



CITY OF PHARR, TX

PURCHASING MANUAL



AUGUST 2012

RECIPIENTS OF:



Prepared By: Finance Department

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CHAPTER 1 – INTRODUCTION

1.A –AUTHORITY

As per the City of Pharr’s Code of Ordinances; Ordinance No. 85-27: the Agent of Purchasing by virtue of being the City Manager’s designated representative shall have full authority to purchase or provide for the purchasing of materials, supplies and equipment for the use of all departments, commissions, and boards comprising the City government. The Agent of Purchasing shall have full authority towards monitoring the activity of all purchasing for the City of Pharr and keep proper documentation of same.

The Purchasing Division is located in the Finance Department. The Finance Department will provide assistance in all purchasing activities. Each department director is responsible for their department’s purchases.

This purchasing manual is subordinate to the State of Texas laws and regulations as set forth in the State of Texas Local Government Code, City Charter, and City ordinances.

1.B – PURCHASING DIVISION

Per the City Manager, the Purchasing Division (Division) is a branch of the Finance Department in the City of Pharr (City). The Division’s responsibility is to assist all City departments in the acquisition of goods and services at the most cost effective manner. The Division is the central point for all purchase orders.

It is the objective of the City to assure fair and competitive access by responsible vendors/contractors to the purchasing requirements of the City and to conduct business activities in such a manner as to foster public confidence in the integrity of the City. The City adheres to all State of Texas laws and regulations as set forth in the State of Texas Local Government Code and as published in the Cities purchasing manual and as approved by the City Commission of the City.

1.C – GOALS OF THESE POLICIES AND PROCEDURES

The goals of the Purchasing Manual are to:

- Acquaint all persons (internal and external) in respect to the City’s purchasing policies and procedures;
- Attempt to gain the most value for in every purchase;
- Provide added security in attempting to insure public spending is not used to enrich elected officials or government employees or to confer favors on favored constituents;
- Establish a good strong business-like relationship with all interested vendors;
- Ensure public funds are safeguarded. Although the purchasing office does not usually designate the types of purchases to be made, purchases are reviewed for completeness and are tested on a sample basis for adequate departmental purchasing methods;
- Ensure fair and open competition among bidders; and

- Ensure local businesses have an added opportunity in the contract awards process. This serves an interest of the City as a whole by assisting local vendors stay in business.

1.D – RESPONSIBILITIES OF CITY EMPLOYEES

The City wants to promote and protect its governmental integrity. Public employees must, therefore, discharge their duties impartially to assure fair, competitive access to City procurement. All City Staff engaged in procurement for the City shall comply with the ethical standards set forth in the following section.

The employees of the City responsible for purchasing activities should:

- Purchase the proper goods or services to suit the City's need;
- Get the best possible price for the goods or services using City policies;
- Have the goods or services available when and where the City needs it;
- Assure a continuing supply of needed goods and services;
- Guard against misappropriation of City funds;
- Facilitate cooperation with other governmental units;
- Maximize competition from responsible bidders;
- Safeguard public funds and receive the best value for the public dollar;
- Never use public spending to enrich elected officials or City employees; and
- Never make purchases for personal use in the City's name.

1.E – PURCHASING MANUAL REVIEW

This Purchasing Manual will be reviewed at least annually and approved by the City Commission at least every two fiscal years.

CHAPTER 2 – PURCHASING ETHICS (For City Representatives & Vendors)

The statutes governing local government purchasing impose criminal penalties for violating the provisions of the various Acts enacted by the Legislature to oversee purchasing. Any misuse of the City's purchasing power carries various legal and/or future employment consequences.

The City also requires ethical conduct from those who do business with the City. City representatives and vendors/entities are required to adhere to all federal, state, and municipal laws and ordinances.

2.A – DISCLOSURE OF CERTAIN RELATIONSHIPS

Effective January 1, 2006, pursuant to H.B.914 and per Chapter 176, LGC, conflict of interest should be disclosed at all times. Vendors/entities wishing to do business with the City, including those who submit bids on city contracts, make purchases of surplus city property, or participate in any other purchase or sales transactions with a city, must disclose any potential conflict of interest (example: elected member/employee of the City that provide services to the City for compensation). The City may not disqualify the entities with a conflict of interest, so long as the conflict is disclosed.

It is the entity's responsibility to notify the City of a potential conflict of interest and to fill out the questionnaire. It is the responsibility of the City's representative to inform senior management or the Division of a potential conflict of interest by the entity. Failure to do so results in a breach of ethics.

Pursuant to the requirements of Section 176.002(a) of the Texas Local Government Code, vendors or respondents who meet the following criteria must fill out a conflict of interest questionnaire no later than the 7th day after the person begins contract discussions or negotiations' with the City or submits to the City 'an application, response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with the City:

An entity/vendor or respondent that-

(1) contracts or seeks to contract for the sale or purchase of property, goods, or services with a local governmental entity;

Or

(2) is an agent of a person described in Subdivision (1) in the person's business with a local governmental entity.' Any person who meets the criteria, as for enforcement to ensure the veracity of the vendors, the statute makes it a Class C Misdemeanor to violate the vendor disclosure provisions."

Conflict of interest forms are maintained by the City's Finance Department Accounts Payable Division.

The forms required to comply with the above Government Code are available on the City's Finance Department Accounts Payable Division webpage and on the Ethics Commission website at <http://www.ethics.state.tx.us/forms/CIS.pdf>.

2.B – CONFLICTS OF INTEREST

It shall be a breach of ethics for any employee of the City to participate directly or indirectly in procurement when the employee knows that:

- The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
- A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
- Any other person, business or organization with which the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

2.C – PERSONAL GAIN

It shall be a breach of ethics to attempt to realize unauthorized personal gain through employment with the City or by any conduct inconsistent with the proper discharge of the employee's duties. Any personal gain by a representative of the City must be disclosed and a conflict of interest form submitted to the City.

2.D – INFLUENCE OF A PUBLIC EMPLOYEE

It shall be a breach of ethics to attempt to influence any City representative to violate the standards of conduct set forth by the City.

2.E – PARTICIPATING IN PROCUREMENT'S WITH FAMILY

It shall be a breach of ethics for any representative of the City to participate directly or indirectly in procurement activity for the City, and failing to disclose it, when the employee knows that:

- The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
- A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
- Any other person, business or organization with which the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement

2.F – GRATUITIES

It shall be a breach of ethics of city employment to offer, give or agree to give any representative of the City or for any representative of the City to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement 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 program requirement or a contract or sub-contract, or to any solicitation or proposal therefore pending before the City.

2.G – KICKBACKS

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

2.H – CONFIDENTIAL INFORMATION

It shall be a breach of ethics for any representative of the City knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any person.

2.I – PURCHASE OF MATERIALS, EQUIPMENT, AND SUPPLIES FOR PERSONAL USE

No City representative may purchase City property for their own personal use unless it is purchased through the City's public auction or through the sealed bid procedures of the City. This includes new and used equipment, materials or supplies.

2.J – PRIVATE PURCHASES THROUGH CITY FACILITIES

No City representative may use the purchasing power of the City to make private purchases. In addition, they should not have private purchases sent to the City C.O.D. to be paid for by the representative.

- Such purchases may give citizens the erroneous impression that something dishonest is being perpetrated;
- It may be considered a mild form of blackmail on the merchant involved who desires to do business with the City; and/or
- It may evade sales tax, which is illegal

CHAPTER 3 – PURCHASING PROCESS

3.A – GENERAL AUTHORITY

The City has attempted to incorporate local, state and federal laws into this manual. The City, however, does not warrant that these policies include all such laws. Local, state and federal laws will prevail over these rules where applicable.

The Department Director has the authority to release a purchase order. A purchase order is a contract between the City and a vendor. The contract is not binding until it is accepted by the vendor. The City will not recognize the issuance of orders by unauthorized individuals and payment of the obligations will not be approved. Department Directors are responsible for their purchase orders. Failure to comply with the purchasing procedures may be subject to review by the City Manager. The only exceptions are emergency purchases made during or after normal working hours to keep necessary equipment or machinery in operation or to avoid work stoppage.

The Purchase Order authorizes the supplier to ship and invoice for the goods ordered and acts as a contract between the City and the supplier. The primary purpose of the Purchase Order is to expedite and control the buying activities of the City.

3.B – PURCHASING LIMITS AND REQUIREMENTS – NON-MAINTENANCE

At no time shall purchases be broken down into smaller quantities or specialized activities so as to avoid the requirements stated below. It is against state law and City policy to do so.

1. Purchases less than \$2,000

Purchases less than \$2,000 do not require competitive bidding, quotation forms. Quotes may be advantageous to obtain them regardless of the purchase price, so the City encourages them at all prices. Directors may, without further approval of the Division, make purchases less than \$2,000. Directors must authorize invoices for payment and forward to the Division.

This purchase order requires approval by the following City representatives: Department Director.

2. Purchases of \$2,000 to less than \$5,000

Purchases \$2,000 to less than \$5,000 will require written quotations with at least three quote prices. This is an informal process. The Department Director will validate the authenticity of the quotations. If the department solicits only one quotation because of the lack of bidders, the department Director shall note that explanation on a quotation page. The Director will authorize the invoice for payment once the items are received. Something documenting the original quotations, supporting documentation, and invoice shall be forwarded to the Division for payment processing.

This purchase order requires approval by the following City representatives: Department Director, City Manager.

3. Purchases of \$5,000 to less than \$50,000

The Department Director must submit every purchase request for \$5,000 or more to the City Manager for approval prior to purchasing the item. This is a formal process; quotes must be on the vendor's official letterhead/form.

The City Commission must approve in advance all capital expenditures for \$5,000 or more if the City administration proposes to award the bid to other than the low bidder meeting specifications.

This purchase order requires approval by the following City representatives: Department Director, City Manager.

4. Purchases for \$50,000 or More

City Commission must approve in advance all expenditures for \$50,000 or more. With the approval of the City's annual budget containing a listing of all capital expenditures, approval is already provided. If the asset is not in the annual budget's list of capital expenditures, separate Commission approval will be needed.

The requesting department will initiate the request for formal competitive bids/proposals for goods, services, or contractual needs. The City Clerk will maintain and provide guidance for all bid activities.

City Commission must grant permission to advertise for formal bids/proposals. Notice to bidders must be advertised in two (2) consecutive weeks, with the first date of publication being at least fourteen (14) days prior to the opening of the bids or proposals. The department director initiating the bid process along with a Finance Department representative will conduct a public bid opening and tabulate the bids. The Finance representative will open the bids and read them aloud in the City's effort to ensure no tampering of bid documents. Competitive bids are awarded by the City Commission. The decision is based on a combination of price, quality, delivery time and service reputation. The bid will be awarded to the lowest responsible bidder, but the City reserves the right to reject any or all bids if it is in the best interest of the City. Competitive sealed proposals, used for high technology procurements, are opened so as to avoid disclosure of the contents of proposals to competing bidders until after the award of the bid.

This purchase order requires approval by the following City representatives: Department Director, City Manager, and City Commission official approval.

4.i Purchases Exempt From Competitive Bidding

State law provides a number of exceptions to the competitive bidding process. Under the State of Texas' Professional Services Procurement Act, a contract for

the purchase of a personal or professional service is exempt from competitive bidding requirements if the City grants the exemption.

The City may not select providers of professional services based on competitive bids. In these situations, the City must make the selection and award based on demonstrated competence and qualifications for performing the services for a fair and reasonable price.

The professional fees under the contract must be consistent with the recommended practices and fees published by the applicable professional associations and may not exceed any maximum provided by law.

Professional services include:

- Accounting;
- Architecture;
- Landscape architecture;
- Land surveying;
- Medicine;
- Optometry;
- Professional engineering;
- Real estate appraisal; or
- Nursing.

Professional services may include “members of disciplines requiring special knowledge or attainment and a high order of learning, skill and intelligence,” according to the Texas Attorney General’s Office.

Some of the areas not mentioned in the Professional Services Procurement Act that state courts and Texas attorneys general have ruled as excused under the professional and personal exemption include:

- Contracts for preparing tax rolls, tax reports, tax statements, inventory and proof rolls;
- Contracts involving the coordination of investigation of crimes;
- Contracts for services of a construction manager;
- Contracts for services of a third-party administrator of insurance benefits;
- Employment of an auditor; and
- Contracts for plat books and abstracts

Except for those professions specifically covered under the Professional Services Procurement Act and listed above, the City may still ask for competitive bids for professional services if it believes it is in the City’s best interests.

4.ii Other Exemptions

The following is a list of other areas that are exempt from competitive bidding requirements.

- Any land or right-of-way;

- An item that can be obtained from only one source, including:
 - items for which competition is precluded because of the existence of patents, copyrights, secret processes or monopolies;
 - films, manuscripts or books;
 - electric power, gas, water, and other utility services; and
 - captive replacement parts or components for equipment;
- An item of food;
- Personal property sold:
 - at an auction by a state licensed auctioneer;
 - at a going-out-of-business sale; or
 - by a political subdivision of the state, a state agency, or an entity of the federal government; or
- Any work performed under a contract for community and economic development made by a county designed to reasonably increase participation by historically underutilized businesses in public contract awards by establishing a contract percentage goal for those businesses.

3.C – PURCHASING REQUIREMENTS – REPAIR & MAINTENANCE

Purchase of repair and maintenance services will require an open PO to be issued. The requesting department will go out for bids to obtain an hourly rate from the top 3 most advantageous businesses. During the bidding process, it must state that priority will be given to emergency equipment repair.

3.D – LIABILITIES NOT REQUIRING PURCHASE ORDERS

There are certain City liabilities that do not require purchase orders due to the nature of the purchase and their billing. The only liabilities the City recognizes without purchase orders, other than those expressed in section 3.B.1, are for utility services (example: water, electricity, gas, etc...) and for payroll related liabilities (pension, health insurance, etc...).

3.E – PURCHASE ORDER PROCESS

The Purchase Order (PO) process is centralized through the Division. The following steps are the basic City purchasing order procedures:

1. The Division controls all PO's.
2. The Division provides 25 blank PO forms to each department.
3. PO forms are filled out and approved per section 3.B **BEFORE** making purchases, **ENSURING** that budgeted funds are available, excluding maintenance items.
4. The department makes purchases based on departmental needs.
5. The department turns in all PO forms and invoices/statements to the Division for entry. Departments are responsible for the timely submission of all PO's, invoices, and statements.
6. The Division enters PO's throughout the month in the City's Incode accounting system.

7. The PO's are not present in the account line item detail until the PO's are posted; they are posted once payments are made.

3.F – PURCHASE ORDER PAYMENT PROCESS

The timely processing of payments to vendors is addressed via State law. The Local Government Code, Chapter 2251 sets out:

- Required deadlines for payment to vendors;
- Requirements for vendors' payments to their subcontractors;
- Penalties for failure to comply with the Act; and
- Exceptions to the Act.

It requires that the City pay all payments owed not later than 30 days after the goods or services are received or the date that the invoice is received, whichever is later. This Act also requires that vendors follow the same rules for payments to their subcontractors,

When the City believes there is an error on an invoice received from a vendor, it has until the 21st day after receipt to notify the vendor of the dispute. Then, if the dispute is resolved in favor of the City, the vendor must submit a new invoice and the City has 30 days from receipt of the new invoice in which to pay. If the dispute is resolved in favor of the vendor, interest is due from the original date the invoice became overdue.

Other times when the Act provides exceptions are:

- When there is a bona fide dispute between the City and a vendor, contractor, subcontractor or a supplier concerning the supplies, materials or equipment delivered or the services performed which causes the payment to be late;
- When there is a bona fide dispute between the vendor and a subcontractor, or between a subcontractor and its supplier concerning the supplies, materials or equipment delivered or the services performed which causes the payment to be late;
- When the terms of a federal contract, grant, regulation or statute prevent the City from making a timely payment with federal funds; or
- When the invoice is not mailed to the proper office, if an office address is specified in the instructions on the purchase order.

1. Standard Accounts Payable Cycle

The Accounts Payable Division (AP) is in the Finance Department. AP works closely with the Division in ensuring the prompt payment of City purchasing liabilities.

AP's standard payment cycle is posted twice a month, on the 15th and at the end of the month.

The payment cycle is as follows:

1. Invoices/statements are sent to AP AT LEAST 4 DAYS PRIOR TO PAYMENT DATE.
2. The department director responsible for the purchase liability must approve the invoice and submit the associated PO form for proper documentation
3. AP will enter the information into accounting system
4. Once all documentation is turned in and approved for payment, checks will be processed

5. Checks will then be mailed out unless specifically requested otherwise

2. Check Request Purpose and Use

Check Request forms are to be used for prompt payments and do not go through the standard City policy of using a semi-monthly payment cycle. They are only to be used for certain time-sensitive payment requests. Constant use of this procedure goes against the purchase order process and standard payment cycle, which leaves the door open to possible discrepancies in operations. Attempts to minimize the use of Check Requests should continue at all times. Due to the need for prompt payment, the following items are approved for the use of the Check Request procedure:

- Travel related pre-payments
- Emergency payments so as to avoid penalties or to comply with Chapter 6 of this manual
- Time sensitive **NON-RECURRING** items approved by the City Manager
- Construction contracts
- Purchase from entities that do not accept PO's
- Events Center close-out

The steps in preparing a Check Request are similar to the standard accounts payable cycle. The summary steps are as follows:

1. Check Requests must be properly filled out and approved with all data prior to being submitted to AP for processing.
2. Check Requests must be approved by the requesting department's director, City Manager, and Finance Director
3. Once filled out and proper approvals and documentation attached, AP will process it to produce a check.
4. The check will go directly to the department requesting the check request unless specifically requested otherwise.

3.G – RECEIVING AND INSPECTION

After an item is purchased, the task of receiving and inspection rests with all City representatives accepting the materials, goods, or supplies. This should be done as promptly as possible to take advantage of early payment discounts and/or to give the Division the processing time needed to avoid interest and penalties. All items must be inspected upon receipt, and whenever possible, in the presence of the vendor or shipper. Inspection should include:

- Verification of correct delivery site
- Verification of correct quantities
- Verification of correct PO number on the packing slip
- Checking for damaged or defective goods
- Receiving Complete Orders: sign and date the packing slip, attach the packing slip to the PO, and immediately submit it to the Division
- Receiving Partial Orders: make a copy of the P.O. and cross out any items that are not received, sign and date the partial packing slip, and submit it to the Division for processing. The original PO will be submitted for the final payment of the PO.

3.H – INVOICES

An invoice is an itemized statement of merchandise or service provided by the vendor. Invoices are sent by the vendor for payment by the City after purchases are made. It contains the same information as the purchase order and is the means of settlement of financial obligations incurred when the PO is issued.

- All invoices must be sent directly to the Division where they are held until the PO receiving or partial (copy of original) has been processed
- Should the using department receive an invoice, the department will forward it immediately to the Division for prompt payment and to avoid interest penalty. Vendors should be notified that all future invoices are to be sent directly to the Division
- Payment is overdue on the 31st day after the later of: (Texas Government Code, Chapter 2251.021)
 - ✓ The date the City receives the goods under the contract
 - ✓ The date the performance of the service under the contract is completed; or
 - ✓ The date the City receives an invoice for the goods or services

CHAPTER 4 – QUOTATION PROCESS – FORMAL/INFORMAL

The quotation process is the documentation of the City's purchasing representative's attempt to obtain the best purchase price available. This documentation can be informal and formal, based on the cost of the item being purchased per section 3.B.

1. **Formal Quote**

The requesting department will ask the vendor providing the quote to mail/fax/email their quote for the item being purchased. This quote must be on the vendor's letterhead/stationary.

2. **Informal Quote**

The requesting department may ask the vendor providing the quote to state their quote over the phone for the item being purchased. The quote will then be noted by the requesting department via memo format.

CHAPTER 5 – BID PROCESS (RFP/RFQ)

5.1 – SEALED BID OR PROPOSAL PROCEDURES

The bid activity must be coordinated with and maintained by the City Clerk. It is the policy of the City to use a sealed bid proposal or design/build procedure in compliance with Chapter 252 of the State of Texas Local Government Code for any procurement which will total \$50,000 or more. The requesting department will prepare and solicit all procurement's requiring sealed bids.

5.2 – REQUIREMENTS UNDER STATE LAW

The Texas Local Government Code requires that before a municipality may enter into a contract, other than a contract for insurance, that requires an expenditure of more than \$50,000 from one or more municipal funds, the municipality must comply with the procedure prescribed by Chapter 252.021 for competitive sealed bidding or competitive sealed proposals.

5.3 – ADVERTISING AND ADVERTISING TIME REQUIREMENTS

Permission to advertise must be obtained from the City Commission. Section 252.041 of Chapter 252 requires that the sealed bid be advertised publicly with notice of the time and place at which the bids will be publicly opened and read aloud. The public notice must be published at least once a week for two (2) consecutive weeks in a newspaper published in the municipality that is listed as the City's paper of record (Advance News). The date of the first publication must be before the 14th day before the date set to publicly open the bids. In addition to the paper of record, the City, at its option, may also advertise online and with other publications and/or organizations.

5.4 – BID SPECIFICATIONS AND DEPARTMENT REQUISITIONS

All sealed bids must include a set of complete and detailed specifications of the item or items and/or services to be purchased. **THE CREATION IS THE SOLE RESPONSIBILITY OF THE REQUESTING DEPARTMENT.** The Finance Department will assist the requesting department in any way necessary, but will not be responsible for the final content of the specifications. The City Clerk is responsible for all remaining parts of the bids/proposals terms, conditions and document requirements including any legal terminology required by law.

Vendors can be consulted as a source for specification information as long as they are advised that a sealed bid procedure will be used and the vendor cannot be treated with any type of favoritism. Specifications used by other governmental entities or sources is acceptable, and therefore, should be contacted if needed for this assistance. In addition, previous specifications submitted to Finance will be kept available for reference.

In order to assure fair and competitive bids, brand names should not be used in specifications unless it is made clear to each bidder that the brand name is being used for reference only. This can be accomplished by adding an "or equal" statement behind the brand name. This statement

will indicate to the bidder that other brand names will be considered if they offer specifications that are equal or better than the specifications listed in the bid. Brand names can be specified, as the only brand that will be accepted in cases where the brand specified is the only product that will work with the existing parts or equipment.

An approved purchase order must be submitted to Finance for all formal bids and proposals. The requisition must include the funding account number and budgeted amount authorized for the purchase. The requisition along with the specifications should be submitted for approval as called for in the purchasing manual. **WITHOUT THE AUTHORIZED APPROVALS INDICATING SUFFICIENT FUNDS ARE AVAILABLE FINANCE WILL NOT PROCESS A BID.**

5.5 – BID PREPARATION AND ADMINISTRATION

All sealed bids and proposals will be prepared and administered by the requesting department and coordinated with the City Clerk. The only exceptions are projects that involve engineering and architect design services. The requesting department will be responsible for notifying the City Clerk on any bid or proposal that they issue, the dates of any advertisements, pre-bid conferences and bid opening dates. The City Clerk will be responsible for posting the bids on the City Internet Web site to insure all bid information is available on the Web site. On both bids and proposals, a bid number will be assigned and advertising dates, pre-bid meeting dates and the bid opening date set. The Finance Director or his designee or the designee assigned for bids/proposals will be responsible for the bid opening and reading of the bids received. Once opened, a pre-audit bid tabulation will be created. Once a complete audit and bid tabulation is completed by the requesting department, the tabulation along with all bids will be sent to the City Clerk. When all bids have been reviewed, the requesting department will be responsible for submitting to the City Clerk a recommendation of bid award and background wording to be included in the Agenda Memo to the City Commission.

5.6 – BID OPENING PROCEDURES

Receiving competitive bids and proposals must be done properly in order to ensure that no possibility of favoritism or even the appearance of favoritism exists.

Each bid or proposal must be returned to the City Clerk's office, with the bid/proposal identification number marked on the outside of the envelope/box. Only one bid/proposal should be submitted per envelope. If more than one bid is to be submitted, require that the vendor use separate envelopes for each one. The bid/proposal envelope should be time and date stamped in the designated office as soon as it is received. The bid/proposal envelope should then be filed unopened together with the other bids/proposals for the same invitation/request number.

Bids/proposals are opened at the hour specified in the invitation/request at the place named in the RFP. Vendors and the public are invited and encouraged to attend the bid opening. In case no observers attend the bid opening, always have a member of another office act as witness so that charges or irregularities can be disproved.

In order to establish a standardized format of bid openings the following procedures should be followed:

1. The Finance Director or his designee or the designee assigned by the requesting department bids shall conduct all bid openings.
2. In addition to the Finance Director or his representative there will be at least one city employee from the department who submitted the purchase request at all bid openings. This employee will be knowledgeable of the bid specifications and should be prepared to answer all questions that pertain to the specifications. At bid openings the requesting department representative will act as the recorder of all information that is read at the bid opening and will publicly confirm that all information was read completely and truthfully.
3. At Bid Openings all bids will be opened and all pricing will be called out in accordance with the bid opening procedures.

5.7 – BID RECOMMENDATIONS AND STATE LAW REGARDING BID AWARDS

The requesting department is solely responsible for reviewing the specifications offered in each bid to insure the specifications meet the bid requirements and must provide a review of any bid that did not meet the specifications. If the bids offered meet the specifications requested, the recommendation may then be made based on the procedures set out in the State of Texas Local Government Code Chapter 252, Sub Chapter C, 252.043. Under this chapter entitled Award of Contract, the City may award the contract based on:

Sub-section (a) f the competitive sealed bidding requirement applies to the contract for goods or services, the contract must be awarded to the lowest responsible bidder or the bidder who provides goods or services at the best value for the municipality”.

Sub-section (b) In determining the best value for the municipality, the municipality may consider:

- (1) the purchase price;
- (2) the reputation of the bidder and of the bidder’s goods or services;
- (3) the quality of the bidder’s goods or services;
- (4) the extent to which the goods or services meet the municipality needs;
- (5) the bidder’s past relationship with the municipality;
- (6) the impact on the ability of the municipality to comply with laws and rules relating to contacting with historically underutilized businesses and non-profit organizations employing persons with disabilities;
- (7) the total long-term cost to the municipality to acquire the bidder’s goods or services; and
- (8) any relevant criteria specifically listed in the request for bids or proposals.

Sub-section (c) Before awarding a contract under this section, a municipality must indicate in the bid specifications and requirements that the contract may be awarded either to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the municipality.

Sub-section (f) The Governing body may reject any and all bids.

Sub-section (h) If the competitive sealed proposals requirement applies to the contract, the contract must be awarded to the responsible offeror whose proposal is determined to be the most advantageous to the municipality considering the relative importance of price and the other evaluation factors included in the request for proposals.

In addition under the State of Texas Local Government Code Chapter 271, Sub Chapter 271.9051 a Municipality may consider a bidders principal place of business where the Municipality has a population of 250,000 or less. The sections of this Sub Chapter states:

(b) In purchasing under this title any real property, personal property that is not affixed to real property, or services, if a municipality receives one or more competitive sealed bids from a bidder whose principal place of business is in the municipality and whose bid is within five percent of the lowest bid price received by the municipality from a bidder who is not a resident of the municipality, the municipality may enter into a contract with:

- (1) the lowest bidder; or
- (2) the bidder whose principal place of business is in the municipality if the governing body of the municipality determines, in writing, that the local bidder offers the municipality the best combination of contract price and additional economic development opportunities for the municipality created by the contract award, including the employment of residents of the municipality and increased tax revenues to the municipality.

(c) This section does not prohibit a municipality from rejecting all bids.

Other considerations of a bid award may be:

- the safety record of the bidder considered
- Companies or individuals indebted to the municipality
- Inclusion of required bonding and insurance
- Any other consideration as listed in the State of Texas Local Government Code

5.7.1 – BID NUMBER SEQUENCES

The bid number will consist of four sections totaling 13 digits. The first sections will consist of four digits indicating the fiscal year. The next section will consist of two digits indicating the fund. The third section consists of three digits identifying the requesting department's departmental account number. The last section consists of the number of bids the City as a whole has managed throughout the fiscal year. The City Clerk is responsible for assigning the bid number to the requesting department.

5.8 – BID DISCREPANCIES AND DISQUALIFICATIONS

There are several reasons that require a bid to be disqualified. These reasons are as follows:

1. Any bid received that is not signed by an authorized company representative.
2. Any bid received that did not return required information such as addendum/s, bonding and/or insurance requirements. This requirement may be waived as a technicality but must be approved by the City Attorney's office.
3. Also subject to disqualification are bids/proposals where prices are conditional on award of another bid, or when prices are subject to unlimited escalation. If allowed by the specification, prices may be subject to escalation based on an independent wholesale index. (e.g., for oil and gas products, the net terminal price or current Oil Price Information Service prices.)

5.9 – AGENDA REQUIREMENT RESPONSIBILITIES (ALL CAPITAL PURCHASES/PROJECTS)

All capital items purchased by the City must be submitted to the City Commission for approval. During the budget process, all capital items are budgeted and approved by the City Commission once they approve the budget. The capital items needed outside of the budget process must be submitted to the City Commission for approval after ensuring adequate funds are available.

5.10 – RELEASE OF BID INFORMATION

All requests for historic information concerning a bid, specifications on a bid or other matters relating to bids of the City can only be conveyed via an open records request and should be made through the City Clerk's Office. All open records request forms are to be kept and filed in a manner that makes retrieval of the information that was requested and the information that was returned easily accessible.

5.11 – CHANGE ORDERS

After awarding the contract, the governing body may make changes to plans, specifications or quantities if necessary. But the total contract amount may not be increased unless the increase will be paid from current funds, or is provided for by issuing debt. If a change order involves a decrease or an increase of \$25,000 or less, the governing body may grant general authority to an administrative official of the municipality to approve the change orders. No increase of more than 25 percent may be made, and the contractor must agree to any decrease of 25 percent or more.

5.12 – BONDING

By State Statute, any person, persons, firm, or corporation (prime contractor) entering into a contract in excess of \$ 50,000.00 with the City for the construction, alteration or repair of any

public building or prosecution of completion of any public work, shall be required before commencing such work, to provide the following bonds, issued by a corporate Surety duly authorized and admitted to do business in the State of Texas.

PUBLIC WORK: Although the term public work is not defined by statute, it is generally understood to mean construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property. Contracting for demolition of real property would also fall under this definition.

5.12.1 – BONDING REQUIREMENTS

To ensure that the successful bidder will enter into a contract with the City and complete the project as defined by the bid specifications, bidders may be required to provide the City with surety bonds guaranteeing successful completion of the contract. There are three types of surety bonds commonly used with City contracts; the bid bond, performance (and maintenance) bond, and the payment bond. A surety is a firm (usually an insurance company) that will guarantee that the bidder will perform as defined by the specifications. The City will only accept corporate sureties as bonding entities. Personal sureties are unacceptable.

5.12.2 – BID BOND

It is the City's option whether or not to require bidders to provide the City with a bid bond along with their bid submissions. State statutes do not address bid bonds for Municipalities.

Bid bonds are issued by a Surety financially guaranteeing that the successful bidder will enter into an agreement with the City to perform the project or provide the service as defined by the specifications. The City requires that the bid bond be accompanied with an appropriately completed "Power of Attorney" executing the bid bond for the bidder. As an alternative, the City may accept a cashier's check, with the City named as payee, to be held in escrow until the successful bidder signs the City's project contract.

BID BOND AMOUNT: The bid bond minimum limit (or cashier's check) is five percent (5%) of the total amount bid.

5.12.3 – PERFORMANCE BOND

Performance bonds financially guarantee that once the successful bidder enters into a contract with the City to perform work, the contractor will complete the project. Should the contractor fail, then the Surety will, generally, hire an alternate contractor to complete the work, allow the City to select another contractor and pay the difference between the first contractor's price and the new contractor's price, or pay the original contractor whatever it takes to complete the project.

PERFORMANCE BOND AMOUNT: Performance bonds must be written for one hundred percent (100%) of the total bid price.

5.12.4 – PAYMENT BOND

A payment bond will pay any outstanding bills for labor, materials, and supplies used in the City's project from the contractor's subcontractors and suppliers should the prime contractor default on their payment.

PAYMENT BOND AMOUNT: Payment bonds must be written for one hundred percent (100%) of the total bid price

5.12.5 – MAINTENANCE BOND

Maintenance bonds financially guarantee that the Contractor will maintain and keep in good repair the work contracted to be done and performed from the date of acceptance of the work by the City for a predetermined period of time. For public works projects, the bond would also include any necessary back filling that may arise because of sunken conditions in ditches.

The bond is designed to provide financial protection to the City for all defective conditions arising by reason of defective material, work, or labor performed by the Contractor. In the event the Contractor does not fulfill its maintenance obligation, the bonding company will pay to maintain the project as defined in the contract specifications.

5.13 – INSURANCE REQUIREMENTS

Whenever the City contracts with an outside party (contractor, consultant, vendor, or concessionaire) for goods or services, the bid or request for proposal that is released to the public should include an indemnity clause (hold harmless clause), along with a contractual agreement, to be executed upon award of the contract, that transfers the risk of the project from the City to the contractor. Because the contractor may or may not have the financial resources to handle the risks that are transferred in the contract, the City requires that insurance be purchased and maintained by the contractor for financial security.

Most contracts are tailored for individual projects and programs; therefore, certain elements of the insurance required should be addressed in every contract document. One of the most important elements is the actual insurance coverage, which include the coverage types and limits that are dependent upon the nature of the project/program.

Although not all of the coverage's are required for every project (and limits will vary by exposure), understanding the coverage's provided by these policies is important to assure that all of the City's potential liabilities and exposures from the project are properly protected. Should any questions arise about the amounts of types of insurance requirements the initiating department should contact the Risk Managers office.

5.14 – TECHNOLOGY COMPETITIVE SEALED PROPOSALS

Municipalities may use the Competitive Sealed Proposal procedure for high technology procurements. Local Government Code 252.021. High technology procurement is defined as the procurement of equipment, goods, or services of a highly technical nature, including, but not limited to: data processing equipment, software, and firmware used in conjunction with data processing equipment, telecommunications equipment, radio and microwave systems, and electronic distributed control systems (including building energy management systems), and technical services relating to such items.

Notice requirements for high technology proposals are the same as for general contracts. Requests for Proposals must solicit quotations and must specify the relative importance of price and other evaluation factors. The City may hold discussions with bidders who submit proposals and are determined to be responsibly qualified for the award of the contract. Each bidder must be treated fairly and equally with respect to any opportunity for discussion and revision.

Proposals are evaluated one against the other, and then initially ranked. The proposals are then negotiated, and re-ranked. Further negotiations will be required and a final selection made. A department head or his designee may meet in private session with each proposer, and negotiate for exactly what is needed. Negotiations are not limited to one meeting.

Offers shall be treated fairly and equally with respect to any opportunity for discussion and revision of proposals. To obtain the final offers, revisions may be permitted after submissions and before the award of the contract. Throughout the proposal process, information identified by the vendor as trade secrets or proprietary information, and contained in the proposals, must be kept confidential by law.

After proposals are received, the City may enter into negotiations with as many vendors as have submitted feasible proposals in order to arrive at the best possible proposal for each vendor.

CHAPTER 6 – EMERGENCY PURCHASES

The City may make emergency or exempted purchases without competitive bidding under specific circumstances. Purchases that are required immediately for purposes that could not reasonably have been foreseen are generally exempt from bids. They may be subject to other requirements, however, such as certification that an emergency exists. When it is necessary to preserve or protect the public health, competitive bidding requirements are waived regardless of how the conditions were brought about. If there is time to give proper notice and for an advertisement to be made, then it is not an emergency situation.

6.A – Procedure for Making Emergency Purchases

The following are procedures for dealing with emergency purchases:

- **Qualification:** The purchase must qualify as an emergency purchase as defined in state law local government code chapters 252, 262 and 271.
- **Designation:** The emergency purchase designation indicates a situation of such urgency that the normal purchasing procedure must be modified in the interest of speed, and therefore no competitive bids are required.
- **Normal working hours:** All emergency purchases occurring during normal working hours are processed through the City as follows:
 - The requesting department will notify the Division by telephone immediately, with as much information as possible about the emergency purchase required, so that the purchasing action can be initiated immediately;
 - Simultaneously, a PO is prepared and hand-carried through the approval process;
 - The requesting department contacts as many vendors as necessary to arrange the emergency purchase. If there is not enough time to get authorization, the purchase can be completed by telephone, and the purchase order completed after the fact and delivered to the vendor; and
 - The buyer requests expedited delivery. The person making the requisition may be required to pick up the emergency purchase from the vendor if timely delivery is not available.
- **Evenings, weekends and holidays:** When purchasing support is unavailable, process emergency purchases as follows:
 - The responsible official of the requesting department takes whatever steps are necessary to procure needed supplies, services or equipment to relieve the emergency. If possible, only those goods or services needed during the evening, weekend or holiday are procured; and
 - On the first working day following the emergency, the responsible official prepares a PO and hand carries it to the Division. The person making the purchase must attach the invoices, bills of materials, receipts or other documents related to the purchase to the PO.
- The official in charge of the requesting department must certify in writing on the next business day, or as soon as possible, why the emergency purchase was necessary and why it was an emergency.

CHAPTER 7 – SOLE SOURCE PURCHASES

Quotes are not required if the materials, goods, or supplies can only be purchased from a sole vendor, in other words, a sole source. Reasonable efforts must be made to ensure purchases from sole sources are correctly classified as such. Materials, goods, and/or supplies cannot be requested so as to remove other suitable alternative vendors/sources. Sole source purchases are subject to possible review by the City Attorney.

For a sole source purchase, at least one (1) of the following must exist:

- Available from only one source because of patents, copyrights, secret processes, or natural monopolies
- Films, manuscripts, or books
- Gas, water, and other utility services, (in most instances)
- Captive replacement parts or components for equipment
- Books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and
- Sole source purchases are approved only after the lack of alternate sources has been determined and proof of sole source is documented via memo by the department director.

The requesting department should do everything possible to strengthen the City's bargaining position. Costs related to procurement should always be considered before an order is issued. Post-purchase costs could include multi-year maintenance contracts, replacement parts or trade-in value.

7.A – Procedure for Sole Source Purchases

Sole source purchases are handled the same as other purchases, with these exceptions:

1. The Finance Director must approve all sole source purchases. The approval should be done before a PO is issued.
2. The PO is then completed in accordance with the standard purchasing procedures.
3. If the item is a sole source purchase, the requesting department director must prepare a statement and attached it to the PO that says a sufficient number of vendors have been contacted to determine that only one practical source of supply exists or states the reasons only one source exists. This statement must be attached to the PO.

CHAPTER 8 – DISPOSAL OF SURPLUS/SALVAGE EQUIPMENT/MATERIAL

8.A – SURPLUS EQUIPMENT AND PROPERTY

Any property that is movable or not attached to the land (referred to as personal property) such as furniture, fixtures, vehicles, equipment, tools, instruments, clothing, or other such items of value, which has lost its useful value to the City or has become obsolete, may be disposed of by any of the following methods.

1. Sold competitively by accepting sealed bids or by public auction.
2. Traded in for new equipment or equivalent service;
3. Donated to an entity with City Commission approval;
4. Recycled; or
5. If the item has no value except for salvage, the procedure will take place per section 8.B.

Personal property does not include real estate such as land, including the building or improvements on it, or its natural assets, such as minerals and water. The City may sell real property owned by the City by sealed bid under Local Government Code §272.001 or by public auction under this section.

To sell real property by public auction, the City must publish notice of the auction. According to Local Government Code, §253.008, the notice must be published once a week for at least three consecutive weeks, with the first publication at least 20 days before the date the auction is held, in a newspaper of general circulation in both the county in which the City is located and the county in which the property is located. The notice must contain a description of the property, including location, and the date, time and location at which the auction is to be held.

8.B – SALVAGE MATERIAL

Disposal of salvage materials, scrap metals, copper, brass, etc., may be sold after attempting to obtain 3 offers.

CHAPTER 9 - MISCELLANEOUS

9.A – SALES TAX

The City of Pharr is exempt from all Federal Excise Tax And the State of Texas Limited Sales Excise and User Tax. All purchases should be tax exempt.

9.B – PREFERANCE TO LOCAL VENDORS

The City will always make every effort to purchase from Pharr vendors. This preference is deemed as being in the best interest of the city. Local vendors are afforded a 5% cost difference in comparison to non-Pharr vendors. This preference applies to items under the State of Texas bid mandated purchasing per section 3.B.

9.C – PURCHASING THROUGH STATE CONTRACTS

Through cooperative purchasing, the City can save time and money in our purchasing procedures. The Local Government Code (§§271.081 - 271.083) provides for purchasing by the City through state contracts. This frequently saves time and effort in local purchasing. In addition, all statutory bidding requirements are satisfied when purchases are made through state contracts, and the vendors are frequently the same ones with whom the City is already dealing.

There may be some drawbacks. Some prices on state contracts may not be as low as a local contract. Requesting departments should also consider levels of service and other service related options not included on the contract or in the quoted price.

9.D – PURCHASES OTHER THAN COOPERATIVE PURCHASING USING FEDERAL & HOMELAND SECURITY FUNDS

If purchases are made from other than a cooperative purchasing contract using federal funds, example: Homeland Security Funds, the department purchasing shall:

1. Check with the GSA Excluded Parties List System (EPLS) website www.epls.gov to verify that the vendor to be used by the City is not on the excluded parties list. Due to the EPLS constantly changing, this action needs to be done every time a purchase order is issued.
2. Attach a copy of the screen indicating the vendor is not debarred at the time of the procurement and include that copy with the procurement records for audit and monitoring purposes. If the vendor is debarred, we cannot do business with that vendor.

9.E – EMPLOYEE REIMBURSEMENT FOR CITY EXPENSES

The City will reimburse purchases made by employees on behalf of City business. Items that are not reimbursable include: tobacco products, alcoholic beverages, and other questionable expenses. Questionable expenses will ultimately be decided upon by the City Manager.

9.F – PURCHASING LAWS

Texas purchasing law is located in a number of places in the statutes. City purchasing is primarily in Chapter 252 of the Local Government Code. Statutes pertaining to both cities and counties, plus other types of local governments, are included in Chapter 271 of the Local Government Code. Conflicts of interest by local government officials are covered in Chapter 171 of the Local Government Code.

Other statutes pertaining to purchasing or contracting are in Vernon's Civil Statutes or in other parts of Vernon's Texas Codes. Since the law is so fragmented, it is helpful to have this listing of where to find different statutes and each act's general contents.

Attorney general opinions offer valuable guidance in interpreting and applying the laws. Consult them whenever questions arise. The attorney general's opinions are available from:

Attorney General of Texas
Opinion Committee
209 West 14th Street
Austin, TX 78701-2548

Telephone (512) 463-2110