

# CITY OF FORT SMITH PURCHASING MANUAL



**PURCHASING DIVISION  
OF THE FINANCE DEPARTMENT**

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# City of Fort Smith, Arkansas Purchasing Manual

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## CHAPTER 1

### LEGAL BASIS, POLICIES AND ORGANIZATION OF THE PURCHASING SYSTEM

#### 1.00 PURPOSE, INTENT, AND LEGAL BASIS

The intent and purpose of this manual is to establish operational policies for the City's Purchasing System which assures the community that the goods and services required to support the operation of City government are procured in a manner consistent with City Ordinances, Administrative Directives, and Arkansas Statutes and to assure the community that the procurement system of the City is committed to fair and equal opportunity with integrity and openness.

The Objectives of the Purchasing Division and this manual are:

- A. To clearly establish that the responsibility for purchasing is the responsibility of all employees with the assistance of the Department of Finance, Purchasing Division.
- B. The timely procurement of all supplies, materials, equipment, contractual labor and services (other than professional), and insurance as specified by City Ordinance and the provisions of this manual at the most appropriate cost and best quality consistent with the goods and services required.
- C. To exercise positive financial accountability in the expenditure of City funds.
- D. To provide an efficient means for procurement, storage, and disposal of items which minimize duplication and overstocking.
- E. To establish and maintain high standards of quality based on suitability of use in all purchasing transactions.
- F. To ensure the fair and equitable treatment of all persons who deal with the purchasing system of the City.
- G. To provide safeguards for the maintenance of a purchasing system of quality and integrity.
- H. To ensure that all parties involved in the negotiation, performance or administration of City contracts act in good faith.

#### 1.01 APPLICABLE LAWS

The City of Fort Smith Municipal Code contains several sections dealing with the operation of the City's Purchasing System. Subjects covered in the various Ordinance sections are as follows and can be found at [www.fortsmithar.gov](http://www.fortsmithar.gov) under "Code of Ordinances":

## 1.02 Municipal Code

- |    |               |   |
|----|---------------|---|
| A. | Section 2-181 | Authority of administrator                    |
| B. | Section 2-182 | Procedures for purchase of supplies, services |
| C. | Section 2-183 | Competitive bidding-When required             |
| D. | Section 2-184 | Same-Waiver of formalities                    |

## 1.03 General Law

Unless displaced by the particular provisions of this manual, the principles of law and equity, including the Arkansas Uniform Commercial Code, the law merchant, and law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the provisions of this manual.

## 1.04 DUTIES OF THE PURCHASING MANAGER

- A. **Specifications:** The Purchasing Manager shall have the responsibility for writing bid documents and specifications for the purchase of items as provided in this manual or in administrative policies or as established by the City Administrator or his designee, and shall maintain such documents on file for a reasonable length of time. All departments should provide their expertise and assistance in writing specifications of a technical nature.
- B. **Contracts:** Pursuant to City Ordinance, the City Purchasing Manager shall contract for and sign all contracts for the acquisition of goods, services, and all items as provided in this manual or in administrative policies or as established by the City Administrator or his designee; except those contracts for specialized construction projects, professional services, and those contracts for which the City Code, Administrative Policies or as established by the City Administrator or his designee that require approval by the City Administrator or City Board of Directors.
- C. **Ordinance Duties:** The City Purchasing Manager shall be responsible for the operation and supervision of the Purchasing Division pursuant to and in compliance with the City Ordinances.
- D. **Coordination of Contracts:** The City Purchasing Manager shall determine and establish contracts for the procurement of goods and services used regularly and on a volume basis whether by individual department(s), or on a city wide basis. Continued determination of

economic and price trends, products innovations and applications, and continued costs savings to the City will be a primary function.

- E. **Vendor Relations:** The City Purchasing Manager shall act as the City's agent in purchase negotiations with its vendors and shall establish a relationship of mutual confidence between the City and its suppliers. Such relationship shall be based on fair and equal opportunity to compete for City business within a system with the highest standards of integrity. To accomplish this goal, the City Purchasing Manager shall be aware of all transactions conducted between the City and its suppliers.

## 1.05 REGULATIONS GOVERNING PURCHASING STANDARDS

The following purchasing standards are intended to serve as a guide to the Purchasing Division and to all Departments of the City in the conduct of their operations. Such standards shall not permit the procurement of items in violation of an existing contractual obligation:

- A. **Competitive Bids:** Any contract made pursuant to this manual shall be made only after ample competition. This manual establishes the following dollar levels and method of competitive procurement:
  - a. Purchases not exceeding \$1,000 may be made without competitive bidding pursuant to procedures established by the City Purchasing Manager and the Director of Finance.
  - b. All purchases exceeding \$1,000 shall be made only after competitive bidding protocol has been observed, pursuant to procedures established by the City Purchasing Manager and the Director of Finance.
  - c. City Ordinance prohibits the subdivision of contracts or purchases for the purpose of evading requirements of competitive bidding.
- B. **Competitive Bids by Telephone, Facsimile or other Electronic Means:** Purchases made for no more than \$7,500 may be made after taking bids from at least three (3) potential vendors able to provide the item(s) being purchased, or fewer number of potential vendors if there are not three (3) dealing in and able to supply in accordance with the required specifications. Such telephone bids may be obtained only by those individuals who are authorized by their department superior to do so. The procedures which may be established shall ensure sound business practices, compliance with the requirements of this manual and other applicable law, and verification of bids received.

This provision is intended to provide the flexibility to take bids in the above manner up to the amount of \$7,500 but it is the best practice to obtain written bids when circumstances allow.

Single Source Items are items that are available only from a one source of vendor supply. A statement should be forthcoming from the department head who makes such a single source purchase request as to why this is a single source item. Whenever feasible, competitive bidding should be fully utilized to benefit the City. When a single source does exist, it shall be verified as such by the Purchasing Division. The practice of single source purchasing is highly discouraged.

- C. **Written Informal Bids:** Contracts made for purchases of more than \$7,500 and not exceeding \$75,000 shall be made after ample competition and receipt of a minimum of three (3) written bids on the bid documents and specifications (if warranted) prepared and submitted to potential vendors by the requesting department.

Informal written bids do not require formal advertising. A public notice of bid opening shall not be required and the contract may be made at any time the City Purchasing Manager, in his discretion and opinion, has received an adequate number of competitive responses from potential vendors.

- D. **Formal Bids:** Contracts made for purchases of goods or services or other items exceeding \$75,000 shall be made by legal advertisement published one (1) time in a daily local newspaper. The advertisement shall state that bids will be received, opened, and read in public at a particular time, place and date which provides potential vendors adequate time to submit their bids. Bids received pursuant to such advertisement shall be opened not less than fifteen (15) days including the date of invitation to bid. Such bids shall be made on the bid documents and specifications prepared by the City Purchasing Manager and shall be received in sealed container and not opened until the time established by the formal notice that bids will be received. In the event of an emergency, an exception shall be made to invite competitive bidding to be opened not less than five (5) days following the date of invitation to bid.

- E. **Bidding Methods:** Informal or formal bids exceeding \$75,000 may be made utilizing either of two methods:

- a. **Invitation For Bid:** The bid documents and specifications are definite and specific. Evaluation and award shall be made but not limited to cost, determination of compliance with the specifications and conditions specified in the bid documents, and the responsibility of the bidder to meet the City's needs in a timely manner. Negotiations after bids are received are not permissible. The Purchasing Manager may use judgmental consideration to determine if the bidder's offer complies with the specifications and conditions if such considerations can be demonstrated to be reasonable, appropriate, and fairly applied. This method does not permit comparison of the relative specifications of competing bidders but only comparison to the specifications contained in the bid documents.
- b. **Request For Proposal:** This method can be used whenever detailed specifications cannot be determined in advance, whenever several possible methods may satisfy the City's requirements, or whenever the nature of the requirements is such that subjective evaluation of criteria other than cost is necessary. This method permits negotiations and discussion with competing vendors to determine the best solution to meet the City's needs. Proposals may be revised or modified at the request of the City.

Subjective criteria may be used in the evaluation of competing proposals. The relative value of evaluation criteria shall be established in the Request For Proposal documents published by the City.

This method of procurement permits negotiations and discussions with competing vendors after proposals are opened; therefore, no information taken from proposals received shall be disclosed to any competing vendors until the acceptance of a proposal. Consideration should be made with the disclosure of information since information submitted in a proposal may be of a proprietary nature.

- F. **Non-Responsive or Unacceptable Bids:** The City's Purchasing Manager shall reject any bid or proposal which is materially non-responsive to the requirements set forth in the bid documents. The Purchasing Manager may re-solicit bids or proposals if, in his discretion, bids received as a result of a solicitation for bids or proposals are not acceptable for any reason. Such re-solicitation shall not be for the purpose of directing the award to a particular bidder.

G. **Bid Security:**

- a. **Requirement for Bid Security:** If it is determined that a bid

security shall be required for a certain sealed bid, bid security shall be in the form of a bond provided by a surety company authorized to do business in the State of Arkansas, or the equivalent in cash, or otherwise supplied in a form satisfactory to the City in an amount equal to at least 5% of the amount of the bid. Failure to provide security will result in the bid being rejected. If the bidder fails to honor the bid for any reason, then such bid security may be retained by the City and deposited to the General Fund.

- b. **Withdrawal of Bids:** Bids or proposals may be revised, modified, or withdrawn by the bidder at any time prior to opening. Any such revision, modification, or withdrawal shall be in writing. After the bids are opened, they shall be irrevocable for the period specified in the bid documents. Bids or proposals may not be withdrawn or revised after opening except as permitted under 4.05 (B) above.
- c. **Receipt of Bids:** Bids or proposals shall not be received after the time set in the bid documents for receipt of proposals or opening of bids.

H. **Certification of Appropriated Funds:** The City's Ordinance requires the Director of Finance to certify that funds are appropriated and unencumbered for the expenditure of funds by any City Department, and that such certification be in writing on the actual contract form before such contract is valid and binding. Generally, all such expenditures are approved in the current year's budget.

- a. All expenditures shall have certification thereon by the Director of Finance that funds are appropriated and unencumbered in sufficient amounts.
- b. Any contract amendment, addendum, or change order which increases the amount of any contract shall be certified thereon by the Director of Finance that there are sufficient funds appropriated and unencumbered to pay for any such increase.
- c. No contract made by the City Purchasing Manager shall be revised or modified in any manner unless and until such modification is amended and approved by the City Purchasing Manager.

I. **Approval of Contract As To Form:** All contracts that will impact the city as a whole shall require the approval of the City Attorney. No such contracts shall be valid unless and until approved as to form thereon by the City Attorney. The City Attorney may establish in his discretion procedures by which contracts may be pre-approved as to form.

J. **Correction or Withdrawal of Bids:** Correction or withdrawal of erroneous bids after opening, or cancellation of awards or contracts based

on such bid mistakes, shall not be permitted.

- K. **When Competitive Bidding Is Not Required:** In the following situations, competitive bidding shall not be required, and is not limited to, the following:
- a. Insurance which has a standard premium set by the State of Arkansas
  - b. Works of art
  - c. Purchases made cooperatively with other units of government
  - d. Services of individuals possessing a high degree of professional skill
  - e. Purchases from federal, state, or other local governmental units
  - f. Magazines, books or periodicals
  - g. Fuel purchases, provided the City has requested bids from three fuel suppliers and provided that the City has previously taken competitive bids for such fuel and the seller of the fuel has exhausted his allocation of fuel or is unable to meet the City's timely delivery needs
  - h. Items or services for data processing when the item or service is designed to be used in connection with an existing data processing system and the City Administrator has determined that it is reasonable to require all such items or services to be used with the existing data processing system shall be compatible so that responsibility for the operation and maintenance of the system may be determined
  - i. Items purchased through the State of Arkansas at a price deemed below that obtainable from private dealers pursuant to the rules and regulations governing cooperative procurement established by the State of Arkansas
  - j. Recurring payments such as utilities, postage, telephone, travel, mileage, principal and interest on debt, rent, FICA, pension contributions, judgments and claims, and publications
  - k. Sole source items as determined by the Purchasing Manager
  - l. Items procured utilizing funds donated or granted to the City if the terms of the grant or donation agreement require the City to procure a specific item from a specific source(s)

## 1.06 MISCELLANEOUS PURCHASING POLICIES

- A. **Small or Disadvantaged Businesses:** The City shall, whenever possible or practical, use small or disadvantaged businesses in the procurement process. Small business is defined as a business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation. Disadvantaged business is defined as a small business which is owned or controlled by a majority of persons who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.
  
- B. **Local Procurement:** The City shall, whenever possible and practical, solicit bids from potential vendors within the greater Fort Smith area. If, after consideration of the effects of time of delivery, maintenance and repair services and other pertinent costs, it is determined that a bid received from a firm located in the greater Fort Smith area is substantially equal to or better than other bids received, award shall be made to the local firm.
  
- C. **Tie Bids:** In the event two or more bids are equal in all evaluation criteria, such bids shall be awarded first to the bidder within the Fort Smith city limits, next to bidders within Sebastian County, next to bidders located in the adjacent counties, then next to other Arkansas bidders. If a tie bid situation still exists after the application of these criteria, then the bid shall be awarded arbitrarily or for any reason to any of such bidders. The City may also, unless the terms, conditions and specifications of the Invitation For Bid state to the contrary, elect to divide the contract award between two or more bidders, if it deems such action to be in its best interest.
  
- D. **Energy Efficient Purchasing:** Energy efficient purchasing shall be used by the City in the procurement of items when it is in the best interest of the City. Energy efficient purchasing uses the principles of life cycle costing. If life cycle costing is to be used, it should be clearly stated on the Invitation to Bid so that bidders are aware of the evaluation process to be used.

**CHAPTER 2**

## **PURCHASING PROCEDURES**

**2.00** The purchasing procedure usually consists of the following operations:

- A. Determination of purchase requirements
- B. Conduct of purchase negotiations
- C. Award of orders or contracts
- D. Handling of emergency orders and purchases
- E. Approval of invoices.

**2.01** The total estimated cost of the items should be supplied by reference to past requisitions and purchases, or if such data is not available or is dated, by inquiry with the Purchasing Division. Whenever possible, annual contracts with suppliers of common use items should be encouraged, as they can represent a significant savings of time and money to the City. Bids on these contracts are to be solicited by the Purchasing Department.

### **2.02 BRAND NAMES**

Brand names may be specified only when requesting component parts or standardized materials, supplies or equipment for the City. The purpose of such brand name specifications is singularly to promote noted economies or obvious savings to the City, often in maintenance areas.

**2.03** Many cities have centralized purchasing in name, but fail to obtain the full benefit of centralization because the purchasing agencies:

- A. Fail to standardize commodities purchased
- B. Purchase solely and strictly by brand name
- C. Purchase commodities with inadequate specifications

**2.04** For the Purchasing Department to be fully effective, it must ascertain the types, sizes, and grades of commodities used by individual departments and reduce them to minimum actually needed. The departments, however, must assist by preparing and transmitting this information to the Purchasing Division. Standard specifications describing these purchase items can then be developed. Obviously, the process of standardization should begin with these items most commonly used.

**2.05** Using departments sometimes consider a particular brand of commodity as indispensable. Thus, often they are not aware that many "name" brands differ in no manner from competing products in the same market. All qualified prospects should be thoroughly investigated.

**2.06** In addition, it should be noted that local governments seeking to establish standard specifications should avail themselves to the work already performed by

other levels of government or outside agencies.

- 2.07** The Purchasing Division, after consulting with the Department Head, shall have the responsibility for recommending standards and specifications of equipment, materials, supplies or services to be purchased by the City.
- 2.08** The Purchasing Division shall issue all purchase orders which may be necessary for any of the City's Departments and those City agencies which are required to purchase through the City's Purchasing Department.
- 2.09** The Purchasing Division shall strive to establish a relationship of mutual confidence and satisfaction between the City and its suppliers. All contacts between the City and vendor's representatives shall be through the Purchasing Department, who will refer catalogs and other advertising to the departments concerned. Those departments which correspond directly with a vendor on technical matters concerning items to be purchased shall forward copies of this correspondence to the Purchasing Department.
- 2.10** All purchases will be made in strict conformance to the State Statutes and City of Fort Smith Ordinances. The following procedures are prescribed for obtaining goods for the use by City departments:
- A. No quotes are required on all purchases under \$1,000. Use of Limited Purchase Order (LPO) is required. Final approval is required by the Department Head or designated representative.
  - B. Verbal quotes (three or more) are required on all purchases exceeding \$1,000 and less than \$7,500. Use of a Purchase Order (PO) is required. Final approval is required by the City Administrator or designated representative (Purchasing Manager)
  - C. Written quotes (three or more) are required on all purchases exceeding \$7,500 and less than \$75,000. Final approval is required by the City Administrator.
  - D. Formal Bids are required on purchases above \$75,000. Final approval is required by the Board of Directors.

## **2.11 PURCHASE REQUEST**

The form (two part form) is designed to assist the using department to initiate the purchasing process. The requesting department prepares the form in order to request items that it seeks to purchase or to be purchased by the Purchasing Department. A requisition should be initiated not less than thirty (30) days in advance of the time the items are needed in order to allow adequate time for review and solicitation of bids (if necessary) by the Purchasing Department. The rate of consumption of items requisitioned should be carefully considered in arriving at the quantity requested.

The following fields must be filled before the form is submitted to the Purchasing Department:

- Division
- Department
- Deliver To
- Requisitioned By
- Division Head Approval
- Dept. Head Approval
- Requisition Date
- Date Required (only if the Purchasing Department is soliciting bids)
- Program Number, Code, and Fund
- Is this a One Source Item?
- Bid No. (If applicable)
- Vendor Name◆
- Purchase Order Number
- Quantity, Description of Items, Unit, and Total◆◆
- Suggested Vendor, List & Cost (minimum of three quotes must be included-if unable to obtain three quotes, must indicate reason)

◆ The Purchasing Division will maintain a list of qualified vendors in consultation with Department Heads.

◆◆ Common use items should be described by their popular names, supplemented by number, size, style, or other identifying data. Departments must exercise care to avoid using a "closed" description or specification which describes the product of one manufacturer and prevents the obtaining of competitive bids. However, a requisition may specify a brand name "or equal thereto" in order to request a minimum standard of quality. Quantity purchases shall be made whenever practical. Annual contracts or price agreements will be initiated by the Purchasing Department or department when it proves advantageous to the City. Consolidated purchases of similar products/services for several departments will be encouraged.

After completion of the requisition in the department, the original (white) is submitted to the Purchasing Department and a copy (yellow) is retained in the departmental files.

The Purchasing Department will review the requisition to see that there are appropriations to cover the requested purchase(s), that there is sufficient cash available for payment, and that proper account codes have been used. Requisitions not meeting these requirements will be returned to the requesting department with the reasons indicated thereon. Acceptable requisitions will be approved by the Purchasing Division and the corresponding Purchase Order number will be issued by Purchasing and submitted to the requesting department. The Purchase Order number should be recorded on the requisition and maintained as a part of the department record file.

All purchase requests involving Capital Outlay must be approved in the current year Budget.

## **2.12 LIMITED PURCHASE ORDER (LPO)**

This is the legal and binding document between the vendor and the City for the purchase of goods not to exceed \$750.00. The Limited Purchase Order is initiated and approved by the Department Head or designated representative and consists of the following copies:

- A. White: This copy serves as the original copy and is presented to the vendor at time of purchase. This is the vendor's authority to charge merchandise to the City, and should be retained by the vendor.
- B. Yellow: Departmental file copy
- C. Green: The Receiving Report-the lower right hand corner should be completed, and the invoice attached. The department head signs the green copy, and forwards to the Purchasing Department for final approval and processing for payment.

## **2.13 PURCHASE ORDER (PO)**

The signed Purchase Order authorizes the vendor to ship the items specified thereon. It constitutes the contract between the City and the vendor. Purchase Orders should be clear and concise in order to avoid misunderstandings or confusion. The Purchase Order is completed from information furnished on the Purchase Request Form and the selected bidder's bid documents. The Purchase Order shall be prepared by the Purchasing Department. After the Purchase Order is prepared in the Purchasing Division, it shall be signed by the Purchasing Manager, keyed (encumbered) into the General Ledger System, and sent electronically to the requesting Department.

**NOTE:** "Open PO/LPO's" can be used for recurring monthly expenditures from the same vendor. Please note that some vendors do not accept the "Open PO/LPO" concept. In an effort to save the department time, the Purchasing Department is capable of establishing "Quarterly Open PO/LPO's" for purchases such as parts, chemicals, tires, specific services, etc. If a department desires to use Open Purchase Orders for the whole year, a purchase request must be submitted before year-end to the Purchasing Department expressing the desire to do so. Please contact the Purchasing Department for assistance.

## **2.14 ENCUMBRANCE OF FUNDS**

All requisitions and following purchase orders issued call for encumbering the necessary funds for completion of the order from the proper account(s). This is primarily an accounting procedure, the responsibility for which resets upon the General Ledger Accounting System. However, it is essential that all department heads be made aware of the correct balance of unencumbered funds in their budgets, and that they realize the effects of the encumbrances on their budgets. All purchase orders issued by the City require the encumbrance of the appropriate fund.

## **2.15 INVOICES**

An invoice is the vendor's statement of its charges against the City for items/services provided. Invoices are normally based on information from Purchase Orders and must contain substantially the same information. Invoices should be mailed to the Accounts Payable Department. In some cases, however, the invoices may be delivered with the items at the receiving point. In this case, the using department must attach the invoice to the receiving report (the pink copy of the purchase order) and forward it to the Purchasing Department. **ALWAYS ATTACH THE ORIGINAL INVOICE TO THE RECEIVING REPORT.** Please note that packing slips are not considered invoices. If the original invoice is misplaced, please note on the copy of the invoice why it is missing and attach it to the receiving report.

## **2.16 RECEIPT AND INSPECTION**

Upon receipt of delivery, the receiving department should check delivery against invoice. Deviations in quantity, description, or condition of commodities should be noted on the invoice. The right hand portion of the pink receiving report entitled "Special Instructions to Receiving Clerk" should be completed and signed by the department head or designated representative. This signature informs the Purchasing Department that commodities were received as stated on the purchase order. The receiving report and invoice should be forwarded promptly to the Purchasing Division for processing.

If the materials delivered are not in conformity with the required specifications or for other reasons, are not acceptable to the using department, they shall notify the Purchasing Department of the reasons for withholding acceptance. The using department shall notify the vendor that the delivery has been rejected and that a satisfactory replacement of a supplementary delivery must take place before payment can be processed.

Unless the City receives the quantity and the quality of the commodities ordered, an otherwise sound purchasing program is of little value. Adequate inspection of deliveries is an important but frequently neglected part of the purchasing procedure. Such inspection of deliveries saves the City from losses due to errors or deliberate attempts to defraud.

Upon receipt by the Purchasing Division, the invoice will be checked against the receiving report. The Purchasing Department will check the invoice against the original

purchase order to ensure that the terms are as specified, that discounts, if any, have been applied, and that taxes (if applicable) and invoice calculations are correct. If all is in order, the Purchasing Manager will sign the Purchase Order (signifying approval), and forward it to the Accounts Payable office where payment will be initiated.

## **2.17 REQUEST FOR PAYMENT (RFP)**

For the procurement of **non-tangible** items such as utility services, travel, seminars, memberships, subscriptions, maintenance agreements, leases, rentals, postage, periodic pay estimates, etc, the Request for Payment form should be used exclusively for the processing of these payments. These types of payments do not generally fall under the PO or LPO payment method. The proper pay detail (original invoices or statements) should be attached behind the RFP form and submitted to the Purchasing Division for payment processing.

In order for an invoice to be paid on the next week's pay, it must be received in the Purchasing Department no later than 12:00 noon, each Monday.

## **CHAPTER 3**

### **EXCEPTIONS TO NORMAL PURCHASING PROCEDURES**

### **3.00 EMERGENCY PURCHASES**

Notwithstanding any other provision of this Manual, the Purchasing Manager may make or authorize others to make emergency purchases when there exists a threat to public health, welfare, or safety under emergency conditions as defined in regulations promulgated by the Purchasing Manager; provided that such emergency purchases shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

If the emergency occurs at times other than normal working hours, the using department may purchase directly the commodities needed. At the time of the purchase, the department will secure from the vendor a sales ticket or invoice for the goods or services. A purchase request will then be made out in the usual manner, except that the words "EMERGENCY PURCHASE" will be written on the purchase request, along with the purchase order number and an explanation of the nature of the emergency.

Emergency purchases generally occur as result of parts and labor needed for immediate repairs to equipment which must be kept operable. Nevertheless, requisitions should be submitted immediately to the Purchasing Division, the only exception occurring when parts or labor must be acquired at night or on Sundays or holidays. In these cases, the requisition should be submitted the next business day.

In other emergencies, the Purchasing Manager will be contacted before necessary items are purchased. Emergencies arising due to employee or managerial neglect must be avoided. They are usually caused by poor departmental planning, three examples of which are:

- A. Depletion of stock due to negligence in reporting
- B. Buildings or equipment needing repairs over a long period of time and then suddenly becoming an "emergency"
- C. Orders for materials for projects, most of which must be planned long in advance, being requested just before desired use

**NOTE: LACK OF PLANNING DOES NOT CONSTITUTE AN EMERGENCY**

### **3.01 PROCEDURES**

The Director of Finance and the City Purchasing Manager shall establish procedures for emergency purchases to ensure such purchases are made:

- A. Consistent with the nature and degree of the emergency condition
- B. With such competition as is possible
- C. That funds are or can be made available for the emergency purchase
- D. So that fiscal accountability is maintained
- E. In order to validate the purchase as a valid emergency

### **3.02 EMERGENCY PURCHASES UNDER \$7,500**

Upon the declaration that an emergency situation exists, the City Purchasing Manager may suspend the rules and make or permit the user department to make such purchases as may be necessary because of the emergency. Verbal requests for emergency purchase may be made provided that a written purchase requisition is submitted in the manner which is established for normal purchasing within twenty-four hours or the next business day. The requisition shall clearly and prominently indicate the emergency purchase order number issued by the Purchasing Department and must contain a full description of the emergency circumstances.

The Director of Finance may verbally certify the funds are available to the City Purchasing Manager; and, the Director of Finance may require that such certification be made prior to the purchase. The Director of Finance may require the department head of the requesting department to concur and approve such emergency purchase. The Director of the requesting department may designate specific personnel to approve emergency purchases.

### **3.03 EMERGENCY PURCHASES OVER \$7,500**

All emergency purchases over \$7,500 shall be handled in the same manner as above but must be approved in writing by the City Administrator or his designated approver.

### **3.04 EMERGENCY PURCHASES NECESSARY OUTSIDE OF NORMAL BUSINESS HOURS**

The Director of a department may make emergency purchases, in his discretion, outside normal business hours whenever an emergency situation exists and the City Purchasing Manager cannot be contacted. The Director of the department which makes such an emergency purchase shall contact the Purchasing Department immediately at the first opportunity and before the close of the next business day. The City Purchasing Manager may then issue a confirming purchase order to the emergency purchase supplier. A purchase request shall then be initiated by the user department in the manner specified in Section 2.11 above.

### **3.05 PRICE AGREEMENT PURCHASES**

The City Purchasing Manager is authorized to and shall consolidate requirements for items which are continually needed by the various departments for the purpose of

making contracts for the supply of such items as needed and if needed during a term of up to one year and may extend such term as is appropriate in his discretion. Such contracts may be exclusive or nonexclusive, based on estimated quantities or based on an "all-needs" quantity. All purchases for such items shall be made from the contracted supplier unless that supplier is unable to deliver as needed to the City or as promised in its bid. Revisions to specifications for the purpose of avoiding purchases under the price agreement contract are not permitted. If the contract has been terminated for failure of the Contractor to perform the provisions of the contract, the City Purchasing Manager may purchase from whichever source is in the City's best interest. All departments shall be notified by the Purchasing Division of which price agreement contracts are made so as many departments as possible can take advantage of these contracts. Departments shall plan their needs for such items and provide the City Purchasing Manager with sufficient scheduling information, specifications and other information as may be required to prepare bid documents and enter into the contracts. All requisitions for items under a price agreement contract shall contain the contract/bid number.

### **3.06 PETTY CASH PURCHASES**

The Director of Finance is authorized to create petty cash funds where they are needed within City government. The size of all petty cash funds will be controlled by the Director of Finance. Routine purchases of items of less than Ten Dollars (\$10.00) may be made from petty cash without contacting the Purchasing Division. The custodian, usually a secretary or clerk, is responsible for the fund. The custodian is to be aware of the proper procedures for maintaining the fund and will be held responsible for any and all discrepancies, misuse, or violation of the fund, and not the department head. The custodian and the department head shall approve each voucher. If a custodian is to be replaced, the Finance Department is to be notified. Access to the fund must be restricted to the custodian and the department head.

The following regulations will apply to all petty cash funds:

- A. No personal checks are to be cashed.
- B. Reimbursement is to be made only to personnel authorized by the department head. It shall be the responsibility of the using department to properly code or classify the item or expenditure. Authorization for the custodian to replenish the fund shall be on the written approval of the department head.
- C. Reimbursement is not to be made until an original invoice marked "paid," a valid receipt, or certificate of expenditure is received by the fund custodian.
- D. No reimbursement is to be made for items over Ten Dollars (\$10.00) without prior approval by the Director of Finance, or for separate items which total over \$10.00 where it appears that the purchasing regulations are being circumvented.
- E. Items incidental to travel (such as transportation, gasoline, and registration fees) are not reimbursable through petty cash and should be reported on

- the Travel Expense Report.
- F. All petty cash funds will be subject to audit at unannounced times by a designated representative of the Director of Finance.
  - G. Custodians of petty cash funds shall requisition for replenishment of the fund when needed. A Request for Payment form will be utilized as the means for requesting replenishment of petty cash funds. The Accounting Division of the Finance Department will charge the appropriate expenditure accounts for the various departments, thus reflecting expenditures made through petty cash funds.
  - H. The Director of Finance may establish such additional rules and regulations regarding petty cash funds as deemed necessary.

### **3.07 DISPOSAL OF OBSOLETE, SCRAP OR SURPLUS PROPERTY**

Whenever a Department of the City has items which have become obsolete, scrap or surplus to their needs, these items shall be disposed of by the City Purchasing Division in compliance with the City Municipal Code. Sections in the Code dealing with this subject are found under **Chapter 2, Administration, Division 3. Sale, Lease or Exchange of Property, Section 2-201 to Section 2-205**. Departments having obsolete, scrap or surplus items shall file a report of such property with the City Purchasing Manager. The City Purchasing Manager will then notify all departments of these items to see if any other department has use for these items. Obsolete, scrap, or surplus City items shall be disposed of by the City Purchasing Division in any one or more of the following ways:

- A. Transfer on the City's books of accounting, at book or other negotiated value, to other City departments.
- B. Solicitation of bids for such property. In advertising and accepting bids for obsolete, scrap, or surplus items, the City Purchasing Manager shall follow the usual practices of competitive bidding. If formal bids are requested by the City, they will be opened at the time and place specified in the bid documents. When necessary, a bid surety shall be required of prospective bidders and the amount will be set by the City Purchasing Manager. Determination of the highest and best bidder will be made by the City Purchasing Manager.
- C. Publicly advertised auction sales, held once, annually. The City Purchasing Division is hereby authorized to contract for the services of an auctioneer and clerk for said auction sales and shall pay for the costs of such services from the proceeds of the sale.
- D. Property that has no monetary value and use to the City may be disposed of by the City Purchasing Manager at the City Landfill or other authorized disposal site upon the determination and certifications of the City Purchasing Manager and the Director of the Department, certifying that the property has no monetary value and use. In the event the above conditions have been satisfied, the City Purchasing Manager may donate the property to a church or charity or not-for-profit organization. Any organization to which items are donated pursuant to this section shall

agree in writing to waive any liability of the City of Fort Smith, Arkansas, and shall further agree not to sell or use as trade-in against the purchase of other item. If, after notification by the City Purchasing Manager that item(s) are available for donation under this section, more than one qualified organization has requested the item(s), then the selection of the donee shall be made by the drawing of lots. Lots shall be drawn first for Sebastian County organizations, next for the counties bordering Sebastian County, and last, other Arkansas counties.

- E. A department may elect to trade-in obsolete or surplus items for credit against the purchase price of replacement items. If a department elects to trade-in rather than dispose of items as provided above, the City Purchasing Manager shall determine the actual methods to obtain the best value or credit for such items.
- F. Obsolete, scrap or surplus items with a salvage value up to Five Thousand Dollars (\$5,000.00) may be disposed of by the City Purchasing Manager without further approval. Obsolete, scrap or surplus items with a salvage value over Five Thousand Dollars ( \$5,000.00) shall be disposed of by the City Purchasing Manager after the approval of the Board of Directors. This paragraph shall not apply to real estate sales unless otherwise required by City Ordinance.

This section shall not apply to vehicles of any kind. This section shall not apply to any item with a current book value of more than Five Thousand Dollars (\$5,000). Book value shall be determined using the straight-line method of depreciation of the original acquisition cost less estimated salvage value. If book value of the item(s) cannot be determined, then the City Purchasing Manager may estimate the current value and substitute such estimate for the book value.

The City Purchasing Manager shall establish and maintain records of all donations made under this section. Such records shall include item description, acquisition cost, book cost if available, and donee organization.

### **3.08 DISPOSAL OF PROPERTY HELD BY THE POLICE DEPARTMENT**

- A. This section relates to and embraces lost, stolen, strayed, abandoned, unclaimed or confiscated property which of itself is not contraband or the possession of which is not unlawful, which is now or which may hereafter come into the possession of the Fort Smith Police Department, which is not subject to other provisions of state or federal law pertaining to the disposal of property.
- B. All personal property shall be kept by the Police Department for an unspecified period of time, unless claimed by its rightful owner.
- C. If the owner or person entitled to the possession of the property shall fail to claim such property within the specified period of time designated by the Police Department, such property shall become City property and shall be scheduled for sale to the highest bidder at the annual public City

auction.

## **CHAPTER 4**

### **LEGAL AND CONTRACTUAL REMEDIES**

#### **4.00 RIGHT OF PROTEST**

Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation of bids or the award may protest to the City Purchasing Manager. The protest shall present in writing the basis upon which the solicitation or award is contested, and must be presented within thirty (30) days after the aggrieved party became aware of the solicitation or award. Before proceeding in any court action, a person must pursue the administrative remedies set forth below.

#### **4.01 RESOLUTION OF PROTEST**

Whenever the City Purchasing Manager so requests, the City Purchasing Committee shall meet and resolve contested solicitation or awards. The City Purchasing Committee shall be comprised of the following: Deputy City Administrator, the Director of Finance, the City Attorney, and the City Purchasing Manager, or their authorized representatives. The City Purchasing Committee shall have no authority to overturn bid awards, but may advise the City Purchasing Manager, or the Director of the contracting department of changes or guidelines to follow in the future.

#### **4.02 AUTHORITY TO SUSPEND OR DEBAR**

The Purchasing Committee shall have authority to suspend or debar a person from consideration for bid awards. A suspension may be for up to six months. A debarment may be from six (6) months to two (2) years in length.

#### **4.03 SUSPENSION AND DEBARMENT PROCEDURES**

- A. Notice of suspension or debarment shall be given by certified mail at least seven (7) days prior to the effective date of the suspension or debarment.
- B. The person to be suspended or debarred does not have the right to contest the suspension or debarment. Should a matter reach this stage, it would have been because every manner of resolve has been exhausted in order to rectify the matter with the concerned individual and in the opinion of the Purchasing Manager, a resolution is not attainable.

#### **4.04 CAUSES FOR SUSPENSION OR DEBARMENT**

The causes for suspension or debarment include the following:

- A. Conviction within the last ten (10) years for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- B. Conviction within the last ten (10) years under State or federal statutes for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which affects responsibility as a

- contractor.
- C. Conviction within the last ten (10) years under State or federal statutes arising out of the submission of bids or proposals;
- a. Violation within the last two (2) years of contract provisions, as set forth below, of a character which is regarded by the City Purchasing Manager or the Director of the contracting department to be so serious as to justify debarment action.
  - b. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
  - c. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
  - d. Violation of general ethical standards in relation to gratuities or kickbacks involving City contracts.
  - e. Any other cause the City Purchasing Manager or Director of the contracting department determines to be so serious and compelling as to affect responsibility as a contractor.

#### 4.05 SOLICITATIONS OR AWARDS IN VIOLATION OF LAW

When a solicitation or award is determined to be in violation of law, the following provisions shall apply:

- A. **Remedies Prior to Award:** If, prior to award, it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall either be canceled or revised to comply with the law.
- B. **Remedies After Award:** If after an award it is determined that a solicitation or award of a contract is in violation of law, then:
  - a. If the person awarded the contract has not acted fraudulently or in bad faith, at the option of the City:
  - b. The contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the City; or
  - c. The contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract prior to the termination
- C. If the person awarded the contract has acted fraudulently or in bad faith, at the option of the City:
  - a. The contract may be declared null and void; or
  - b. The contract may be ratified and affirmed if such action is in the best interest of the City, without prejudice to the City's rights to such damages as may be appropriate.

## 4.06 ETHICS

### A. **General Ethical Standards**

- a. **For Employees:** Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of ethical standards.
- b. **For Non-Employees:** Any effort to influence any public employee to breach the standards of ethical conduct set forth in this Manual is also a breach of ethical standards.

### B. **Employee Conflict of Interest**

- a. **Conflict of Interest:** It shall be a breach of ethical standards for any employee to participate directly or indirectly in a contract for purchase or sale when the employee is aware:
  - i. The employee or any member of the employee's immediate family has a financial interest pertaining to the purchase or sale
  - ii. A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the purchase or sale
  - iii. Any other person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the purchase or sale.

- C. **Discovery of Actual or Potential Conflict of Interest:** Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved.

## 4.07 Restrictions of Employment of Present Employees

**Contemporaneous Employment Prohibited:** It shall be a breach of ethical standards for any employee who is participating directly or indirectly in the purchasing process to become or be, while such an employee, the employee of any person contracting with the City, or any department of the city.

## 4.08 Gratuities and Kickbacks

- A. **Gratuities:** It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any

employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or any offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a contract requirement, specification, or 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 requirement, contract, subcontract, or any solicitation or proposal therefor.

- B. **Kickbacks:** It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a contractor or subcontractor under a contract to the City, prime contractor, or higher tier subcontractor, or any person associated therewith, as an inducement for the award of a subcontract or order.

**4.09 Confidential Information:** It shall be a breach of ethical standards for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

**4.10 Criminal Sanctions:** To the extent that violations of the ethical standards of conduct set forth in this Manual constitute violations of the state criminal statutes and of the Fort Smith Municipal Code, they shall be punishable as provided therein. Such sanctions shall be in addition to the remedies provided in this Manual.

#### **4.11 REMEDIES**

- A. **Against Employees:** Any employee who violates the provisions of this Manual may be reprimanded, suspended, or terminated in accordance with the City's Personnel Policy Handbook and Code of Business Conduct.
- B. **Against Non-Employees:** Any non-employee who violates the provisions of this Manual may be warned, reprimanded, suspended, or debarred in accordance with the provisions in this Manual.