

## **SECTION II: PURCHASING POLICY & CONTRACTS**

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1. POLICY OBJECTIVES. The underlying purpose of this policy is the balancing of the following objectives. It is understood that some of the objectives may be in conflict with other objectives. It is the final decision making body's prerogative to find the appropriate balancing of the objectives within this General Policy when making a Procurement.
  - A. Streamline Procurement. Streamlining the purchasing process and reducing administrative burdens associated with conducting Tremonton City business.
  - B. Greatest Economy. To provide for the greatest possible economy in Tremonton City Procurement activities.
  - C. Broad-Base Competition. To foster effective broad-based competition within the free enterprise system to ensure that Tremonton City shall receive the best possible service or product at the lowest possible price.
  - D. Strengthen Local Economy. To strengthen Tremonton City's economy by supporting independently owned Businesses in Tremonton City and the Bear River Valley.
  
2. PURCHASING POLICY EXEMPTIONS.
  - A. The following circumstances or situations are exempt from the purchasing policy:
    - (1) Grant, Gift, or Bequest. This policy shall not prevent Tremonton City from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.
    - (2) Federal Law and Regulation. When Procurement involves the expenditure of federal assistance funds, Tremonton City shall comply with applicable federal law and regulations.
    - (3) Extending Existing Contracts. To reduce service disruptions the Department Head or City Manager may recommend to the City Council to extend existing contracts with vendors or Independent Contractors.
    - (4) Emergency Procurement. Notwithstanding any other provision of this policy, when there is an immediate threat to public health, welfare or safety, or City facilities and infrastructure, the City Council, Mayor, or the City Manager, may authorize others to make emergency Procurement. A written determination of the basis of the emergency and the selection of the particular contractor or vendor shall be included in the contract file. UCA 11-39-104 allows for exceptions for emergency repairs for Building Improvements and Public Works Projects.

3. DEFINITIONS.

A. The terms below shall have the following meaning:

- (1) “Bid Limit” is defined in UCA 11-39-101 as amended.
- (2) “Building Improvement” is as defined in UCA 11-39-101 as amended. Generally, Building Improvement shall mean the construction or repair of a public building or structure.
- (3) “Contract” means any Tremonton City agreement for the Procurement or disposal of supplies, services, or construction.
- (4) “Procurement” means buying, purchasing, renting, leasing, leasing with an option to purchase, or otherwise acquiring any supplies, services, or construction.
- (5) “Purchase Description” means the document and words used in a solicitation to describe the supplies, services, or construction to be purchased, and includes specifications attached to or made a part of the solicitation.
- (6) “Professional Services Agreement” means an agreement which is approved by the City Council by resolution in which the City receives professional services from an independent contractor.
- (7) “Purchase Orders” (sometimes referred to as P.O.) means a preprinted, numbered document on forms provided by Tremonton City which shows purchase details which includes the seller information, indicating types or services of Procurement, quantities, and prices for products or services and the City’s account number with which to record the expense.
- (8) “Public Works Project” is as defined in UCA 11-39-101 as amended. Generally, Public Works Project means the construction of a park or recreational facility or a pipeline, culvert, dam, canal, or other system for water, sewage, storm water, or flood control.
- (9) “Request for Bid” (RFB) means that Tremonton City provides detailed project specifications that outlines the bidding process and contract terms and provides guidance on how the bid shall be formatted and presented. The specifications allow Vendors to send in their bid indicating how much the project shall cost to complete. Because the focus of the Request for Bid is on the Vendor’s price for project completion, there is less emphasis on the bidder introducing its own ideas. This separates the RFB from a Request for Proposal (RFP).

- (10) “Request for Proposal” (RFP) means that Tremonton City announces that funding is available for a particular project or program and allows a Vendor to introduce their own ideas on how to complete the project or program along with a bid for completing the project or program. The Request for Proposal (RFP) outlines the bidding process and contract terms and provides guidance on how the bid shall be formatted and presented.
- (11) “Request for Qualifications” (RFQ) means that Tremonton City announces that funding is available for a particular project, program, or service and allows a Vendor to provide statements and other documents that demonstrate that they are qualified to be considered for the completion of the project or program, or to provide the service. The Request for Qualifications (RFQ) may outline the project, program, or service and potential contract terms, and provides guidance on how the state of qualifications shall be formatted and presented. A submittal by a Vendor of their statement of qualification does not guarantee that the Vendor shall be contracted to perform any project, program, or service but only gives notice to Tremonton City that the Vendor desires to be considered.
- (12) “Single-Source Provider” means is one that provides a particular product, part, or service for an agency or department, which no other company provides or independent contractor can reasonably provide.
- (13) “Vendor” means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity that has intent to sale goods or services to the City.

#### 4. AUTHORIZATION FOR EXPENDITURES.

- A. Budget Appropriation. Annually the City Council appropriates an expenditure budget for departments and funds. Appropriations lapse, excepting appropriations in the capital projects fund, at the end of the year (See Utah Code Annotated 10-6-130).
- B. Expenditures Within Budget Appropriation. Department Heads are authorized to expend funds in accordance with an approved budget and shall ensure that the total budget in which they have stewardship is not exceeded (See Utah Code Annotated 10-6-123).
- C. Fiscal Year End. Expenditures are accounted for within a fiscal year when the invoice and services are rendered or the products are received. Towards the end of a fiscal year, the City Manager may set a date whereby Department Heads shall not expend funds without prior approval.

- D. Procurement Made According to Policy. In accordance with Utah Code Annotated 10-6-122 all Procurement shall be made or incurred according to the purchasing procedures established by each City by ordinance or resolution and only on an order or approval of the person duly authorized to act as a purchasing agent for the City.
- E. Purchase Orders Required. All Procurement requires a Purchase Order to be filled out and approved prior to the purchase and submitted to the Accounts Payable Clerk. A Purchase Order shall be filled out with a receipt attached and submitted to the Accounts Payable Clerk for all Procurements made with City Credit Cards.
- F. Basis for Making Procurement Decisions and Authorizing the Expense. The position/body that has been granted authority to authorize an expense by signature of a Purchase Order shall make the decision upon requirements set forth in the Purchase Description, Request for Bids, Request for Proposal, and Request for Qualifications and balancing the policy objectives of Section 1 Policy Objectives. It is not requisite that the position/body who has authority to make Procurement decisions select the Vendor based upon the lowest possible price except as specified in UCA 11-39 for Building Improvement and Public Works Projects. Additionally, the position/body making the Procurement decision may, after receiving the bids, inquire to see if an independently owned Vendor in Tremonton City or the Bear River Valley may match the lowest bid received.

The positions/body listed below is granted the authority to make Procurement decisions and authorize an expense by signature of a Purchase Order in the following amounts:

<b>Purchase Order Type/Amount</b>	<b>Signature Authorization</b>
Vehicles & Equipment above \$100,000	City Council
Unlimited with City Council Approval	City Manager City Recorder Finance Director Fire Chief Mayor Police Chief Public Works Director
\$25,001 to \$75,000 and/or Vehicles & Equipment \$100,000 and under when co-signed by the City Manager or Finance Director	All Department Heads

\$25,000 and under	Assistant Public Works Director City Recorder Community Services Director Fire Chief Police Chief Police Lieutenant Public Works Director
\$5,000 and under	Building Official City Treasurer Code Administrator Emergency Manager Library Director Pantry Director Parks and Recreation Director Payroll Administrator Public Works Leads Public Works Operations Manager Senior Center Director Zoning Administrator
\$1,000 and under	Communication/Events Coordinator Judge Police Records Clerks Recreation Supervisor Sergeants
\$500 and under	City Employees when co-signed by Supervisor

G. Stamped Signature Authorization. Authorized personnel may use a stamped signature in lieu of a wet (handwritten) signature on purchasing documents, including purchase orders, vendor agreements, and internal approvals provided the following conditions are met:

- (1) The individual whose signature is stamped must have previously granted written approval for the use of their stamped signature in purchasing transactions.
- (2) Stamps must be securely stored and accessible only to designated staff. Misuse or unauthorized use of a signature stamp will result in disciplinary action.

5. CREDIT CARD PURCHASING POLICY.

- A. Purpose. The purpose of this policy is to establish clear rules for the use of municipal credit cards, ensure timely submission of purchase orders and documentation, maintain fiscal accountability and protect public funds.
  - B. Scope. The policy applies to all municipal employees, officers, and officials who are issued a municipal credit card or are authorized to make purchases on behalf of the municipality.
  - C. General Policy. Municipal credit cards are provided strictly for official city expenses and purposes. All purchases must comply with municipal procurement policies, budgetary limits, and documentation requirements. Use of a credit card is a privilege, not a right, and may be suspended or revoked at any time for noncompliance.
  - D. Purchase Order Requirements. A purchase order shall be submitted to accounts payable at the time of the purchase or within five (5) days of the transaction. All required documentation (receipts, invoices, etc.) shall be submitted with the purchase order. Failure to submit a purchase order and documentation within the required timeframe constitutes noncompliance with this policy.
  - E. Prohibited Practices. The following practices are prohibited:
    - (1) Making purchases without submitting a purchase order within the required timeframe.
    - (2) Repeated late submissions of purchase orders or documentation.
    - (3) Circumventing procurement or approval requirements.
    - (4) Personal purchases of any kind.
6. PROGRESSIVE ENFORCEMENT FOR FAILURE TO SUBMIT PURCHASE ORDERS ON TIME. Failure to submit purchase orders and required documentation in a timely manner will result in the following progressive disciplinary actions:
- A. First Occurrence.
    - (1) Verbal warning issued by the employee's supervisor or department head.
    - (2) Reminder of purchase order requirements and expectations.
    - (3) Documentation of the warning maintained by the supervisor (not placed in personnel file).
  - B. Second Occurrence.

- (1) Second verbal warning issued by the supervisor or department head.
  - (2) Reinforcement of policy requirements and consequences of continued noncompliance.
  - (3) Documentation maintained by the supervisor.
- C. Third Occurrence.
- (1) Written warning issued to the employee. The written warning shall describe the violations, reference prior verbal warnings, and clearly state expectations moving forward.
  - (2) The written warning shall be placed in the employee's personnel file.
- D. Fourth Occurrence.
- (1) Formal corrective conversation involving the employee, supervisor or department head, and City Manager (if applicable).
  - (2) The conversation will emphasize the seriousness of continued noncompliance and the risk of losing credit card privileges.
  - (3) Documentation of the meeting shall be retained.
  - (4) The employee shall be placed on a probationary period of one (1) year for credit card use. During the probationary period, all purchase orders and documentation shall be submitted timely and in full. Any additional failure to comply will advance enforcement to the next level.
  - (5) If no further occurrences take place during the one-year probationary period, the progressive enforcement sequence shall reset, and prior occurrences will no longer be counted for purposes of this policy.
- E. Fifth Occurrence (During Probationary Period).
- (1) Immediate revocation of municipal credit card privileges.
  - (2) The employee must surrender the credit card to the City Manager.
  - (3) Future purchasing must be completed through standard procurement processes without use of a credit card.
  - (4) Reinstatement of credit card privileges, if any, shall be at the sole discretion of the municipality and may require additional training or corrective action.

- F. Additional Consequences. Repeated failure to comply with purchasing and documentation requirements may also result in further disciplinary action under applicable personnel policies, up to and including suspension or termination, if warranted.
- G. Non-Exclusivity of Discipline. Nothing in this Progressive Disciplinary scheme shall be construed to limit City's ability to revoke or suspend credit card privileges. Notwithstanding the foregoing ordinary course, the City may suspend or revoke a credit card privilege without following the foregoing progressive disciplinary measures.
- H. Training and Acknowledgment. All cardholders must sign the Municipal Credit Card Policy Acknowledgement Form (See Appendix Number 60 for details) an acknowledgement confirming they have read, understand, and agree to comply with this policy.

7. PROCUREMENT *NOT* REQUIRING BIDS.

- A. Procurement *not* requiring bids shall include:
  - (1) Procurements Less than \$2,000. Procurement costing less than \$2,000 in total shall *not* require bids of any type.
  - (2) State Procurement Contracts. Procurement made through existing service/suppliers/leasing companies and the cooperative purchasing contracts administered by the State Divisions of Purchasing.
  - (3) Single-Source Provider. Procurement made from a Single-Source Provider. The Department Head shall provide a written statement stating that the product is being purchased from a Single Source Provider.
  - (4) Professional Services Agreement Approved by the City Council. Procurement offered for a Professional Services Agreement which is approved by the City Council.
  - (5) Insurance Procurement. Procurement offered for any type of insurances offered by the City including, but not limited to: medical, dental, liability, property, auto, etc. which is approved by the City Council.

8. GENERAL PROCUREMENT POLICIES.

- A. General Procurement Policies. The following policies shall be applicable to any Procurement:
  - (1) Artificial Division of Procurement. Procurement shall not be artificially divided so as to constitute a small purchase under this section to avoid the

procurement process. The City Manager is granted discretion in making the determination of an artificial division.

- (2) Rejection of Bids. The City reserves the right to reject any or all bids. If the City rejects all bids the City may re-advertise the bids.
- (3) No Response Received. If there are no bids, proposals, or qualifications submitted in response to a Request for Bid, Proposals, or Qualifications the City Council may proceed under their own direction to make the purchase.
- (4) Accounts Payable Clerk Verification. The Accounts Payable Clerk shall verify compliance of the City purchasing policy with the processing of Purchase Orders.
- (5) Contract File. In accordance with Utah Code Annotated 10-6-122 and in conjunction with the Utah Municipal General Recorders Retention Schedule, Schedule 10 whenever the City is required by law to receive bids for purchases, construction, repairs, or any other purpose requiring the expenditure of funds, the City Recorder shall keep on file all bids received, together with proof of advertisement by publication or otherwise, for: (a) at least four years following the letting of any contract pursuant to those bids; or (b) four years following the first advertisement for the bids, if all bids pursuant to that advertisement are rejected.
- (6) Retention. Any payment of funds that is retained or withheld shall be handled by the City in conformance with UCA 13-8-5 as amended. The requirement of this State law is generally that any payment that is retained shall be placed in an interest-bearing account with the interest to accrue for the benefit of the Vendor to be paid after the project is completed and accepted by the City. It is the responsibility of the Vendor to ensure that any interest accrued on the retention is distributed by the Vendor to the sub-vendor on a pro rata basis. Additionally, no retention can exceed five (5) percent of the payment due, and the total retention cannot exceed five (5) percent of the contract price.

9. PROCUREMENT FOR BUILDING IMPROVEMENTS OR PUBLIC WORKS PROJECTS. The City shall follow the requirements of Utah Code 11-39-101 et seq. for projects associated with Building Improvements of Public Works Projects. It is suggested that the Department Head making the Procurement review the aforementioned Utah Code Sections prior to making the Procurement. Utah Code shall govern in all cases of conflict with City policy below.

- A. When the City embarks on Procurement for Building Improvement or Public Works Projects the City shall, in accordance with UCA 11-39-102 as amended, cause:

- (1) Plans and specifications to be made for the Building Improvement or Public Works Project; and
  - (2) An estimate of the cost of the Building Improvement or Public Works Project to be made.
- B. When the City's prepared estimate for Building Improvement or Public Works Projects exceeds the Bid Limit as defined in UCA 11-39-101 the City shall follow the process and requirements prescribed in UCA 11-39-101 et seq. for Procurement for Building Improvements and Public Works Projects. The Bid Limits contained in UCA 11-39-101 are generally as follows:
- (1) Building Improvements Bid Limits. Bid Limits for Building Improvements is the greater amount of the two following: 1) improvements over \$40,000 or 2) the Bid Limit as described in UCA 11-39-101.
  - (2) Public Works Projects Bid Limits. Bid Limits for Public Works Projects is the greater amount of the two following: 1) improvements over \$125,000 or 2) the Bid Limit as described in UCA 11-39-101.
- C. When the City's prepared estimate for Building Improvement or Public Works Projects does *not* exceed the Bid Limit as defined in UCA 11-39-101, the City shall follow the process contained in Section 9, Section 10, or Section 11 of this policy as appropriate.
10. PROCUREMENT FOR CLASS C ROADS IMPROVEMENT PROJECTS. The City shall follow the requirements of Utah Code 72-6-108 through 110 for projects associated with Class C Roads. It is suggested that the Department Head making the Procurement review the aforementioned Utah Code Sections prior to making the Procurement. Definitions associated with Class C Road Improvements are contained in Utah Code 72-6-109. Utah Code shall govern in all cases of conflict with City policy below.
- A. When the City embarks on Procurement for Class C Road Improvement Project the City shall, in accordance with UCA 72-6-108 as amended, cause:
    - (1) Plans and specifications to be made for the Class C Road Improvement Project; and
    - (2) An estimate of the cost of Class C Road Improvement Project to be made.
  - B. When the City's prepared estimate for Class C Road Improvement Project exceeds the Bid Limit as defined in UCA 72-6-109, the City shall follow the process and requirements prescribed in UCA 72-6-108 for Procurement for Class

C Road Improvement Project. The Bid Limits contained in UCA 72-6-109 are generally as follows:

- (1) Class C Road Improvement Project Bid Limits. Bid Limits for Class C Road Improvement Project is the greater amount of the two following: 1) improvements over \$125,000 or 2) the Bid Limit as described in UCA 72-6-109.

C. When the City's prepared estimate for Class C Road Improvement Project Projects does *not* exceed the Bid Limit as defined in UCA 11-39-101, the City shall follow the process contained in Section 10 or Section 11 of this policy as appropriate.

11. PROCUREMENT REQUIRING TELEPHONE, INTERNET, AND WRITTEN BIDS.

A. Procurement Requiring Telephone, Internet, and Written Bids. Procurement requiring telephone, internet, and written bids shall include the following Procurement:

- (1) Procurement between \$2,000 and \$10,000. Department Heads shall attempt to obtain at least three (3) telephone or internet bids for Procurement when the expense is between \$2,000 and \$10,000. Department Heads shall document telephone bids by listing Vendors and their corresponding bid amounts. All obtained telephone and internet bids shall be submitted to the Recorder's Office with Purchase Orders to be filed.
- (2) Procurement between \$10,000 and \$40,000. Department Heads shall attempt to obtain at least three (3) internet or written bids for Procurement when the expense is between \$10,000 and \$40,000. All obtained internet or written bids shall be submitted to the Recorder's Office with Purchase Orders to be filed.
- (3) Procurement of Vehicles and Equipment. Department Heads shall attempt to obtain at least three (3) internet or written bids for Procurement of vehicles and equipment regardless of the expense. All obtained internet or written bids shall be submitted to the Recorder's Office with Purchase Orders to be filed.
- (4) Procurement of Building Improvements. Department Heads shall attempt to obtain at least three (3) internet or written bids for Procurement of Building Improvements that do *not* exceed the Bid Limits of UCA 11-39-101. All obtained internet or written bids shall be submitted to the Recorder's Office with Purchase Orders to be filed.

- (5) Procurement of Public Works Projects. Department Heads shall attempt to obtain at least three (3) written bids for Procurement of Public Works Projects that does *not* exceed the Bid Limits of UCA 11-39-101. All obtained written bids shall be submitted to the Recorder's Office with Purchase Orders to be filed.
- B. Process for Obtaining Written Bids. Department Heads shall contact potential Vendors to solicit telephone, internet, or written bids. The selection of potential Vendors to contact is at the discretion of the Department Head. There is no public notice or public bid opening for telephone, internet, or written bids.
- C. Selection of Bids. The selection of bids shall be done in accordance with the policies and procedures contained in this policy in Section 4 "Authorization for Expenditures".
- D. Cancellation and Rejection of Bids. Any bids or other solicitation may be canceled, or any or all bids may be rejected, in whole or in part, when it is in the best interests of Tremonton City.

12. PROCUREMENT REQUIRING SEALED BIDS.

- A. Procurement Requiring Sealed Bids. Except as otherwise provided by Utah Code or this policy, Procurement anticipated to be in excess of the amounts listed below shall be awarded by competitive sealed bidding:
  - (1) Procurement over \$75,000
- B. Process for Obtaining Sealed Bids. The process for obtaining sealed bids shall be as follows:
  - (1) Request for Bids. Request for Bids shall be issued for competitive sealed bidding. The Request for Bids shall include a Purchase Description and all contractual terms and conditions applicable to the Procurement.
  - (2) Public Notice. Public notice of the sealed bid procurement shall be given at least seven (7) days prior to the advertised date of the opening of the bids. The City Recorder shall give public notice through the appropriate media as they deem appropriate.
  - (3) Bid Opening. Sealed Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Request for Bids. The amount of each bid and any other relevant information, together with the name of each bidder, shall be recorded. The record and each bid shall be retained by the Recorder's Office in accordance with Utah Code and in conjunction with the Utah Municipal General Recorders Retention Schedule and shall be open to public inspection.

- (4) Alteration of Bids. Sealed Bids shall be unconditionally accepted without alteration or correction, except as authorized in this policy.
  - (5) Correction or Withdrawal. Correction or Withdrawal of inadvertently erroneous bids shall be permitted prior to award. However, following bid award, only complete withdrawal of a bid shall be permitted. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of Tremonton City or fair competition shall be permitted. All decisions to permit the correction or withdrawal of bids or to cancel awards or Contracts based on bid mistakes shall be supported by a written determination made by the Department Head.
- C. Selection of Bids. The Selection of Bids shall be done in accordance with the policies and procedures contained in this policy in Section 4 “Authorization for Expenditures”.
  - D. Cancellation and Rejection of Bids. An invitation for bids or other solicitation may be canceled, or any or all bids may be rejected, in whole or in part, when it is in the best interests of Tremonton City.

### 13. PROCUREMENT REQUIRING SEALED PROPOSALS.

- A. Sealed Proposals in lieu of bids. When the Department Head and City Manager determine that the use of sealed bids or sealed qualifications is either not practicable or not advantageous to Tremonton City, a Request for Proposals may be noticed. The Request for Proposals shall include a Purchase Description and all contractual terms and conditions applicable to the Procurement.
- B. Public Notice. Public notice of the Request for Proposals shall be given at least seven (7) days prior to the advertised date of the opening of the proposals. The City Recorder shall give public notice through the appropriate media as they deem appropriate.
- C. Proposal Opening. Proposals shall be opened so as to avoid disclosure of contents to competing Vendors during the process of negotiation. A register of Vendors shall be prepared and retained by the Recorder’s Office in accordance with Utah Code and in conjunction with the Utah Municipal General Recorders Retention Schedule and shall be open for public inspection after contract award.
- D. Stated Evaluating Factors. The Request for Proposals shall state the relative importance of price and other evaluating factors.
- E. Short List. The City may create a short list of Vendors based upon requirements set forth in the Purchase Description and Request for Proposals whereby the City may discuss the Vendor’s proposal. Vendors on the short list shall be afforded fair

and equal treatment with respect to any opportunity for discussion and revision of proposals and revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing Vendors.

- F. Selection. Award shall be made to the Vendor whose proposal is determined to be the most advantageous to Tremonton City, taking into consideration price and the evaluation factors set forth in the Request for Proposals.
- G. Cancellation and Rejection of Proposals. A Request for Proposal or other solicitation may be canceled, or any or all proposals may be rejected, in whole or in part, when it is in the best interests of Tremonton City.

#### 14. PROCUREMENT REQUIRING SEALED QUALIFICATION.

- A. Sealed Qualifications in lieu of bids. When the Department Head and City Manager determine that the use of sealed bids or sealed proposals is either not practicable or not advantageous to Tremonton City, a Request for Qualifications may be noticed. The Request for Qualifications shall include a Purchase Description and all contractual terms and conditions applicable to the Procurement.
- B. Public Notice. Public notice of the Request for Qualifications shall be given at least seven (7) days prior to the advertised date of the opening of the proposals. The City Recorder shall give public notice through the appropriate media as they deem appropriate.
- C. Qualification Opening. Qualifications shall be opened so as to avoid disclosure of contents to competing Vendors during the process of negotiation. A register of Vendors shall be retained by the Recorder's Office in accordance with Utah Code and in conjunction with the Utah Municipal General Recorders Retention Schedule and shall be open for public inspection after contract award.
- D. Stated Evaluating Factors. The Request for Qualifications shall state the relative importance of price and other evaluating factors.
- E. Short List. The City may create a short list of Vendors based upon requirements set forth in the Purchase Description and Request for Qualifications whereby the City may discuss the Vendor's Qualifications. Vendors on the short list shall be afforded fair and equal treatment with respect to any opportunity for discussion. In conducting discussions, there shall be no disclosure of any information derived from qualifications submitted by competing Vendors.
- F. Selection. Award shall be made to the Vendor whose qualification is determined to be the most advantageous to Tremonton City, taking into consideration price and the evaluation factors set forth in the Request for Qualifications.

- G. Cancellation and Rejection of Qualification. A Request for Qualification or other solicitation may be canceled, or any or all qualifications may be rejected, in whole or in part, when it is in the best interests of Tremonton City.

15. VENDOR APPEALS.

- A. Any actual or prospective Vendor who is aggrieved in connection with the solicitation or award of a contract may appeal to the City Manager. An appeal shall be submitted in writing with two (2) working days after the Procurement decision.
- B. The City Manager shall issue a written decision within two (2) working days regarding any appeal, if it is not settled by a mutual agreement. The decision shall state the reasons for the action taken and inform the Vendor of the right to appeal to the City Council.
- C. The City Council shall be the final appeal on Tremonton City level.
- D. All further appeals shall be handled as provided in Section 63g-6-801 et seq. of the Utah Code.

16. CONTRACTS.

- A. Cost-plus-a-percentage-of-cost Contracts prohibited. Subject to the limitations of this section, any type of contract which shall promote the best interests of Tremonton City may be used, provided that the use of a cost-plus-a-percentage-of-cost Contract is prohibited and so long as the contract does not violate UCA 13-8-101 et seq. "Unenforceable Agreements".
- B. Miscellaneous Required Contract clauses. The following clauses shall be included in Contracts:
  - (1) The unilateral right of Tremonton City to order, in writing, changes in the work within the scope of the Contract and changes in the time of performance of the Contract that do not alter the scope of the contract work.
  - (2) Variations occurring between estimated quantities of work in a contract and actual quantities.
  - (3) Suspension of work ordered by Tremonton City.
- C. Indemnity/Hold Harmless Clause. Each contract with an independent contractor shall contain indemnity/hold harmless clauses which provide that:

- (1) All contracts shall contain indemnity and defense provisions in which the independent contractor assumes all liability arising out of work performed by the contractor or their officers, employees, agents, and volunteers. In accordance with Utah Code Annotated 13-8-1 and 13-8-2 this provision does not apply to construction and design professionals.
  - (2) All Vendors shall provide evidence that they have acquired and maintain comprehensive general liability coverage, including liability insurance covering the contract concerned, prior to the execution of the contract. Tremonton City and its officials, employees, and agents shall be named as “additional insured” on the liability insurance policy and a copy of the policy shall be given to the Accounts Payable Clerk.
- D. Workers’ Compensation Clause. Each contract with an independent contractor shall contain provisions that ensure the contractor is carrying Workers’ Compensation insurance coverage.
- (1) Tremonton City shall require evidence of Workers Compensation insurance (or evidence of qualified self-insurance) from all contractors prior to the contract for services being signed.
  - (2) Tremonton City shall have the contractor show evidence of the contractor's Workers Compensation coverage to Tremonton City and a copy shall be maintained by the Accounts Payable Clerk.
- E. Fiscal Funding Clause for Lease. Pursuant to Utah Code Annotated § 10-1-202, the City has the authority to enter into contracts, including purchase contracts. However, Section 3(1) Article XIV of the Utah Constitution in essence states that, purchase contracts secured by property taxes only, and not approved by a direct vote of the City’s citizens, may not have a term in excess of one (1) fiscal year. Base on the aforementioned statutory authority, there is a conflict in lease and/or purchase contracts for which no bonding takes place and for which the term of the contract is in excess of one (1) year. Frequently a problem between the two statutory authorities occurs with purchase or lease contracts for office equipment, yard equipment, and computer equipment as companies with which the City typically contracts for these types of purchases, draft term agreements in excess of the one (1) year allowed by the State Constitution. To remedy this situation, the State of Utah Uniform Accounting Manual has suggested the following, "Governmental units frequently obtain needed assets through lease-purchase agreements. These agreements need to contain a 'fiscal funding' or cancellation clause which permits the governmental unit to terminate the agreement on an annual basis to ensure the debt restrictions set forth in Article XIV Section 3 of the State constitution are not violated." All lease agreements over a period of one (1) year shall have the fiscal funding or cancellation clause to comply with the applicable Utah Constitution Section.

17. ETHICS IN PUBLIC CONTRACTING

- A. No Person involved in making procurement decisions may have personal investments in any business entity which shall create a substantial conflict between their private interests and their public duties.
  
- B. Any Person involved in making Procurement decisions shall not ask, receive, or offer to receive any emolument, gratuity, contribution, loan, or reward, or any promise thereof, either for the Person's own use or the use or benefit of any other person or organization from any person or organization interested in selling to Tremonton City.

Notes: