



# Purchasing Policy

Managed by Finance

Approved October 27, 2020

## I. Purpose

- A. Increase public confidence in the procedures followed in public purchasing.
- B. Ensure fair and equitable treatment of all persons who encounter the City's purchasing system.
- C. Maximize the purchasing value of public monies for the City.
- D. Provide safeguards for the maintenance of a purchasing system of quality and integrity.

## II. Definitions

- A. Change Order means a written order signed by the City Manager or designee, directing the contractor to make changes in the contract.
- B. Contract means all types of City agreements for the purchase or disposal of supplies, services, or construction.
- C. Purchasing means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction.
- D. Reoccurring Purchase means a service or product purchased more than once by a department during the course of a budget year.
- E. Services means the furnishing of labor, time, or effort by a contractor not involving the delivery of a specific end product other than reports, which are merely incidental to the required performance.
- F. Sole Source means items or services available only from a single supplier.
- G. Substantial Interest means any of the following:
  - 1. If an individual or an individual's spouse, either individually or collectively, has owned within the preceding 12 months a legal or equitable interest exceeding \$5,000 or 5% of any business, whichever is less, the individual has a substantial interest in that business.
  - 2. If an individual or an individual's spouse, either individually or collectively, has received during the preceding calendar year compensation which is or will be required to be included as taxable income on federal income tax returns of the individual and spouse in an aggregate amount of \$2,000 from any business or combination of businesses, the individual has a substantial interest in that business or combination of businesses.
  - 3. If an individual or an individual's spouse, either individually or collectively, has received in the preceding 12 months, without reasonable and valuable consideration, goods or services having an aggregate value of \$500 or more from a business or combination of businesses, the individual has a substantial interest in that business or combination of businesses.

4. If an individual or individual's spouse holds the position of officer, director, associate, partner or proprietor of any business, other than an organization exempt from federal taxation of corporations under section 501(c)(3), (4), (6), (7), (8), (10) or (19) of chapter 26 of the United States Code, the individual has a substantial interest in that business irrespective of the amount of compensation received by the individual or individual's spouse.
  5. If an individual or an individual's spouse received compensation which is a portion or percentage of each separate fee or commission paid to a business or combination of businesses, the individual has a substantial interest in any client or customer who pays fees or commissions to the business or combination of businesses from which fees or commissions the individual or the individual's spouse, either individually or collectively, received an aggregate of \$2,000 or more in the preceding calendar year. As used in this subsection, "client or customer" means a business or combination of businesses.
- H. Supplies means all property, including but not limited to equipment, materials, printed materials, insurance, and leases of real property, excluding land or a permanent interest in land.
- I. Vendor means a seller of supplies and/or services, and includes any person representing the vendor.

### III. Purchasing Authority

#### A. Governing Body

1. Adopt the annual operating budget to determine levels of expenditure by fund, department, and program.
2. Adopt a policy for the purchasing of all goods and services.
3. Review, adopt, and approve purchases over \$10,000.
4. Approve all leases of equipment.

#### B. City Manager or designee.

1. Approve all purchases between \$5,001 and \$10,000.
2. Present purchasing recommendations to the Council for purchases over \$10,000.
3. Implement and enforce provisions of this purchasing policy.
4. Exercise discretion and authority to override specific aspects of this policy when determined necessary to provide for the best interest of the City and inform the City Council of such decisions.

#### C. Director of Finance

1. Monitor expenditures and advise the City Manager of monthly expenditure rates.
2. Ensure budgeted levels for each fund are not exceeded.
3. Oversee purchasing with the responsibilities to:
  - i. Secure the highest quality goods and services at the least cost.
  - ii. Make recommendations to the City Manager for updating purchasing policy and procedures.

- iii. Keep informed of current developments in the field of purchasing.
  - iv. Lead and direct bulk purchasing and cooperative purchasing when possible.
  - v. Ensure those who default or are unreliable are disqualified from doing business with the City.
  - vi. Oversee competitive bid processes according to state statutes and local policy.
  - vii. Authorize appropriate city personnel to make purchases.
- D. Department Directors
- 1. Inform personnel of purchasing requirements and ensure adherence.
  - 2. Plan purchases under \$5,000 to allow sufficient time to obtain proposals or quotations, determine best vendor, and issue orders or contracts with reasonable time for delivery.
  - 3. Plan purchases over \$5,000 to allow sufficient time for the item to be bid through competitive sealed bidding and for the City Manager to approve or in the case of items that need City Council approval, for the City Council to award the contract.
  - 4. Provide accurate and complete information on items requested and timely preparation of requisitions.
  - 5. Keep records of all bids and quotes received for 3 years.
- E. Employees
- 1. Employees approved to make minor purchases up to \$500 are encouraged to make such purchases from established vendors within the Regional Economic Area Partnership defined area if no loss in price or quality would result from buying local.
  - 2. When making purchases, employees are to put their signature and division name on the invoice. All invoices need to be turned in to the employee's respective department on a daily basis.
- F. *NOTE: All purchases are subject to procedures set forth in this document regardless of whether budgeted, emergency, or ad hoc in nature.*

<u>Amount of Purchase</u>	<u>Dept. Responsible for Bid/Quote</u>	<u>Type of Bid/Quote Required</u>	<u>Other Requirement</u>
Minor Purchases up to \$500	Director and Division Head	One quotation	
\$501 to \$2,500	Director and Division Head	Three written quotes	
\$2,501 to \$5,000	Director and Division Head	Three written quotes; Bid Board Approval required if low bid is not recommended by the Director	
\$5,001 to \$10,000	Director and Division Head	Competitive bid process, Bid Board Approval and City Manager	
\$10,001 to \$50,000	Director and Division Head	Competitive bid process, Bid Board Approval and City Council Approval	If low bid is recommended and funding is available in the adopted budget, the item will be placed on Consent Agenda. Otherwise, a separate agenda item is required.
More than \$50,001	Director and Division Head	Competitive bid process, Bid Board Approval and City Council Approval	A regular agenda item is required.
Change Orders (CO) (applicable to all bids and contracts)	Director, Division Heads and City Manager	If under \$10,000, City Manager or designee approves. If over \$10,000, City Council approves unless the project is still within budget or it is in the best interest of the City for a CO to be implemented prior to the next City Council meeting.	Each CO must be in writing and attached to the original contract.

#### IV. Prohibited Purchases

- A. The following purchases cannot be made from City funds:
  - 1. The purchase of any illegal substance or services.
  - 2. Gambling-related purchases.
  - 3. Purchases made for personal benefit with no value to the City.

#### V. Vendor Selection and Contract Formation

##### A. Vendor Participation

- 1. Vendors interested in receiving requests for bids and proposals should sign up for the Notify Me service on the City's website at [www.derbyweb.com](http://www.derbyweb.com). In an effort to attract bids from local and knowledgeable vendors, the requesting department is encouraged to notify vendors known to have adequate expertise. The City's notification software relies on email addresses to have been correctly input in the system by vendors. In the event of an error or change in personnel, a follow-up email by staff of the requesting department will ensure vendors are aware of the opportunity and will encourage competition, thereby lowering the cost of goods and services to the City.

##### B. Irresponsible Vendors

- 1. Any vendor who fails to comply with the terms of an awarded bid, quote, or required specifications may be declared an irresponsible vendor upon recommendation of the Finance Director and approval of the City Manager or designee. Vendors shall be notified in writing they have been declared an irresponsible vendor and that their bids will be deemed ineligible for award. Any vendor wishing to appeal this decision may request the City Manager or designee, present the appeal to the City Council for review and final determination.

##### C. Procedures for All Types of Sealed Bidding

- 1. Invitation for Bids - An invitation to bid shall be posted on the city's website, and vendors who have previously signed up for notification will receive an email alert of the posting. Invitations to bid shall be posted on the City's website at least 7 days in advance of the due date for submission of bids. Items requiring publication in the newspaper shall also be published at least 7 days in advance of the due date for submission of bids. Notice shall be filed with the City Clerk or designee, and shall be open to public inspection.
- 2. Bid Opening - Bids shall be opened by the City Clerk or designee in the presence of one or more witnesses. The amount of each bid and other relevant information shall be recorded along with the name of each bidder.
- 3. Bid Evaluation - Bids shall be evaluated based on requirements set forth in the Invitation to Bid, which may include criteria to determine acceptability, such as inspection, testing, quality, and suitability for a particular purpose. No criteria may be used in bid evaluation that are not set forth in the Invitation to Bid.

4. Award - The contract shall be awarded or rejected with reasonable promptness. Award shall be made to the lowest responsible bidder who submits a responsive bid which is most advantageous to the City.
- D. Purchases Not Subject to Competitive Sealed Bidding
1. Purchases made under the following circumstances shall not require competitive sealed bidding:
    - i. When the purchase is of an emergency nature.
    - ii. When the price or method of acquisition is prescribed by law.
    - iii. When the supplier is the sole source of supply.
    - iv. When the good or service is available from another governmental entity or purchasing program at a price deemed less than commercially available. General Services Administration (GSA) is an example of a purchasing program where taking advantage of the prices offered eliminates the need for additional competitive bidding.
    - v. Professional services.
    - vi. In the case of repairs of heavy equipment or vehicles when the extent of repair cannot be determined or when specifications cannot practically be prepared.
    - vii. Utility bills for water, sewer, electricity, and natural gas consumption are not subject to competitive bidding requirements.
- E. Competitive Sealed Bidding over \$10,000 (requires Council approval)
1. Unless otherwise exempted pursuant to this policy or state law, contracts exceeding \$10,000 shall be awarded by the City Council through competitive sealed bidding, unless it is determined by the City Manager that this method is not practical. (Refer to above paragraph, "Procedures for All Types of Sealed Bidding.")
  2. Process for Obtaining Council Approval
    - i. All purchases or service contracts totaling more than \$10,000 but less than \$50,000 in which the item is in the approved budget and the low bid is recommended shall be included in a consent agenda item for approval by the Governing Body.
    - ii. If the purchase or service contract is greater than \$10,000 but is not budgeted or the low bid is not recommended, a separate agenda item is required.
    - iii. Items over \$50,000 shall require a regular agenda item.
    - iv. Contracts for construction of infrastructure for which the City Council has already approved the resolution and the low bid is recommended will be placed on the consent agenda if the city-at-large cost is \$50,000 or less. Otherwise, a regular agenda item is required.
    - v. All purchases or service contracts shall be accompanied by a written recommendation from the City Manager for award.
- F. Competitive Sealed Bidding \$5,001 - \$10,000 (requires City Manager approval)

1. Purchases between \$5,000 and \$10,000 require competitive sealed bidding and Bid Board approval. The Bid Board will send all items to the City Manager or designee, for final approval. (Refer to "Procedures for All Types of Sealed Bidding.")
- G. Purchases between \$500 and \$5,000 (requires Director approval)
  1. Purchases between \$500 and \$5,000 require at least three documented price quotes that will be maintained on file by the department unless submitted to the Accounts Payable Clerk for scanning into Laserfiche with a copy of the invoice.
    - i. The user department shall solicit quotes in person, by telephone, email, from websites, or in writing from at least three qualified vendors.
    - ii. Purchases under \$500 shall not require competitive quotes if the prices are considered reasonable, although informal quotes are encouraged.
  2. Non-competitive Selection
    - i. A contract may be awarded for a supply, service, or construction item without competition under the following circumstances:
      - (a) Price established by law.
      - (b) Emergency purchases described in next section.
      - (c) Sole source of supply.
      - (d) Purchase from another governmental unit or purchasing program at a price deemed less than commercially available.
      - (e) Professional services.
- H. Reoccurring Purchases
  1. For services or products required more than once a year, the aggregate total of the purchases will be used to determine the purchasing procedures that should be followed.
    - i. Repetitive purchases that add up to between \$500 and \$5,000 over the course of a year require at least three documented price quotes to be obtained at least once during the calendar year. Director approval is required. Example: The cost of an individual tire is \$150, but based on records from prior years, approximately \$2,500 is spent on tires, therefore the department would be required to contact at least three vendors and obtain a price quote good for a maximum of one year. To obtain the best possible price, the department needs to inform the vendor of approximately how many tires will be purchased during the calendar year.
    - ii. Repetitive purchases that add up to between \$5,000 and \$10,000 over the course of a year require at least three documented price quotes to be obtained at least once during the calendar year. City Manager or designee, approval is required. Example: The cost of salt is \$50 per ton, but over the course of a year the total exceeds \$5,000.
- I. Emergency Purchases
  1. An emergency purchase is a purchase made when delaying the purchase would threaten (1) the functioning of city government, (2) the preservation or protection of

property, machinery, or equipment, (3) the health or safety of any person or (4) to increase costs to the City. In case of an emergency as defined above, the City Manager may waive all provision for competitive bidding. Emergency needs shall be purchased by informal open market procedure or negotiated.

2. Emergency Purchase Procedures

- i. During normal business hours, the department shall notify the City Manager of the emergency situation and request verbal approval to proceed with the emergency purchase. The department shall provide the following:
  - (a) The nature of the emergency.
  - (b) The estimated cost of the services/goods required.
  - (c) The vendor recommended to receive the order.
- ii. In the event of an emergency during non-working hours, the highest authority personnel on hand to make a responsible decision may purchase directly any supplies whose immediate procurement is essential as described above. For expenditures of \$5,000 or more, the department director or designee shall submit by close of business the next work day a written report to the City Manager explaining the circumstances of the emergency.
- iii. When expenditures are \$10,000 or more, a report of the purchase and the circumstances necessitating the emergency action shall be presented to the City Council at its next available meeting.

J. Local Business Preference

1. Purchasing goods and services from local vendors is desired because it stimulates the local economy and recognizes that our local vendors are valued members of our community. Minor purchases up to \$500 shall be made from established vendors in the Regional Economic Area Partnership defined area whenever possible if no loss in price or quality would result from buying local.
2. A local preference will be given to vendors who are located within the Regional Economic Area Partnership defined area for routine vehicle purchases. Local vendors will be awarded the vehicle bid if their quote or bid is within 1% or \$500, whichever is higher, of the low bid, with a maximum bid difference of \$2,500. When bidding multiple vehicles of the same spec the local preference will be given on a per vehicle basis.

K. Property Acquisition

1. The purchase of real property associated with an approved public improvement project is subject to approval as follows:
  - i. The City Council must approve the contract if the cost for acquisition exceeds \$10,000.
  - ii. The City Manager or designee, can approve the contract if the cost for acquisition is less than \$10,000.

## VI. Bid Board

### A. Purpose

1. Ensure bids are reviewed in a fair and equitable manner.
2. Make recommendations for purchases to the City Manager and/or City Council that serve the best interest of the City.

### B. Purchases Requiring Bid Board Review

1. Purchases over \$5,000 require competitive sealed bids and Bid Board recommendation.
2. The Bid Board reviews purchases between \$2,500 and \$5,000 when the department is not recommending the low bid.
3. The Board does not review bids for public improvements (streets, sewers, etc.) unless requested by the City Manager. (Refer to section IV for Procedures for All Types of Sealed Bidding and for Purchases not Subject to Competitive Sealed Bidding.)

### C. Bid Board Members

1. Finance Director (chairperson)
2. Director of Operations (vice chairperson)
3. Budget Manager
4. Police Department designee
5. Public Works designee
6. Fire & Rescue Department designee
7. Financial Analyst (non-voting)

### D. Process for Sending an Item to the Bid Board

1. Each department is responsible for preparing specifications for items to be bid and sending out their own requests for bids.
2. Bid specifications are sent to the Budget Manager for posting to the City's website.
3. Once bids are received and opened, the department requesting the bids will be responsible for preparing an analysis of the bids in a format that allows for comparison of price and specifications.
4. This comparison will then be provided to the Bid Board, along with the original bid information.

### E. Bid Opening Procedure

1. All sealed bids are opened publicly in the Council Room, 611 N. Mulberry, on the date and at the time shown in the Notice of Invitation for Bids. The City Clerk or designee, presides over bid openings. Other representatives of the City may be in attendance. The City Clerk or designee, shall read the bid amount, delivery, and terms and conditions relating to the bid.

### F. Bid Board Approval Process

1. Low responsive bid is the primary criteria for approvals.

2. The Bid Board meets on an as-needed basis in the Panther Room, provided that at least a quorum of three voting members is present. Staff are welcome to attend. The Board may conduct meetings electronically to consider routine purchases and to ensure a quorum.
  3. The Bid Board may accept or reject any or all bids and any part or parts of bids due to incomplete, conditional or obscure information.
  4. The Bid Board Chairperson forwards the Board's recommendations to the City Manager or designee for final determination. Once the City Manager or designee has approved, a signed copy is sent to the requesting department, which is authorized to submit an agenda item or if below \$10,000, purchase the item.
- G. Types of Purchases Excluded from Bid Board
1. Professional Services. Competitive bids are unnecessary for contracts for professional services. Examples include architectural, engineering, specialized consulting, and accounting services. A Request for Proposals (RFP) is routinely used to solicit proposals and begin a process of selection based on qualifications, fit and value.
  2. Legal Professional Services. Competitive bids are unnecessary for contracts for legal services. Engagement of outside attorneys must be approved by the City Manager.

## VII. Change Orders

- A. Change orders are issued to address changes in terms and conditions associated with unforeseen problems not addressed in the bid or contract document or changes/modifications recommended after a contract is awarded.
1. Change orders under \$10,000 must be approved by the City Manager or designee.
  2. Change orders over \$10,000 must be approved by the City Council, unless the project is still within budget or it is in the best interest of the City for a change order to be implemented prior to the next regularly scheduled meeting of the City Council. In such circumstances, the City Manager shall have the authority to authorize the change and shall notify the City Council of the action.

## VIII. Ethical Standards

- A. General Standards of Ethical Conduct
1. General Ethical Standard for Employees: Any attempt to realize personal gain through City employment by conduct inconsistent with the proper discharge of an employee's duties is a breach of public trust. Employees must comply with all conduct requirements as set forth in the Personnel Policy Manual.
  2. General Ethical Standard for Non-Employees: Any effort to influence City employees to breach the standards set forth in this Chapter is also a breach of ethical standards.
  3. Employee Conflict of Interest
    - i. Pursuant to K.S.A 75-4304, no City employee in his or her capacity as such employee, shall make or participate in the making of a contract with any person

or business by which he or she is employed or in which he or she has a substantial interest. A City officer or employee does not make or participate in the making of a contract if he or she abstains from any action in regard to the contract. Department directors should be notified of situations where a conflict of interest may exist prior to the bid request. The Director should consult with the City Attorney to address any concerns.

- ii. This section shall not apply to the following:
  - (a) Contracts let after competitive bidding has been advertised by published notice.
  - (b) Contracts for property or services for which the price or rate is fixed by law.
- 4. Employee Disclosure Requirements
  - i. An employee who has or obtains any benefit from any City contract with a business in which the employee has a substantial financial interest shall report such benefit to the Finance Director. Any employee who knows or should have known of such benefit and fails to report such benefit to the Finance Director is in breach of ethical standards.
- 5. Gratuities and Kickbacks
  - i. Gratuities. No vendor shall offer or give any employee or former employee a gratuity or an offer of employment in connection with a purchasing decision. It shall be a breach of ethical standards for any employee or former employee to solicit or accept a gratuity or an offer of employment in connection with any City purchasing decision. Gratuities shall not include pens, calendars, or other novelty items used for advertising purposes, or occasional meals. Employees are expected to comply with all requirements of the Personnel Policy Manual.
  - ii. 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 subcontractor as an inducement for award of a subcontract or order.
- 6. Use of Confidential Information
  - i. It shall be a breach of ethical standards for any employee or public official to knowingly use confidential information for actual or anticipated personal gain.
- 7. Remedies for Breach of Ethical Standards
  - i. Remedies against Employees: In accordance with the Personnel Policy, employees who violate the ethical guidelines will be subject to the following:
    - (a) Oral or written warnings or reprimands.
    - (b) Suspension with or without pay for specified periods of time.
    - (c) Termination of employment.
  - ii. Remedies against Non-Employees: Violations of ethical guidelines by non-employees involved in purchasing transactions with the City may result in any of the following:
    - (a) Written warnings.
    - (b) Termination of transactions.

- (c) Disbarment or suspension from contracting with the City.
- iii. Recovery of Value Transferred or Received
  - (a) The City reserves the right to pursue recovery of the value of anything transferred or received in breach of the ethical standards laid out in this policy from both employees and non-employees.
- iv. Criminal Sanctions
  - (a) To the extent that a violation of the ethical standards of conduct set forth in this section also constitutes a violation of federal, state, or city law, it shall be punishable as provided therein. Such sanctions shall be in addition to the remedies set forth in this policy.

## IX. Equal Opportunity in Public Contracting

### A. Equal Opportunity

1. The City of Derby shall comply with all applicable state and federal laws, executive orders, and rules and regulations that govern equal employment opportunity and affirmative action in public contract, and shall only do business with contractors and vendors who also comply.

### B. Kansas Act Against Discrimination

1. The State of Kansas requires that all contracts entered into with the state or any political subdivision of the state for construction, alteration or repair of any public building or public work or for acquisition of materials, equipment, supplies or services shall contain provisions by which the contractor agrees to observe provisions of the Kansas Acts Against Discrimination. The Kansas Acts Against Discrimination (K.S.A. 44-1030, et seq.) requires that those entering into contracts with governmental entities shall not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry. Vendors subject to these statutes are those:
  - i. That employ four or more employees during the term of such contract; and
  - ii. Whose contracts with the City of Derby cumulatively total more than \$5,000 during the City's fiscal year.

### C. Failure to Comply

1. Failure to comply with federal or state statutes and regulations governing equal opportunity and non-discrimination in public contracting shall be a material breach of contract. In addition, unless otherwise noted, failure to comply with state or federal provisions shall be a breach of the contract for which the city may suspend further performance under the contract or terminate the contract in whole or in part.

## X. Disposal of Property

- A. The City Manager may transfer, sell, exchange or destroy any surplus, obsolete, abandoned, or confiscated property with or without competitive bidding. The City

Manager shall determine whether personal property is to be sold at auction or by negotiated sale or donated to another organization. Upon disposal, a written report shall be made detailing the date of sale, name and address of the purchaser, list of property sold and the sale price.

- B. The sale of real property requires approval by the Governing Body.