

MEMORANDUM

To: Mayor and City Council
From: Chris Pike, Finance Director
Date: August 27, 2018
Subject: **Ordinance to Amend the Dunwoody Purchasing Policy**

ITEM DESCRIPTION

Ordinance to Amend the Dunwoody Purchasing Policy

BACKGROUND

Every two years, the Finance Department reviews the city's Purchasing Policy to ensure compliance with state law and adherence to best practices. The last update was in 2016. This draft incorporates recently adopted law (HB489) requiring the city to use the state's Department of Administrative Services web portal for announcing our requests for bids and proposals. This update has also been requested by GDOT. There are no other suggestions.

RECOMMENDED ACTIONS

It is respectfully requested Council approve the ordinance to amend the city's Purchasing Policy.

**AN ORDINANCE TO AMEND THE POLICY RELATING TO THE PROCUREMENT
PROCESS, AS A COMPONENT OF THE FINANCIAL MANAGEMENT PROGRAM
FOR THE CITY OF DUNWOODY, GA; AND TO PROVIDE FOR GUIDANCE IN
ADMINISTERING THE POLICY**

WHEREAS, Section 5.06 of the City of Dunwoody Charter requires the City Council by Ordinance to prescribe procedures for a system of centralized purchasing for the City; and

WHEREAS, the City has previously adopted the Administration Ordinance, Chapter 2 of the City of Dunwoody Code of Ordinances, which requires the City to create a Purchasing; and

WHEREAS, the City has previously adopted a Purchasing Policy and now wishes to revise same.

THEREFORE, BE IT ORDAINED, by the Mayor and City Council of the City of Dunwoody, and it is hereby resolved by the authority of the City Council, that the City of Dunwoody hereby adopts the amended Purchasing Policy, as attached hereto and incorporated herein.

SO ORDAINED AND EFFECTIVE this 11th day of September, 2018.

Approved by:

Denis L. Shortal, Mayor

Attest:

Sharon Lowery, City Clerk

Seal



Financial Management Policies
Purchasing Policy

Purchasing Policy



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PURCHASING POLICY

I. Purpose

The purpose of this policy is to state the City's position regarding the purchasing responsibility and authority of non-construction Goods and Services as required under City Code of Ordinances Section 5.06. This document will clarify purchasing functions and outline purchasing policies, as well as describe departmental relationships, responsibilities and participation in the procurement cycle. This policy will provide control functions, assure proper record keeping and confirm purchases in writing to allow the City to meet the following goals:

- A. Maintain at all times and under all conditions a continuous supply of Goods and Services necessary for the operation of the City;
- B. Encourage and promote fair and equal opportunity for all persons doing, or seeking to do, business with the City;
- C. Safeguard the quality and integrity of the City's procurement process;
- D. Ensure compliance with laws and regulations pertaining to the procurement of Goods and Services;
- E. Manage procurement and inventories of purchased Goods to meet the use requirements of City departments at the most advantageous cost to the City;
- F. Administer procurement contracts and contract amendments;
- G. Properly dispose of all material and equipment declared to be surplus or obsolete; and
- H. Ensure the City provides quality service to our citizens and support the largest economic engine in the Southeast by planning in a careful and thoughtful manner.

In addition, this policy is to set a standard of environmentally preferable procurement and demonstrate the City's commitment to environmental, economic, and social stewardship. The City of Dunwoody has a unique opportunity to further expand its leadership in the area of environmentally preferable purchasing, and through its actions, elicit changes in the marketplace. By further incorporating environmental considerations into public purchasing, the City of Dunwoody will positively impact human health and the environment, remove unnecessary hazards from its operations, reduce costs and liabilities, and improve the environmental quality of the region. This policy will guide the City's efforts in procuring environmentally preferable Goods and Services.

The philosophy behind this policy is one of separating the need for Goods and Services from the function of negotiation and executing the necessary contractual purchase agreement.

The Purchasing Policy outlined herein shall be used in conjunction with the Procurement Card Procedure Manual.

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II. Scope

The scope of this purchasing policy covers the procurement of most Goods and Services for non-construction purposes without regard to the past method by which the material or service has been or is customarily procured. The policy covers all contractual and purchase agreements between the City of Dunwoody and another Person. The procurement function includes the initial agreement/purchase, changes and/or re-negotiations. This policy establishes the specific responsibility and authority of the procurement of materials and services.

As part of the audit process, the internal controls and accounting processes outsourced municipal services Vendors will be evaluated and a measure of assurance given as a requirement of completion of the City's annual audit. The staff of outsourced municipal services Vendors assigned to work at City of Dunwoody City offices and perform purchasing activities on behalf of the City of Dunwoody is not exempt from the City's adopted Purchasing Policy. Furthermore, unless due to the lack of competitive options, the City will not typically procure Goods and Services from outsourced municipal services Vendors not expressly stated in their contract to provide municipal services or do not have a direct impact on the Vendor's ability to provide those contracted services.

The provisions of this policy do not apply to procurements for the following:

- A. Public works construction contracts to the extent governed by O.C.G.A. §36-91-1 et seq.
- B. Services and construction whose procurement falls under a conflicting federal or Georgia statute;
- C. Land, artistic work, or other good whose inherent nature is unique and cannot be competitively compared to other goods within its class, except as provided in section VIII(G). Real Estate Acquisition;
- D. Employee Benefits and health related services procured through a quotation and negotiating process conducted by an expert in the field, or to maintain continuity of employee-health records;
- E. Travel, entertainment, conferences, training, speakers, instructors, facilitators, and meeting expenses, or other expenditures covered by another City policy;
- F. Insurance procured through a negotiating process;
- G. Items or services procured for resale or to generate a revenue;
- H. Advertising;
- I. Subscriptions and dues established during the budget process;
- J. Transactions approved by Council involving another governmental entity;
- K. Utilities; and

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- L. Seized Property included in a court order authorizing disposal.

All other policy exceptions must receive approval from City Council. Such exception may be approved by Council when practicable, more appropriate, or when adherence to the policy is not in the City's best interest.

III. Definitions

When used in this policy, the following words, terms and phrases, and their derivations, shall be the meaning ascribed to them in this section, except where the context clearly indicates a different meaning,

- A. ADDENDUM means a change, clarification or correction in the Solicitation Documents, prior to the award of a Contract.
- B. AMENDMENT means an agreed upon addition to, deletion from, correction or modification of a Contract.
- C. ANNUAL CONTRACT means an agreement or Contract, typically for a specified duration, between a supplier and the City, to furnish Goods or Services usually of an indefinite quantity and delivery schedule, at unit prices provided for under the terms of the Contract. Also known as a term contract, annual agreement or requirements contract.
- D. AGENT means an Official, Employee, contracted or subcontracted Person who is authorized to act on behalf of the City of Dunwoody and represent their interests.
- E. APPEAL means a specific written objection by an interested Person to a Request for Qualifications, a Request for Quotations, an Invitation for Bid, an Invitation to Negotiate, a Request for proposal, or an award or proposed award of a Contract, with the intention of receiving a remedial result.
- F. AVAILABLE LOCALLY means that one or more Persons within the City or immediate surrounding areas are able to provide Goods and Services in a timely manner, and in sufficient quantity and quality to meet a specific need.
- G. BID / PROPOSAL BOND means a form of bid security executed by the Bidder (or Proposer) as principal and by a Surety, to guarantee that the Bidder (or Proposer) will enter into a Contract within the time specified in the Invitation for Bid or Request for proposals, and will furnish the necessary bonds and insurance, and meet any other requirements of those documents.
- H. BIDDER means a person or entity submitting a bid or quote to the City for the supply of Goods or Services.
- I. BUYING COOPERATIVE OR ALLIANCE means a group of public entity purchasers organized for the purpose of creating contracts or pricing agreements in order to take advantage of group or quantity buying discounts or special pricing from which members of the group can benefit.

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- J. CAPITAL EXPENDITURE ITEM is defined, established and modified from time to time within the Capital Assets Policies. Capital Expenditure Items generally have a normal life expectancy of three years or more, are a complete entity within themselves are distinguished from components, and require approvals as discussed in the Capital Asset Policies.
- K. CITY means the City of Dunwoody and, as the context warrants, those persons or bodies authorized to act on its behalf, including but not limited to the Council, Committees, and staff.
- L. CITY FINANCE DIRECTOR means the City Accountant as described in the City Charter, his agent, or the department head of the City Finance Department, if such a department is in existence.
- M. COMPETITIVE AWARD means a procurement based upon the outcome of one of the competitive processes set forth in this Policy, where award is made based on the lowest quotation or Bid submitted by a responsible and responsive Bidder or to the most qualified or advantageous Proposer based on the qualitative and/or quantitative factors identified for the procurement. A Competitive Award can be made even if only a single bid or proposal has been received from a Bidder or Proposer who is determined to be responsible and responsive.
- N. CONSTRUCTION means the process of building, altering, improving or demolishing any public structure or building, or other public improvements of any kind to any public real property. The term "Construction" does not include the routine operation, repair and/or maintenance of existing structures, buildings or real property.
- O. CONTRACT means all types of City agreements for the purchase or disposal of Goods, Services, or Professional Services regardless of what they may be called, including contracts for a fixed price, cost plus a fixed fee, incentive contracts, and contracts providing for the issuance of job or task orders, leases, letter contracts and purchase orders. Contracts also include amendments, modifications and supplemental agreements with respect to any of the foregoing. Every Contract must be duly authorized and approved prior to execution.
- P. CONTINUING PURCHASE CONTRACT means a Contract procured under this policy with one or more Vendors based on general specifications and/or scope of work, for which award of specific scopes of work is intended periodically during the Contract term as the need arises. Pricing and/or rates may be defined in the original Contract or by Amendment at the time that specific scopes of work are awarded.
- Q. CONTRACT EXTENSION means an Amendment to a Contract that includes an increase in the term of a Contract, for which no options to renew the Contract beyond the current expiration date exist.
- R. CONTRACT RENEWAL means an exercise of an approved, existing option to increase the term of a Contract. Options to renew a Contract are often done in annual increments.
- S. EMPLOYEE means an individual drawing a salary or wage from the City whether on a full-time or part-time basis. The term shall encompass all members of the Council

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without regard to whether or not such individuals are compensated. A contracted third party shall be considered as an "employee" for the purposes of this Policy only.

- T. EMERGENCY PROCUREMENT means any procurement of Goods or Services in the context of an Emergency.
- U. EMERGENCY means a situation that occurs suddenly and unexpectedly and demands immediate action to prevent delays which may vitally affect the health, safety or welfare of the public or City Employees and affects the continuation of services to the citizens, and/or serious loss or injury to the City. Emergency shall also mean a condition, malfunction, or occurrence in which the immediate procurement of an item (i.e. Good, Services, or Professional Service) is essential to comply with regulatory requirements.
- V. ENVIRONMENTALLY PREFERABLE GOODS AND SERVICES means Goods and Services that have a lesser or reduced negative effect on human health and the environment when compared with competitive Goods and Services that serve the same purpose.
- W. GIFTS or FAVORS means anything of any service of value. Value shall be considered anything in excess of \$100.
- X. GOODS or COMMODITIES means supplies, apparatus, materials, equipment and other forms of tangible personal property used by a City department in the accomplishment of its responsibilities.
- Y. GOVERNING AUTHORITY means the City entity responsible for the Contract.
- Z. INFORMAL WRITTEN QUOTES (IWQ) means all documents utilized for soliciting quotations for Goods, Services, or Professional Services, in which award is made based on the lowest responsive and responsible quotation and in which the type or cost of the procurement does not require a more formal Bid or proposal process.
- AA. INVITATION TO BID (ITB) means all documents utilized for soliciting bids, including those attached or incorporated by reference. These include a scope of work and all contractual terms and conditions applicable to the procurement. Bids are requested when requirements are clearly defined, price is the major determining factor for award, and a formal sealed submittal is required.
- BB. INVITATION TO NEGOTIATE (ITN) means documents used for soliciting competitive proposals in which negotiation of price and other factors is to commence after receipt of proposals and prior to recommendation of award. This process may be used when the scope of work is complex or difficult to define, if strict comparison of Services or Goods required may be difficult because components are likely to vary among Proposers or in any situation when it is in the City's best interest to negotiate prior to recommendation of award to obtain the Services or Goods that best meet the City's needs, price and other factors being considered.
- CC. LATE BID/PROPOSAL means a Bid or proposal received after the time or date such bid or proposal was due, as stated in the Solicitation Documents.

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- DD. LIFE CYCLE COST ASSESSMENT means the comprehensive accounting of the total cost of ownership, including initial costs, energy and operational costs, longevity and efficacy of service and disposal costs.
- EE. MULTIPLE AWARD SCHEDULE CONTRACT means a Contract based upon one solicitation awarded to two or more Vendors to supply Goods or Services.
- FF. NEGOTIATED AWARD means a procurement made as the result of negotiations between the City and a Supplier, such as a Sole Source Procurement or Single Source Procurement or another instance, including competitive Invitation to Negotiate, where a Contract award based on direct negotiations with a Supplier of Goods or Services is appropriate.
- GG. OFFICIAL means any elected or appointed person who holds office or serves in a position of public capacity.
- HH. ONLINE REVERSE AUCTION means a purchasing method wherein Bidders enter prices for items electronically, and their prices are displayed for other bidders to see with all Bidders given the opportunity to continually bid a lower price until the time period of the bid expires.
- II. ORDINANCE means related Administration Ordinance in Chapter 2, Article 7 of the City's Municipal Code.
- JJ. PAYMENT TERMS means the established due date for payments by the City to pay an invoice. Absent any agreement otherwise stated, the City's payment term will be Net 30.
- KK. PERFORMANCE BOND means a bond provided by a contractor/supplier in which a surety guarantees to the City that the Goods are delivered or the Services are performed in accordance with the Contract documents. A letter of credit issued by a financial institution that meets the City's requirements may, at the discretion of the City, be substituted for the performance bond.
- LL. PERSON means any business, entity, company, firm, individual, union, committee, club or other organization or group of individuals.
- MM. PRACTICABLE means satisfactory and within reason when considering price, performance, availability, compatibility with specified operation, and public safety.
- NN. PRE-QUALIFICATION means the part of a competitive procurement process in which the City determines, based on standards developed for a specified product or service, which interested Vendors meet those standards and are eligible for further consideration in the purchasing process.
- OO. PRODUCT EVALUATION means the evaluation of a product to help determine its usefulness in meeting the City requirement or specification.
- PP. PROFESSIONAL SERVICES means services rendered by an independent contracting individual or firm having expertise in a particular industry or subject matter due to specialized education, training, licensure or skill, and consisting primarily of advice reports, conclusions, recommendations or other outputs resulting from the time and

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effort of the service provider, as opposed to the acquisition of specific commodities, or of services not requiring any specialized education, licensing, training or skill (e.g. janitorial services). Professional Services include but are not limited to evaluations, consultations, management systems, management consulting, compiling statistical data, support of planning and operating activities, appraisal services, and research and development studies or reports.

- QQ. PROPOSER means a Person submitting a proposal or qualifications to the City for the supply of Goods, Services, or Professional Services.
- RR. PURCHASE ORDER means a document approved and issued by the Purchasing Agent or designee and accepted by the Vendor to obtain Goods, Commodities and Services.
- SS. PURCHASING is the process of securing materials, services, repairs, leases and rentals necessary for the operation and support of the City. The renewal, renegotiations and changes to Contracts, leases and agreements are functions of purchasing.
- TT. PURCHASING AGENT means the principal purchasing official of the City of Dunwoody pursuant to Chapter 2, Article 7 of the City's Municipal Code who is authorized and appointed to purchase a range of Goods, Services, or Professional Services on a routine basis.
- UU. REQUEST FOR PROPOSALS (RFP) means all documents utilized for soliciting proposals for Goods, Services, or Professional Services, including those attached or incorporated by reference. These include a scope of work and all contractual terms and conditions applicable to the procurement. This method is used when factors in addition to price are considered for award.
- VV. REQUEST FOR QUALIFICATIONS (RFQ) means all documents utilized for soliciting qualifications for Goods, Services, or Professional Services.
- WW. REQUISITION means an internal document, provided by a department to the Purchasing Agent that contains the fund source, approvals, descriptions, quantities and other information about the Goods, Services, or Professional Services in order to proceed with the procurement. The Requisition becomes valid when properly completed and approved.
- XX. RESPONSIBLE BIDDER OR PROPOSER means a Person, who, in the exclusive judgment of the City, (a) has the capability in all respects to fully perform the Contract requirements; and (b) the integrity, experience, qualification, and reliability which assures good faith performance.
- YY. RESPONSIVE BIDDER OR PROPOSER means a Person, who, in the exclusive judgment of the City, has submitted a bid or proposal that conforms in all material respects to the Solicitation Documents.
- ZZ. SERVICES mean any performance of effort or labor, for which the City has contracted other than Professional Services or services classified as construction. Services include, but are not limited to, janitorial, landscaping, and street striping.

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- AAA. SHORTLISTING means the part of a competitive procurement process in which the City determines, based on criteria developed for a specified Good, Service, or Professional Service which of the interested Vendors are the best qualified to be eligible for further consideration in the purchasing process.
- BBB. SINGLE-SOURCE PROCUREMENT means identifying and using, without first completing a competitive process, one source for Goods or Services among others in a competitive marketplace, which, for justifiable reasons, is found to be most advantageous for the purpose of fulfilling a given Purchasing need of the City.
- CCC. SOLE-SOURCE PROCUREMENT means identifying and using, without first completing a competitive process, one source for Goods or Services, when that source is the only one available that can fulfill a given Purchasing need of the City.
- DDD. SOLICITATION DOCUMENTS means an Invitation for Bids, Request for proposals, Request for Qualifications, Request for Quotations, or an Invitation to Negotiate including all of the associated forms and documents of each solicitation, or any other types of documents used by the City to procure Goods, Services, or Professional Services.
- EEE. SPECIFICATION OR SCOPE OF WORK means any description of the physical or functional characteristics, or of the nature of Goods, Services, or Professional Services. Specifications or Scope of Work may include any function and other criteria that will be required to perform the work and a description of any requirement for inspection, testing, or delivery.
- FFF. SUPPLIER, MERCHANT OR VENDOR means a Person currently supplying or in the business of supplying Goods, Services, or Professional Services.
- GGG. SURETY means an organization who, for a consideration, promises in writing to make good the debt or default of another organization. The Surety must be satisfactory to the City and licensed to do business in Georgia.
- HHH. THE USING DEPARTMENT/DIVISION (User) is defined as the department which has the authority and responsibility for determining the need for an item or service, its related specifications, and need date. The User is responsible for funding the need and advising Purchasing of the approved funding and the specific budget account number. The User is responsible for authorizing the purchases of all materials, services, repairs, leases and rentals in which the negotiated price exceeds the approved funding.

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IV. Ethics in Procurement

Each person involved in the procurement process must adhere to a high standard of ethics. Each will be bound by the ethics provision in the Code of Conduct as adopted by the city of Dunwoody.

A. Employee Conflict of Interest

It shall be unethical for any City of Dunwoody Employee, Official or Agent to transact any business or participate directly or indirectly in a procurement Contract when the Employee or Official knows that:

1. The Employee, Official or Agent or any member of the Employee, Official or Agent's immediate family has a substantial interest or financial interest pertaining to the procurement Contract, except that the purchase of Goods and Services from businesses which a member of the City Council or other City of Dunwoody Employee has a financial interest is authorized as per O.C.G.A. § 36-1-14, or the procurement Contract is awarded pursuant to O.C.G.A. § 45-10-22 and § 45-10-24, or the transaction is excepted from said restrictions by O.C.G.A. § 45-10-25, interpreting such statutes as if they were applicable to a municipality.
2. Any other person, business or organization with whom the Employee, Official, Agent or any member of an Employee, Official or Agent's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement Contract.
3. An Employee, Official, Agent or any member of an Employee, Official or Agent's immediate family who holds a substantial interest or financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that substantial interest or financial interest.

All Vendors may be asked to sign a disclosure document indicating any connection to or with a City of Dunwoody Employee or Elected Official.

B. Gratuities, Rebates or Kickbacks

1. **Gratuities.** It shall be unethical for any person to offer, give, or agree to give any City of Dunwoody Employee, Official or Agent, or for any City of Dunwoody Employee, Official or Agent to solicit, demand, accept, or agree to accept from another person, a gratuity, rebate or an offer of employment in connection with any decision, approval, disapproval, recommendation or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a Contract or subcontract, or to any solicitation or proposal therefore in any manner inconsistent with the State of Georgia's Department of Administrative Services Gratuity Policy. Rebates normally or routinely offered to all customers for the purchase of their Goods and Services are acceptable and are the property of the City of Dunwoody.

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Nothing in this section shall preclude an Official, Employee or Agent of the City from attending seminars, courses, lectures, briefings, or similar functions at any Vendor's facility or at any other place if any such seminar, course, lecture, briefing, or similar function is for the purpose of furnishing the Official, Employee, or Agent with knowledge and information relative to the Vendor's products or services and is one which the City Manager determines would be of benefit to the City.

In connection with any such seminar, course, lecture, briefing, or similar function, nothing shall preclude the Official, Employee, or Agent from receiving meals from a Vendor. Nothing in this section shall preclude the Official, Employee, or Agent from receiving educational materials and business related items of not more than nominal value from a Vendor.

Nothing contained in this section shall permit the Official, Employee, or Agent to accept free travel from the Vendor outside the state of Georgia or free lodging in or out of the state of Georgia.

2. Kickbacks and Rebates. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a Contract to the prime contractor or higher tier subcontractor, or any person associated therewith, as an inducement for the award of a subcontract or order.
3. Contract Clause. The prohibition against gratuities, rebates and kickbacks prescribed in this Section shall be conspicuously set forth in every Contract and Solicitation Documents therefore.
4. Courtesies. Employees may accept for themselves and members of their families common courtesies usually associated with customary business practices so long as a strict standard is enforced with respect to gifts, services, discounts, entertainment or consideration of any kind from suppliers of merchandise, services, supplies, etc. to the City of Dunwoody. An example of a common courtesy is free pens or notepads with the Vendor's name on them.
5. Cash. It is never permissible for a City of Dunwoody Official, Employee or Agent to accept a gift in cash, cash equivalents, stocks or other forms of marketable securities of any amount.

C. Prohibition Against Contingent Fees

It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a City of Dunwoody Contract upon any agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

D. Use of Confidential Information

It shall be unethical for any City of Dunwoody Employee, Official or Agent knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

E. Unauthorized Purchases

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No purchases of Goods and Services shall be made in the name of the City of Dunwoody or one of its departments, except such as is required for official use by the City of Dunwoody or one of its departments. Purchases in the name of the City of Dunwoody or a department for personal use by an individual or for other than official use are prohibited, and no City of Dunwoody funds will be expended or advanced therefore.

F. Penalties and Sanctions

1. Legal or disciplinary action by City Council. The City Council may take appropriate legal and/or disciplinary actions pursuant to the City's Ethics Ordinance against any City of Dunwoody Official or Person in violation of these ethical standards for any Employee under their direct supervision and control subject to the appropriate appeals process of the City of Dunwoody.
2. Legal or disciplinary action by City of Dunwoody City Manager. The City of Dunwoody City Manager may take authorized and appropriate legal and/or disciplinary actions, including dismissal, against any City of Dunwoody Employee.
3. Administrative penalties for Employees. The City of Dunwoody City Manager may impose any one or more of the following penalties or sanctions on a City of Dunwoody Employee for violations of the ethical standards in this Section as appropriate to the situation, subject to the Personnel Manual or other appropriate appeals procedures:
 - a) Oral or written warnings or reprimands.
 - b) Suspensions with or without pay for specified periods of time.
 - c) Termination of employment.
4. Administrative penalties for outside contractors/Vendors. The City of Dunwoody may impose any one or more of the following penalties or sanctions on a Vendor or other Person or organization for violations of these ethical standards:
 - a) Written warnings or reprimands.
 - b) Termination of Contracts.
 - c) Debarment or suspension.

G. Disclaimer of Responsibility for Improper Purchasing

The City may disclaim responsibility and liability for any purchase, expenditure, or agreement for expenditure arising from a procurement made in its name, or in the name of any governmental body under its authority, by an unauthorized person or any person acting outside this Policy or the authorization or delegation as provided in this Policy. The expense of any such disclaimed transaction will become the personal liability of the individual who acted improperly.

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H. Vendor Contact During Open Solicitations

Persons seeking an award of a City of Dunwoody contract may not initiate or continue any verbal or written communications regarding a solicitation with any Official, Employee or other City representative other than the Purchasing Agent named in the solicitation between the date of the issuance of the solicitation and the date of the final contract award. The City Manager or designee will review violations. If determined that such communication has compromised the competitive process, the offer submitted by the individual, firm or business may be disqualified from consideration for award.

V. **Responsibility**

A. Purchasing Agent

The City Council may appoint the City Manager, or said Agent appointed by the City Manager, to serve as the Purchasing Agent for the City, or the Council may contract with an independent third party to serve as the Purchasing Agent (per City Code of Ordinances Section 2-175).

DUTIES: The Purchasing Agent shall have the following duties and powers:

1. Arrange and negotiate the purchase or Contract for all equipment, supplies and contractual services for the City or any using agency; arrange and negotiate for the sale or otherwise dispose of all surplus equipment and supplies or real estate of the City or any using agency.
2. Maintain a perpetual or periodic inventory record of all materials, supplies, software, or equipment stored in city storerooms, warehouses, and elsewhere, including monthly reports to the Finance Director that include:
 - a) Titles of all formal solicitations and the method of source selections to be used.
 - b) Contracts authorized by the City Council, the method of source selection used and the total dollar amount.
 - c) Emergency Contracts awarded pursuant to Municipal Code Chapter 2, Article 7.
 - d) Change orders or Contract modifications authorized by the Council and the dollar amount and reason.
 - e) Change orders or Contract modifications authorized by the Purchasing Agent and the dollar amount and reason.
 - f) Explanation of any changes, and the costs involved, in the scope of services made between the time a Contract is awarded and the time that the Contract is authorized by the City Council.

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- g) Documentation of the types, quantities, and dollar amounts of environmentally preferable Goods (including the percentage of post-consumer and total recovered material content) and Services purchased. The report shall also include dollar amounts of non-environmental or conventional Goods and Services, identify and discuss instances where this policy is waived or its requirements found impracticable, and highlight barriers to the procurement of environmentally preferable Goods and Services, if applicable.
3. Manage and supervise purchasing staff.
 4. Control and supervise all City storerooms and warehouses.
 5. Develop and maintain a purchasing policy and procedures manual which will be updated by City Manager (or their designee) periodically.
 6. Establish guidelines, within the purchasing policy and procedures manual, governing the review and approval of specifications for procurement of Goods and Services based on recyclability, energy and water conservation, life cycle cost, and other environmental considerations.
 7. Direct efforts to procure Goods and Services through advertisements of bids in the local legal organ as required by the City's Municipal Code and by State law.
 8. Require bonds, insurance and other forms of protection for the City on the process of procuring Goods and Services for the City.
 9. Terminate solicitations for bids for any Good(s) or Service(s) when, in the opinion of the Purchasing Agent, it is in the City's best interest to do so.
 10. Reject any and all bids, when in the opinion of the Purchasing Agent it is in the City's best interest to do so.
 11. Consult with the City Attorney if a contracting party breaches or is reasonably anticipated to breach its Contract with the City.
 12. Assist in negotiating City Contracts, as directed. The City Council shall approve final Contracts and Amendments valued at \$50,000 and above and execute and bind the City to such agreements. (For example, if a \$40,000 contract was previously approved and a subsequent amendment of \$15,000 is proposed, such amendment would require Council approval.) Contracts and amendments (in the aggregate) valued at less than \$50,000 shall be approved and signed by the City Manager or designee. (The valuation threshold above shall not apply to contractual employment relationships. Council must approve any such contract worth more than \$25,000 per Code of Ordinances Section 2-23(c).)
 13. Advise the Finance Director and City Manager on the status of negotiations, as well as Contract provisions and their impacts on the City.
 14. Make recommendations on Contract approval, rejection, amendment, renewal and cancellation.

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15. Provide Contract administration and supervision of Contracts, as directed by the City Manager. Such tasks shall include, but not be limited to, monitoring Contract Amendments, obtaining applicable insurance certificates and monitoring applicable progress.
16. Plan and implement processes for the ongoing protection of the City's interests.
17. Recommend and implement policies and procedures to provide for compliance with laws related to bidding, Contracting and Purchasing as set forth in the State of Georgia Code and Regulations, by examining the applicable laws and developing procedures for bidding, Contracting and procurement processes.
18. Ensure all Contracts are reviewed by the City Attorney as required by Section 3.08 of the City Charter.
19. Ensure Council is notified as soon as reasonably possible of all upcoming and active competitive procurements.
20. Ensure all procurements, when required, have Council approval as outlined in item 12 above.

B. Using Department/Division (User)

1. Determine Need: The User is responsible for determining the need for a material or service and providing appropriate documentation & justification, including a purchase requisition.
2. Determine Funding: The User is responsible for providing proper funding. Specific budget account numbers must be on the purchase requisition.
3. Determine Specifications: The User is responsible for determining the quantity, quality, dimensions, duration and all other necessary specifications essential to the determination of what is to be procured. The specifications must, where applicable, conform to the approved City standards for identity and continuity.
4. Purchase Requisition: It is imperative that the User transmits its need to the Purchasing Agent. The Purchasing Agent can only purchase supplies and services on the basis of an approved and completed Requisition. A properly approved Requisition contains, as a minimum, the following information:
 - a) Complete description and specifications.
 - b) Quantity.
 - c) Need date (lead time of at least one week, must be allowed).
 - d) Estimated cost.
 - e) Freight.

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- f) Complete budget account number.
 - g) Previous purchase information or quotation (if known).
 - h) Known or suggested Vendor(s).
 - i) Authorized approval of department head and division head.
 - j) Authorized approval from the Budget/Finance Department.
5. Acceptance of Procured Item or Service: The User is responsible for advising the Purchasing Office within 24 hours after receipt or within 48 hours if the items or services are found to be unsatisfactory. This is to be done in writing on a Receiving Report.

VI. Environmentally Preferable Goods and Services

In its purchasing of Goods and Services, the City has the opportunity to address many of its sustainability goals while maintaining a fiscally responsible purchasing policy. Therefore, it is the policy of the City to incorporate environmental considerations into purchasing decisions in order to:

- Promote practices that improve human and environmental health;
- Protect and conserve natural resources, water, and energy;
- Minimize the City's contribution to pollution and solid waste; and
- Promote a local, sustainable economy.

In order to achieve these goals, the City shall take into account the following when identifying, soliciting, and evaluating Goods and Services procured with City funds, when practicable:

- Prioritize waste and pollution reduction and cost efficiency opportunities by identifying alternative options to the purchase of new products when more sustainable options are available;
- Procure products that contain the highest percentage of post-consumer recycled content material available in the marketplace and that are recyclable;
- Purchase non-emergency fleet vehicles that provide the best available net reduction in vehicle fleet emissions, including but not limited to the purchase of alternative-fueled and hybrid vehicles;
- Consider purchasing lower emission emergency fleet vehicles with comparable specifications for performance, safety, and fuel availability during emergencies as conventionally-powered emergency fleet vehicles;
- Purchase at least Energy Star rated equipment and appliances for use in local government facilities when practicable based upon considerations of Life Cycle Costs;
- Purchase water-saving products, including WaterSense labeled, whenever practicable, including but not limited to, high performance fixtures such as toilets (1.28 gallons per flush or less), urinals (0.5 gallons per flush or less), low-flow faucets (1.5 gallons per minute or less), aerators, and upgraded high-efficiency irrigation systems;
- Replace disposable with re-usable, recyclable, or compostable Goods;
- Consider Life Cycle Cost Assessment; and
- Evaluate, as appropriate, the environmental performance of Vendors in providing Goods and Services.

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This analysis to determine environmentally preferable Goods and Services may include raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, disposal of products, or service delivery.

Specifically, factors that should be considered when determining that Goods or Service have environmentally preferable attributes include, but are not limited to:

- Conserve water and natural resources, and minimize the use of electricity and fuel;
- Reduce the generation and emissions of toxics, gases, and pollutants;
- Extend the life-cycle uses of the product;
- Reduce waste in the manufacturing, use, and packaging of products;
- Consider at the time of purchase the total cost of ownership and impact of the products, including end-of-life impacts;
- Evaluate the environmental performance of Vendors in providing Goods and Services;
- Minimize transportation impacts of products; and
- Consider factors that provide other environmental and health benefits.

VII. Competitive Procurements

A. Request for Informal Written Quotes (IWQ)

Requests for Informal Written Quotes (IWQ) are prepared and issued with the goal of obtaining competitive responses.

Public notice is posted on the Purchasing Agent's Internet Web Page for all Requests for Quotations in which the value is expected to exceed \$50,000. ~~Additional public notice may be provided for solicitations that, in the sole discretion of the City, are of the size, type, or dollar value that make additional public notice appropriate.~~ If a bid (RFB) or proposal (RFP) opportunity is extended for goods and services valued at \$10,000.00 or more or if a bid or proposal opportunity is extended for public works construction contracts subject to O.C.G.A. Chapter 91, such bid or proposal opportunity shall be advertised in the Georgia Procurement Registry, as established in subsection (b) of O.C.G.A. Code Section 50-5-69. Additional public notice may be provided for solicitations that, in the sole discretion of the City, are of the size, type, or dollar value that make additional public notice appropriate. Each advertisement shall include such details and specifications as will enable the public to know the extent and character of the bid opportunity.

Quotations are opened by the Purchasing Agent at the location indicated and on or after the due date indicated in the Request for Quotations. A split or partial quotation may be awarded, if a Request for Quotations is for multiple Goods or Services, more than one Vendor provides a quotation that meets the specifications for the items, and a price comparison can be made between the items quoted. The award may be split between more than one Vendor by awarding to the lowest cost provider of each item or reasonable grouping of items if acquisition, delivery, and other requirements can be reasonably administered. A Split or Partial Quotation Award shall not be used under the following conditions:

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- a) When the solicitation is for an integrated system and the split of the award between components or parts of that system would jeopardize performance; or
- b) If the item is part of a system and the performance of that system would be jeopardized if another brand was substituted.

Tie quotations are handled in the same way as tie bids.

B. Invitation to Bids

Invitation to Bids (ITB) are prepared and issued to prospective Bidders, with the goal of obtaining competitive responses.

Public notice (such as publication in a newspaper of general circulation or posting on the Purchasing Agent's Internet Web page) of the ITB must be given a minimum of fourteen (14) calendar days prior to the date set for bid opening, unless it can be demonstrated that an urgent requirement for Goods or Services exists, in which instance, the requirement for public notice may be reduced by the Purchasing Agent.

Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. All relevant information, including each Bid amount and Bidder's name, will be recorded on a summary sheet.

Split or partial bid awards may be awarded with the same guidelines and restrictions as those provided for split or partial quotation awards.

Tie Bids: In the event two or more identical bids are received, the following procedure will be used when the basis of award is low bid:

- a) To the extent permitted by law, a tie Bidder from a Person within the city limits of Dunwoody would be recommended to the appropriate approving authority for an award over one without an office in the City. A Person within the state of Georgia would be recommended to the appropriate approving authority for an award over one without an office in Georgia. (See also Section VII(K) of this policy)
- b) If the procedures in (a) above does not result in an award, then, the tie Bidders will be contacted and advised of the tie and asked if they wish to reduce their bid in writing submitted in a sealed envelope to be opened at the time and place stated by City staff. If one or more of the tied Bidders agrees to participate, award will be made to the new low bid. If none of the tied Bidders agree to participate or if the new bids are tied, then City staff shall break the tie by following the procedures described below, as necessary.
- c) If the procedures in (a) and (b) above do not result in an award, then, to the extent permitted by law, a tie Bidder deemed in the City's sole discretion to provide the most environmentally preferable Goods would be recommended to the appropriate approving authority for an award over one deemed environmentally inferior.

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- d) If the procedures above do not result in an award, then, the Purchasing Agent in the presence of two or more witnesses will flip a coin. Award will be recommended to the appropriate approving authority.

Correction or withdrawal of inadvertently erroneous bids is permitted in accordance to the terms indicated within the ITB; however, minor irregularities may be waived by the City. No bid may be withdrawn for a period of ninety (90) days after the time scheduled for bid opening, or as otherwise stated in the Invitation to Bid.

Late bids will be rejected and returned unopened.

Bids will be evaluated based on the evaluation factors set forth in the Invitation to Bid, which may include criteria to determine acceptability of Goods (for example, inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose). Criteria for the acceptability of Goods shall be used to determine whether particular Goods are responsive to the Invitation to Bid, and not to determine the relative desirability between acceptable Goods. The City reserves the right to waive any informalities or irregularities of bids, to request clarification of information submitted in any bid, to further negotiate with the Responsive and Responsible Bidder selected for Contract award, or to reject any or all bids for any reason whatsoever.

If no Responsive and Responsible Bids are received or all bids are rejected, the City may procure such Goods and Services by direct negotiation as indicated below in Non-Competitive Procurement of Goods and Services.

The Bid will be awarded, if an award is made, to the Responsible and Responsive Bidder offering the lowest price whose bid meets the requirements and criteria set forth in the Invitation to Bid. The Bid may require a Contract.

C. Request for Proposals (RFP)

When the Purchasing Agent determines the use of an Invitation to Bid is not practical or not advantageous because of existing market conditions or the type of items required, the City may procure Goods, Services, or Professional Services through receipt of competitive sealed proposals. Competitive sealed proposals are solicited through the use of an RFP, with the goal of obtaining competitive responses.

Public notice of the RFP shall be given in the same manner as the procurement described in section VII, sub-section A of this policy.

Proposals shall be opened publicly by the Purchasing Agent, in the presence of one or more witnesses at the time and place designated in the RFP. A register of proposals is prepared that lists each Proposer's name. Interested persons shall have access to information regarding procurement transactions of the City of Dunwoody in accordance with City policy and the Georgia Open Records Act, O.C.G.A. §50-18-70 et seq.

All meetings of the City's Council are duly noticed public meetings and all documents submitted to the City as a part of or in connection with a Proposal may constitute public records under Georgia law regardless of any person's claim that proprietary or trade secret information is contained therein. By submission to the City, Proposers waive any declaration the entire response any solicitation to be proprietary information. The Proposer shall designate in the smallest increments possible, that

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part of the qualifications which is deemed to be proprietary. Proposals and all related correspondence are governed by the Georgia Open Records Act and shall be provided to anyone properly requesting same, after contract award. The City cannot protect proprietary data submitted in vendor proposals unless provided for under the open records law and clearly marked as proprietary by the proposer. In the event the Proposer deems certain information to be exempt from the disclosure requirements, the Proposal must specify what content is considered exempt and cite the applicable provision of the law to support that assessment. In the event such information is requested under the open records law, the Proposer's assessment will be examined by the City Attorney who will make a determination. The decision to withhold or release the information will be at the City's sole discretion.

Correction or withdrawal of proposals is permitted in accordance with instructions contained within the RFP. No proposal may be withdrawn for a period of ninety (90) days after the time scheduled for proposal opening, or as otherwise stated in the RFP.

Late proposals will be rejected and returned unopened.

The RFP will identify the criteria to be considered and evaluated as the basis of award.

Proposals submitted by Responsible and Responsive Proposers are evaluated by City staff based upon the criteria applicable to the RFP. All proposals (or the most acceptable proposals in the discretion of the committee evaluating proposals) will be ranked in order of their acceptability to the City, giving consideration to the criteria. The City has no obligation to award the Contract to the Proposer who proposes the lowest price.

The City reserves the right to waive any informalities or irregularities of proposals, to request clarification of information submitted in any proposal, to further negotiate with a Responsive and Responsible Proposer who has been selected for Contract award, or to reject any or all proposals for any reason whatsoever.

The Contract award will be awarded, if award is made, by the City to the Responsive and Responsible Proposer whose proposal is determined, in the City's exclusive discretion, to be the most advantageous to the City, taking into consideration price, qualifications, and other factors as indicated in the RFP. The RFP will contain the basis on which the award is to be made.

If no Responsive and Responsible proposals are received or all proposals are rejected, the City may procure such Goods, Services, and Professional Services by direct negotiation as indicated below in Non-Competitive Procurement of Goods and Services.

D. Request for Qualifications

Requests for Qualifications (RQ) may be used when it is determined to be in the City's best interest to evaluate the experience and qualifications of a Service provider, without regard to price or prior to considering price.

The procedure for soliciting, opening and evaluating statements of qualifications shall be the same as described herein for competitive sealed proposals. Service providers whose qualifications meet the criteria established in the Request for Qualifications, at the sole discretion of the City, may be considered for Contract award by participation

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in the completion price negotiation. The City shall attempt to negotiate a fee with the highest ranked firm. If no agreement is reached, the City shall begin negotiations with the next highest ranked firm. Negotiations will proceed in this manner until an agreement is reached. Alternatively, the City may, by Direct Negotiation, finalize terms with service providers who are selected for award based on qualifications. The City reserves the right to reject any or all responses for any reason. Clarification of information may be requested by the City.

E. Invitation to Negotiate

An Invitation to Negotiate (ITN) may be used when the City determines it is in its best interest to commence negotiation of price and other factors prior to recommendation of award, and it is approved by the City Manager. An ITN may be used for Goods or Services when the scope of work is complex or difficult to define, if strict comparison of Services or Goods required may be difficult because components are likely to vary among Proposers, or in any situation in which it is in the City's best interest to negotiate prior to recommendation of award to obtain the product that best meets the City's needs, price and other factors being considered.

The procedure for soliciting and opening initial responses to an Invitation to Negotiate (ITN) shall be the same as described herein for competitive, sealed proposals.

The ITN will identify the criteria to be considered during the evaluation of proposals. All Responsive and Responsible proposals submitted are evaluated based upon the criteria applicable to the ITN. Clarification of information submitted in the proposal may be requested. The City reserves the right to waive any informalities or irregularities of proposals, to request additional information from any Proposer, or to reject any or all responses for any reason whatsoever.

The City may, at its sole discretion, shortlist firms that are deemed to best meet the City's requirements, taking into consideration all criteria listed in the ITN, including price. The City may, at its sole discretion, ask for formal presentations from all of the Responsive and Responsible Proposers, or only from those firms that are Short-listed, if Short-listing is determined to be in the best interest of the City. Negotiations will be conducted and may take place in person or via telephonic with all of the Proposers or, if Short-listing occurs, with all of the Short-listed Proposers. Proposers that participate in the negotiations may be given an opportunity to submit their best and final offers.

The Contract Award will be awarded, if an award is made, by the City to the Responsive and Responsible Proposer whose proposal is determined to be the most advantageous to the City, taking into consideration price and other factors as indicated in the ITN. The City has no obligation to award the Contract to the Proposer that submits the lowest price; though justification should be documented.

F. Multi-step Solicitation

The City may initiate one of the multi-step solicitation processes described below when: (a) in the City's discretion, it is impractical to prepare an adequate or complete description of the Goods or Services desired (due to insufficient data, uncertain requirements, unfamiliar market options, etc.), (b) the City desires to identify a field of qualified Bidders, Proposers, Goods or Services, out of a broader field of Bidders,

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Proposers, Goods or Services, or (c) the City believes a multi-step process would best serve its purposes.

1. Consecutive Multi-Step Process:

- a) The City may request unpriced proposals or statements of qualifications to be evaluated based on the criteria in the RFP or the RFQ for purposes of identifying one or more desirable or acceptable Goods, Services, or Professional Services or for purposes of identifying a field of at least three (if possible and available) qualified or most qualified Bidders or Proposers. The City may request demonstrations, samples, or may conduct interviews with Proposers to aid in the identification of desirable or acceptable Goods, Services, or Professional Services or in the identification of qualified or most qualified Bidders or Proposers. In the event the City requests demonstrations or samples, the City is not required to seek or permit demonstrations or samples of Goods or Services deemed by the City to be less desirable or acceptable than other Goods or Services for which proposals or statements of qualifications were received. In the event the City conducts interviews with Proposers, the City is not required to interview any Proposer deemed by the City to be unqualified or less qualified than other Proposers.
- b) After identifying a field of most qualified Bidders or Proposers with the capability of providing the desirable or acceptable Goods, Services, or Professional Services, the City may either follow a Competitive Award solicitation process among the field of Vendors identified as having the capability to meet the City's requirements for the procurement or by direct negotiation as indicated below in Non-Competitive Procurement of Goods and Services.

2. Simultaneous Multi-Step Process:

- a) The City may request that priced proposals be submitted in two separate envelopes, with pricing information contained in one envelope and all other requested information contained in the other envelope. In such case, proposals will be evaluated in accordance with the requirements set forth in the RFP, initially without regard to price and without opening the envelope containing pricing information. Based on such evaluation, the City will establish a field of at least three (if possible and available) qualified or most qualified Proposers. The City may conduct interviews with Proposers to aid in the identification of qualified or most qualified Proposers. In the event the City conducts interviews with Proposers, the City is not required to interview any Proposers deemed by the City to be unqualified or less qualified than other Proposers.
- b) After establishing a field of qualified or most qualified Proposers, the City will open the pricing envelopes of only the qualified or most qualified Proposers, and evaluate such pricing information in the manner described in the RFP for purposes of recommending/making an award (e.g. most advantageous proposal, price and other factors considered or low price submitted by qualified Proposers). In the absence of specific instructions to the contrary in the RFP, pricing information will be evaluated together with

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all other information required by the RFP for purposes of selecting among the qualified field of Proposers the most advantageous proposal, price and other factors considered.

3. Multi-Step Process to Award Continuing Purchasing Contracts

- a) When it is in the best interest of the City to have pre-qualified, Continuing Purchasing Contracts because of the need to Provide quick-response, repetitive Services or a range of Services or Professional Services within a specific field of expertise, the City may use either a Consecutive or a Simultaneous Multi-Step Procurement Process to identify one or more Continuing Contractors. The purpose is to identify one or more Continuing Contractors that demonstrate the ability to perform a particular type of Service during a specified Contract period.
- b) Contract award - The multi-step solicitation shall specify the general types of Services required, the selection process to be used, and the selection criteria for award of the Continuing Contract(s).
- c) Award of a specific scope of work to a Continuing Contractor - During the term of the Continuing Contract(s), specific scopes of work may be developed and awarded to Continuing Contractor(s), by Amendment to such Continuing Contract(s), provided that the specific scope of work is consistent with the general types of Services upon which award of the Continuing Contract(s) was made.
- d) When there is more than one Continuing Contractor available to perform the specific scope of work defined, the process for award of the work is set forth below:
 - i. Work may be rotated during the Contract period between the Continuing Contractor(s) that were selected to perform the general type of Services required; or,
 - ii. Award may be made to the Continuing Contractor that is deemed, based on its original proposal, to be most advantageous to the City for the specific scope of work required, price and other factors being considered and without regard to rotation among selected contractors; or,
 - iii. Quotations, Bids or proposals may be requested from the pre-qualified Continuing Contractor(s) that were selected to perform the general type of Services or Professional Services required. The City may select the Continuing Contractor whose quotation, bid, or proposal is deemed to be most advantageous to the City to perform the specific scope of work required. Council approval shall be required for all projects awarded to a Continuing Contractor when the project is valued over \$50,000.

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G. Online Reverse Auction

The City reserves the right to utilize this procurement method when advantageous. The process will be specified in the Solicitation Documents.

H. Performance Guarantee

A performance guarantee, such as a Performance Bond or Letter of Credit, may be required for any solicitation that includes Services to be performed after consultation with the City Manager, and others, as necessary.

I. Approval of Awards and Recommendations

Prior to the consummation of the purchase by the City of Goods, Services, or Professional Services, such purchase shall be approved by a person having approval authority over such purchase.

J. Forms

The Purchasing Agent shall provide and update all forms to procure Goods, Services, and Professional Services, as needed.

K. Preferences for products manufactured in Georgia; reasonableness (O.C.G.A. § 36-84-1)

The City, when contracting for or purchasing supplies, materials, equipment, or agricultural products, excluding beverages for immediate consumption, shall give preference as far as may be reasonable and practicable to such supplies, materials, equipment, and agricultural products as may be manufactured or produced in Georgia. Such preference shall not sacrifice quality. In determining whether such a preference is reasonable in any case where the value of a contract for or purchase of such supplies, materials, equipment, or agricultural products exceeds \$100,000, the City shall consider, among other factors, information submitted by the bidder which may include the bidder's estimate of the multiplier effect on gross state domestic product and the effect on public revenues of the state and the effect on public revenues of political subdivisions resulting from acceptance of a bid or offer to sell Georgia manufactured or produced goods as opposed to out-of-state manufactured or produced goods. Any such estimates shall be in writing. The City shall not divide a contract or purchase which exceeds \$100,000 for the purpose of avoiding the requirements of O.C.G.A. § 36-84-1.

VIII. Non-Competitive Procurements

The provisions of this policy section shall apply to the procurement of Goods and Services, when competitive procurement is not practical, feasible, possible or desirable. Notwithstanding any other provision, any Contract or subcontract entered into by the City with any Person for the construction, reconstruction, or maintenance of all or part of a public road in the City, including but not limited to a Contract or subcontract for the purchase of materials, for the hiring of labor, for professional services, or for other things or services incident to such work, shall be entered into in accordance with O.C.G.A. § 32-4-114.

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A. Sole Source Procurement

The City may acquire Goods, Services, or Professional Services pursuant to a Sole Source Procurement. Sole Source Procurement is available when Goods, Services, or Professional Services are limited to one source, or when they must be obtained from a specific manufacturers' dealer and valid competition among dealers does not exist. The User must provide the justification for the Sole Source Procurement to the Purchasing Agent after approved by the City Manager or Council.

B. Single Source Procurement

The City may acquire Goods and Services pursuant to a Single Source Procurement. A Single Source Procurement is a procurement made from one Person among others in a competitive market place which, for justifiable reasons, is found to be most advantageous for the purpose of fulfilling the given purchasing need. The User must provide the justification for the Single Source Procurement to the Purchasing Agent after approved by the City Manager or Council. The Purchasing Agent may elect to purchase particular brand name Goods or Services when the Goods or Services comprise a major brand system, program or service previously selected by the City and due to operational effectiveness, future enhancements or additions, or maintenance or storage of spare parts precludes the mixing of brands, manufacture, etc.

C. Direct Negotiation

Following the completion of a Competitive Award solicitation process above that fails to produce a responsible or responsive Bidder or Proposer, fails to produce a qualified respondent, or for which all submissions were rejected for any reason, the City may procure the Goods, Services, or Professional Services that were the subject of such failed solicitation by Direct Negotiation with any provider of such Goods or Services when issuing a revised solicitation is not recommended by the City Manager with concurrence from legal counsel.

Direct Negotiation will be completed by the Purchasing Agent, assisted as needed by the User and legal counsel.

D. Emergency Procurement

The City may acquire Goods, Services or Professional Services by directly negotiating award pursuant to an Emergency Procurement. Emergency purchasing situations occur when there exists an emergency constituting a threat to public health, safety or welfare or to the soundness and integrity of public property or to the delivery of essential services and where the diverse effects of such emergency may worsen materially with the passage of time.

It is understood that, from time to time, occasions arise at departments, which dictate immediate action to purchase items in order to prevent disruption of operations. Notwithstanding any other section of this policy, when the City Manager determines that an Emergency Situation exists, the Purchasing Agent may make or authorize others to make emergency procurements for Goods, Services, construction items, or Professional Services. The City Manager shall make such determination when there exists a threat to public health, welfare or safety under Emergency Situations. Such

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emergency procurements shall be made with as much competition as is practicable under the circumstances.

A written determination of the basis for the Emergency Situation and for the selection of the particular Person shall be included in the Contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the Contract, a listing of the item procured under the Contract, and the identification number of the contract file.

If an Emergency Situation should arise after office hours which requires immediate action on the part of the agency involved for the protection of the best interest of the City or if a like situation arises on a weekend or holiday and when it is not possible or convenient to reach the Purchasing Agent, any purchase necessary shall be made by the official in charge of such agency, and such purchase reported to the Purchasing Agent within 24 hours.

E. Costs Under the Competitive Threshold

The Purchasing Agent may acquire Goods, Services and Professional Services by Direct Negotiation or by some other non-competitive method, when the dollar value of the purchase does not exceed \$50,000 and a properly executed and authorized Requisition is received. Under this non-competitive method, the Purchasing Agent shall attempt to obtain the Goods, Services or Professional Services most advantageous to the City, price and other factors considered. For Goods, Services, and Professional Services under the competitive threshold but over \$20,000, (OCGA 32-4-113) the Purchasing Agent or User shall obtain, where possible, at least three quotes using the IWQ method as outlined in Section VII (A).

The User may acquire Goods, Services, and Professional Services by Direct Negotiation or by some other non-competitive method, when the dollar value of the purchase does not exceed \$20,000. Under this non-competitive method, the User shall attempt to obtain the Goods, Services or Professional Services most advantageous to the City, price and other factors considered.

F. Direct Negotiation and Other Public Entities and Co-ops

The City may acquire Goods, Services, and Professional Services by Direct Negotiation or other method involving limited or no competition from a Supplier having a requirements Contract/Annual Agreement with any public entity (e.g., federal, state, county, city, authority, school board, Buying Cooperative, etc.) for Goods, Services, or Professional Services described in such contract and at prices or discounts no less favorable than any set forth in such Contracts. Use of State/Co-Op Contracts: The Purchasing Agent may, independent of the requirements of bid process of this article, procure supplies, services or construction items through the Contract established through competitive means by the purchasing division of the State of Georgia, national Co-Ops (i.e.-U.S. Communities), and collaborative purchasing agreements with other local governments when deemed to be in the best interest of the City.

G. Real Estate Acquisition (Other than Rights-of-Way Acquisition)

1. Compliance with Applicable Regulations

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All real estate acquisition activities shall conform to applicable federal, state (e.g. O.C.G.A § 36-80-18) and local laws and regulations and shall be subject to the provisions of the City Code of Ethics.

2. Confidentiality

The City Council and City staff shall maintain the confidentiality of potential and on-going real estate acquisitions and related information.

3. Formal Approval

All real estate transactions shall be formally approved by the City Council in a public meeting prior to the City entering a sales contract.

4. Appraisals

For any piece of real estate, for which a sales contract has been signed, the City will conduct at least one appraisal by an independent third-party who holds the MAI membership designation with the Appraisal Institute.

- a. One appraisal for real estate under contract for less than or equal to \$500,000.00
- b. Two appraisals for real estate under contract for more than \$500,000.00.
- c. Should the two appraisal vary by more than 20% and provided that at least one appraisal is less than the contract price, a third appraisal will be completed to help establish market value.

5. Land Acquisition Procurement Process

- a. City staff will investigate and identify properties for purchase that generally meet an approved plan or strategy (e.g. "Parks Bond Land Acquisition Strategy"). Furthermore, land purchased with a specific funding source (e.g. Parks Bond Funds) will only be used for such purposes anticipated and/or authorized. If the City determines that the land cannot be used for its intended purpose, the City may dispose of the property in a manner consistent with Georgia law and funds raised through the sale of the property will be used for future land purchases consistent with the purposes authorized.
- b. City staff will work with a Real Estate broker to gather information and make site visits related to properties under consideration for acquisition.
- c. City staff will regularly brief the City Council in Executive Session on properties the city is considering purchasing to receive direction on "terms and price" from the City Council.
- d. City staff will negotiate for "Letters of Intent" with land owners on properties the City Council has provided direction staff with direction on "terms and price".

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- e. City staff will make the "Letter of Intent" public on the city website and through a press release within 48 hours of the city receiving a fully executed copy of the "Letter of Intent".
 - f. City staff will present the "Letter of Intent" at a public meeting, and at that time request a Resolution from the City Council authorizing the City Manager to execute a sales contract to purchase the property using the Letter of Intent as the guidelines for a contract. (PUBLIC HEARING REQUIRED)
 - g. City staff will publish the executed sales contract on the city website.
 - h. City staff will conduct due diligence on the property including at a minimum but not limited to:
 - i. Environmental testing (Phase I required, Phase II and specialized testing if warranted)
 - ii. Production of an ALTA survey of the property
 - iii. Production of a MAI appraisal of the property
 - iv. Complete title work on the property
 - v. Other reasonable due diligence activities as warranted
 - i. City staff will present the findings of the due diligence on the property at a public meeting and request a Resolution from the City Council authorizing the City Manager to execute any and all closing documents to complete the purchase of the property. (PUBLIC HEARING REQUIRED)

H. Performance Guarantee

A performance guarantee, such as a Performance Bond or Letter of Credit, may be required for any solicitation that includes Services to be performed after consultation with the City Manager, and others, as necessary.

I. Approval of Awards and Recommendations

Prior to the consummation of the purchase by the City of Goods, Services, or Professional Services, such purchase shall be approved by a person having approval authority over such purchase.

J. Forms

The Purchasing Agent shall provide and update all forms to procure Goods, Services, and Professional Services, as needed.

IX. General Procedures and Approval Authorizations

- A. The City reserves the right to reject any or all bids if it determines such rejection to be in the best interest of the City.
- B. All awards for amounts of \$50,000 or greater shall be approved or rejected by the City Council. Similar purchases and projects shall be combined for purposes of determining the value of the Contract. For example, an estimated contract value of \$60,000 may not be split into two \$30,000 contracts in order to avoid the

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- threshold. Similar purchases shall be defined by their commonality as well as the time of acquisition. When it is anticipated similar or identical items will be needed in the near future, every attempt should be made to combine the purchases in the contract. If a similar Contract(s) is required within 180 days of a previously approved Contract that was under \$50,000, but the combined value of the Contract(s) now exceed \$50,000, the Contracts shall go to Council for approval.
- C. The City Manager, or designee, is authorized to approve budgeted capital purchases or Contracts up to \$50,000 in most cases without obtaining further City Council approval (except for initial budget approval from City Council). The User is responsible for making the recommendation for the award following the procedures as identified above.
 - D. The City Manager shall have the authority to propose contractual employment relationships between the City and third parties. The terms of these third party Contracts will be established by the Contract at the time of hiring. City Council must approve a contract worth more than \$25,000.00. Issues of liability and scope of agency are to be defined by the contract.
 - E. City Council must approve the purchase of any budgeted capital purchase or Contract over \$50,000. The User is responsible for submitting the recommendation for this award to the City Council.
 - F. RFP's will generally be solicited on a project-by-project basis. The User will submit the Scope of Services to Purchasing, who will then determine which of the processes to use.
 - G. Periodically, the City may be given private/public grants and donations from sources such as the State and Federal Government and private corporations. These types of solicitations are more restrictive and may dictate the procurement process and methodology that the City is to follow for an award. Both federal and state procurement policy supersedes City of Dunwoody's purchasing requirements when buying goods and services using federal or state grant monies. Departments should refer to the Federal Acquisition Regulation for guidance on specific federal procurement policies.
 - H. The final determination of the price and terms of any Goods, materials or services shall rest with the Purchasing Agent.
 - I. It shall be the responsibility of the Purchasing Agent to document all Contracts, purchases, agreements for services and leases and to maintain said documents consistent with the records retention policy of the City. All agreements or Contracts binding the City must be in writing. There will be no exceptions.
 - J. All negotiations of agreements for Goods and Services shall be conducted by the Purchasing Agent. It is recognized that special situations may exist where there is a special need for the User to be involved in the negotiation process. This must be in conjunction with the Purchasing Agent at all times. The Purchasing Office will make final recommendation for agreements.
 - K. It is the responsibility of the Purchasing Agent to secure all necessary approvals of the City Manager or their designee, or legal authority, in writing, when necessary

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- to protect the City and its legal liability prior to execution of a Contract or purchase agreement.
- L. The Purchasing Agent may make any authorized purchase for which payment will be made in a current, routine manner following receipt of the Goods or services. Procurement by leasing, long-term financing, advance payments or deposits or any other special non-routine method must be approved in advance by the City Manager or their designee.
 - M. The Purchasing Agent will not normally provide purchase orders after procurement has been initiated. Purchases must be documented by the User with appropriate requisition and specific budget account number prior to the issuance of the purchase order number.
 - N. In the case of Contracts (other than routine purchase orders), leases or service agreements (either new or renewals), the approval process is necessary. All such documents will be forwarded to the Purchasing Agent. The Purchasing Office will acquire the necessary approvals prior to execution of any agreement, Contract or lease through the City Attorney's office. When said Contracts, leases or service agreements are up for renewal or expiration the Purchasing Agent will notify the User for approval to either maintain the Contract or bid a new Contract. The Purchasing Agent will be responsible for maintaining a file of all current Contracts, leases or service agreements.
 - O. The Purchasing Agent will review the Contract for form, completeness, insurance considerations, legal implications, and any other items dictated by each situation. The Contract will then be sent to the User and approved by the Department Director and returned to Purchasing. The Purchasing Agent will be responsible for having the Contract signed by the City Manager or their designee after it is signed by the Vendor.
 - P. Once the Contract is officially executed, the original of the Contract will be filed in the City Clerk's office.
 - Q. Once a Contract is awarded by the City, the Contract may be amended, without the necessity of rebidding such Contract, provided the original Contract amount and the scope of the Contract is not substantially altered. The Purchasing Agent will review all change orders and adjust encumbrances as applicable. Change orders will be processed to correct the account distribution, quantity, addition/deletion of line items, change in description and unit price. If a revised quoted price, including the change order is up to \$50,000, the requisition will be sent to the Finance Director and City Manager for approval. Any revised pricing over \$50,000 require City Council approval. The department cannot use the change order process to circumvent the Purchasing Policy. Change orders cannot substantially change the scope of the Contract.
 - R. The Purchasing Agent and the User share the responsibility to ensure the quality, delivery and payment of required Goods and Services.
 - S. Final adjudication of any dispute between the Vendor and User shall be made by the Purchasing Agent with appropriate input from the User.

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- T. In most cases, contact with Vendors regarding the Contract will be by the Purchasing Agent and in conjunction with the User as necessary. All Vendors must coordinate with the Purchasing Agent before visiting any other department regarding the Contract. All visits regarding the Contract must be made with the knowledge of the Purchasing Agent and the Purchasing Agent has the option of accompanying the visitor. It is recognized that this restriction on visitation will not necessarily apply to those Vendors with ongoing relationships such as computer and copy machine service technicians.
- U. All return of Goods must be initiated by the User through the Purchasing Agent. Additionally, all cancellations of, or modifications to, any agreements must be made by the Purchasing Agent.
- V. It shall be the responsibility of the User to ensure that purchased Goods are received, inspected and verified as to condition. Since the department head signed the purchase requisition, that person cannot be the receiver of the Goods and must appoint an individual within the department to be the receiver of the Goods and Services.
- W. Protests
- a) Right to protest. Any Person who is aggrieved in connection with the solicitation or award of a Contract may protest to the City of Dunwoody. Protestors shall seek resolution of their complaints initially with the City Manager. All protests must be submitted in writing to the City Manager. The complaint shall specify the alleged act or omission by the City that provides the basis for the complaint.
 - b) Upon the filing of a written complaint, the City Manager, within three (3) business days, shall request a response from the Purchasing Agent. The Purchasing Agent's response will be returned to the City Manager within seven (7) calendar days. Failure by the Purchasing Agent to file a response may be considered as evidence by the City Manager. If requested by either party, the City Manager, or designee shall have a hearing on the complaint within fourteen (14) calendar days of filing the complaint to decide the merits of the claim. The City Manager is empowered to decide to uphold, dismiss or amend the decision of the Purchasing Agent. The City Council shall approve or reject the City Manager's decision. If the party bringing the complaint disagrees with the conclusions of the City Manager and City Council, the decision may be appealed by filing a writ of certiorari to the Superior Court of DeKalb County within thirty (30) days of the decision of the City Council.
 - c) Protests concerning invitations. A protest with respect to an ITB, RFQ, RFQ, or RFP shall be submitted in writing prior to the opening of bids or the closing date of proposals. If not done by that time, the complaint or protest is invalid.
 - d) Stay of procurement during protests. In the event of a timely protest under subsection (b) of this Section, the Purchasing Agent shall not proceed further with the solicitation or award of the Contract until all administrative remedies have been exhausted or until the City Manager or City Attorney

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makes a determination that the award of the Contract without delay is necessary to protect the interests of City of Dunwoody.

- X. Credit Cards shall only be issued upon approval of the department head and the City Manager. The Credit limit for each card shall be established by the Director of Finance. All individuals assigned a Credit Card on behalf of the City of Dunwoody shall be personally responsible for the use and any fraudulent use. The City Manager shall maintain a Procurement Card Procedure Manual. This manual shall be on file with the City Clerk and made available for all users.

X. Property Disposal

A. Excess, Surplus, and Obsolete Materials

It shall be the duty of the User to report all excess, surplus or obsolete materials to the Purchasing Agent. At this point, the Purchasing Agent will examine alternatives as to the most advantageous disposition of the items in accordance with O.C.G.A. § 36-37-6 and other Georgia law. Items could be refurbished or reconditioned, transferred, traded in on new equipment or sold by auction or sealed bid, or destroyed. For property over \$5,000 in aggregate or \$500 (as required by O.C.G.A. § 36-37-6) individually, Council shall approve the request to have the property declared surplus. For other property, the Purchasing Agent shall present a list to the City Manager for approval.

1. Transfer or Re-use: The most gainful method for handling an item no longer needed by a department is to transfer it to another department that has a use for the item.
2. Trade-In: In replacing obsolete equipment, it may be financially advantageous to trade-in the old equipment. The invitation for bids on the replacement item should call for bid prices with or without trade-in and provide that award may be made either way.
3. Sale: Excess, surplus and obsolete items not transferred or traded-in may be consolidated and offered for sale. Except as otherwise provided in, included but not limited to subsections (b) through (j) of O.C.G.A. § 36-37-6, the City shall make all such sales to the highest responsible bidder, either by sealed bids or by auction after due notice has been given. Auctions can be traditional or contemporary including online auctions such as www.Govdeals.com or similar websites. The City shall have the right to reject any and all bids or to cancel any proposed sale. The City shall cause notice to be published once in the official legal organ of the county in which the municipality is located or in a newspaper of general circulation in the community, not less than 15 days nor more than 60 days preceding the day of the auction or, if the sale is by sealed bids, preceding the last day for the receipt of proposals. The legal notice shall include a general description of the property to be sold if the property is personal property or a legal description of the property to be sold if the property is real property. If the sale is by sealed bids, the notice shall also contain an invitation for proposals and shall state the conditions of the proposed sale, the address at which bid blanks and other written materials connected with the proposed sale may be obtained, and the date, time, and place for the opening of bids. If the sale is by auction, the notice shall also contain the conditions of the proposed sale and shall state the date, time, and place

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- of the proposed sale. The consolidated list will be submitted to City Council for approval before an auction or sealed bid is organized. The property offered for sale will be on an "AS IS/WHERE IS" basis. Bids received in connection with a sale by sealed bidding shall be opened in public at the time and place stated in the legal notice. A tabulation of all bids received shall be available for public inspection following the opening of all bids. All such bids shall be retained and kept available for public inspection for a period of not less than 60 days from the date on which such bids are opened.
4. Disposal of Confiscated Weapons and Other Seized Assets: Confiscated/seized assets will be disposed in accordance with OCGA § 17-5-54 et seq. For any unclaimed personal property that is not a firearm, the Police Chief shall make application to the superior court for an order to retain, sell, or discard such property. In the application the Chief shall state each item of personal property to be retained, sold, or discarded. Upon the superior court's granting an order for the law enforcement agency to retain such property, the Police Department shall retain such property for official use. Upon the superior court's granting an order which authorizes that the property be discarded, the Police Department shall dispose of the property as other salvage or nonserviceable equipment in accordance with other provisions of this section. Upon the superior court's granting an order for the sale of personal property, the Chief shall provide for a notice to be placed once a week for four weeks in the legal organ specifically describing each item and advising possible owners of items of the method of contacting the law enforcement agency; provided, however, that miscellaneous items having an estimated fair market value of \$75.00 or less may be advertised or sold, or both, in lots. Such notice shall also stipulate a date, time, and place said items will be placed for public sale if not claimed. Such notice shall also stipulate whether said items or groups of items are to be sold in blocks, by lot numbers, by entire list of items, or separately. Such unclaimed personal property shall be sold at a sale which shall be conducted not less than seven nor more than 15 days after the final advertised notice has been run. The sale shall be to the highest bidder. If such personal property has not been bid on in two successive sales, the Police Department may retain the property for official use or the property will be considered as salvage and disposed of as other county or municipal salvage or nonserviceable equipment. With respect to unclaimed perishable personal property or animals or other wildlife, the Chief may make application to the superior court for an order authorizing the disposition of such property prior to the expiration of 90 days. With respect to unclaimed firearms, if the Police Chief certifies that a firearm is unsafe because of wear, damage, age, or modification or because any federal or state law prohibits the sale or distribution of such firearm, at the discretion of the Chief, it shall be transferred to the Division of Forensic Sciences of the Georgia Bureau of Investigation, transferred to a municipal or county law enforcement forensic laboratory for training or experimental purposes, or be destroyed. Otherwise, an unclaimed firearm will be disposed in accordance with OCGA § 17-5-54 et seq following the requirements of #3 "Sale" above provided, however, the City shall not have the right to reject any bids or to cancel any proposed sale of such firearms, and all sales shall be to persons who are licensed as firearms collectors, dealers, importers, or manufacturers under the provisions of 18 U.S.C. Section 921, et seq., and who are authorized to receive such firearms under the terms of such license.

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5. Other Disposal: To the extent it does not violate Georgia law, Council may approve an alternative method of disposal of the surplus property (e.g. sale to another governmental entity without bidding).

B. Sale to Employees

To avoid any appearance of impropriety in the disposition program, it will be the City's policy to prohibit the direct sale of surplus property to any City Employee, Official or Agent. This policy does not prohibit any City Employee, Official or Agent from extending an offer at a public auction or in the form of a sealed bid.

C. Allocation of Proceeds

Proceeds from the sale of excess or surplus property will go into the City's Fund that held the asset.

XI. Architect and Engineer Program Funding for Competitive Negotiation Qualifications-based Selection for Projects Using Federal Aid Highway Program (FAHP) Funding

Except as provided in (2) and (3) below, the City of Dunwoody shall use the competitive negotiation method for the procurement of engineering and design related services when FAHP funds are involved in the contract (as specified in 23 U.S.C. 112(b)(2)(A)). The solicitation, evaluation, ranking, selection, and negotiation shall comply with the qualifications-based selection procurement procedures for architectural and engineering services codified under 40 U.S.C. 1101-1104, commonly referred to as the Brooks Act.

In accordance with the requirements of the Brooks Act, the following procedures shall apply to the competitive negotiation procurement method:

A. Solicitation.

The solicitation process shall be by public announcement, public advertisement, or any other public forum or method that assures qualified in-State and out-of-State consultants are given a fair opportunity to be considered for award of the contract. This includes, but is not limited to, requirements pursuant to O.C.G.A. § 36-80-26 that all bid and proposal solicitations valued at \$10,000 or more or if a bid or proposal opportunity is extended for public works construction contracts subject to Chapter 91 of this title be posted on the Georgia Procurement Registry (GPR) established and maintained by the Georgia Department of Administrative Services (DOAS). Each advertisement shall include such details and specifications as will enable the public to know the extent and character of the bid opportunity.

Procurement procedures may involve a single step process with issuance of a request for proposal (RFP) to all interested consultants or a multiphase process with issuance of a request for statements or letters of interest or qualifications (RFQ) whereby responding consultants are ranked based on qualifications and request for proposals are then provided to three or more of the most highly qualified consultants. Minimum qualifications of consultants to perform services under general work categories or areas of expertise may also be assessed through a prequalification process whereby statements of qualifications are submitted on an

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annual basis. Regardless of any process utilized for prequalification of consultants or for an initial assessment of a consultant's qualifications under an RFQ, a RFP specific to the project, task, or service is required for evaluation of a consultant's specific technical approach and qualifications.

B. Request for Proposal (RFP).

The RFP shall provide all information and requirements necessary for interested consultants to provide a response to the RFP and compete for the solicited services. The RFP shall:

- (1) Provide a clear, accurate, and detailed description of the scope of work, technical requirements, and qualifications of consultants necessary for the services to be rendered. The scope of work should detail the purpose and description of the project, services to be performed, deliverables to be provided, estimated schedule for performance of the work, and applicable standards, specifications, and policies;
- (2) Identify the requirements for any discussions that may be conducted with three or more of the most highly qualified consultants following submission and evaluation of proposals;
- (3) Identify evaluation factors including their relative weight of importance in accordance with subparagraph (a)(1)(iii) of this section;
- (4) Specify the contract type and method(s) of payment to be utilized in accordance with § 172.9;
- (5) Identify any special provisions or contract requirements associated with the solicited services;
- (6) Require that submission of any requested cost proposals or elements of cost be in a concealed format and separate from technical/qualifications proposals as these shall not be considered in the evaluation, ranking, and selection phase; and
- (7) Provide a schedule of key dates for the procurement process and establish a submittal deadline for responses to the RFP which provides sufficient time for interested consultants to receive notice, prepare, and submit a proposal, which except in unusual circumstances shall be not less than 14 days from the date of issuance of the RFP.

C. Evaluation Factors.

- (1) Criteria used for evaluation, ranking, and selection of consultants to perform engineering and design related services must assess the demonstrated competence and qualifications for the type of professional services solicited. These qualifications-based factors may include, but are not limited to, technical approach (e.g., project understanding, innovative concepts or alternatives, quality control procedures), work experience, specialized expertise, professional licensure, staff capabilities, workload capacity, and past performance.

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(2) Price shall not be used as a factor in the evaluation, ranking, and selection phase. All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.

(3) In-State or local preference shall not be used as a factor in the evaluation, ranking, and selection phase. State licensing laws are not preempted by this provision and professional licensure within a jurisdiction may be established as a requirement which attests to the minimum qualifications and competence of a consultant to perform the solicited services.

(4) The following non-qualifications based evaluation criteria are permitted under the specified conditions and provided the combined total of these criteria do not exceed a nominal value of ten percent of the total evaluation criteria to maintain the integrity of a qualifications-based selection:

(a.) A local presence may be used as a nominal evaluation factor where appropriate. This criterion shall not be based on political or jurisdictional boundaries and may be applied on a project-by-project basis for contracts where a need has been established for a consultant to provide a local presence, a local presence will add value to the quality and efficiency of the project, and application of this criteria leaves an appropriate number of qualified consultants, given the nature and size of the project. If a consultant outside of the locality area indicates as part of a proposal that it will satisfy the criteria in some manner, such as establishing a local project office, that commitment shall be considered to have satisfied the local presence criteria.

(b.) The participation of qualified and certified Disadvantaged Business Enterprise (DBE) sub-consultants may be used as a nominal evaluation criterion where appropriate in accordance with 49 CFR Part 26 and the City of Dunwoody's FHWA-approved DBE program.

D. Evaluation, Ranking, and Selection.

(1) Consultant proposals shall be evaluated by the City of Dunwoody based on the criteria established and published within the public solicitation.

(2) While the contract will be with the prime consultant, proposal evaluations shall consider the qualifications of the prime consultant and any sub-consultants identified within the proposal with respect to the scope of work and established criteria.

(3) Following submission and evaluation of proposals, the City of Dunwoody shall conduct interviews or other types of discussions to determine three of the most highly qualified consultants to clarify the technical approach, qualifications, and capabilities provided in response to the RFP. Discussion requirements shall be specified within the RFP and should be based on the size and complexity of the project as defined in City of Dunwoody written policies and procedures (as specified in § 172.5(c)). Discussions may be written, by telephone, video conference, or by oral presentation/interview.

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Discussions following proposal submission are not required provided proposals contain sufficient information for evaluation of technical approach and qualifications to perform the specific project, task, or service with respect to established criteria.

(4) From the proposal evaluation and any subsequent discussions which have been conducted, the City of Dunwoody shall rank, in order of preference, at least three consultants determined most highly qualified to perform the solicited services based on the established and published criteria.

(5) Notification must be provided to responding consultants of the final ranking of the three most highly qualified consultants.

(6) The City of Dunwoody shall retain acceptable documentation of the solicitation, proposal, evaluation, and selection of the consultant accordance with the provisions of 49 CFR 18.42.

E. Negotiation.

(1) Independent estimate. Prior to receipt or review of the most highly qualified consultant's cost proposal, the City of Dunwoody shall prepare a detailed independent estimate with an appropriate breakdown of the work or labor hours, types or classifications of labor required, other direct costs, and consultant's fixed fee for the defined scope of work. The independent estimate shall serve as the basis for negotiation and ensuring the consultant services are obtained at a fair and reasonable cost.

(2) Elements of contract costs (e.g., indirect cost rates, direct salary or wage rates, fixed fee, and other direct costs) shall be established separately in accordance with § 172.11.

(3) If concealed cost proposals were submitted in conjunction with technical/qualifications proposals, only the cost proposal of the consultant with which negotiations are initiated may be considered. Concealed cost proposals of consultants with which negotiations are not initiated should be returned to the respective consultant due to the confidential nature of this data (as specified in 23 U.S.C. 112(b)(2)(E)).

(4) The City of Dunwoody shall retain documentation of negotiation activities and resources used in the analysis of costs to establish elements of the contract in accordance with the provisions of 49 CFR 18.42. This documentation shall include the consultant cost certification and documentation supporting the acceptance of the indirect cost rate to be applied to the contract (as specified in § 172.11(c)).

F. Small Purchases.

The small purchase method involves procurement of engineering and design related services where an adequate number of qualified sources are reviewed and the total contract costs do not exceed an established simplified acquisition threshold. The City of Dunwoody may use the

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State's small purchase procedures which reflect applicable State laws and regulations for the procurement of engineering and design related services provided the total contract costs do not exceed the Federal simplified acquisition threshold (as specified in 48 CFR 2.101). When a lower threshold for use of small purchase procedures is established in State law, regulation, or policy, the lower threshold shall apply to the use of FAHP funds. The following additional requirements shall apply to the small purchase procurement method:

- (1.) The scope of work, project phases, and contract requirements shall not be broken down into smaller components merely to permit the use of small purchase procedures.
- (2.) A minimum of three consultants are required to satisfy the adequate number of qualified sources reviewed.
- (3.) Contract costs may be negotiated in accordance with State small purchase procedures; however, the allow ability of costs shall be determined in accordance with the Federal cost principles.
- (4.) The full amount of any contract modification or amendment that would cause the total contract amount to exceed the established simplified acquisition threshold would be ineligible for Federal-aid funding. The FHWA may withdraw all Federal-aid from a contract if it is modified or amended above the applicable established simplified acquisition threshold.

G Noncompetitive.

The noncompetitive method involves procurement of engineering and design related services when it is not feasible to award the contract using competitive negotiation or small purchase procurement methods. The following requirements shall apply to the noncompetitive procurement method:

- (1.) The City of Dunwoody may use their own noncompetitive procedures which reflect applicable State and local laws and regulations and conform to applicable Federal requirements.
- (2.) The City of Dunwoody shall establish a process to determine when noncompetitive procedures will be used and shall submit justification to, and receive approval from, the FHWA before using this form of contracting or the State.
- (3.) Circumstances under which a contract may be awarded by noncompetitive procedures are limited to the following:
 - (a.) The service is available only from a single source;
 - (b.) There is an emergency which will not permit the time necessary to conduct competitive negotiations; or
 - (c.) After solicitation of a number of sources, competition is determined to be inadequate.

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(4.) Contract costs may be negotiated in accordance with the City of Dunwoody noncompetitive procedures; however, the allow ability of costs shall be determined in accordance with the Federal cost principles.

Additional Procurement Requirements.

A. Common Grant Rule.

(1.) The City of Dunwoody must comply with procurement requirements established in State and local laws, regulations, policies, and procedures which are not addressed by or in conflict with applicable Federal laws and regulations (as specified in 49 CFR 18.36).

(2.) When State and local procurement laws, regulations, policies, or procedures are in conflict with applicable Federal laws and regulations, the City of Dunwoody must comply with Federal requirements to be eligible for Federal-aid reimbursement of the associated costs of the services incurred following FHWA authorization (as specified in 49 CFR 18.4).

B. Disadvantaged Business Enterprise (DBE) program.

(1.) The City of Dunwoody shall give consideration to DBE consultants in the procurement of engineering and design related service contracts subject to 23 U.S.C. 112(b)(2) in accordance with 49 CFR part 26. When DBE program participation goals cannot be met through race-neutral measures, additional DBE participation on engineering and design related services contracts may be achieved in accordance with the City of Dunwoody's FHWA approved DBE program through either:

(A) Use of an evaluation criterion in the qualifications-based selection of consultants (as specified in § 172.7(a)(1)(iii)(D)); or

(B) Establishment of a contract participation goal.

(2.) The use of quotas or exclusive set-asides for DBE consultants is prohibited (as specified in 49 CFR 26.43).

C. Suspension and Debarment.

The City of Dunwoody must verify suspension and debarment actions and eligibility status of consultants and sub-consultants prior to entering into an agreement or contract in accordance with 49 CFR 18.35 and 2 CFR part 180.