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# PURCHASING POLICY

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# I. Introduction

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## A. Purpose

The purpose of this policy is to state the City's position regarding the purchasing responsibility and authority. This document will clarify purchasing functions and outline purchasing procedures, as well as describe departmental relationships, responsibilities, and participation in the procurement cycle. This policy will clarify the City's Municipal Code, Chapter 2, Article 8, and it will in no way be contrary to this Code.

## B. Scope

The scope of this policy covers the procurement of all materials and services 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 Johns Creek and another company or person. The procurement function includes the initial agreement/purchase, renewals, changes, and/or re-negotiations. This policy establishes the specific responsibility and authority of the procurement of materials and services.

## C. Ethics in Procurement

To maintain the public trust, each person involved in the procurement process must adhere to the highest standard of ethics and avoid any appearance that their actions are motivated by private or personal interest. Actions such as the acceptance of gratuities or kickbacks are expressly prohibited. Unethical actions by employees or vendors will not be tolerated. As a guideline for the City's procurement activities, the National Institute of Governmental Purchasing (NIGP) Code of Ethics is included in the Appendix. The following principles are to be maintained:

- Consider the best interest of the City in all transactions;
- Purchase without prejudice, and follow defined processes and procedures seeking to obtain the best value for each dollar expenditure in accordance with required quality standards;
- Subscribe to and demonstrate honesty and truth in purchasing and avoid all forms of conflict of interest, as well as the appearance of such conflicts of interest;
- Avoid all unethical practices and appearance of the same, including the improper or unlawful attempt to influence the outcome of the procurement process; and
- Strive consistently for knowledge of materials and supplies required for use by the City.

City employees found in violation of one or more of the ethical standards set forth in this policy will face disciplinary action pursuant to established policy/procedures.

1. Employees will avoid activities which would compromise or give the perception of compromising the best interests of the City of Johns Creek. Employees will not knowingly use confidential proprietary information for actual or anticipated personal gain.
2. Employees will avoid any activity that would create a conflict between their personal interest and the interest of the City. Conflicts exist in any relationship where a person is not acting in the City's best interest and may be acting in their own interest or the interest of someone associated with them. Such conflicts of interest would include being involved in any procurement in which:
  - a. The employee or any member of the employee's family has a financial interest pertaining to the City procurement process;
  - b. A business or organization in which the employee, or any member of the employee's family, has a financial interest pertaining to the City procurement process, or
  - c. Any other person, business, or organization with whom the employees or a member of the employee's family is negotiating or has an arrangement concerning prospective employment.

If such conflicts of interest exist, the employee will notify the City Manager in writing and will remove him/herself from the City procurement process.

3. Employees will avoid the appearance of unethical or compromising practices in relationship, actions, and communications regarding the procurement process.
4. Employees will never solicit or accept money, loans, gifts, favors, or anything of value, from present or potential contractors which might influence or appear to influence a purchasing decision by a Government Official O.C.G.A. 16-10-2. If anyone is in doubt about whether a specific transaction complies with this policy, the person should disclose the transaction to the City Manager for a determination of compliance.

## D. Application of Federal and State Law

It is the intention that this policy shall conform to all applicable provisions of the laws of the United States and the State of Georgia, and the provisions hereof shall be so construed wherever possible. In the event any portion of this policy shall be declared invalid for its failure to conform to federal or state law, such invalidity shall not affect the remaining portions hereof. Notwithstanding any other provision of this policy, the City may enter into any contract, follow any procedure, or take any action that is otherwise at variance with this policy if necessary or convenient to receiving funds from the government of the United States, State of Georgia, or other governmental/public entities.

## E. Equal Opportunity

The City of Johns Creek hereby gives public notice that it is the policy of the City to assure full compliance with Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987, and related statutes and regulations in all programs and activities. It is our policy that no person in the United States of America shall, on the grounds of race, color, national origin, sex, age, or disability be excluded from the participation in, be denied the benefits of, or be otherwise subjected to discrimination under any of our programs or activities.

## F. Public Access to Procurement Information

Interested persons shall have access to information regarding City procurement transactions in accordance with City policy and the Georgia Open Records Act (O.C.G.A. §50-18-70, *et seq.*).

## G. Unauthorized Purchases

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

# II. Staff Responsibilities

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## A. Authority and Duties of the 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 Municipal Code Chapter 2, Article 8, Section 2-333).

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, except as noted in the procedures outlined below; 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, or equipment stored in City storerooms, warehouses, and elsewhere, including monthly reports submitted to the Finance Director and City Manager that provide:
  - Titles of all request for proposals (RFPs) and the method of source selections to be used;
  - Contracts authorized by the City Council or City Manager, the method of source selection used and the total dollar amount;
  - Emergency contracts awarded pursuant to Municipal Code Chapter 2, Article 8;
  - Change orders or contract modifications authorized by the Council or City Manager, and the dollar amount and reason;
  - Change orders or contract modifications authorized by the Finance Director, City Manager and or, Council and the dollar amount and reason; and
  - 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 or City Manager.
3. Manage and supervise Purchasing staff.
4. Develop and maintain a purchasing policy and procedure manual which will be updated by the Purchasing Agent or City Manager (or their designee) periodically.
5. Direct efforts to procure services through advertisements of bids in the local legal organ, a website maintained by the legal organ, a website maintained by a newspaper of general circulation that is not a designated legal organ, the Georgia Procurement Registry, the Georgia Public Notice website, or the City's website as required by the City's ordinances and by state law.
6. Require bonds, insurance, and other forms of protection for the City in the process of procuring goods and services for the City.
7. 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. Reasons may include termination, breach of contract, or anticipated breach of contract.
8. Reject any and all bids when in the opinion of the Purchasing Agent it is in the City's best interest to do so.
9. Consult with the City Attorney if a contracting party breaches or is reasonably anticipated to breach its contract with the City.
10. Assist in negotiating City contracts, as directed. The City Council shall approve final contracts and execute and bind the City to such agreements.
11. Advise the Finance Director and City Manager on the status of negotiations as well as contract provisions and their impacts on the City.
12. Make recommendations on contract approval, rejection, amendment, renewal, and cancellation.
13. Provide contract administration and supervision of contracts and agreements, as directed by the City Manager. Such tasks shall include, but not be limited to, monitoring and processing contract amendments, obtaining applicable insurance certificates, and monitoring applicable progress.
14. Plan and implement processes for the ongoing protection of the City's interests.
15. 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 by examining the applicable laws and developing procedures for bidding, contracting, and procurement processes.
16. Assist and coordinate necessary grant applications and submissions as directed.

## B. Duties of the User Department

The User Department has responsibilities as provided throughout this policy including, but not limited to, the following:

1. *Determine need.* The User Department is responsible for determining the need for a material or service and providing appropriate documentation and justification, including a purchase requisition.
2. *Determine funding.* The User Department is responsible for providing proper funding. Specific budget account numbers must be on the purchase requisition.

3. *Determine specifications.* The User Department is responsible for determining the quantity, quality, dimensions, duration, estimated purchase price, 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 Department transmits its need to the Purchasing Office. The Purchasing Office can only purchase supplies and services on the basis of an approved and completed purchase requisition. A properly approved purchase requisition contains, as a minimum, the following information:
  - Complete description and specifications;
  - Quantity;
  - Need date (lead time of at least one week must be allowed);
  - Estimated cost;
  - Freight;
  - Complete budget account number;
  - Previous purchase information or quotation (if known);
  - Known or suggested vendor(s);
  - Authorized approval of department head; and
  - Authorized approval from the Finance Director.
5. *Preparation of comparative schedule.* Prior to the presentation of a contract to council, the User Department is responsible for preparing a schedule outlining the components of the bid and the variations in the proposals received. The schedule should include where possible an evaluation of cost.
6. *Acceptance of procured item or service.* The User Department is responsible for advising the Purchasing Office in writing on a Receiving Report within two business days after receipt or within four business days if the items or services are found to be unsatisfactory.

### III. Competitive Procurement

For all Public Works construction projects utilizing federal or state funds through the Georgia Department of Transportation (GDOT), the City of Johns Creek shall use the procurement methods as established by GDOT to comply with GDOT regulations.

#### A. Procurement Thresholds

##### Goods, Services, and Professional Services

	Purchase Amount	Responsible Party	Procurement Method	Minimum Quotes	Approval Authority
Informal	less than \$2,500	User Department	Procurement Card <i>or</i> Check Request	Non-competitive 0	Department Director
	\$2,501 to \$5,000	User Department	Procurement Card or Check Request	3 Quotes When/Where possible	Department Director
	\$5,001 to \$10,000	User Department	Purchase Order or Check Request and Informal Procurement or QBS-On Call Contracts	3 Quotes for RFIQ	Department Director Finance Director
	\$10,001 to \$100,000	Purchasing Agent	Purchase Order <i>and</i> Informal Procurement, QBS-On Call Contracts with Department Head Justification or Formal Procurement	3 written for RFIQ	Department Director Finance Director City Manager
Formal	\$100,001 or more	Purchasing Agent	Formal Procurement or QBS-On Call Contracts with Department Head Justification	N/A	City Council

#### B. Informal Procurement

Purchases of \$10,001 to \$100,000 must be made through an informal procurement process, cooperative purchasing agreement, existing unit-price/on-call contract, or other method allowed under this policy. The Purchasing Agent shall make the determination of the method of procurement.

##### 1. Request for Informal Quotes (RFIQ) or any derivation thereof

- a. *Conditions for use.* The Purchasing Agent will request informal written quotes on items or projects requisitioned that meet the following criteria:
  - The items or projects are valued between \$10,001 to \$100,000;
  - Precise specifications are available and can be described in an RFIQ;
  - The establishment of a contract is necessary for the purchase of a good or service; and
  - Three or more responsible vendors are willing to participate in the process.
- b. *Content.* The RFIQ shall state, or incorporate by reference, all specifications, proposed contractual terms and conditions, and other information applicable to the procurement. The RFIQ shall list the full schedule of dates, including the solicitation posting date, the due date and time for questions and clarifications, and the due date and time for the submittal deadline.

- c. *Public Works project bond requirements.* Requirement of performance, payment, and bid bond may be required at the discretion of the Department Head (O.C.G.A §36-91-70, O.C.G.A. §36-91-90, and O.C.G.A. §36-91-50 )
- d. *Advertisements/public notice.* Advertisements/public notice of the RFIQ shall be posted on the City's electronic bidding platform. At least two (2) full, consecutive weeks must pass between the day the advertisement appears and the last day of collecting quotes. **Public Works construction projects utilizing federal or state funds through the Georgia Department of Transportation (GDOT) must advertise for at least four (4) full, consecutive weeks per GDOT regulations.** The advertisement shall state that the City reserves the right to reject any or all of the quote(s) and to make award to the lowest responsive, responsible bidder meeting the minimum specifications of the RFIQ.
- e. *Modification or clarification of RFIQ.* The terms of an RFIQ may be modified or clarified through a written addendum issued by the Purchasing Agent. Addenda will be attached to the solicitation documents on the electronic bidding platform and provided to known bidders. Each bidder shall acknowledge receipt of all addenda in writing.
- f. *Receipt of quotes.* The User Department or Purchasing Agent may collect written, emailed, or faxed price quotes. Quotes should include (at a minimum) the following: the name, address, and contact information of the business submitting the quote; the date and amount of each quotation; quantity; and a description of the goods or services being procured. Additionally, quotes that do not expressly provide an expiration date are assumed to expire in sixty (60) days from date of issuance.
- g. *Modification of quotes.* If an error is discovered prior to the opening, the bidder can submit a corrected quote. The corrected quote should be clearly marked that it supersedes the quote originally submitted. If an obvious clerical error is discovered after the quote has been opened, the bidder may submit a letter to the Purchasing Agent within two (2) business days of submittal requesting that the error be corrected. The letter must be on company letterhead and signed by an individual authorized to legally bind the firm. The bidder must present clear and convincing evidence that an unintentional error was made. The Purchasing Agent will review the correction request and a judgement will be made. A non-material omission in a quote may be corrected if the Purchasing Agent determines the correction to be in the City's best interests. Omissions affecting or relating to price shall be deemed material and shall not be corrected after the quote opening. Generally, modifications to submitted quotes for reasons other than obvious clerical errors are not permitted.
- h. *Withdrawal of quotes.* Quotes may be withdrawn at any time prior to the close of the quote collection period by submitting a letter to the Purchasing Agent requesting withdrawal. The letter must be on company letterhead and signed by an individual authorized to legally bind the firm. A bidder requesting to withdraw after the quote has been submitted will be required to submit a letter with documented facts supporting the reason for withdrawal within two (2) business days of the submittal. The letter must be on company letterhead and signed by an individual authorized to legally bind the firm. The bidder must present clear and convincing evidence that an unintentional error was made. The Purchasing Agent will review the withdrawal request and a judgement will be made. Generally, quote withdrawal after the close of the quote collection period for reasons other than obvious clerical errors is not permitted. If a quote is withdrawn under the authority of this provision, the lowest remaining, responsive quote shall be deemed to be the low quote.
- i. *Quote evaluation.* Quotes shall be evaluated based on the requirements set forth in the specifications. No criteria may be used in quote evaluation that is not specifically set forth in the solicitation.
- j. *Quote award.* The award is made to the lowest responsive and responsible bidder based on the criteria (e.g. specifications, scope of work, etc.) set forth in the RFIQ. When applicable, the RFIQ should be structured to include best value principles (e.g. include support/maintenance to determine a total cost of ownership as opposed to simply acquisition costs). In most cases, the bid award will be made on best price, but the award may be made in what is determined to be in the best interest of the City.

- k. *Notice of selection.* The Purchasing Agent shall notify the selected bidder in writing of their contract award under the RFIQ.
- l. *Record retention.* The City of Johns Creek shall retain all documentation from the negotiation efforts in the contract file.
- m. *Award of contract.* 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 Department Director for approval. Any changes to the contract by the User Department Director and/or Finance Director will be reviewed by the City Attorney. The Purchasing Agent will forward one copy of the contract for signature to the vendor, with them returning two copies. 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. Once the contract is officially executed, the original of the contract will be filed in the City Clerk's office. The second copy will be returned to the vendor and an electronic copy will be stored in the City's Contract Management System.
- n. *Disqualification of quotes.* The following types of quotes shall be disqualified for consideration for a quote award:
  - A quote arrives after the set time for submittal
  - A quote which is incomplete in any material aspect
  - A quote submitted by a company on the ineligible source list
- o. *Waiver of irregularities.* The Purchasing Agent shall have the authority to waive all nonmaterial irregularities on any and all quotes except timeliness and signature requirements. Nonmaterial irregularities are those irregularities which do not affect price and/or competition.
- p. *Tie quotes.* In the event two or more bidders are tied in price while otherwise meeting all of the required conditions, the quote shall be awarded to the business which is located within City of Johns Creek, or if not within the above, within the State of Georgia. Where no bidder is located in City of Johns Creek or in the State of Georgia, the Purchasing Manager shall call a public forum, cause each bidder or stand-in to attend the flip of a coin.
- q. *Re-bids.* To ensure sufficient competition for any procurement, a minimum of three quotes is preferred. If fewer than three quotes are received, the Purchasing Agent will make a determination on the necessity of reissuing based on the circumstances surrounding the quote responses and the feasibility/practicality of reissuing.

## C. Formal Procurement

Purchases of \$100,001 or more must be made through a formal procurement process, cooperative purchasing agreement, existing unit-price/on-call contract, or other method allowed under this policy. The Purchasing Agent shall make the determination of the method of procurement. Once the procurement process is complete, it is the User Department's responsibility to prepare an agenda item and make the presentation to the City Council to obtain approval for contract award.

### 1. Invitation to Bid (ITB) or any derivation thereof

- a. *Conditions for use.* The Purchasing Agent will request sealed bids on items or projects requisitioned that meet the following criteria:
  - The items or projects are valued at \$100,001 or more;
  - Precise specifications are available and can be described in an ITB;
  - Two or more responsible vendors are willing to participate in the process; and
  - Price is the primary basis of award. When applicable, the ITB should be structured to include best value principles (e.g. include support/maintenance to determine a total cost of ownership as opposed to simply acquisition costs).

- b. *Content.* The ITB shall state, or incorporate by reference, all specifications, proposed contractual terms and conditions, performance and/or payment bond requirements, and other information applicable to the procurement. The ITB shall list the full schedule of dates, including the solicitation posting date, the due date and time for questions and clarifications, and the due date and time for the submittal deadline.
- c. *Bond requirements.* Public Works projects valued at \$100,001 or more are required by state law to have payment bonds, performance bonds, and bid bonds at the amounts specified below (O.C.G.A. §36-91-70, O.C.G.A. §36-91-90, and O.C.G.A. §36-91-50). All other projects at all other dollar amounts, regardless of the requesting department, will use the bond requirements listed below.

Value of Project	Payment Bond	Performance Bond	Bid Bond
Less than \$100,000	Discretion of Department Head	Discretion of Department Head	Discretion of Department Head
\$100,001 or more	100%	100%	5%

- d. *Self-performed work requirement.* **The City requires at least 51% participation by the Prime Contractor on all Public Works construction projects.**
- e. *Advertisements/public notice.* Advertisements/public notice of the ITB shall be posted in the legal organ of the City, a website maintained by the legal organ, a website maintained by a newspaper of general circulation that is not a designated legal organ, the Georgia Procurement Registry, the Georgia Public Notice website, and/or the City’s website as required by the City’s ordinances and by state law. All solicitation documents shall be accessible through the City’s electronic bidding platform. At least two (2) full, consecutive weeks must pass between the day the advertisement appears and the last day of collecting quotes. **Public Works construction projects utilizing federal or state funds through the Georgia Department of Transportation (GDOT) must advertise for at least four (4) full, consecutive weeks per GDOT regulations.** The advertisement shall state that the City reserves the right to reject any or all of the bids and to make award to the lowest responsive, responsible vendor meeting the minimum specifications of the bid.
- f. *Pre-bid conference.* A pre-bid conference to explain the procurement requirements may be held at the discretion of the Purchasing Agent and the User Department. Vendor attendance is not required to be considered by the City for any project.
- g. *Modification or clarification of ITB.* The terms of an ITB may be modified or clarified through a written addendum issued by the Purchasing Agent. Addenda will be attached to the solicitation documents on the electronic bidding platform and provided to known bidders (e.g. bidders registered through a pre-bid conference). Each bidder shall acknowledge receipt of all addenda in writing or electronically on the City’s bid platform.
- h. *Receipt of bids.* No bid shall be eligible for consideration by the City unless it is submitted electronically on the City’s bid platform, or if required, placed in a sealed envelope or package and actually received by the City of Johns Creek by the date and time specified in the ITB. The Purchasing Agent shall cause all in-person bid submissions to be stamped with the date and time of receipt, or for electronic submissions, be designated electronically with the date and time of electronic submission and secured until the designated opening time. A bid delivered late shall under no circumstances be eligible for consideration by the City and shall be returned unopened to the bidder (at bidder’s expense) or destroyed (if directed to do so by the bidder). Additionally, bids that do not expressly provide an expiration date are assumed to expire in sixty (60) days from date of issuance.
- i. *Bid opening.* Bids submitted in person shall be opened publicly in the presence of one or more witnesses on the date and at the time and place designated in the ITB. The name of each bidder, the purchase price contained in each bid, and such other information as the Purchasing Agent deems appropriate shall be announced as the bids are opened. Bids submitted electronically shall be checked for

compliance and opened and results published on the City's website. A record of bid information shall be recorded and made available for public inspection.

- j. *Modification of bids.* If an error is discovered prior to the opening, the bidder can submit a corrected bid. The corrected bid should be clearly marked that it supersedes the bid originally submitted. If an obvious clerical error is discovered after the bid has been opened, the bidder may submit a letter to the Purchasing Agent within two (2) business days of opening requesting that the error be corrected. The letter must be on company letterhead and signed by an individual authorized to legally bind the firm. The bidder must present clear and convincing evidence that an unintentional error was made. The Purchasing Agent will review the correction request and a judgement will be made. A non-material omission in a bid may be corrected if the Purchasing Agent determines the correction to be in the City's best interests. Omissions affecting or relating to price or insurance shall be deemed material and shall not be corrected after the bid opening. Generally, modifications to opened bids for reasons other than obvious clerical errors are not permitted.
- k. *Withdrawal of bids.* Bids may be withdrawn at any time prior to the bid opening by submitting a letter to the Purchasing Agent requesting withdrawal. The letter must be on company letterhead and signed by an individual authorized to legally bind the firm. A bidder requesting to withdraw after the bid has been opened will be required to submit a letter with documented facts supporting the reason for withdrawal within two (2) business days of the opening. The letter must be on company letterhead and signed by an individual authorized to legally bind the firm. The bidder must present clear and convincing evidence that an unintentional error was made. The Purchasing Agent will review the withdrawal request and a judgement will be made. Generally, bid withdrawal after bids are opened for reasons other than obvious clerical errors is not permitted. If a bid is withdrawn under the authority of this provision, the lowest remaining, responsive bid shall be deemed to be the low bid.
- l. *Bid evaluation.* Bids shall be evaluated based on the requirements set forth in the specifications. No criteria may be used in bid evaluation that is not specifically set forth in the solicitation.
- m. *Bid award.* The award is made to the lowest responsive and responsible bidder, based on the criteria (e.g. specifications, scope of work, etc.) set forth in the ITB. When applicable, the ITB should be structured to include best value principles (e.g. include support/maintenance to determine a total cost of ownership as opposed to simply acquisition costs). The User Department is tasked with preparing an agenda item and making the presentation to the City Council to obtain approval for contract award.
- n. *Notice of selection.* The Purchasing Agent shall notify the selected bidder in writing of their contract award under the ITB.
- o. *Record retention.* The City of Johns Creek shall retain all documentation from the negotiation efforts in the contract file upon notification of contract approval by Council.
- p. *Award of contract.* The Purchasing Agent and the City Attorney 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 Department Director, Finance Director, and or Council for approval. Any changes to the contract by the Purchasing Agent, User Department Director and/or Finance Director will be reviewed by the City Attorney. The Purchasing Agent will forward one copy of the contract for signature to the vendor, with them returning two copies. The City Attorney will perform a final legal review before the City Manager signs it. 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 and if necessary, approved by Council. Once the contract is officially executed, the original of the contract will be filed in the City Clerk's office. The second copy will be returned to the vendor. An electronic copy will be stored in the City's Contract Management System.
- q. *Contract amendments.* Once a contract is awarded by the City, the contract may be amended (or change orders may be submitted) without the necessity of rebidding the contract, provided that such amendments or change orders approval is followed in Section K of the Purchasing Policy.

- r. *Disqualification of bids.* The following types of bids shall be disqualified for consideration for a bid award:
- A bid arrives after the set time for submittal
  - A bid which is incomplete in any material aspect
  - A bid submitted without required bonds or insurance
  - A bid submitted by a company on the ineligible source list
  - A bid placed by a vendor who receives one or more substantive, negative comments from a governmental or public entity reference or from a private organization that used the vendor for similar goods/services as that being sought by the City
- s. *Waiver of irregularities.* The Purchasing Agent shall have the authority to waive all nonmaterial irregularities on any and all bids except timeliness and signature requirements. Nonmaterial irregularities are those irregularities which do not affect price and/or competition.
- t. *Tie bids.* In the event two or more bidders are tied in price while otherwise meeting all of the required conditions, the bid shall be awarded to the business which is located within City of Johns Creek, or if not within the above, within the State of Georgia. Where no bidder is located in City of Johns Creek or in the State of Georgia, the Purchasing Manager shall call a public forum, cause each bidder or stand-in to attend the flip of a coin.
- u. *Re-bids.* To ensure sufficient competition for any procurement, a minimum of three bids is preferred. If fewer than three bids are received, the Purchasing Agent will make a determination on the necessity of rebidding based on the circumstances surrounding the bid responses and the feasibility/practicality of rebidding.

## **2. Request for Proposals (RFP) or any derivation thereof**

- a. *Conditions for use.* The Purchasing Agent will request sealed proposals on items or projects requisitioned that meet the following criteria:
- The items or projects are valued at \$100,001 or more;
  - A need can be identified, outlined, and the User Department desires to utilize the expertise of bidders in arriving at a solution;
  - The need or solution is fairly detailed or complex, or the specifications of the project or item cannot be clearly defined;
  - The need or solution involves services or a combination of goods/services;
  - The quality, availability, or capability is overriding in relation to price in procurement of technical supplies or services; and
  - Price negotiation is desired.
- b. *Basis of solicitation.* RFPs will generally be solicited on a project-by-project basis with the exception of the following: Auditor, Engineering Testing Services, Medical Services, and Banking Services, which should be solicited every three (3) years with possible two-year extensions.
- c. *Content.* The RFP shall provide a statement of need or problem description for which proposed solutions are sought. Such RFP may include specifications, scope of work, proposed contractual terms and conditions to which the bidder must respond, and the scoring criteria and weights used in the evaluation process. The RFP shall list the full schedule of dates, including the solicitation posting date, the pre-bid conference date and time (along with whether vendor attendance is required), the due date and time for questions and clarifications, and the due date and time for the submittal deadline. The RFP must also stipulate that technical proposals must be in a sealed envelope or package separate from the cost proposal, as the cost proposal will be considered separately from the technical proposal. The RFP may encourage the proposal of alternative specifications, scope of work, and proposed contractual terms and conditions, if such alternatives are proposed as the best method of meeting the stated need or

solving the stated problem. An RFP may include a request for qualifications (RFQ) or may be preceded by a request for information (RFI).

- d. *Self-performed work requirement.* **The city requires 51% participation by the Prime Contractor on all Public Works construction projects.**
- e. *Advertisements/public notice.* Advertisements/public notice of the RFP shall be posted in the legal organ of the City, a website maintained by the legal organ, a website maintained by a newspaper of general circulation that is not a designated legal organ, the Georgia Procurement Registry, the Georgia Public Notice website, and/or the City's website as required by the City's ordinances and by state law. All solicitation documents shall be accessible through the City's electronic bidding platform. At least two (2) full, consecutive weeks must pass between the day the advertisement appears and the last day of collecting quotes. **Public Works construction projects utilizing federal or state funds through the Georgia Department of Transportation (GDOT) must advertise for at least four (4) full, consecutive weeks per GDOT regulations.** The advertisement shall state that the City reserves the right to reject any or all of the bids and to make award to the lowest responsive, responsible vendor meeting the minimum specifications of the bid.
- f. *Evaluation committee.* The evaluation of proposals shall be carried out by a committee consisting of at least three members. The committee will typically include the Project Manager, the Director or designated representative from the user department, and additional members as deemed necessary by the User Department or Purchasing Agent. The composition of the evaluation team may be adjusted at the discretion of the User Department, subject to approval by the Purchasing Agent, to ensure a thorough and comprehensive review of proposals. *Pre-proposal conference.* A pre-proposal conference to explain the procurement requirements may be held at the discretion of the Purchasing Agent and the User Department. Vendor attendance may be required at the Purchasing Agent's discretion. Such requirement shall be noted in the RFP.
- g. *Modification or clarification of RFP.* The terms of an RFP may be modified or clarified through a written addendum issued by the Purchasing Agent. Addenda will be attached to the solicitation documents on the electronic bidding platform and provided to known bidders (e.g. bidders registered through a pre-proposal conference). Each bidder shall acknowledge receipt of all addenda in writing.
- h. *Receipt of proposals.* No proposal shall be eligible for consideration by the City unless it is placed in a sealed envelope or package and actually received by the City of Johns Creek by the date and time specified in the RFP. The Purchasing Agent shall cause all proposals to be stamped with the date and time of receipt and secured until the designated opening time. A proposal delivered late shall under no circumstances be eligible for consideration by the City and shall be returned unopened to the bidder (at bidder's expense) or destroyed (if directed to do so by the bidder). Additionally, proposals that do not expressly provide an expiration date are assumed to expire in sixty (60) days from date of issuance.
- i. *Proposal opening.* Proposals shall be opened publicly in the presence of one or more witnesses on the date and at the time and place designated in the RFP. The name of each bidder shall be announced as the proposals are opened, but no other information shall be disclosed nor shall the proposals be considered an open record until a contract is awarded.
- j. *Modification of proposals.* If an error is discovered prior to the opening, the bidder can submit a corrected proposal. The corrected proposal should be clearly marked that it supersedes the proposal originally submitted. If an obvious clerical error is discovered after the proposal has been opened, the bidder may submit a letter to the Purchasing Agent within two (2) business days of opening requesting that the error be corrected. The letter must be on company letterhead and signed by an individual authorized to legally bind the firm. The bidder must present clear and convincing evidence that an unintentional error was made. The Purchasing Agent will review the correction request and a judgement will be made. A non-material omission in a proposal may be corrected if the Purchasing Agent determines the correction to be in the City's best interests. Generally, modifications to opened proposals for reasons other than obvious clerical errors are not permitted.

- k. *Withdrawal of proposals.* Proposals may be withdrawn at any time prior to the proposal opening by submitting a letter to the Purchasing Agent requesting withdrawal. The letter must be on company letterhead and signed by an individual authorized to legally bind the firm. A bidder requesting to withdraw after the proposal has been opened will be required to submit a letter with documented facts supporting the reason for withdrawal within two (2) business days of the opening. The letter must be on company letterhead and signed by an individual authorized to legally bind the firm. The bidder must present clear and convincing evidence that an unintentional error was made. The Purchasing Agent will review the withdrawal request and a judgement will be made. Generally, proposal withdrawal after proposals are opened for reasons other than obvious clerical errors is not permitted.
- l. *Proposal evaluation.* Proposals shall be evaluated based on the requirements set forth in the specifications. No criteria may be used in proposal evaluation that is not specifically set forth in the solicitation. Each proposal shall be evaluated to determine whether it is responsive to the scope of services and other terms and conditions contained in the RFP. In evaluating the proposals, the evaluating team may communicate with each bidder to clarify and amplify each bidder's proposal. No information concerning any other bidder's proposal shall be communicated in any way to the bidder. Additional information may be requested of bidders by the Purchasing Agent.
- m. *Selection of bidder with whom to negotiate.* The User Department and the Purchasing Agent, after considering the recommendation of the evaluation committee (if applicable), shall select the proposal that is determined to provide the best value to the City. Such selection shall be based upon, but not limited exclusively to, price and the evaluation factors set forth in the RFP.
- n. *Contract negotiations.* Upon recommendations of the Purchasing Agent, User Department Director, and evaluation committee (if applicable), contract negotiations shall commence with the bidder. If fair and reasonable compensation, contract requirements, and contract documents can be agreed upon, the User Department will prepare an agenda item and make a presentation to City Council to obtain approval for contract award.
- o. *Alternate bidder.* If contract terms cannot be agreed upon with the bidder initially selected, the Purchasing Agent shall advise the bidder in writing of the termination of negotiations. After termination, negotiations may be conducted with such other bidder determined to be in the City's best interest (the "alternate bidder"). If contract terms can be agreed upon with the alternate bidder, the User Department will prepare an agenda item and make a presentation to the City Council to obtain approval for contract award.
- p. *Notice of selection.* The Purchasing Agent shall notify the selected bidder in writing of their contract award under the RFP upon notification of contract approval by Council.
- q. *Record retention.* The City of Johns Creek shall retain all documentation from the negotiation efforts in the contract file.
- r. *Award of contract.* The Purchasing Agent and the City Attorney 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 Department Director and the Finance Director for approval. Any changes to the contract by the User Department Director and/or Finance Director will be reviewed by the City Attorney. The Purchasing Agent will forward one copy of the contract for signature to the vendor, with them returning two copies. The City Attorney will perform a final legal review before the City Manager signs it. 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 and if necessary, approved by Council. Once the contract is officially executed, the original of the contract will be filed in the City Clerk's office. The second copy will be returned to the vendor. An electronic copy will be stored in the City's Contract Management System.
- s. *Contract amendments.* Once a contract is awarded by the City, the contract may be amended (or change orders may be submitted) without the necessity of rebidding the contract, provided that such amendments or change orders approval is followed in Section K of the Purchasing Policy.

- t. *Disqualification of proposals.* The following types of proposals shall be disqualified for consideration for a proposal award:
  - A proposal arrives after the set time for submittal
  - A proposal which is incomplete in any material aspect
- u. *Waiver of irregularities.* The Purchasing Agent shall have the authority to waive all nonmaterial irregularities on any and all proposals except timeliness and signature requirements. Nonmaterial irregularities are those irregularities which do not affect price and/or competition.
- v. *Reissue.* To ensure the best value for any procurement, a minimum of three proposals is preferred. If fewer than three proposals are received, the Purchasing Agent will make a determination on the necessity of reissuing the RFP based on the circumstances surrounding the responses and the feasibility/practicality of reissuing the RFP.

## D. Multi-Step Solicitation (MSS)

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, bidders, goods or services, out of a broader field of bidders, bidders, 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 RFIQ 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 bidders. The City may request demonstrations, samples, or may conduct interviews with bidders 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 bidders. 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 bidders, the City is not required to interview any bidder deemed by the City to be unqualified or less qualified than other bidders.
- b. After identifying a field of most qualified bidders or bidders with the capability of providing the desirable or acceptable goods, services, or professional services, the City may either follow a competitive procurement 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 in the section of this policy non-competitive procurement.

### 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 bidders. The City may conduct interviews with bidders to aid in the identification of qualified or most qualified bidders. In the event the City conducts interviews with bidders, the City is not required to interview any bidders deemed by the City to be unqualified or less qualified than other bidders.

- b. After establishing a field of qualified or most qualified bidders, the City will open the pricing envelopes of only the qualified or most qualified bidders, 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 bidders). In the absence of specific instructions to the contrary in the RFP, pricing information will be evaluated together with all other information required by the RFP for purposes of selecting among the qualified field of bidders the most advantageous proposal, price and other factors considered.

### **3. Multi-Step Process to Award Continuing Purchasing Contracts / On-Call Professional Services**

- 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. 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. 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) through an issuance of a Task Order Agreement, 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 through a Quality Based Selection (QBS) 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 prequalified 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 \$100,001.

## **E. Cancellation of Formal Solicitations**

A RFIQ, ITB, RFP, or other procurement solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when determined by the Purchasing Agent to be in the City's best interest. The reasons for cancellation or rejection shall be made part of the procurement file. Each RFIQ, ITB, RFP, or other procurement solicitation shall be subject to the following conditions:

1. The solicitation may be canceled;
2. Any solicitation may be rejected in whole or in part;
3. Any action taken by the City in response to an solicitation shall be made without any liability or obligation on the part of the City or its employees;
4. The selection, failure, or refusal to make a selection pursuant to such solicitation shall be made without any liability or obligation on the part of the City or its employees;

5. Any termination of selection, withdrawal, or cancellation of such solicitation, either before or after selection of a bidder or bidder, shall be made without any liability or obligation on the part of the City or its employees;
6. The City, in its sole discretion, reserves the right to determine the eligibility for selection of any part or parties submitting bids/proposals in response to any solicitation;
7. All cost incurred in preparing or responding to a solicitation are the sole responsibility of the responding party; and
8. The City and the party responding to a solicitation will be contractually bound only if and when a written contract is fully executed.

## F. Local Vendor Preference

It is the policy of the City to invest in the local community when appropriate through securing goods/services from local businesses at competitive pricing and terms. This section provides the framework to encourage local businesses to compete for City business for procurements solicited under a Formal Procurement process (Section III(E)) with a maximum contract value of \$500,001. Contracts valued over \$500,001 are not subject to this section.

1. *Definition of "local vendor."* For the purposes of this section, a "local vendor" shall mean a business which:
  - a. Has had a fixed office or distribution point in and having a street address within the geographic limits of the City of Johns Creek, Georgia, for at least six (6) months immediately prior to the issuance of the Invitation to Bid (ITB) or Request for Proposals (RFP); and
  - b. Holds any business license required by the City's Municipal Code; and
  - c. Employs at least one full-time employee or two part-time employees whose primary residence is within the geographic limits of the City of Johns Creek, Georgia, or if the business has no employees, the business shall be at least fifty percent (50%) owned by one or more persons whose primary residence is within the geographic limits of the City of Johns Creek, Georgia.
2. *Invitation to Bid (ITB) or any derivation thereof.*
  - A Johns Creek vendor will be given preference in contract award if their responsive and responsible bid is within two percent (2.00%) of the lowest responsive and responsible bid.
  - If multiple Johns Creek vendors are within two percent (2.00%) of the lowest responsive and responsible bid, then contract award will go to the Johns Creek vendor with the lowest responsive and responsible bidder.
3. *Request for Proposals (RFP) or any derivation thereof.*
  - Johns Creek vendor preference of two percent (2.00%), or equivalent unit of measure, shall be provided as an evaluation criterion.
4. *Exceptions.*
  - Formal solicitations with a contract value of \$500,001 or greater
  - Public Works construction projects totaling \$100,001 and greater (O.C.G.A. §36-91-1 *et seq.*)
  - Sole source, single source, and cooperative purchasing agreements
  - Federal or state law prohibits the use of local preference
  - The work is funded in whole or part by a governmental entity that prohibits the use of local preference
  - The Johns Creek vendor is either non-responsive or non-responsible
  - All bids submitted exceed the budget amount and supplemental funding is not available
  - Emergency purchases
  - The Purchasing Agent, City Manager, and/or City Council may exempt any formal solicitation from the Johns Creek vendor preference

## G. Additional Approvals

Dependent on the nature of the procurement, additional authorizations may be required prior to initiation of the procurement process.

1. For any fleet purchases of new or replacement vehicles, the Purchasing Agent, in the absence of a citywide Fleet Manager, shall review and approve any such procurement to verify that it is consistent with the fleet replacement schedule and the City's strategic goals.
2. For any technology compliance approval, the Information Technology Director will review and approve any technology-related procurements involving the City's technology for verification of compatibility with existing equipment and consistency with the City's strategic goals. Technology-related procurements include software that resides on the City's network and hardware that utilizes the City's network (e.g. cellphones, smartphones, tablets, printers, desktop and laptop computers, etc.).

## H. Cooperative Purchasing Agreements

The Purchasing Agent 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.) at prices or discounts no less favorable than any set forth in such contracts, provided however, that such contract was the product of a competitive bid process if such process is required under the City's ordinance/policies for the type of purchase being made. The Purchasing Agent may participate in, sponsor, conduct or administer a cooperative purchasing agreement for procurement (e.g. Omnia Partners, Sourcewell, NASPO, SAVVIK, etc.) including "piggybacking" on governmental (e.g. local, state, national, etc.) and authority (GDOT, transportation, utility and or development authorities, etc.) contracts, provided however, that such agreement was the product of a competitive bid process if such process is required under the City's ordinance/policies for the type of purchase being made. Prior to the City making a purchase through "piggybacking" or cooperative purchasing, the Purchasing Agent must verify that the original contract states that it is subject to cooperative purchasing and/or intergovernmental agreements or obtain written consent from the vendor and the original public agency for the cooperative purchasing/"piggybacking" by the City. Cooperative purchasing agreements assist local governments in reducing the cost of purchased goods and services through pooling the purchasing power of multiple public agencies. Due to the nature of cooperative purchasing agreements, competition has been established so additional quotes, bids, or proposals are not required. However, approval requirements based on the procurement dollar amount are still in effect. Specific Policy and Procedures for this process will be maintained by the Purchasing Agent.

## I. On-Call/Unit-Price Contracts

On-call/unit-price contracts (e.g. on-call electrical services, on-call tree services, uniform vendors, etc.) awarded by the City through a competitive procurement process only require one quote assuming the procurement is (1) for the work within the approved scope and (2) follows the approved contract pricing. However, approval requirements on the procurement dollar amount are still in effect.

## J. Other Procurement Methods and Requests

The Purchasing Agent may use other procurement methods determined to be in the City's best interest. Such methods may include, but are not limited to, Request for Qualifications (RFQ), Request for Information (RFI), Invitation to Negotiate (ITN), Invitation to Participate (ITP), and Request for Letter of Interest (RFLI).

## K. Change Orders

It is the policy of the City to limit change orders on procurements. However, the City recognizes that at times circumstances may dictate that changes be made to the scope of a project or procurement.

**All change order requests shall be accompanied by a description and justification** and will be reviewed by the Purchasing Agent for appropriateness including assuring approval thresholds are not being subverted. Change orders will be processed to correct the account distribution, quantity, addition/deletion of line items, change in description,

and unit price. The City reserves the right to rebid any contract with change orders which exceed 10% variance of the original contract amount.

The following change order thresholds are cumulative over the life of the contract/procurement:

Original Purchase Amount	Cumulative Increase/Decrease in Original Purchase Amount	Approval Authority
\$10,001 to \$100,000	≤ 10.00% of original purchase amount	Department Director Purchasing Agent Finance Director
\$10,001 to \$100,000	≥ 10.01% of original purchase amount	Department Director Purchasing Agent Finance Director City Manager
\$100,001 or more	≤ 10.00% of original purchase amount	Department Director Purchasing Agent Finance Director City Manager
\$100,001 or more	≥ 10.01% of original purchase amount	City Council

On-call/unit-price contracts (see Section III(I)) are included within the change order policy on an individual project basis (e.g. repair of electrical outlets at City Hall) as opposed to an overall contract basis (e.g. on-call electrical services).

## L. Grants/Donations

Periodically, the City may be given private/public grants and donations from sources such as the federal and state government, foundation, or private corporations. These funding types are more restrictive and may dictate the procurement process and methodology that the City is to follow for an award. Notwithstanding any other provision of this policy, the City may enter into any contract, follow any procedure, or take any action that is otherwise at variance with this policy if necessary or convenient to receiving funds from the government of the United States, the State of Georgia, other governmental/public entities, or private entities.

## M. Use of Technology

Procurement activities for the City should be automated whenever it is in the City's best interest.

1. Electronic solicitation
  - a. *Electronic public notice allowed.* As an alternative to the public notices required, the Purchasing Agent may electronically distribute a solicitation. The Purchasing Agent may limit such electronic distribution to firms electronically registered with the City.
  - b. *Use of private contractor.* If appropriate, the Purchasing Agent may contract with a private firm to manage the vendor registration process, bid lists, distribution of procurement documents, and master agreement catalogs.
2. Electronic submissions
  - a. *Electronic submissions.* The Purchasing Agent may receive procurement submissions electronically if the solicitation includes permission for such electronic submission.
  - b. *Digital signatures.* To assure the validity of procurement submissions received electronically, the Purchasing Agent may require vendors to adopt signature standards established by the State, the National Institute of Government Purchasing, or other recognized national organization.
  - c. *Public records.* All procurement submissions received electronically shall be a public record and shall be made available to the public as provided by law.

## N. Protests

1. *Right to protest.* Any actual or prospective bidder, Offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the City of Johns Creek.
2. *Procedure.* Protestors shall seek resolution of their complaints initially with the Finance Director. All protests must be submitted in writing to the Finance Director within seven (7) calendar days of the first date that the aggrieved party knew or should have known of the facts giving rise to the protest. The complaint shall specify the alleged act or omission by the City that provides the basis for the complaint. Upon the filing of a written complaint, the Finance Director, within five (5) business days, shall review the merits of the claim and submit a written recommendation to the City Manager. The City Manager is empowered to decide that the contract at issue be voided, upheld, or whatever other relief may be necessary. The City Manager must provide a written response to the aggrieved party within ten (10) business days. If the party bringing the complaint disagrees with the conclusions of the City Manager, the decision may be appealed to Superior Court of Fulton County.
3. *Protests concerning an ITB or RFP.* A protest with respect to an ITB 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.
4. *Stay of procurement during protests.* In the event of a timely protest under subsection (2) 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 makes a determination that the award of the contract without delay is necessary to protect the interests of City of Johns Creek.

## O. Adherence to GDOT Procurement Policies for Projects Involving Federal Funds

The City follows the Georgia Department of Transportation (GDOT) Procurement Policy for the Procurement, Management, and Administration of Engineering and Design Related Consultant Services for all state and federally funded transportation projects administered by the City of Johns Creek. This includes, but is not limited to, any projects co-funded by the City. From time to time, the GDOT may amend the adopted Policy. As such, the City's adoption Purchasing Policy City of Johns Creek, Georgia Page 20 includes all amendments until the adoption of the policy is voided by a majority vote of City Council. Per the requirements of the GDOT, personnel involved in the procurement, management and administration of engineering, design related consultant services for all state, and federally funded transportation projects will attend GDOT training as directed by the Agency.

Please refer to the GDOT Purchasing Policy for further details.

## IV. Non-Competitive Procurement

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### A. Exceptions

The following items may be procured without competitive selection and the Purchasing Agent is authorized to execute the resulting transaction (e.g. procurement card transaction, direct payment, or purchase order) and subsequent change orders (if any):

1. Water, sewer, electrical, telephone (land line only; does not include cellular), gas, and other utility services where competition is not available
2. Dues and memberships in trade or professional organizations
3. Job-related seminars and training, whether provided through an outside organization or by the City for in-house training, including facilities and amenities needed for such training
4. Hospitality services.
5. Travel including car rentals and expenses including meals and hotel accommodations guidelines established in the City Travel and Meal Expenditure Policy.
6. Subscriptions for periodicals
7. Postage

8. Advertisements (e.g. legal ads, special event ads, etc.)
9. Recreational service providers (e.g. recreational instructors)
10. Artists, artistic services including graphic design and fireworks, music ensembles (bands), and other entertainment providers
11. Entertainment venues (e.g. theme parks for recreation camps)
12. Vehicle and equipment repair
13. Licensed computer software and associated support/maintenance
14. Copyrighted materials not available from multiple sources
15. Medical services
16. Real estate services
17. Appraisal services
18. Title insurance and title abstracts for real property
19. Services required by proprietary ownership and original equipment manufacturers such as maintenance contracts
20. Services or commodities provided by other governmental agencies
21. The following professional services:
  - Legal services including bond counsel
  - Bond financial advisory services (e.g. capital financing)
  - Insurance policies competitively procured through the City's insurance broker
  - Lobby services (the Mayor, City Manager, and Finance Director may select a person to provide lobbying services on behalf of the City without competitive selection)

## B. Sole/Single Source

A contract may be awarded or a purchase made without competition when the City determines that there is only one source for the required products, supply services, or construction items. The determination will be limited to a specific time frame and/or project and will be effective for no more than three (3) fiscal years (initial year is the fiscal year of approval; expiration occurs on September 30<sup>th</sup> of the third fiscal year). After three (3) fiscal years, the User Department will submit a written request for the determination to be reevaluated by the Purchasing Agent in consultation with the City Attorney. The Purchasing Agent will maintain a listing of sole source and single source vendors.

Once a vendor has been deemed sole source or single source, a User Department may procure goods or services from this vendor without the need for quotes, ITBs, or RFPs. Unlike procurement exceptions (Section IV(A)), sole source and single source procurements are subject to the approval authority (i.e. signature requirements) set forth under Section III(A).

## C. Emergency Procurement

Notwithstanding any other provisions of this policy, the City Manager (or Department Head, if under \$10,000) may authorize an emergency procurement when there exists an immediate threat or danger to public health, safety, or welfare, loss of public or private property, or interruption in the delivery of an essential governmental services. When the City Manager determines that an emergency exists, the Purchasing Agent may make or authorize others to make emergency procurements for supplies, services, construction items, or professional or consultant services. Such emergency procurements shall be made with as much competition as is practicable under the circumstances.

The User Department Director shall attest to the conditions that constitute the immediate threat, danger, or loss of service interruption, the type of emergency, the risks associated with delaying corrective actions, estimates of the time, costs, and work required to mitigate the situation, and such other information as the City Manager and the Purchasing Agent may require. 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. All such information shall be provided to the Finance Department as sufficient justification for the procurement.

If an emergency 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.

## V. General Procedures

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1. *Documentation.* All documentation relating to purchases must be submitted to the Finance Department once all applicable processing parameters have been fulfilled.
2. *Responsible for prices.* The final determination on any dispute of the price and terms of any goods, materials, or services shall rest with the Purchasing Office.
3. *Records.* It shall be the responsibility of the Purchasing Office 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.
4. *Negotiations of agreements.* All negotiations of agreements for supplies, materials, or services shall be conducted by the Purchasing Office. It is recognized that special situations may exist where there is a special need for the User Department to be involved in the negotiation process. These negotiations must be in conjunction with the Purchasing Office at all times. The Purchasing Office will make final recommendation for agreements.
5. *Delivery, quality, and payment.* It shall be the responsibility of the Purchasing Office to ensure the quality, delivery, and payment of required goods and services.
6. *Disputes.* Final adjudication of any dispute between the vendor and User Department shall be made by the Purchasing Office with appropriate input from the User Department.
7. *Vendor.* In most cases, contact with vendors will be by the Purchasing Office and in conjunction with the User Department as necessary. All vendors must coordinate with the Purchasing Office before visiting any other department. All visits must be made with the knowledge of the Purchasing Office 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.
8. *Return of goods and/or cancellation of agreements.* All return of goods must be initiated by the User Department through the Purchasing Office. Additionally, all cancellations of, or modifications to, any agreements must be made by the Purchasing Office.
9. *Receiving of goods.* It shall be the responsibility of the User Department to ensure that purchased goods and equipment are received, inspected, and verified as to condition. This will be accomplished by the use of a Receiving Report. Since the Department Director 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.

## VI. Definitions

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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.

- **Addendum:** A change, clarification, or correction in the solicitation documents prior to the award of a contract.
- **Best value:** The most advantageous balance of price, quality, time, and performance considerations at competitive costs over the useful life of the goods/services, which best meets the operational needs of the User Department. When applicable, procurement decisions should include costs beyond the initial purchase (e.g.

total cost of ownership principles which include maintenance, support, useful life, efficiencies, operational savings, etc.).

- **Bid opening:** The act of publicly opening the bid envelopes and making the bids available for public inspection.
- **Bid:** An offer submitted in response to public notice of an intended sale or purchase.
- **Bidder:** One who submits an offer in response to public notice of an intended sale or purchase, including by submittal of a bid, a proposal, or a quote.
- **Bond:** A form of financial protection against damages; a binding agreement executed by a bidder or vendor and another party to guarantee the performance of certain obligations or duties to the purchaser. (*See also "payment bond" and "performance bond."*)
- **Budget:** The annual appropriations for each User Department together with any subsequent budget amendments.
- **Change order:** An agreed upon addition to, deletion from, correction, or modification of a contract.
- **City Council:** The legislative and governing body of the City.
- **City:** The City of Johns Creek 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.
- **Competitive procurement:** 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.
- **Construction:** 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.
- **Contract:** 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.
- **Contractor:** Any person or business having a contract with the City.
- **Cooperative Purchasing:** Procurement conducted by or on behalf of more than one public purchasing entity. For purposes of cooperative purchasing, a "public purchasing entity means the United States government and/or any department, agency or division thereof; any county, municipality, city, town, consolidated government, and/or any political subdivision of the State of Georgia and/or public agency of any such subdivision; any public authority; any educational, health, or other public institution; and any other entity which expends public funds for procurement of supplies, services, or construction.
- **Department Director:** The director of the User Department requesting the procurement. Where applicable, (User) Department Director will also refer to his/her designee.
- **Department:** An organizational unit within City government that is responsible to the City Manager, or designee.
- **Emergency purchase:** The purchase of supplies and/or services whose immediate procurement is essential to protect life or property.
- **Emergency:** An immediate threat or danger to public health, safety, or welfare, loss of public or private property, or interruption in the delivery of an essential governmental services.
- **Employee:** An individual drawing a salary or wage from the City whether on a full-time, part-time basis, or contractual third-party. The term shall encompass all members of the governing authority without regard to whether or not such individual is compensated.
- **Finance Director:** The department head of the City's Finance Department.
- **Gifts/favors:** Anything of any service of value. Value shall be considered anything in excess of \$100.

- **Goods:** Supplies, apparatus, materials, equipment, and other forms of tangible personal property used by a City department in the accomplishment of its responsibilities.
- **Invitation to bid (ITB):** 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.
- **Johns Creek vendor:** A person or business entity that meets the following requirements:
  - Has a permanent place of business with full-time employee(s) within City limits for a minimum of six months prior to the issuance date of any formal solicitation to which the business will be responding. The permanent place of business must distribute goods/services and cannot be a post office box or a residence.
  - Has a valid business license from the City.
  - Is not delinquent on any taxes/fees owed to the City (e.g. property taxes, business license fees, etc.)
 The Johns Creek vendor will be required to certify their eligibility as part of the formal solicitation process.
- **Late bid/proposal:** A bid or proposal received after the time or date such bid or proposal was due, as stated in the solicitation documents.
- **Local vendor preference:** Applies to all informal and formal procurements excluding construction projects, professional and consulting services, federally funded projects, and online/electronic sealed bid/reverse auctions. A local vendor's bid will be awarded if the bid is within two percent (2%) of the non-local vendor's bid who otherwise would have received the award of the contract.
- **Non-Johns Creek vendor:** A vendor that does not meet the eligibility requirements of a Johns Creek vendor.
- **Payment bond:** A bond which assures payments, as required by law, to all persons supplying labor or material for the completion of work under the contract.
- **Performance bond:** 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.
- **Practicable:** Satisfactory and within reason when considering price, performance, availability, compatibility with specified operation, and public safety.
- **Prime Contractor:** The contractor who bids on and wins contracts directly from the City, and who is the entity legally responsible for all aspects of fulfilling the contract, such as interacting with the City, organizing and managing subcontractors, and meeting all delivery requirements.
- **Project Manager:** *The staff member responsible for leading and overseeing a project from initiation to completion. Their primary role is to ensure that the project is completed on time, within scope, and within budget, while meeting the specified objectives, quality standards and procurement processes are followed.*
- **Professional services:** Services that involve specialized education, knowledge, labor, judgment, and skill which are predominantly mental or intellectual (as opposed to physical or manual) in nature. Professional services typically require professional licensing such as architects, auditors, engineers, etc. The Purchasing Agent makes the final determination on which services are classified as professional services.
- **Protest:** A specific written objection by an interested person to a Request for Informal Quotes, an Invitation to Bid, a Request for Proposals, or any other solicitation, or an award or proposed award of a contract.
- **Protestor:** An actual bidder who is aggrieved in connection with the bid process, including contract award, and who files a protest in writing in accordance with this section.
- **Public Works construction project (O.C.G.A. Chapter 91 of Title 36):** The building, altering, repairing, improving, or demolishing of any public structure or building or other public improvements of any kind to any public real property other than those projects covered by O.C.G.A. Chapter 4 of Title 32 (highways and bridges). Such term does not include the routine operation, repair, or maintenance of existing structures, buildings, or real property,

or any energy savings performance contract or any improvements or installations performed as part of an energy savings performance contract.

- **Purchase order:** A document authorizing a City of Johns Creek employee contracting with a seller to deliver goods with payment to be made later.
- **Purchasing agent:** The principal purchasing official of the City of Johns Creek pursuant to Chapter 2, Article 8 City's Municipal Code.
- **Purchasing Office:** The office responsible for procurement for the City.
- **Purchasing:** 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.
- **Quality Base Selection (QBS):** A process for awarding a Professional Services Agreement to the firm deemed most qualified based upon competency, qualifications and experience rather than price.
- **Reasonable cost:** Cost that by its nature or amount does not exceed what would normally be incurred by an ordinarily prudent person in the conduct of competitive business.
- **Request for Informal Quotes (RFIQ):** 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.
- **Request for Proposal (RFP):** A document used in purchasing complex services when the competitive sealed bid is neither practical nor advantageous. The RFP process considers both quality of the solution offered and price to obtain the best overall value.
- **Responsible bidder:** A vendor who has the capability in all respects to perform fully the contract requirements and the experience, integrity, perseverance, reliability, capacity, facilities, and reliability which assures good faith performance.
- **Responsive bidder:** A vendor who has submitted a bid that conforms in all administrative and material respects to the requirements stated in the invitation to bid.
- **Sealed bid:** An offer submitted in response to a formal procurement solicitation in a closed envelope to be opened at a specific time and place.
- **Sealed proposal:** An offer submitted in response to a formal procurement solicitation in a closed envelope where the technical response and cost are separated to be opened at specific time and place.
- **Services:** Any performance of effort or labor, for which the City has contracted other than professional services or services classified as construction.
- **Single source:** A vendor which demonstrates the unique knowledge, skills, and/or performance required to ensure successful consultation, implementation, installation, maintenance, etc., of a requested good/service which is an integral component of the City's existing infrastructure, equipment, and/or operations.
- **Sole source:** Only one vendor possesses the unique and singularly available capability to provide the goods/services.
- **Specification/scope of work:** 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.
- **Subcontractor:** Any contractor who joins a Prime Contractor's team to carry out the work necessary for delivering the terms of the contract, and who is responsible for their area of expertise. The Prime Contractor will determine the "workshare," or portion of contract work, to delegate to the Subcontractor(s).
- **User Department:** 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 Department is responsible for funding the need and advising purchasing of the approved funding and the specific budget account number.
- **Vendor:** Anyone who has filed a vendor application with the City of Johns Creek.

## Appendix: NIGP Code of Ethics

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The Institute believes, and it is a condition of membership, that the following ethical principles should govern the conduct of every person employed by a public sector procurement or materials management organization:

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