Purchasing Manager, with the consent of the Director of Budget and Purchasing, is authorized to negotiate an open market order on terms most advantageous to the City.

Who Signs?

Purchase Contracts or Agreements up to \$49,999.99 will be approved and signed by the Purchasing Manager, Director of Budget and Purchasing, or Mayor. Contracts or Agreements of \$50,000.00 or more must be approved by the Board of Aldermen.

Who Places the Order?

The initiating department places the order unless they notify the Purchasing Department otherwise.

How does the vendor get paid?

When you have received the product or service and receive an invoice or packing slip, indicate on the paper document that it is "OK to Pay", date and sign it. Give reference to the Purchase Order number if it is not already referenced on the document. Forward this document to the Accounts Payable division of Purchasing. It is imperative that the packing slip and invoice be submitted to Accounts Payable in a timely manner to avoid late payments. All invoices should be sent by the vendor to invoices @cityoffrederickmd.gov.

SECTION II – PURCHASING AUTHORITY

The purchasing authority for The City of Frederick is delegated as herein provided.

A. PURCHASING POSITIONS AND COMMITTEE

1. The Purchasing Manager is responsible for management of the Purchasing Department and its function, review and approval of all City purchases, maintenance of the Purchasing Policies Manual and interpretation of the Purchasing Policies Manual language and intent. The designated backup for the Purchasing Manager is the Director of Budget and Purchasing.
2. A Purchasing Committee is hereby established composed of the Mayor, President Pro-Tem of the Board of Aldermen, Director of Finance, and the Director of Budget and Purchasing. The committee has the authority to approve emergency purchases, including those that cannot meet the timing of Mayor and Board of Aldermen meeting schedule. Three members of the Purchasing Committee constitute a quorum. All decisions must be made by a majority of those present.

B. PURCHASE ORDERS AND ISSUING AUTHORITIES

1. The Purchasing Manager, Purchasing Department Buyer or designee is responsible for issuing purchase orders and making purchases on behalf of all departments, when appropriate. This includes obtaining a single quote, soliciting three quotes, and processing formal bids. These duties may be delegated to the departments, as necessary. Departments will be responsible for writing the technical specifications and the Purchasing Department will assist.
2. No purchases (excluding p-card purchases) shall be made without a purchase order. Department heads and/or employees may be held fully liable for all purchases or expenses involved contrary to the provisions provided and may be subject to disciplinary action. The Purchasing Manager shall review such purchases and report problems to the employee, the immediate supervisor and further up the chain of command, as appropriate.
3. The Purchasing Manager or designee must certify that an unencumbered balance in excess of all unpaid obligations is sufficient to defray the amount of the purchase order. It is the responsibility of the Finance Department to provide the Purchasing Department with a detailed budget and capital outlay listing for each City department. The Mayor, Director of Budget and Purchasing, and Director of Finance have the authority to override a purchase if sufficient funds are not available in the budget category.

SECTION III – PURCHASING POLICY

A. BASIC POLICIES

1. All applicable local, state, and federal laws apply when goods or services are purchased by the City.
2. Personal Purchases for Employees
 - a. The Purchasing Department may not purchase supplies for the private use of employees.
 - b. No City employee in any of their private purchases may use their position with the City in an effort to obtain a price consideration better than that offered to the general public, unless it is offered as a group discount rate to all City employees. Employees are permitted to purchase additional uniforms through the Purchasing Department at their own expense. Payment shall be made prior to delivery.
3. Relations with Other Departments: Purchasing Department employees are to familiarize themselves with the particular requirements of the various users of services and materials and to be receptive to their counsel.
4. Relations with municipal agencies and cooperative purchasing organizations.
 - a. The Purchasing Manager may undertake programs involving joint or cooperative purchases with other public agencies and/or cooperative purchasing organizations such as the Frederick Area Cooperative Purchasing Committee, State of Maryland, NJPA, COG, US Communities, BRCPC, H-GAC, National IPA, TCPN, etc.
 - b. When pricing advantage may be obtained by buying from surplus lists or supply contracts of other governmental purchasing agencies, competitive bidding is not required. “Piggybacking” on other governmental contracts that have been bid may be done if the vendor is willing to abide by the terms of the contract and the bid award is less than one year old or has the formal option to renew. A copy of the original contract and any renewal documentation must be submitted to the Purchasing Department for review and approval.
5. Avoidance of Verbal Arrangements/Understandings: Insofar as possible or practical, communications with vendors should be in writing to avoid misunderstandings and provide a historical file.
6. Negotiations with Vendors: No employee of the City shall contract directly or indirectly with any vendor except with the approval of the Purchasing Manager or their designee.

7. Relations with the Public

- a. The City's Ethics Ordinance, Chapter 21 of the Frederick City Code, shall govern employees' relations with vendors and those organizations under contract with the City.
 - b. Negotiation by suppliers' representatives with employees in a user department should be through, or with the knowledge of, the appropriate purchasing representative.
8. Purchasing Department Files and Records: Complete files are to be maintained in the Purchasing Office (or electronically, as appropriate) consisting of at least the following.
- a. Requisitions and purchase orders with copies of related correspondence,
 - b. Catalog files (electronic files, descriptive literature of commodities regularly purchased),
 - c. Copies of contracts and agreements, where applicable.
9. It is a violation of these regulations to spread the purchase of an item or items over two or more purchase orders when the intent is to avoid these policies.

B. PURCHASING LIMITS

All goods, supplies and services purchased for the City shall conform to the following procedures. Anyone found to have violated these procedures may be subject to appropriate disciplinary action as described in the City's Employee Policies and Procedures Handbook.

1. All purchases (total requisition) for goods and services amounting to less than \$10,000.00 shall be made by obtaining a price from a qualified vendor and submitting a requisition. It is the responsibility of all employees making purchases to rotate purchases among qualified vendors when repeated small purchases are made.
2. All budgeted purchases or line items of a single purchase order between \$10,000.00 and \$49,999.99 shall require three (3) documented price quotes from solicited suppliers. Explain circumstances fully if less than three (3) quotes were obtained. Special circumstances that could fall under emergency purchase or sole source guidelines may necessitate less than three prices. This must be approved by the Purchasing Manager.
3. Purchases of items greater than \$49,999.99 must be advertised for bid/proposal but can be made by direct vendor solicitation if approved by the Purchasing Manager. In the event there is only a single source of supply and the cost exceeds \$49,999.99, the Purchasing Manager is authorized to negotiate an open market order on terms most advantageous to the City.

C. CAPITAL PURCHASES

Capital outlay items are those with a single value of \$5,000.00 or more and have a life expectancy of 3 years or more. These items are to be budgeted specifically in the capital outlay expense category. If it is deemed necessary by the Department Head that a purchase of an item that has not been previously approved and line itemed in the capital outlay budget, the Department Head must submit a budget transfer, justification, and all supporting documents for the purchase to the Director of Budget and Purchasing for approval.

If a capital outlay item has been previously approved through the budget process by the Mayor and Board of Aldermen, it shall not be necessary to revisit approval of purchase of the capital outlay item, as long as the purchase price is not greater than approved dollars budgeted.

D. DISPUTES

The Purchasing Manager and their designees have the right and the duty to question any item(s) that can be considered unnecessary and/or unreasonable. The Purchasing Manager does not have the authority to refuse to purchase the item(s) unless funds are insufficient in the budget. However, if the Purchasing Manager does question an item(s), they will first request the Department Head to further substantiate the validity of the purchase. If the Purchasing Manager remains unsatisfied with the explanation due to a sincere difference of opinion, the matter will then be brought to the attention of the Director of Budget and Purchasing who may, at their discretion, present the issue to the Purchasing Committee for a final decision.

E. SIGNING AUTHORITY

Purchase Requisitions, Contracts or Agreements that obligate the City to pay for a service or product will be approved and signed by the Purchasing Manager, Director of Budget and Purchasing, Finance Director or Mayor, or their designees.

For Purchase Requisitions, Contracts or Agreements over \$49,999.99, the item with supporting material shall be placed on a public meeting agenda for approval by the Mayor and Board of Aldermen.

F. CHANGE ORDERS

Change Orders that have sufficient operating or project budget and that are less than \$50,000 shall be approved by the City Project/Contract Manager, the Director of Budget and Purchasing, Purchasing Manager, Director of Public Works, and the Mayor, using an appropriate Change Order Form.

Change Orders of \$50,000 or more or exceeding the budget (along with a contract amendment, if applicable), shall be approved by the Board of Aldermen at a regular public meeting. Once this process has been completed a requisition is to be entered electronically indicating the nature of the change order, listing the existing purchase order to be amended and submitting the signed/approved change order form to Purchasing for back-up of the amendment to the Purchase Order.

G. LONG STANDING RELATIONSHIPS

The City reserves the right to maintain certain long-standing relationships without requiring a competitive solicitation for selection. Examples would include Appraiser, Attorney, Auditor, Bond Counsel, Broker, Insurance Agent, and others. Generally, there should be some reasonable justification for maintaining a long-standing relationship. For example, a long-standing relationship with a bond counsel firm and an individual attorney within that firm is in the best interest of the City. In a good working relationship, the bond counsel becomes intimately familiar with the financial workings of the City and can offer many helpful suggestions beyond the simple structuring and marketing of a bond issue. The Director of Budget and Purchasing shall maintain a list of all long-standing professional relationships. These relationships shall be reviewed on a case-by-case basis annually to review reasonableness and competitive quality and pricing.

H. EMERGENCY PURCHASES

An emergency shall exist when a breakdown in machinery and/or a threatened termination of essential services or a dangerous condition develops, or when unforeseen circumstances arise causing curtailment or diminution of an essential service.

1. If an emergency occurs during regular City business hours, the using agency shall immediately notify the Purchasing Manager, who shall either purchase the required goods or services or authorize the using agency to do so.
2. If an emergency occurs at times other than regular business hours, the using agency may directly purchase the goods or services required. The agency shall also, not later than the next regular business day, submit to the Purchasing Manager a requisition; a tabulation of bids received; a copy of the delivery record; and an explanation of the circumstances concerning the emergency transaction.
3. A complete, current file record shall be maintained by the Purchasing Manager explaining and supporting the particular basis upon which each emergency purchase order was issued. Such records shall be available for public inspection upon written request to the Director of Budget and Purchasing.
4. Manmade emergencies, through neglect, must be avoided.
5. It shall be the responsibility of the respective agency and the Purchasing Department to reduce the practice of making emergency purchases to a minimum. The use of an emergency purchase to circumvent normal purchasing procedures will not be permitted. Violations or abuse of the emergency procedures identified by the Director of Budget and Purchasing may result in appropriate disciplinary action as described in The City of Frederick Employees Policies and Procedures Handbook.

I. NON-DISCRIMINATION POLICY, INVESTIGATIONS, AND REMEDIES

It is the policy of The City of Frederick that discrimination against business by reason of the race, color, religion, sex, national origin, age, marital status, veteran status, disability, sexual orientation, gender identity, genetic information or any other legally protected group is prohibited. Furthermore, it is the policy of the City that all vendors and contractors doing business with it shall provide to all businesses the opportunity to participate in contracting and procurement paid, in whole or in part, with monetary appropriations of the Board of Aldermen without regard to the race, color, religion, sex, national origin, age, marital status, veteran status, disability, sexual orientation, gender identity, genetic information or any other legally protected group. Similarly, it is the policy of The City of Frederick that the contracting and procurement practices of the City should not implicate it as a passive participant in discriminatory practices engaged in by private contractors or vendors who seek to obtain contracts with The City of Frederick.

1. Contractor Non-Discrimination: Promise of non-discrimination: In consideration of, and as condition precedent to, the right and privilege to bid on or obtain construction projects and other procurement contracts with the City, each bidder, contractor, or vendor shall be required to submit to the Manager of Equity and Inclusion a duly executed and attested promise of nondiscrimination, enforceable at law, which by agreement, affidavit or other written instrument, shall provide substantially as follows:

“Know all persons by these presents, that I/We, (Name(s)), (Title(s)), (Name of bidder/contractor/vendor) (hereinafter “Company”), in consideration of the privilege to bid on or obtain contracts funded, in whole or in part, by The City of Frederick, hereby consent, covenant and agree as follows:

- a. No person shall be excluded from participation in, denied the benefit of, or otherwise discriminated against on the basis of race, color, religion, sex, national origin, age, marital status, veteran status, disability, sexual orientation, gender identity, genetic information, or any other legally protected group in connection with any bid submitted to The City of Frederick for the performance of any contract resulting therefrom;
- b. That it is and shall be the policy of this company to provide equal opportunity to all businesses seeking to contract or otherwise interested in contracting with this company without regard to the race, color, religion, sex, national origin, age, marital status, veteran status, disability, sexual orientation, gender identity, genetic information, or any other legally protected group;
- c. That the promises of nondiscrimination as made and set forth herein shall be continuing in nature and shall remain in full force and effect without interruption;
- d. That the promises of nondiscrimination as made and set forth herein shall be made a part of, and incorporated by reference into, any contract or portion thereof which this company may hereafter obtain; and

- e. That the failure of this company to satisfactorily discharge any of the promises of nondiscrimination as made and set forth herein shall constitute a material breach of contract entitling the Board of Aldermen to declare the contract in default and to exercise any and all applicable rights and remedies, including but not limited to cancellation of the contract, termination of the contract, and suspension from future contracting opportunities.
 - f. That the bidder shall provide such information as may be required by the Purchasing Manager and the Manager of Equity and Inclusion.
2. Required information: Where the Manager of Equity and Inclusion has reason to believe that a bidder, contractor, or vendor is engaged in unlawful discriminatory conduct, the Manager of Equity and Inclusion, with consultation by the Director of Budget and Purchasing and Purchasing Manager, may request an investigation of such person, contractor, its subcontractors and/or suppliers be conducted by the Mayor or designee. Such information may include, but is not necessarily limited to the following:
- a. Documents that show what, if any, good faith efforts the bidder, contractor, or vendor has taken to insure the participation of all businesses without regard to the race, color, religion, sex, national origin, age, marital status, veteran status, disability, sexual orientation, gender identity, genetic information, or any other legally protected group for participation in the contract or proposed contract with the City.
 - b. Documents which show that the bidder, contractor, or vendor has attempted to segment the totality of work required under the proposed project or contract into two or more smaller economically feasible units or portions so as to permit participation of all businesses without regard to the race, color, religion, sex, national origin, age, marital status, veteran status, disability, sexual orientation, gender identity, genetic information or any other legally protected group ; provided, however, under no circumstances shall a bidder, contractor, or vendor be required to segment work solely for the purpose of utilizing any particular racial or gender group participant as subcontractors where such segmentation is not in accordance with common and accepted industry practices relating to the utilization of other firms or persons as subcontractors.
 - c. Documents that show whether the bidder, contractor, or vendor attended any pre-solicitation meeting and/or pre-bid conference (if such meeting or conference is held) so as to permit interested businesses a meaningful opportunity to market their goods and services to the bidder, contractor, or vendor without regard to the race, color, religion, sex, national origin, age, marital status, veteran status, disability, sexual orientation, gender identity, genetic information or any other legally protected group.

- d. Documents that show whether the bidder, contractor, or vendor solicited specific individual racial, gender, ethnic, or LGBTQ businesses whose availability as potential sources of goods or services can be reasonably ascertained. This measure includes the sending of letters or making other personal contacts with specific certified MWBEs including those with whom the bidder, contractor or vendor has contracted in the past as well as other MWBEs with whom the bidder, contractor, or vendor may be unfamiliar, but whose identities can be ascertained from a directory of certified MWBEs maintained by the Purchasing Manager.
- e. Letters or documented personal contacts with any minority or woman business enterprise programs, or programs for disadvantaged businesses, as well as private minority trade associations which programs and associations are known to publicize contracting and procurement opportunities for the benefit of their respective participants and/or members.
- f. Documents that show whether the bidder, contractor, or vendor advertised in publications of general circulation and/or trade publications and other media owned by, or otherwise focused or marketed to racial minorities, women, the LGBTQ community, and any disadvantaged individuals and/or businesses owned and operated by them. The publication or media shall be one that reasonably covers the metropolitan statistical area. The advertisement shall identify and describe the specific subcontracting or other opportunity in reasonable detail.
- g. Documents that show whether the bidder, contractor, or vendor provided all interested business concerns with adequate information about the plans, specifications and requirements of the project or contract in question.
- h. Documents that show whether the bidder, contractor, or vendor conducted negotiations with any interested business in good faith without regard to the race, color, religion, sex, national origin, age, marital status, veteran status, disability, sexual orientation, gender identity, genetic information or any other legally protected group and not rejecting them as unqualified or for other reasons without having thoroughly investigated any such business' capabilities or other basis of rejection.
- i. Documents that show whether the bidder, contractor, or vendor provided reasonable assistance to an otherwise qualified business without regard to the race, color, religion, sex, national origin, age, marital status, veteran status, disability, sexual orientation, gender identity, genetic information, or any other legally protected group in need of equipment, supplies, bonding, letters of credit and/or insurance. The bidder, contractor or vendor may waive such bonding, credit and/or insurance as may be ordinarily required by it or provide reasonable assistance to any such business to obtain such equipment, supplies, bonding, credit and/or insurance.

- j. Documents that show whether the bidder, contractor, or vendor provided reasonable technical assistance to any business without regard to the race, color, religion, sex, national origin, age, marital status, veteran status, disability, sexual orientation, gender identity, genetic information or any other legally protected group to ameliorate any deficiencies of technical knowledge or advance skill, where such assistance is undertaken by the bidder, contractor, or vendor for the purpose of facilitating such business' successful participation on a project or contract.
- k. Documents that show whether the bidder, contractor, or vendor provided equal opportunity to all businesses without regard to the race, color, religion, sex, national origin, age, marital status, veteran status, disability, sexual orientation, gender identity, genetic information or any other legally protected group when replacing nonperforming subcontractors or suppliers. The Manager of Equity and Inclusion shall approve all replacements prior to engagement of the substituting firm.
- l. Documents that show whether the bidder, contractor, or vendor provides a nondiscriminatory worksite. Bidders, contractors, and vendors shall ensure and maintain a work environment free of harassment, intimidation and coercion at all construction sites, offices, and other facilities at which the bidder's, contractor's or vendor's employees are assigned to work. The contractor shall specifically show that all labor supervisors, superintendents, and other onsite supervisory personnel are aware of and carry out the bidder's, contractor's, or vendor's obligation to maintain a nondiscriminatory work environment.
- m. Documents that show all subcontractors and suppliers that were contacted by the bidder, contractor, or vendor detailing, among other things, their race, color, religion, sex, national origin, age, marital status, veteran status, disability, sexual orientation, gender identity, genetic information or any other legally protected group requirements, the manner in which such contact was made, if the supplier or subcontractor submitted a bid or quote, the nature of same and, if rejected, the reasons therefor.
- n. Documents which show whether the bidder, contractor, or vendor cooperated with the Manager of Equity and Inclusion. Bidders, contractors, and vendors shall be required to furnish reports and information sufficient to allow the Manager of Equity and Inclusion to determine whether the requirements of this policy are being met.
- o. Bidders, contractors, and vendors shall provide such other information as the Manager of Equity and Inclusion may from time to time reasonably require, whether orally or in writing.

3. Notice to bidder, contractor, or vendor: When the investigation authorized by the Mayor or designee leads to a determination of probable cause to believe that a bidder, contractor, or vendor is engaging in discriminatory conduct, the Manager of Equity and Inclusion shall give notice of such determination to the bidder, contractor, or vendor which notice shall include a rejection of any bid or a determination of breach, and a copy of such notice shall be provided to the Mayor, the Director of Budget and Purchasing and the Purchasing Manager.
4. Appeal: Any bidder, contractor, or vendor who is adversely affected by a determination under this section shall have the right to appeal such adverse determination within thirty (30) calendar days of the determination by providing a written request for appeal to the Manager of Equity and Inclusion. Appeals will be considered by the Board of Aldermen.
5. Sanctions: Where, the City determines that a bidder, contractor, or vendor has engaged or is engaging in discriminatory practices, the bidder, contractor or vendor will be disqualified from eligibility for providing goods or services to the City for two years. The Manager of Equity and Inclusion, with consultation by the Purchasing Manager and the Director of Budget and Purchasing may recommend to the Board of Aldermen, additional sanctions, including but not limited to the rescission of any current contract(s) between the bidder, contractor, or vendor and the City based upon a material breach of contract pertaining to compliance with the non-discrimination policy.

J. MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE PROGRAM

1. Policy Statement

The City of Frederick recognizes the importance and responsibility of awarding contracts to those businesses socially and/or economically disadvantaged and it is the policy of the City to utilize Minority and Women Owned Business Enterprises (MWBE) in all aspects of contracting.

This commitment is clarified in the following procedural plan, and this plan will be published in its entirety to the community and businesses.

2. Designation of a Sponsor's Liaison Officer

The following person has been assigned the responsibility to develop, manage, and implement the MWBE Program:

Manager of Equity and Inclusion
The City of Frederick
101 N Court Street
Frederick, Maryland 21701

3. Annual Aspirational Goals

Annual Aspirational Goals for MWBE participation in City contracts in the categories of construction, architecture and engineering (A&E), professional services, other services, and goods and services (prime and subcontract dollars combined) are established as follows and are based upon the combined MWBE availability by industry / commodity in accordance with the findings of the 2020 Disparity Study.

Construction -- 41%
Architecture and Engineering – 40%
Professional Services – 32%
Other Services – 29%
Goods and Services – 16%

Annual Aspirational Goals are not to be routinely applied to individual solicitations but are intended to serve as a benchmark against which to measure the overall effectiveness of the MWBE Program in increasing MWBE participation on an annual basis, and to gauge the need for future adjustments to the mix and aggressiveness of remedies and program elements being applied pursuant to this policy.

Annual Aspirational Goals may be included only in those City solicitations that do not contain contract specific MWBE goals and when included, shall be advisory only, and must also be accompanied by the full definition of the term in such solicitations as stated in this MWBE Program.

4. Subcontractor Goals

The Goal Setting Committee (GSC) will set a specific percentage-based MWBE subcontracting goal on a contract-by-contract basis for all prime construction contracts and any other contract where (a) there is subcontracting opportunities identified for the contract; and

(b) there are at least three MWBE firms that are available and capable to perform a commercially useful function for the subcontracting opportunities on the contract.

The GSC shall have the authority to establish such goal based upon the type of contract, the NIGP code for the type of subcontracting work that will be required, the weight of the type of work on the contract, and the availability of MWBEs to perform the work for that specific contract. The GSC shall not establish subcontracting goals on contracts where (a) there are no subcontracting opportunities identified for the contract; or

(b) there are not at least three MWBE firms that are available and capable to perform a commercially useful function for the subcontracting opportunities on the contract.

All subcontracting goals authorized under the MWBE Program are intended to be established by the GSC and implemented only on a contract-by-contract basis. It is intended that such goal setting will be based upon careful analysis of the availability of commercially useful subcontracting opportunities within a given contract and the relative availability of MWBE firms to perform required tasks on such subcontract opportunities.

Contract-by-contract goal setting shall be based upon reasonably reliable MWBE subcontractor availability data, based upon a total of the weighted availabilities for all

NIGP codes. Compliance with contract-specific subcontracting goals shall also require compliance with good faith efforts and waiver procedures as established herein.

Accordingly, in establishing contract goals, the GSC shall:

- a. Review in advance proposed contract bid specifications to ensure that they are not unnecessarily restrictive and do not adversely affect the ability of MWBE firms to competitively bid;
- b. Formulate, recommend to the Manager of Equity and Inclusion or its designee, then implement additional rules and procedures for MWBE goal-setting and other aspects of its duties in selecting and applying specific program elements to contracts with The City of Frederick in an efficient and effective manner; and
- c. Monitor and support the implementation of the contract-by-contract goals aspect of the MWBE Program.

5. Goal Setting Committee

The Goal Setting Committee (GSC) is to be chaired by the Manager of Equity and Inclusion. The GSC shall include, at a minimum, the Purchasing Manager, the Director of Budget and Purchasing, and the Director of Public Works or its designee.

The GSC establishes MWBE Program goals (e.g., contract-by-contract subcontracting goals) based upon NIGP codes, vendor availability, and contract-specific characteristics.

At a minimum, the GSC shall:

- a. Meet as often as it deems necessary to accomplish its duties as outlined in this program plan;
- b. Review in advance proposed contract bid specifications to ensure that they are not unnecessarily restrictive and do not adversely affect the ability of MWBE firms to competitively bid without adequate business justification;
- c. Formulate and implement additional rules and procedures for MWBE goal-setting and other aspects of its duties in selecting and applying specific program elements to City contracts in an efficient and effective manner; and
- d. Monitor and support the implementation of the MWBE goals program elements.

6. Annual Report Review

Annual review shall include, but not to be limited to, regulatory effectiveness, MWBE participation, impact, dollar value of contracts awarded to MWBEs and compliance. Reports of review findings will be issued after each review. The Mayor shall appoint a review panel to assist in the review of this Plan and the development of reports. The review panel shall include at least one citizen minority representative.

7. Policy on the Requirement for Bid Bonds

The City will not require bid bonds for contracts of less than \$20,000.

8. Good Faith Efforts (For Goals Program Element)

a. Basic Principles of Good Faith Efforts

In addition to regular and customary solicitation processes for contacting potential subcontractors and/or vendors, all bidders are required to:

- i. Make efforts to include MWBEs in the procurement process;
- ii. Make efforts to ensure that businesses are not discriminated against on the basis of race, ethnicity, or gender;
- iii. Ensure that prospective subcontractors, vendors, suppliers, and others are not denied opportunities to compete for work for the City on the basis of their race, ethnicity, or gender;
- iv. Afford all firms, including those owned by racial or ethnic minorities and women, opportunities to participate in the performance of the business of the City to the extent of their availability, capacity, and willingness to compete;
- v. Demonstrate compliance with these program requirements with appropriate documentation submitted with the bid;
- vi. Cooperate with any document request or other investigatory effort by the City's Purchasing Department in its consideration of the bid.

b. Methods of Demonstrating Good Faith Efforts

Where an applicable MWBE contract goal has not been achieved, bidders shall provide to the Purchasing Department a statement that the bidder has delivered written notice to at least three (3) available certified MWBEs if use of MWBEs is reasonable and if the Purchasing Department has determined availability of at least three MWBEs for the applicable category. Upon request, names, addresses, and telephone numbers for available MWBEs shall be provided by the Purchasing Department for each potential subcontracting or supply category in the solicitation. In addition, a bidder must deliver written notice to all individuals or entities requesting information on the solicitation.

Written notice shall be sent to all subcontractors or vendors that have indicated to the City that they do work in the relevant NIGP codes, and also sent to potential subcontractors or vendors. The notice shall contain the following:

- i. Sufficient information about the plans, specifications, and relevant terms and conditions of the solicitation to permit development of an understanding of work requirements. This may include information about the work that will be subcontracted or the goods that will be obtained from subcontractors and suppliers;
- ii. A contact person knowledgeable of the project documents within the bidder's office to answer questions about the conditions of the contract;
- iii. Information regarding the bidder's bonding requirements;
- iv. The deadline for submission of price quotations.

In addition, where the applicable goal has not been achieved, the bidder shall also demonstrate its Good Faith Efforts by methods that include, as applicable, the following:

- i. Attending informational meetings to update potential subcontractors or vendors of subcontracting or supply opportunities
- ii. Making the construction plans, specifications, and requirements available for review by prospective minority businesses, or provided these documents to them at least 10 days before the bids are due.
- iii. Dividing the contract, in accordance with normal industry practice, into small, economically feasible segments that could be performed by a MWBE. Under no circumstances, however, shall a bidder segment work solely for the purpose of utilizing MWBEs as subcontractors where such segmentation is not in accordance with common and accepted industry practices relating to the utilization of other firms as subcontractors.
- iv. Providing a written explanation for rejection of any potential subcontractor or vendor to the Bidder, including the name of the firm awarded the subcontract or supply agreement. The Purchasing Department will maintain these records and make same available to any subcontractor or vendor rejected by the bidder.
- v. Soliciting specific individual MWBEs whose availability as potential sources of goods or services can be reasonably ascertained at least 10 days before the bid date and notified them of the nature and scope of the work to be performed. This measure includes sending letters or making other personal contacts with specific certified MWBEs including those that the bidder has contracted with in the past as well as other MWBEs with which the bidder may be unfamiliar, but whose identities can be ascertained from a directory of certified MWBEs maintained by the Purchasing Department.

- vi. Sending letters or making other personal contacts with other programs as well as MWBE/minority trade, community, or contractor organizations in the relevant market which are known to publicize contracting and procurement opportunities for the benefit of their respective associates and/or members.
- vii. Advertising in trade publications of general circulation in the relevant market. The advertisement shall identify and describe the specific subcontracting or other opportunity in reasonable detail.
- viii. Following up initial solicitations by contacting potential subcontractors or vendors to determine, with certainty, whether these firms are interested in participating on the contract.
- ix. Thoroughly investigating the potential subcontractor or vendor's capabilities in good faith.
- x. Providing reasonable assistance to a MWBE in need of equipment, supplies, bonding, letters of credit and/or insurance.
- xi. Providing reasonable technical assistance to MWBEs to ameliorate any deficiencies of technical knowledge or advance skill, where such assistance is undertaken by the bidder to facilitate the MWBE's successful participation on a project or contract.
- xii. Providing "quick pay" agreements and policies to enable such minority subcontractor(s) contractors and/or supplier(s) to meet cash-flow demands.

9. Encouragement and Accountability for Aspirational Goals

The City of Frederick strongly encourages utilization of MWBEs in all aspects of City contracting and public private partnership agreements, requires bidders to operate in good faith in seeking to subcontract a portion of prime contracts to MWBE small businesses, and sets Annual Aspirational Goals for MWBE participation. Accordingly, all bidders must agree to seek meaningful subconsultant opportunities with MWBE firms and to provide the City with a completed MWBE Participation Form with its bid.

The City's requirement for a written plan for including MWBE firms, including but not limited to the above forms, constitute a material part of the contract. A bidder's inclusion plan must be responsive in the opinion of the City, which means a meaningful and successful search and commitments to include MWBE firms for subcontracting work. Failure to demonstrate meaningful efforts will render the bid nonresponsive.

The City reserves the right to improve the bidder's written plan before contract execution through negotiation and cooperation. Bidders should thus use selection methods and strategies sufficiently effective for successful MWBE participation.

At the City's request, bidders must furnish evidence of inclusion efforts/achievement such as copies of agreements with MWBE subconsultants either before contract execution or during contract performance. The winning bidder must request written approval from the Purchasing Department for any changes to the inclusion plan once it is agreed upon. This includes changes to goals, subconsultant awards, and outreach efforts.

Reasonable and appropriate MWBE participation goals for public private partnership agreements should be negotiated as part of the project.

10. Certification Expansion

Certification is the qualifying process that ensures that a particular business is an MWBE, consistent with the factors and standards established by the Purchasing Department. Certification assures that interested MWBEs have the proper ownership, control, and management. The City of Frederick accepts certifications from other bona fide certifying agencies or organizations (called "reciprocal certification") in the relevant geographic market, as described below.

Subject to the approval of the Purchasing Manager, the City may accept certification of a DBE or MWBE from another government or private entity. The City currently accepts certifications from Frederick County (MD), Maryland DOT, the District of Columbia, and certifying authorities from governmental entities within the Washington-Baltimore-Arlington, DC-MD-VA-WVPA CSA. Specifically, the counties in the CSA are Baltimore County, Baltimore City, Anne Arundel County, Howard County, Harford County, Carroll County, Queen Anne's County, Washington County, Berkeley County, Morgan County, Franklin County, Frederick County (Virginia), City of Winchester, Hampshire County, St. Mary's County, and Talbot County.

K. SMALL BUSINESS RESERVE PROGRAM

Procurement in professional services or other services valued more than \$10,000 are available for bid and award only to certified Small Business Enterprises ("SBEs"). Procurement contracts for vehicle, industrial equipment and machinery, chemical, or software purchases are exempt from the Small Business Reserve program if it is determined by the Manager of Equity and Inclusion, in consultation with the Purchasing Manager and the Director of Budget and Purchasing, to (a) be in the best interest of the City and (b) the results of our due diligence process will not lead to available or responsive SBEs.

The Manager of Equity and Inclusion or the Purchasing Manager, in consultation with the Director of Budget and Purchasing, may designate additional procurement contracts otherwise reserved for SBEs to be exempt from this program. The exemption decision for a particular contract is discretionary on the part of the Manager of Equity and Inclusion or the Purchasing Manager and should be applied only where there is not a reasonable expectation that there will be at least three

(3) responsible and responsive bids by certified SBEs or that the award will be made at a fair market price/value. Exemption may also be applied when the use of an SBE for a procurement contract would create an undue fiscal burden on the city and is necessary to maintain the health and safety of residents in a timely fashion.

The intention of this Small Business Reserve program is to increase opportunities for SBEs to perform as prime contractors on City projects/contracts, growing capacity and gaining valuable experience. Accordingly, to obtain a small business reserve program contract, the bidding SBE must self-perform a significant percentage of the contracted work (a minimum of 50 percent), limiting its ability to subcontract the work.

Certification and Applicable Size Standards

1. Certification: In order to qualify as an SBE, a business must submit (1) a letter or other documentation from the United States Small Business Administration that establishes that the firm qualifies as an 8(a) firm or HUBZone firm with the United States Small Business Administration, or (2) a letter or other documentation from the State of Maryland or United States Department of Transportation that establishes that the firm qualifies as a Disadvantaged Business Enterprise (DBE); or (3) evidence on a form prescribed the Purchasing Department and Office of Equity and Inclusion affirming under penalty of perjury that the business qualifies as an SBE as defined by the SBA.

The Purchasing Department has the right to audit the certification of any business providing a certification under the above subsection in order to determine whether the business meets the criteria of a small business enterprise established by the SBA. If the Purchasing Manager determines that a business submitted a false certification of its SBE status, it may decertify the business by sending a notice of decertification.

2. Threshold Size and Graduation Standards: The annual sales receipts and the number of employees of the business enterprise, combined with all affiliates, cannot exceed the size standards set forth below.
 - a. SBE Size Eligibility: No applicant business enterprise shall be certified as an SBE for the purpose of eligibility for this program and following certification of an SBE no certification shall be renewed, if on the effective date of the application or renewal the applicant business enterprise or SBE has achieved a size standard that exceeds the applicable size standards established by the Small Business Administration at 13 CFR § 121.201 et. seq. for the SBE's Primary Business, as amended, or successor regulation or classification system by either:
 - Annual receipts averaged over the three (3) preceding fiscal years;
 - Size standard based on number of employees;
 - Or other criteria, which the Purchasing Manager may establish from time to time.
 - b. Certification Based on NAICS Size Standards ("SBA Size Regulations"): The annual receipts and number of employees of an applicant business enterprise shall be determined in accordance with the definitions and methodology established by the Small Business Administration at 13 CFR 121.201 et. seq. as amended, or successor regulation or classification system, all of which are incorporated into this program by reference.

- c. SBE Graduation from NAICS Size Standard: If an SBE (together with any affiliate(s)) has exceeded the graduation criteria in the NAICS major group that matches the SBE's Primary Business, the SBE shall be deemed to be graduated from SBE Certification, and thus, from this Program. In such event, the SBE and its affiliate(s) shall no longer be considered eligible to participate.

L. LOCAL PREFERENCE POLICY

- 1. Preferences
 - a. In general, subject to the exemptions set forth below, in evaluating any competitive solicitation in accordance with these Purchasing Policies, the City will grant a preference in relation to the proposed quoted cost or bid amount as further described herein. The preference is only used for computational purposes to determine the winning bid or proposal and has no bearing on the actual purchase price or cost to the City.
 - b. City Businesses - The preference given to City Businesses is 10 percent of the lowest quote or responsible bid, not to exceed \$100,000.
- 2. The City will not grant any preference in connection with any of the following:
 - a. A purchase for which a local preference is prohibited by State or Federal law;
 - b. A purchase funded, in whole or in part, by a Federal or State grant, if the preference would conflict with any condition attached to the grant;
 - c. A purchase funded, in whole or in part, by a donation or gift to the City, if the preference would conflict with any special condition attached to the donation or gift;
 - d. An emergency purchase, as set forth in Section III (H) of these Purchasing Policies
 - e. The transfer or disposition of any surplus, obsolete, or waste article pursuant to Section VI (D) of these Purchasing Policies; or
 - f. The transfer or disposition of any real property owned by the City.
- 3. This "Local Preference" policy supersedes any other provision within these Purchasing Policies to the extent of any inconsistency.

M. BUY AMERICA POLICY

1. Introduction: When grant funds traceable to the American Recovery and Reinvestment Act of 2009 (“ARRA”) are used by the City, regardless of whether directly granted from Federal agencies or passed through State entities, the City must comply with the requirement in section 1605 (known as the “Buy America” provision) that all of the iron, steel, and manufactured goods used for a project for the construction, alteration, maintenance, or repair of a public building or public work be produced in the United States. Exceptions can be made by the heads of Federal departments or agencies when use of domestic product is:
 - a. Inconsistent with the public interest;
 - b. Compromised because there are insufficient or reasonably unavailable quantities of domestic products or their quality is unsatisfactory; or
 - c. Likely to increase the cost of the overall project by 25% or more.
2. Documentation and verification, generally: The City will retain documentation supporting its compliance with the Buy America provision. It shall be the responsibility of the site inspector and the project manager to verify that all ARRA requirements are being complied with throughout the course of the contract.
3. Solicitations: When a project is to be funded in whole or in part by ARRA funds, a solicitation or request for proposals will include an appropriate notice of the Buy America provision and a statement that as a condition of responsiveness, the bidder or proposer must submit with the bid or proposal a completed Buy America certificate certifying that all of the material, equipment and accessories which are to be incorporated into the contract have been manufactured from domestic construction material as defined by the applicable Federal regulations (except pursuant to a valid waiver).
4. Contracts: The City will incorporate into its contract documents language that obligates sub-recipients or contractors to comply with the Buy America provisions and requires certifications from a contractor or vendor showing that a product was manufactured domestically.
5. Compliance with certification: If, upon being awarded a particular contract, a successful bidder or proposer fails to demonstrate that it is in compliance with its certification, the bidder or proposer will be required to take the necessary steps in order to achieve compliance. If a bidder or proposer takes these necessary steps, it will not be allowed to change its original bid price or the price of its final offer. If a contract has been awarded and the bidder or offeror does not take the necessary steps to achieve compliance, they may be considered in breach of the contract.

N. ENVIRONMENTALLY RESPONSIBLE PURCHASING POLICY

1. It is the policy of The City of Frederick to:
 - a. institute practices that reduce waste by increasing product efficiency and effectiveness,
 - b. purchase products that minimize environmental impacts, toxics, pollution, and hazards to worker and community safety to the greatest extent practicable, and
 - c. purchase products that include recycled content, are durable and long-lasting, conserve energy and water, use agricultural fibers and residues, reduce greenhouse gas emissions, use unbleached or chlorine free manufacturing processes, are lead-free and mercury-free, and use wood from sustainably harvested forests.

2. This Policy is adopted in order to:
 - a. conserve natural resources,
 - b. minimize environmental impacts such as pollution and use of water and energy,
 - c. eliminate or reduce toxics that create hazards to workers and our community,
 - d. support strong recycling markets,
 - e. reduce materials that are landfilled,
 - f. increase the use and availability of environmentally preferable products that protect the environment,
 - g. identify environmentally preferable products and distribution systems,
 - h. reward manufacturers and vendors that reduce environmental impacts in their production and distribution systems or services, and
 - i. create a model for successfully purchasing environmentally preferable products that encourages other purchasers in our community to adopt similar goals.

3. Specifications Source Reduction
 - a. The City shall institute practices that reduce waste and result in the purchase of fewer products whenever practicable and cost-effective, but without reducing safety or workplace quality.
 - b. The City shall purchase remanufactured products such as laser toner cartridges, tires, furniture, equipment, and automotive parts whenever practicable, but without reducing safety, quality, or effectiveness.
 - c. The City shall require all equipment bought to be compatible with source reduction goals as referred to in this section when practicable.
 - d. All buyers shall consider short-term and long-term costs in comparing product alternatives, when feasible. This includes evaluation of total costs expected during the time a product is owned, including, but not limited to, acquisition, extended warranties, operation, supplies, maintenance, disposal costs and expected lifetime compared to other alternatives.

- e. Products that are durable, long lasting, reusable, or refillable are preferred whenever feasible.
- f. The City requests vendors to eliminate packaging or use the minimum amount necessary for product protection, to the greatest extent practicable.
- g. Packaging that is reusable, recyclable, or compostable is preferred, when suitable uses and programs exist.
- h. Vendors shall be encouraged to take back and reuse pallets and packaging materials.
- i. Suppliers of electronic equipment, including but not limited to computers, monitors, printers, and copiers, shall be required to take back equipment for reuse or environmentally safe recycling when the City discards or replaces such equipment, whenever possible.

4. Recycled Content Products

- a. All products for which the United States Environmental Protection Agency (U.S. EPA) has established minimum recycled content standard guidelines, such as those for printing paper, office paper, janitorial paper, construction, landscaping, parks and recreation, transportation, vehicles, miscellaneous, and non-paper office products, shall contain the highest postconsumer content practicable, but no less than the minimum recycled content standards established by the U.S. EPA Guidelines.
- b. Copiers and printers bought shall be compatible with the use of recycled content products.
- c. The City shall purchase re-refined lubricating and industrial oil for use in its vehicles and other equipment, as long as it is certified by the American Petroleum Institute (API) as appropriate for use in such equipment.
- d. When specifying asphalt concrete, aggregate base or portland cement concrete for road construction projects, the City shall use recycled, reusable, or reground materials when practicable.
- e. The City shall specify and purchase recycled content transportation products, including signs, cones, parking stops, delineators, and barricades when practicable.
- f. All pre-printed recycled content papers intended for distribution that are purchased or produced shall contain a statement that the paper is recycled content.

5. Energy and Water Savings

- a. Where applicable, energy-efficient equipment shall be purchased with the most up-to-date energy efficiency functions. This includes, but is not limited to, high efficiency space heating systems and high efficiency space cooling equipment.
- b. When practicable, the City shall replace inefficient lighting with energy-efficient equipment.
- c. All products purchased by the City and for which the U.S. EPA Energy Star certification is available shall meet Energy Star certification, when practicable. When Energy Star labels are not available, choose energy-efficient products that are in the upper 25% of energy efficiency as designated by the Federal Energy Management Program.
- d. The City shall purchase water-saving products whenever practicable.

6. Green Building - Construction and Renovations: all building and renovations undertaken by the City shall follow Green Building practices for design, construction, and operation, when appropriate, as described in the LEED™ Rating System.

7. Landscaping

- a. All landscape renovations, construction and maintenance by the City, including workers and contractors providing landscaping services for the City, shall employ Bay-Friendly Landscaping or sustainable landscape management techniques for design, construction and maintenance whenever possible, including, but not limited to, integrated pest management, grass-cycling, drip irrigation, composting, and procurement and use of mulch and compost that give preference to those produced from regionally generated plant debris and/or food waste programs.
- b. Plants should be selected to minimize waste by choosing species for purchase that are appropriate to the microclimate, species that can grow to their natural size in the space allotted them, and perennials rather than annuals for color. Native and drought-tolerant plants that require no or minimal watering once established are preferred.
- c. Hardscapes and landscape structures constructed of recycled content materials are encouraged. The City shall limit the amount of impervious surfaces in the landscape, wherever practicable. Permeable substitutes, such as permeable asphalt or pavers, are encouraged for walkways, patios, and driveways.

8. Toxics and Pollution

- a. To the extent practicable, no cleaning or disinfecting products (i.e., for janitorial or automotive use) shall contain ingredients that are carcinogens, mutagens, or teratogens. These include chemicals listed by the U.S. EPA or the National Institute for Occupational Safety and Health on the Toxics Release Inventory and those listed under Proposition 65 by the California Office of Environmental Health Hazard Assessment.

- b. The use of chlorofluorocarbon-containing refrigerants, solvents and other products shall be phased out and new purchases shall not contain them.
 - c. All surfactants and detergents shall be readily biodegradable and, where practicable, shall not contain phosphates.
 - d. When maintaining buildings and landscapes, the City shall manage pest problems through prevention and physical, mechanical, and biological controls. The City may either adopt and implement an organic pest management policy and practices or adopt and implement an Integrated Pest Management (IPM) policy and practices using the least toxic pest control as a last resort.
 - e. When maintaining buildings, The City shall use products with the lowest amount of volatile organic compounds (VOCs), highest recycled content, and low or no formaldehyde as practicable when purchasing materials such as paint, carpeting, adhesives, furniture, and casework.
 - f. The City shall reduce or eliminate its use of products that contribute to the formation of dioxins and furans. This includes, but is not limited to:
 - i. Purchasing paper, paper products, and janitorial paper products that are unbleached or that are processed without chlorine or chlorine derivatives, whenever possible.
 - ii. Prohibiting purchase of products that use polyvinyl chloride (PVC) such as, but not limited to, office binders, furniture, flooring, and medical supplies whenever practicable.
 - g. The City shall purchase products and equipment with no lead or mercury whenever possible. For products that contain lead or mercury, the City shall give preference to those products with lower quantities of these metals and to vendors with established lead and mercury recovery programs.
 - h. When replacing vehicles, the City shall consider less-polluting alternatives to diesel such as compressed natural gas, bio-based fuels, hybrids, electric batteries, and fuel cells, as available.
9. Forest Conservation: to the greatest extent practicable, the City shall not procure wood products such as lumber and paper that originate from forests harvested in an environmentally unsustainable manner. When possible, the City shall give preference to wood products that are certified to be sustainably harvested by a comprehensive, performance-based certification system. The certification system shall include independent third-party audits, with standards equivalent to, or stricter than, those of the Forest Stewardship Council certification.

10. Agricultural Bio-Based Products

- a. Vehicle fuels made from non-wood, plant-based contents such as vegetable oils are encouraged whenever practicable.

- b. Paper, paper products and construction products made from non-wood, plant-based contents such as agricultural crops and residues are encouraged whenever practicable.

11. Priorities

- a. The health and safety of workers and citizens is of utmost importance and takes precedence over all other policies.
- b. The City has made significant investments in developing a successful recycling system and recognizes that recycled content products are essential to the continuing viability of that recycling system and for the foundation of an environmentally sound production system. Therefore, to the greatest extent practicable, recycled content shall be included in products that also meet other specifications, such as chlorine free or biobased.
- c. Nothing contained in this policy shall be construed as requiring a department, purchaser, or contractor to procure products that do not perform adequately for their intended use, exclude adequate competition, or are not available at a reasonable price in a reasonable period of time.
- d. Nothing contained in this policy shall be construed as requiring the City, a department, purchaser, or contractor to take any action that conflicts with local, state, or federal requirements.

12. Implementation

- a. The Purchasing Manager shall implement this policy in coordination with other appropriate staff.
- b. Successful bidders shall certify in writing that the environmental attributes claimed in competitive bids are accurate. Vendors shall be required to specify the minimum or actual percentage of recovered and postconsumer material in their products, even when such percentages are zero.
- c. Upon request, buyers making the selection from competitive bids shall be able to provide justification for product choices that do not meet the environmentally preferable purchasing criteria in this policy.
- d. Vendors, contractors, and grantees shall be encouraged to comply with applicable sections of this policy for products and services provided to the City, where practicable.

SECTION IV – TYPES OF PURCHASES

City expenditures fall under one of the following types of purchases:

A. COMPETITIVE INVITATION FOR BID (IFB), REQUEST FOR PROPOSAL (RFP), REQUEST FOR QUALIFICATIONS (RFQ)

All purchases for commodities or services that have a cumulative total for the life of the contract of \$50,000.00 or more must be made by formal competitive solicitations. The approval of The Board of Aldermen is required.

B. COMPETITIVE PRICING (REQUEST FOR QUOTATION -THREE QUOTES)

1. Made on definite quantity single delivery purchase orders based on a requisition from a Department Head, for purchases above \$9,999.99 and up to \$49,999.99.
2. Made on indefinite quantity (blanket) purchase orders on the basis of a negotiated price and requisition from the using department. Used for recurring purchases of advertising, office supplies, medical prescriptions, etc. Exact quantity of purchase is not stated; only an estimated dollar amount is given.

C. NONCOMPETITIVE PRICING

Made on definite quantity single delivery purchase orders based on a requisition from a Department Head, under \$10,000.00.

D. “SINGLE SOURCE” PROCUREMENTS

1. When the City requires supplies, materials or equipment which are produced by only one manufacturer, the Purchasing Manager shall specify such manufacturer's make or brand in the invitation to bid and shall obtain competitive bids from authorized dealers or distributors of such manufacturer. If such manufacturer is the sole bidder and sole source of supply, the Purchasing Manager is authorized to negotiate an open market purchase order or contract with the manufacturer at prices and on terms most advantageous to the City.
2. When the City requires supplies, materials, or equipment which are patented or proprietary and which are obtainable in two or more equally satisfactory and competitive makes, brands or types, the Purchasing Manager shall list such acceptable and competitive makes, brands, or types in the invitation to bid. Unless a pre-qualification process has been completed or the item has been “standardized” such lists shall also include the phrase “or equal to.”
3. The Purchasing Manager may permit bidders to bid on alternate or additional makes, brands, or types. It shall be incumbent on each such bidder to prove to the satisfaction of the City that the alternate or additional make, brand or type is equal in quality or performance to those listed in the invitation to bid.

4. A contract may be awarded without competition when the Purchasing Manager determines in writing, after conducting a good faith review of available sources, that there is only one responsible source for the required material, service, or construction item. This determination must also be approved by the Director of Budget and Purchasing. The using agency requesting sole source procurement shall provide written evidence to support a sole source recommendation. The Purchasing Manager may require that negotiations are conducted as to price, delivery, and terms. The Purchasing Manager may require the submission of cost or pricing data in connection with an award under this section. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A record of sole source procurements shall be maintained as a public record.
5. Miscellaneous exemptions:
 - a. A contract for materials, professional services or services may be awarded without competition if the Purchasing Manager determines in writing that one or more of the following conditions exists:
 - i. Although there exists more than one responsible source, a competitive process cannot reasonably be used or, if used, will result in a substantially higher cost to the City, will otherwise injure the City's financial interests or will substantially impede the City's administrative functions or the delivery of services to the public;
 - ii. A particular material or service is required to maintain interchangeability or compatibility as a part of an existing integrated system;
 - iii. A particular material, professional service or service is required in order to standardize or maintain standardization for the purpose of reducing financial investment or simplifying administration;
 - iv. The material is perishable;
 - v. The material qualifies as an object of fine art;
 - vi. A particular material is required to match materials in use, so as to produce visual harmony;
 - vii. The material, professional service or service is the subject of a change order.
 - b. Any construction change order which authorizes a new improvement under a construction contract may be executed without competition; and
 - i. The new improvement is required for the completion of an improvement which is currently under construction pursuant to a competitive bidding or competitive proposal process;
 - ii. The new improvement results from the discovery of differing or unforeseen physical conditions at the site of the improvement under construction and is required for the completion of the improvement under construction

- iii. The Purchasing Manager deems it would be in the City's best interest to negotiate with the on-site contractor for the construction of the new improvement.
- iv. The requirements of any procurement requiring use of federal, or State of Maryland bid processes take precedence to the aforementioned requirements.

E. OPEN MARKET PURCHASES AND SALES (LESS THAN \$50,000)

1. If the amount of the expenditure for a service, commodity, or a class of commodities normally obtainable from the same source of supply is estimated to be less than \$50,000.00 or if the sale of personal property which has become obsolete or unusable is estimated to less than \$50,000.00, it shall not be subject to the requirements of a formal solicitation. All such open market transactions shall, wherever possible, be based on at least three competitive quotes and the approval of the Purchasing Manager or their designee.
2. The Purchasing Manager, or their designee, shall solicit quotes by direct mail requests, telephone, or electronically to prospective bidders for the class of commodities or services being purchased or sold, and record properly. When quotations are necessary, electronic bid posting is strongly preferred.
3. Purchases less than \$10,000.00, whenever possible, shall be made from pricing agreements, term contracts, or should be based on at least three competitive quotes. Due diligence is always expected.
4. All open market purchases shall be awarded to the lowest responsive and responsible bidder or on the basis of "best value" and all open market sales shall be made to the highest responsive and responsible bidder.
5. Use of electronic transmissions: The use of electronic media, including acceptance of electronic signatures, is authorized consistent with the State of Maryland's applicable statutory, regulatory or other guidance for use of such media, so long as such guidance provides for (i) appropriate security to prevent unauthorized access to the quotation, approval, and award processes; and (ii) accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.
6. Notwithstanding the provisions of this section, the Purchasing Manager may elect to handle any purchase less than \$50,000.00 according to any of the procurement methods.

F. EMERGENCY PURCHASES

Departmental purchases made in an emergency. See Section III, Item H for guidelines.

G. STOCK PURCHASES FROM CITY INVENTORY

Departments are required to purchase goods inventoried by the Purchasing Department (warehouse) only from the Purchasing Department. No purchase of goods from an outside source will be approved if the goods are stocked at the warehouse.

H. PROFESSIONAL SERVICE PURCHASES

The service of physicians, consultants, or other similar types of professional services that are not normally subject to competitive bidding, shall be engaged by the using a RFP based selection. The engagement of legal services is exempt from the City's procurement policies, however remains subject to the provisions of the City Charter.

I. CHECK REQUESTS

Check requests are used to request payment on items that are not processed as purchase requisitions. Examples are dues, subscriptions, travel advances, prepaid orders, escrow releases, refunds, tax payments, utility bills, payroll withholding payments, lease payments or other payments associated with agreements, land and property purchases and certain professional services that have already been contracted for (such as periodic insurance premiums) or are long-standing relationships (See Section III, G). Check request forms should be completely filled out including supporting documentation and sent to the Finance Department for processing.

J. PROCUREMENT CARDS

1. Purpose

The City's Card Program is designed to improve efficiency, timeliness, and internal control in processing purchases from vendors that accept a credit card. Many of our suppliers, currently being paid by Petty Cash, small dollar P.O.'s and Blanket P.O.'s will accept a credit card.

The program will allow cardholders to purchase approved commodities and services directly from vendors. Each procurement card is issued to a named individual and the City is clearly shown on the card as the governmental buyer of goods and services. Procurement Card spending limits are established by the Director of Budget and Purchasing.

The Purchasing Department will monitor the performance of the program. All questions or concerns should be directed to:

Procurement Related: Purchasing Card Administrator
Accounting Related: Director of Budget and Purchasing

The purpose of these policies is to provide an efficient method of purchasing and paying for goods and services, to reduce the use of Blanket Purchase Orders, to ensure Procurement Card Purchases are in accordance with the City's ordinances, to reduce the time spent by Accounts Payable processing transactions, to ensure that the City bears no legal liability from inappropriate use of procurement cards and to provide for disciplinary action if the procurement cards are misused.

The policies herein are minimum standards for Departments. Departments may establish additional controls if necessary.

2. General

The Procurement Card system simplifies the procurement and disbursement processes. Procurement responsibility is delegated to the ordering department enabling an authorized cardholder to place an order directly with the vendor; no prior requisition entry or PO is needed.

When a purchase authorization is requested by the supplier at the point-of-sale, the Procurement Card system validates the transaction against preset limits established by the employee's department. All transactions are approved or declined (electronically) based on the Procurement Card authorization criteria established. The authorization criteria may be adjusted periodically as needed and may include, but is not limited to the following:

- a. Number of transactions allowed per day
- b. Number of transactions allowed per month
- c. Single purchase limit
- d. Monthly spending limit
- e. Approved merchant category code (MCC)

The authorization process occurs through the electronic system that supports the Procurement Card processing services.

3. Assignment and Control of the Procurement Card

a. Request for and Issuance of Procurement Cards

- i. Procurement cards will be issued to individual employees. Generally, these will be the employees who before the Procurement Card Program often used Petty Cash and Blanket Purchase Orders.
- ii. The Procurement Card will have the employee's name, the City's name, the Department/Division's name, and expiration date. The Procurement Card issuing company will not have individual cardholder information other than the cardholder's address to verify citizenship. No credit records of the cardholder are maintained.
- iii. All requests for Procurement Cards must be made by the Department Head.
- iv. All requests for new cardholders will be made by submitting a request form to the Procurement Card Administrator.
- v. When the Purchasing Card Administrator receives a Procurement Card from the issuing card company, they will coordinate delivery and activation with the cardholder.

- b. Lost or Stolen Procurement Cards
 - i. If a Procurement Card is lost or stolen, the cardholder or department representative must immediately notify the Procurement Card Administrator of the loss.
 - ii. The cardholder will be responsible for reporting all information necessary to reduce the liability to the City for lost or stolen cards.
 - iii. Termination or Transfer of Cardholder
- c. When an employee ends their employment or is transferred to another department, the Department Head must notify the Procurement Card Administrator, collect the Procurement Card and destroy. If the Department is unable to collect the Procurement Card when an employee terminates, the Department Head must immediately notify the Procurement Card Administrator, who will ensure that the card is canceled.

4. Limitations on Use of Procurement Cards

- a. Cardholder Use Only: The Procurement Card may be used only by the employee whose name is embossed on the card. No other person is authorized to use the card.
- b. City Purchases Only: The Procurement Card is to be used for City authorized purchases only. The Procurement Card shall not be used for personal use and any such use will require immediate reimbursement and may result in disciplinary action, which may include dismissal.
- c. Dollar Limitations
 - i. Any authorization to go beyond maximum limits for any reason shall come from the Director of Budget and Purchasing or their designee.
 - ii. A purchase may be made of multiple items, but the invoice cannot exceed the single purchase limit. Payment for purchases shall not be split to stay within the single purchase limit.
- a. Prohibited Use of Procurement Cards: the following types of items may not be purchased with a Procurement Card, no matter the dollar amount (unless prior written authorization has been received):
 - i. Gasoline or oil (except in emergency situations)
 - ii. Vehicle repairs (except when authorized by the Vehicle Maintenance Department)
 - iii. Travel expenses such as hotels, food, and airline tickets (with the exception of prior authorization)

- iv. Cash advances
- v. Items available through the Purchasing Department warehouse or on existing contracts
- vi. Additional goods or services specifically restricted by the Department
- vii. Computer hardware and software (except by IT Manager)
- viii. Telephones or telephone related equipment (except by Facilities Manager)

Special permission to go outside these provisions may be granted by the Director of Budget and Purchasing or their designee, with Department Head approval, in extenuating circumstances.

5. Disputes

- a. If items purchased with the Procurement Card are defective, the cardholder must return the item(s) to the vendor for replacement or credit. If the service paid for with a Procurement Card is faulty, the vendor must be notified and asked to correct the situation or provide a credit. If the vendor refuses to replace or correct the faulty item or service, the purchase will be considered in dispute.
- b. A disputed item must be explained with a note on the cardholder's Statement of Account before the statement is forwarded to the Purchasing Department for payment.
- c. It is essential that the time frames and documentation requirements established by the Procurement Card issuer be followed to protect the cardholder's rights in dispute. Dispute policies and procedures issued by the Procurement Card issuer will be provided at the time Procurement Cards are issued to cardholders.

6. Review of Purchases by Departments

- a. Because of their knowledge of the job responsibilities and requirements, department supervisory representatives are required to review each Procurement Card expenditure (item purchased, amount and vendor) to ensure the goods or services were necessary and for official use.
- b. When purchases are questioned, the Department Head or designee will be responsible for resolving the issue with the cardholder. If the Department Head cannot be satisfied that the purchase was necessary and for official use, the cardholder must provide either a credit voucher proving the item(s) were returned for credit or a personal check for the full amount of the purchase. Checks must be sent to the Finance Department with an explanation and account number.
- c. Serious or repeated misuse of the Procurement Card will result in the revocation of the card. Employees incorrectly using their Procurement Card may be subject to disciplinary action.

- d. To help the Departments in their review, management reports may be provided by the Procurement Card Company by contacting the Procurement Card Administrator.

SECTION V – BIDDING POLICIES

A. TERMS

1. A **“responsible bidder”** is one who submits a responsive bid (a solicited bid that is determined to be in substantial conformance with the conditions, completion or delivery requirements, and specifications detailed in the invitation for bid (IFB), request for proposals (RFP), request for quotations (RFQ), or request for tenders) and who has furnished, when requested, information and data to prove that their financial resources, production or service facilities, service reputation and experience are adequate to make satisfactory delivery of the supplies, materials, equipment or contractual services on which he bids and who has not violated or attempted to violate any provision of these regulations. The responsible bidder will have satisfied all terms of the IFB prior to award of the contract.
2. The **bid review committee** is headed by the Purchasing Manager and certain other staff members who have expertise related to the bid subject. The committee shall convene when appropriate, but usually prior to the advertisement of a bid, at the pre-bid conference, if applicable, and prior to the award of the bid by the Mayor and Board of Aldermen.
3. A **bidder’s list** will not be maintained by the City. Notification of available bids may be made by invitation, on the City website, or through advertising in a newspaper of general circulation in Frederick County, trade journals or other publications.

B. FORMAL COMPETITIVE BID - GENERAL

1. All purchases, contracts for goods or services (except as otherwise noted in this policy) that cost \$50,000.00 or more shall be made by formal competitive bidding.
2. The intention of formal competitive bidding procedures is the determination and selection of the lowest responsive, responsible bidder.
3. In a formal competitive bid, the Purchasing Manager or their designee shall be responsible to determine the amount and type, if any, of a surety.
4. When a successful bidder fails to execute a contract after the stipulated time, a bid deposit may be taken and considered as liquidated damages, and not as a penalty for failure to execute the contract. Upon the proper execution of the contract by the successful bidder the bid deposit shall be returned.
5. Bidders may withdraw proposals and resubmit them before the bid opening.
6. Alternate bids may be allowed if stated in the IFB.
7. The Purchasing Manager may waive formalities in bids if such action is considered to be in the best interest of the City.

C. FORMAL COMPETITIVE SEALED PROPOSALS/COMPETITIVE NEGOTIATION

The system of formal competitive sealed proposals is used to select the firm submitting the highest rated responsive and responsible proposal. Competitive negotiation is used to select the firm submitting the most advantageous proposal.

Formal Competitive Sealed Proposals is the preferred method for the procurement of most services other than construction when competitive sealed bidding (IFB) cannot be used because:

1. Specifications cannot be prepared that would permit an award based solely on price, or
2. Competitive sealed bidding (IFB) is not practical or is not advantageous to the City and price is not the sole or most important criteria to be utilized in developing a contract.
3. If competitive negotiation is approved, discussions may be held with two or more of the highest rated “qualified offerors”. If multiple awards are anticipated, more offerors may be invited for discussions. Additional offerors invited for discussion will be selected in the order of their evaluated ranking. Qualified offerors include those offerors thought to be responsible who had been initially classified by the Purchasing Manager as being reasonably susceptible of being selected for award. Discussions are held to assure full understanding of the City’s requirements and of the qualified offerors proposals and abilities to perform, to obtain the best value cost to the City, and to facilitate agreement on a contract that shall be most advantageous to the City, taking into consideration price and the relevant evaluation factors set forth in the request for proposals.
4. If competitive negotiation is approved, the highest rated offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions, negotiations, and clarifications of proposals. Procedures and schedules shall be established for conducting discussions. If discussions show the need for substantial clarification or change in the request for proposals, the Purchasing Manager shall amend the request for proposal to incorporate the change and distribute the change to the offerors participating in the discussions. The mutual understanding of the parties on all basic issues shall be the objective of the negotiations.
5. When in the best interest of the City, the Purchasing Manager may permit qualified offerors to revise their initial proposals by submitting best and final offers. The Purchasing Manager shall establish a date and time for the submission of best and final offers. More than one series of best and final offers may be required when the requesting department makes a written determination that is in the best interest of the City to conduct additional discussions or change the requirements and to require another submission of best and final offers. If more than one submission of best and final offers is requested, an offeror’s immediate previous offer shall be construed, as its best and final offer unless the offeror submits another best and final offer. Unsolicited best and final offers shall be rejected.

6. The Purchasing Manager, upon the recommendation of the evaluation committee to award a contract to the highest rated responsible offeror, or in competitive negotiation to the most advantageous responsible offer, considering price, and the evaluation factors set forth in the request for proposal, will award the contract if they concur and it is within their authority to do so, or will forward and present an action item to the Mayor and Board of Aldermen for award.
7. After an award is made, notice of the award will be executed by the Purchasing Department.

D. FORMAL COMPETITIVE INVITATION FOR BID

1. Bids shall be submitted in a sealed envelope to the Purchasing Department and show the name of the particular bid and the contract number.
2. Except when proprietary information is involved, all formal bids are made public at the stated time, place, and date. No bids will be accepted after the stated deadline. A department review committee, if requested by the Purchasing Department, will review the bids after the bid opening.
3. A tabulation of all bids received shall be public information and kept as a permanent record in the Purchasing Department with the bid file.
4. The Project Manager will provide their recommendation to the Mayor and Board of Aldermen.
5. The Purchasing Department shall be responsible for having all necessary contract and supporting documents contained in the bid package completed and signed by all parties. All original bid documents will become the responsibility of, and be centrally located in, the Purchasing Department.
6. Selected bidder will have the bid bond returned after the receipt of the goods or services. However, if a performance bond is required, the bid bond will only be held until the performance bond or other surety is received by the Purchasing Department.

SECTION VI – PROPERTY ACCOUNTABILITY

A. CATEGORIES

1. Real Estate and Improvements: all land and structures are to be placed in this category. The Finance Department and the Director of Budget and Purchasing will maintain these records. All items in this category will be appraised at five-year intervals. Assessment figures will be checked in the interim years. These purchases are budgeted in the capital categories of either a department's operating budget or in the Capital Improvement Program.

2. Capital Outlay: those assets purchased by the City having a utility which extends at least three years and estimated to be valued at or in excess of \$5,000.00.

Supplies: items with a purchase cost of less than \$5,000.00 shall be recorded as supply purchases in account number 5310100. There will be no differentiation between varieties of supplies in the accounts.

B. RESPONSIBILITY

1. Supervision of property accountability and inventory control shall come under the jurisdiction of the Accounting Manager. A comprehensive inventory maintained by the Finance Department shall be kept and recorded, setting out quantity, building location and full description for identification, including model number and serial number, and establish monetary value and/or price for each item.
2. Each Department Head will assign an individual from their department to act as a coordinator to maintain and control that department's property inventory record.
3. Annually, the Finance Department will produce a Correctable Property Accountability Listing, by department, type code, and property number for all listed assets (those \$5,000.00 and over). Each Department Head shall receive the list of property assigned to their department and is responsible to check it for accuracy.
4. Differences are to be reported to Finance directly on the Correctable Listing (in red ink) or on the Property Transfer Form (if applicable) and the necessary adjustments will be made by Finance.
5. It is also the Department Head's responsibility to maintain a record of all of the department's property with purchase costs under \$5,000.00.

C. ACCOUNTABILITY AND INSPECTIONS

1. Each Department Head shall be held responsible for all property assigned to their department.
2. No capital outlay-type property can be removed from an assigned department without written authority from the Department Head or their designee.
3. As deemed necessary, a representative of the Finance Department will visit a department to ensure that all property assigned to that department is accounted for, that proper records are being maintained, that the property is being kept in good condition and that it is in use.

D. PROPERTY - SURPLUS, OBSOLETE AND WASTE ITEMS

1. The Department Head shall have the sole authority to transfer or dispose of surplus, obsolete and waste articles with an original value less than \$5,000. If it is determined that the surplus, obsolete and waste article may hold potential value to another City department, the Department Head or designee shall circulate an email to other City departments to see who might be able to use the item. When a final determination is made that a surplus, obsolete and waste article is beyond use and of no value, it shall be disposed of in accordance with all applicable laws.
2. The Purchasing Manager shall have the sole authority to transfer or dispose of surplus, obsolete and waste articles with an original value of \$5,000 or more. When a using department has determined that a commodity is beyond further use to the department and had an original value of \$5,000.00 or more it shall notify the Purchasing Manager by filling out the Property Transfer Form. The Purchasing Manager or designee will proceed to dispose of the items as soon as practicable.
3. The Property Transfer Form must also be used when items with an original value of \$5,000 or more are transferred from one department to another, traded-in on new merchandise, or disposed of in any manner whatsoever. This includes all scrap, junk, and obsolete items.

E. SURPLUS PERSONAL PROPERTY ELIGIBLE FOR DONATION

The purpose of this policy is to set forth guidelines for donations of surplus personal City property. This policy does not apply to the donation of surplus real property.

1. The Department Head, with concurrence by the Purchasing Manager, has the authority to approve the donation of surplus personal property with an estimated value of less than \$10,000 in accordance with this section.
2. The Mayor has the authority to approve the donation of surplus personal property with an estimated value of \$10,000 or higher in accordance with this section.
3. The decision to donate surplus personal property must be based upon a determination that the potential benefits received by City residents through donation of the surplus personal property to an eligible organization outweigh the potential fiscal benefit of selling the surplus personal property.
4. Priority shall be given to organizations on the basis of how the donation of surplus personal property will benefit City residents. In general, preference should be given to governmental agencies and volunteer fire departments over non-profit organizations.
5. Pursuant to Internal Revenue Code Section 501(c)(3), non-profit organizations that receive a donation must also meet one of the following criteria:
 - a. The non-profit organization currently provides a service that complements or serves a common client base of an existing City program; or

- b. The donation furthers a special project or geographically focused City effort or benefits a particular group such as the elderly, low-income families, the homeless population, or any group or community the City wishes to provide assistance to.
6. The Property Transfer Form must be utilized for all donated property.
7. All donations pursuant to this section shall be without warranty, express or implied, and the transferee shall agree to defend, indemnify, and hold harmless the City, its officers, and employees, from any claim, cause of action, damage, loss, or liability arising out of the condition of the property or its use by the organization or subsequent transferee.

SECTION VII – TRAVEL POLICIES

A. GENERAL TRAVEL POLICIES

1. All employees and/or representatives of the City traveling on official business are expected to exercise the same care in incurring expenses as they would if traveling on personal business at their own expense.
2. Only employees and representatives of the City will be reimbursed for expenditures while on official City business. This does not include spouses, children, etc.
3. City employees will be reimbursed for expenditures while on official City business when the expenditures have been incurred in accordance with these regulations.
4. The City reserves the right to refuse payment on items or amounts that it considers extravagant or personal in nature.
5. No reimbursement shall be made for the payment of fines or traffic violations.

B. TRAVEL BY CITY AND PRIVATE VEHICLES

1. Travel by City vehicles is encouraged. Length of trip, time spent traveling and cost of traveling should be considered in determining mode of travel. Mode of travel should be determined by the Department Head.
2. Gasoline and oil for all City vehicles must be obtained at City facilities unless an emergency prevails or on an extended trip.

3. Employees will be reimbursed at the current Internal Revenue Service (IRS) mileage allowance for authorized travel in a private vehicle. The Finance Department will notify Department Heads when the mileage allowance is changed. In theory, the IRS mileage rate is calculated based on normal expenses for gas, oil, standard periodic repairs, and insurance. One thing to note: When an employee uses their personal vehicle on City business, they remain covered by the City's liability and workers compensation insurance. They are not covered by the City's automobile insurance.
4. City vehicles shall be used only by City employees or representatives of the City in performing their prescribed duties. No City vehicle is to be used for travel from home to work or vice versa except upon written authorization by the Director of the Department and concurrence of the Mayor.
5. Overnight parking, tolls and daytime parking fees are reimbursable on overnight trips. Daytime parking fees during authorized trips outside of Frederick City are reimbursable. Reimbursements for parking meter fees within the City limits are not permitted.
6. Traffic tickets or parking violations, incurred by a City employee, whether operating a City vehicle or a private vehicle, are the responsibility of the individual and not the City.

C. TRAVEL BY PUBLIC TRANSPORTATION

1. Travel must be made by the least expensive, most practical direct route.
2. The employee will be reimbursed the actual fare of public transportation. Round-trip tickets should be purchased and used whenever possible.
3. When traveling by plane, Economy Class tickets shall be obtained whenever possible.
4. When traveling by train, coach rates should be used unless the trip is overnight. Roomette fares are allowed for overnight travel.
5. Taxis, streetcars, and bus fares are reimbursable only when incurred on official business.
6. Car rental is not considered necessary where there are airport shuttles and taxis.

D. CONFERENCE AND OVERNIGHT TRAVEL

1. On official travel that will require an employee to be out of the City overnight, approval must be obtained from the Department Head.
2. A per diem allowance is provided for overnight official business trips that is equal to the Federal per diem as published by the U.S. General Services Administration. Meals provided as part of an out of town conference or training event are not reimbursable.

3. If the conference takes place during normal working hours, out of the local Frederick area, a lunch allowance will be allowed. Conferences and training held within the City and immediate area are not eligible for meal reimbursement.
4. Documentary evidence, such as receipts, tickets or paid bills are required to support expenditures for:
 - a. Lodging and traveling.
 - b. Transportation charges, except mileage allowance.
 - c. Expenditures in excess of \$5.00. It is not necessary to document tolls, etc., under \$5.00. Expenditures over \$5.00 must include sufficient information to establish the amount, date, place, and essential character of the expenditure.
5. All approved requests for reimbursement should be submitted to the Finance Department on an expense report form, accompanied by a copy of the conference agenda, if applicable.