

ARTICLE II. - PURCHASING

Footnotes:

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Editor's note— Ord. No. 2009-9089, § 1, adopted July 9, 2009, amended Art. II in its entirety. Former Art. II pertained to similar subject matter and derived from Ord. No. 6778, § 1, adopted Apr. 18, 1996; Ord. No. 6895, § 1, adopted Oct. 17, 1996; Ord. No. 7442, § 2, adopted Mar. 25, 1999; Ord. No. 7505, §§ 1, 2, adopted Aug. 5, 1999; and Ord. No. 7721, § 1, adopted Oct. 12, 2000.

State Law reference— *Municipal purchasing, V.T.C.A., Local Government Code ch. 252.*

Sec. 16-4. - Division of purchasing established; office of purchasing manager established.

There is hereby established in the administrative service of the city, in the intergovernmental services team, a division of purchasing and a position of purchasing manager.

(Ord. No. 2009-9089, § 1, 7-9-09)

Sec. 16-5. - Appointment of purchasing manager.

The purchasing manager shall be appointed by the intergovernmental services team leader.

(Ord. No. 2009-9089, § 1, 7-9-09)

Sec. 16-6. - Purchasing authority.

- (a) The division of purchasing shall have the authority and the duty to purchase or contract for all goods, materials, services, or supplies for the use of any department of the city in accordance with the procedure as prescribed by this article and such rules and regulations as adopted for the internal management and operation of the division of purchasing.
- (b) The division of purchasing shall not be responsible for those contracts made by the city attorney's office in connection with its provision of legal services on behalf of the city, its employees or representatives, or other types of purchases not amenable to competitive bidding.
- (c) Procurement authority with respect to certain supplies, services, or construction may be delegated to other city officials when such delegation is deemed necessary for the effective procurement of these supplies, services, or construction.

(Ord. No. 2009-9089, § 1, 7-9-09)

Sec. 16-7. - Unauthorized purchases.

Except as otherwise provided in this article, it shall be unlawful and contrary to city policy for any city officer, department head, or employee to order the purchase of any goods, materials, services, or supplies, or make any contract within the purview of this article other than through the division of purchasing and any purchase order or contract made contrary to the provisions hereof [shall be unlawful] and the city shall not be bound thereby. Policies and procedures shall be adopted by the intergovernmental services team in conjunction with the city manager or the city manager's designee.

(Ord. No. 2009-9089, § 1, 7-9-09)

Sec. 16-8. - Preparation of standard specifications for goods, services, etc.

- (a) The division of purchasing shall obtain and secure with the cooperation of the using city departments standard written specifications for goods, materials, services, and supplies used by the various departments of the city.
- (b) All specifications shall be definite and certain and shall permit competitive bidding whenever possible except for those items not required to be competitively bid or competitive proposals secured by the terms of this chapter and state statute.

(Ord. No. 2009-9089, § 1, 7-9-09)

Sec. 16-9. - Filing of requisitions and estimates.

All using departments, either by or with the authorization of the head of the department under which the using department operates, shall file electronically or by paper with the division of purchasing detailed requisitions or estimates of their requirements and goods, materials, services, and supplies, and contractual services in accordance with the purchasing manual to be adopted pursuant to this article.

(Ord. No. 2009-9089, § 1, 7-9-09)

Sec. 16-10. - Sufficient unencumbered appropriations required prior to purchase.

The division of purchasing shall not issue any order for delivery on a contract or open market purchase until the chief financial officer or the chief financial officer's designee shall have certified after preaudit that there is to the credit of the using department a sufficient unencumbered appropriations balance, in excess of all unpaid obligations, to defray the amount of such order, except in emergency situations.

(Ord. No. 2009-9089, § 1, 7-9-09)

Sec. 16-11. - Conflicts of interest prohibited; exception.

- (a) Any purchase order or contract within the purview of this article in which any employee of the division of purchasing or any appointed officer or employee of the city is financially interested, directly or indirectly, shall be void before the execution of a purchase order or contract, except the city council shall have the authority to waive compliance with this section when it finds such action to be in the best interest to the city and its citizens as a whole.
- (b) However, chapter 171, Texas Local Government Code, as amended, shall be applicable to conflicts of interests in purchasing and shall control when there is a conflict with this section.

(Ord. No. 2009-9089, § 1, 7-9-09)

Sec. 16-12. - Gifts and rebates prohibited; exception.

The division of purchasing employees and all appointed officers and employees of the city are expressly prohibited from accepting, directly or indirectly, from any person to which any purchase order or contract is or might be awarded, any rebate, gift, money, or anything of value whatsoever, except when given for the use and benefit of the city.

(Ord. No. 2009-9089, § 1, 7-9-09)

Sec. 16-13. - Competitive bidding required; use of products made of recycled materials.

- (a) Except for property, goods, services, and items exempted from the competitive bid requirements by the Texas Local Government Code, all purchases of and contracts to purchase goods, materials, nonprofessional services, and supplies when the estimated cost thereof exceeds the amount of money specified in section 252.021(a) of the Texas Local Government Code shall be based on competitive bids from the lowest responsible bidder or offeror.
- (b) The purchasing procedure should encourage the use of products made of recycled materials as set forth in section 361.426, Texas Health and Safety Code.

(Ord. No. 2009-9089, § 1, 7-9-09)

Sec. 16-14. - Sale of personal property.

- (a) *Generally.* All sales of personal property which have become obsolete and unusable shall, except as specifically provided in this article or by applicable state law, be based whenever possible on (1) competitive bids and sold to the highest responsible bidder after due notice inviting proposals, or (2) public auction to the highest bidder.
- (b) *Sale of issued weapons and badges to retired peace officers and firefighters.*
 - (1) Notwithstanding subsection (a) above, the division of purchasing, upon the direction of the chief of police or fire chief, shall sell to a retired peace officer or firefighter, or to the estate of a deceased peace officer or firefighter, that officer's city-issued weapon and breast badge.
 - (2) An officer qualifies as retired for purposes of this subsection if the officer:
 - a. Is receiving a disability pension from the city; or
 - b. Has completed ten (10) years of service with the city.
 - (3) The price of a weapon or badge sold under this section shall be the fair market value of the item as determined by the division of purchasing, or its original cost depreciated by ten (10) percent for each year of service of the officer, whichever is less.
- (c) *Sale of obsolete, excess, or damaged library materials.* Upon the determination by the director of libraries, with the concurrence of the city manager or the designee of the city manager, that certain library materials are obsolete, excess, or damaged, said materials may be transferred to an organization selected by the city council for the purpose of selling said materials to raise funds, which proceeds shall be expended solely on behalf of the Irving Public Library for the purchase of library materials, equipment, or other Irving Public Library System enhancements, including special library projects. For the purposes of this subsection, materials or library materials shall mean printed works, audiovisual and electronic recordings, puzzles and games, and other materials included in the library's collection.

(d) *Sale of memorabilia to retiring city manager.*

- (1) Notwithstanding subsection (a) above, the division of purchasing, upon the approval and direction of the mayor and city council, shall sell to a retired city manager, or to a group of department heads and employees for presentation to said city manager, certain items of office memorabilia, including, but not limited to, a chair, flag, or photograph used by said city manager during his or her tenure.
- (2) The city manager qualifies as retired for purposes of this subsection if said city manager:
 - a. Is receiving a disability pension from the city; or
 - b. Has completed ten (10) years of service with the city.
- (3) The price of such items sold under this section shall be the fair market value of the item as determined by the division of purchasing or its original cost depreciated by ten (10) percent for each year of service of the city manager, whichever is less.

(e) The division of purchasing shall be designated to perform the property disposition duties.

(f) *Sale of retiring police dog to handler.*

- (1) Notwithstanding subsection (a) above, the purchasing manager, upon the approval and direction of the chief of police, shall sell a police dog which has been retired due to a diminished ability to perform duty to the employee on the police department who was the dog's handler.
- (2) Inasmuch as a retired police dog has a negligible market value, and due to the fact that the city would otherwise have to incur an expense of continued maintenance or euthanizing the animal, and insofar as preserving the life of the dog can be a humanitarian gesture and have significant positive impacts on the morale of the police K-9 units, the price of such an animal to the handler shall be one dollar (\$1.00).

(Ord. No. 2009-9089, § 1, 7-9-09; Ord. No. 2016-9843, § 1, 9-8-16)

Sec. 16-15. - Formal contract procedure—Notice inviting bids or proposals.

- (a) *Newspaper advertisements.* Newspaper advertisements shall be in accordance with the requirements of chapter 252 of the Texas Local Government Code when this requirement is legally applicable.
- (b) *Bidders' or proposal list.* The division of purchasing should solicit sealed bids or proposals from all responsible prospective suppliers who have requested their names be added to a bidders' or offerors' list, which the division shall maintain, by sending them a notice which shall sufficiently acquaint them with the proposed purchase or sale. Names may also be removed from the bidders' or offerors' list due to nonresponsiveness to bid and/or failure to fulfill their obligations to the city.
- (c) *Evaluation requirements.* The notice or invitation to bid or propose shall contain the evaluation requirements, some of which are set forth in section 16-20 of this chapter.

(Ord. No. 2009-9089, § 1, 7-9-09)

Sec. 16-16. - Same—Bid or proposal deposit.

- (a) By this section, bid or proposal deposits may be prescribed in public notices inviting bids at the discretion of the division of purchasing.
- (b) If a bid or proposal deposit is deemed necessary, unsuccessful bidders or offerors shall be entitled to return of surety after award of the bid or proposal. A successful bidder or offeror shall forfeit any surety required by this section and by the written notice and specifications upon failure to enter a contract approved by the city attorney, within ten (10) days after the receipt of the contract.
- (c) If a bid or proposal deposit is not required, a successful bidder or offeror shall be liable in damages to the city to the extent of the difference in the original bidder's or offeror's contract and the next available bidder's or offeror's contract upon failure to enter into a contract approved by the office of city attorney within ten (10) days after the receipt of the contract.

(Ord. No. 2009-9089, § 1, 7-9-09)

Sec. 16-17. - Same—Bid or proposal opening procedure.

- (a) Except as provided by subsection (b) below, bids and proposals initiated by the purchasing division shall be submitted sealed to the purchasing division and shall be identified as a bid or proposal on the outside envelope.
- (b) Electronic bids and proposals shall be submitted pursuant to the purchasing division's electronic bid submission rules and procedures as approved by the city council pursuant to chapter 252 of the Texas Local Government Code, as amended.
- (c) Bids shall be opened in public at the time and place stated in the public notices.
- (d) Where provided in the request for proposals, proposals shall be opened so as to avoid disclosure of contents to competing offerors and kept secret during the process of negotiation; however, all proposals received by the city shall be open to public inspection after contract award,

but trade secrets and confidential information shall not be open for public inspection pursuant to chapter 252 of the Texas Local Government Code, as amended.

(Ord. No. 2009-9089, § 1, 7-9-09; Ord. No. 2016-9798, § 1, 4-28-16)

Sec. 16-18. - Same—Discussion with responsible offerors and revisions to proposals.

- (a) Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such 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 offerors.
- (b) As provided in the request for proposals, discussions may be conducted with the offerors who submit proposals determined to be reasonably qualified for selection for award.

(Ord. No. 2009-9089, § 1, 7-9-09)

Sec. 16-19. - Same—Rejection of bids.

The division of purchasing shall have the authority to recommend to the city manager that the city council reject all bids and proposals, part of all bids or proposals, or all bids or proposals for any one or more suppliers or contractual services included in the proposed contract, where the public interest will be served thereby.

(Ord. No. 2009-9089, § 1, 7-9-09)

Sec. 16-20. - Same—Award of contract.

- (a) *Recommendations.* With the consent of the director of the user department, the purchasing manager or the purchasing manager's designee shall recommend to the city manager that the award of contracts be made within the purview of this article.
- (b) *Award to lowest responsible bidder.* Contracts resulting from competitive bidding shall be awarded by the city council based on the recommendation to the lowest responsible bidder. In determining the lowest responsible bidder, in addition to price, the recommendation may consider:
 - (1) The ability, capacity, and skill of the bidder to perform the contract and provide the service required.
 - (2) Whether the bidder can perform the contract to provide the service or make delivery within the time specified, without delay or interference.
 - (3) The character, integrity, reputation, judgment, experience, and efficiency of the bidder.
 - (4) The quality, workmanship, or performance of previous contracts or services.
 - (5) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services.
 - (6) The sufficiency of the financial resources and ability of a bidder to perform the contract or service.
 - (7) The quality, availability, and the adaptability of the supplies or contractual services to the particular use required.
 - (8) The ability of the bidder to provide future maintenance and services for the use of the subject of the contract.
 - (9) The number and scope of conditions attached to the bid.
 - (10) Prior experience or knowledge of the bidder concerning a particular field or piece of equipment.
 - (11) The safety record of the bidder.
- (c) *Award to other than low bidder.* When the recommendation to the city manager that the award is to be given to other than the lowest bidder, a formal and complete statement for the reasons of this recommendation for placing the order elsewhere shall be prepared by the director of the user department and filed with other papers relating to this transaction to be sent to the city manager.
- (d) *Tie bids.*
 - (1) *Local vendor.* When there are tie bids, quality and service being equal, the director shall recommend to the city manager that the bid be awarded to the local bidder.
 - (2) *Multiple local vendors.* If two (2) or more of the bidders submitting identical bids are local bidders, the director of the user department shall recommend to the city manager that the award of the contract be made to one of the tie bidders by drawing lots by the purchasing division.
 - (3) Where the above sections are not in effect, the director shall recommend to the city manager that the award of the contract be made to one of the tie bidders by drawing lots by the purchasing division.

(e) *Competitive sealed proposals.* Contracts resulting from competitive sealed proposals should be awarded by the city council on the division of purchasing's and user department's recommendation to the responsible offeror whose proposal is determined to be the most advantageous to the city, taking into consideration the relative importance of price, other evaluation factors specified in the request for proposals, and the relative weight to be given each factor as specified in the request for proposals. The recommendation may also consider the following:

- (1) The ability, capacity, and skill of the offeror to perform the contract and provide the service required.
- (2) Whether the offeror can perform the contract to provide the service, within the time specified, without delay or interference.
- (3) The character, integrity, reputation, judgment, experience, and efficiency of the offeror.
- (4) The quality or performance of previous contracts or services.
- (5) The previous and existing compliance by the offeror with laws and ordinances relating to the contract or services.
- (6) The sufficiency of the financial resources and ability of an offeror to perform the contract or service.
- (7) The quality, availability, and the adaptability of the supplies or contractual services to the particular use required.
- (8) The ability of the offeror to provide future maintenance and services for the use of the subject of the contract.
- (9) The number and scope of conditions attached to the proposal.
- (10) Prior experience or knowledge of the offeror concerning a particular field or piece of equipment.
- (11) The safety record of the bidder.

(Ord. No. 2009-9089, § 1, 7-9-09)

Sec. 16-21. - Same—Performance bonds and liquidated damage clauses.

The division of purchasing shall have authority to require performance or supply bonds, liquidated damage clauses, or any other types of surety in such amount as it shall find reasonably necessary to protect the best interest of the city.

(Ord. No. 2009-9089, § 1, 7-9-09)

Sec. 16-22. - Same—Subdivision of contract to avoid requirements of article prohibited.

No contract or purchase shall be divided to avoid the requirements of this article or to purposefully circumvent the spirit of this article.

(Ord. No. 2009-9089, § 1, 7-9-09)

Sec. 16-23. - Open market procedure.

All purchases of supplies, goods, materials, and services that do not exceed in estimated value the amount of money specified in section 252.021(a) of the Texas Local Government Code may be made in compliance with such rules and regulations as the intergovernmental services team in conjunction with the city manager or the city manager's designee shall adopt for the internal management and operation of the division of purchasing and other such rules and regulations as shall be prescribed by the city manager and the city council. The open market procedure is as follows:

- (1) *Award of contract.* The user department or purchasing manager shall award the contract for purchases to the lowest responsible bidder if the award is in the best interest of the city as determined by the user department or purchasing manager; otherwise the user department or purchasing manager may recommend rejection of the bid.
- (2) *Recordkeeping procedure.* The division of purchasing shall keep a written record of all bids solicited, received, and awarded under this section, which record shall be open for inspection by the general public.

(Ord. No. 2009-9089, § 1, 7-9-09)

Sec. 16-24. - Reserved.

Sec. 16-25. - Emergency purchases.

- (a) *By division of purchasing.* In the case of an apparent emergency which requires immediate purchase of supplies or contractual services as authorized by the Texas Local Government Code, the city manager or the city manager's designee shall be empowered to authorize the division of purchasing to secure by open market procedure, as herein set forth, at the lowest obtainable price, any supplies, goods, materials, and services regardless of the expenditure. A full report of the circumstances of an emergency purchase shall be filed by the using department and the division of purchasing with the city manager, who in turn shall file same with the city council, and it shall be entered in the minutes of the council and shall be open to public inspection.
- (b) *By head of departments.* In case of an actual emergency, with the consent of the division of purchasing and the approval of the city manager

when possible, the head of any using department may purchase directly any supplies or services where immediate procurement is essential to prevent delays in the work of the using department which may vitally affect the life, health, or convenience of the citizens. The head of such using department shall send to the division of purchasing, city manager, and chief financial officer a copy of the requisition and a copy of the delivery record together with the full and written report of the circumstances of the emergency. The report shall be filed with the city council, and it shall be entered in the minutes of the council and open to public inspection.

(Ord. No. 2009-9089, § 1, 7-9-09)

Sec. 16-26. - Contracts for professional services, personal services, and high technology procurements.

- (a) Except for contracts made by the city attorney's office in connection with its provision of legal services on behalf of the city and its employees or representatives, all proposals for professional services, personal services, and high technology procurements shall be secured in accordance with such rules and regulations as established by the intergovernmental services team and the division of purchasing in conjunction with the city manager or the city manager's designee and the Texas Local Government Code.
- (b) The awarding of contracts for professional services and personal services shall be awarded by the city council if the contract amount equals or exceeds the amount set out in section 252.021(a) of the Texas Local Government Code, otherwise the contract may be signed by the mayor upon recommendation of the city manager, the city attorney, and the department head involved.
- (c) Any award of a contract for professional services shall be done in accordance with chapter 2254, Government Code.

(Ord. No. 2009-9089, § 1, 7-9-09)

Sec. 16-27. - Approval of certain agreements.

The mayor is hereby authorized to sign the following agreements when approved by the city attorney or the city attorney's designee after recommendation by a department head or the department head's designee and review by the city manager or the city manager's designee:

- (1) Fire line service agreements.
- (2) Agreements, including purchase agreements for goods and services, contracts for professional services and personal services, grant agreements, and amendments, change orders, or addenda to such agreements, which, in total, do not exceed the amount set out in section 252.021(a) of the Texas Local Government Code.
- (3) Amendments, change orders, or addenda to agreements, including purchase agreements for goods and services, contracts for professional services and personal services, grant agreements, which agreements have previously been approved by the city council and which amendments do not exceed the amount set out in section 252.021(a) of the Texas Local Government Code.
- (4) Agreements permitting the use of city facilities and property.
- (5) Real property acquisitions within the following guidelines:
 - a. Real property acquisitions negotiated to a settlement of two thousand dollars (\$2,000.00) or less, regardless of appraised value/staff valuation.
 - b. Real property acquisitions negotiated to a settlement above two thousand dollars (\$2,000.00) but not more than fifteen thousand dollars (\$15,000.00), provided the negotiated settlement is within fifteen (15) percent of the appraised value/staff valuation. Negotiated settlements that exceed fifteen (15) percent must be approved by council action.
 - c. All real property acquisitions negotiated to a settlement above fifteen thousand dollars (\$15,000.00) must be approved by council action, unless otherwise provided in this section.
 - d. Real property acquisitions for the Lake Chapman Water Supply Project and outside of Dallas County negotiated to a settlement of fifteen thousand dollars (\$15,000.00) or less, regardless of appraised value/staff valuation, and real property acquisition for said project negotiated to a settlement in any amount greater than fifteen thousand dollars (\$15,000.00), provided the negotiated settlement is within fifteen (15) percent of the appraised value/staff valuation.
 - e. Payments for damage to land and/or seasonal crops during surveys, preacquisition activities, construction, repair, or maintenance for the Lake Chapman Water Supply Project caused by vehicular and/or construction equipment access through the easement area and/or adjacent routes to and from public roads or other points of entry may be negotiated up to a settlement amount of five hundred dollars (\$500.00) when approved by a department head or designated representative.
 - f. In eminent domain cases where the special commissioners have entered an award, the city manager, or the city manager's designee, is authorized, but not required, to deposit the award of the special commissioners into the registry of the court, and the city attorney, or the city attorney's designee, is authorized, but not required, to file an appeal of such award.
- (6) Irving Arts Center's grants under the Founders Fund Financial Assistance Program provided that such grants are approved by the Irving Arts Board and that the total amount of all such grants each year are at or within the amount approved for such grants in the annual

budget approved by the Irving City Council.

(7) Municipally-owned service pole collocation attachment license agreements.

(Ord. No. 2009-9089, § 1, 7-9-09; Ord. No. 2014-9644, § 1, 12-11-14; Ord. No. 2018-10029, § 1, 2-15-18.)