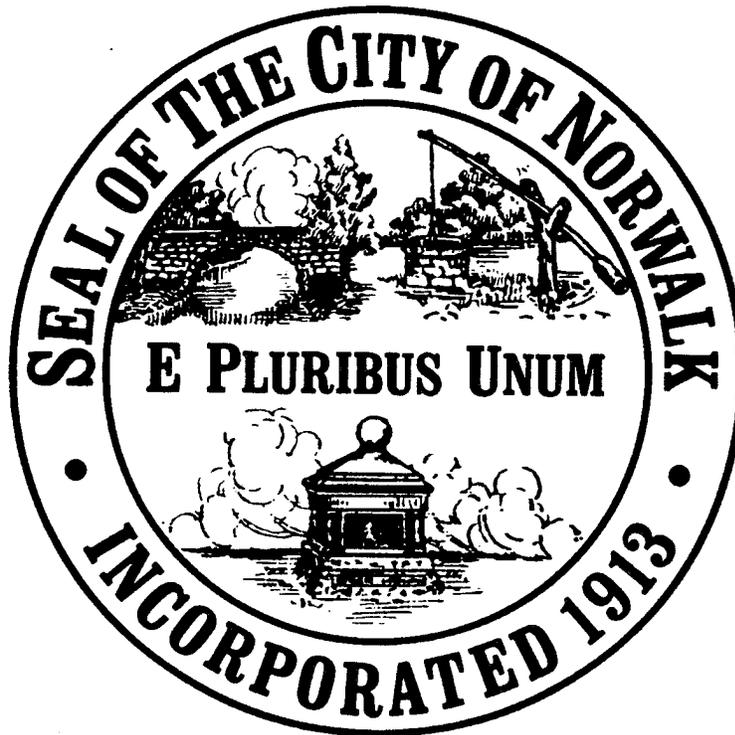


# PROCUREMENT GUIDELINES



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# CHAPTER 1 - GENERAL PROVISIONS OF THESE PROCUREMENT GUIDELINES

## **Part A - Purposes, Construction and Application**

### **§1-101 Purposes, Rules of Construction of These Procurement Guidelines.**

(1) *Interpretation.* These Procurement Guidelines shall be construed and applied to promote its underlying purposes and policies.

(2) *Purposes and Policies.* The purpose of these Procurement Guidelines is to provide for a systematic and uniform standard of Purchasing policies throughout the City.

(3) *Singular-Plural and Gender Rules.* In these Procurement Guidelines, unless the context requires otherwise:

(a) words in the singular number include the plural, and those in the plural include the singular; and

(b) words of a particular gender include any gender and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

**§1-102 Supplementary General Principles of Law Applicable.** Unless displaced by the particular provisions of these Procurement Guidelines, the principles of law and equity, State of Connecticut Statutes, including the Uniform Commercial Code of this State, and law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the provisions of these Procurement Guidelines.

**§1-103 Requirement of Good Faith.** These Procurement Guidelines requires all parties involved in the negotiation, performance, or administration of City contracts to act in good faith.

**§1-104 Application of these Procurement Guidelines.** These Procurement Guidelines apply only to contracts solicited or entered into after the effective date of these Procurement Guidelines unless the parties agree to its application to a contract solicited or entered into prior to the effective date.

**§1-105 Severability.** If any provision of these Procurement Guidelines or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of these Procurement Guidelines which can be given effect without the invalid provision or application, and to this end the provisions of these Procurement Guidelines are declared to be severable.

**§1-106 Specific Repealer.** Reserved

**§1-107 Specific Amender.** Reserved

**§1-108 Construction Against Implicit Repealer.** Since these Procurement Guidelines are intended to be general application, no part of it shall be deemed to be impliedly repealed by subsequent actions of the City if such construction of the subsequent actions can be reasonably avoided.

**§1-109 Effective Date.** These Procurement Guidelines shall become effective upon adoption by the Common Council.

## **Part B - Determinations**

**§1-201 Determinations.** Written determinations required by these Procurement Guidelines shall be retained in the appropriate official contract file of the Law Department.

**§1-202 Conflict Resolution.** It is recognized that there is the potential for overlap in the areas of responsibility between various Departments in the Procurement Procedure and the potential for conflict in the application of the Rules and Procedures set forth therein. In such instances, the process of resolving any such internal conflicts is as follows:

(a) The Department Head of using Agency and the Purchasing Agent are to meet in person, define and attempt to resolve the problem(s). If this opportunity for mutual agreement fails, the Purchasing Agent and the Department Head/using Agency will;

- (b) Meet with the Finance Director to discuss and resolve the stalemated issues defined in Step (a). If the Finance Director cannot bring the two parties to a mutual agreement, he/she will;
- (c) Refer the matter to the Mayor for review, upon the advice of the Law Department, to resolve any conflicts or disagreements.

### **Part C - Definitions of Terms Used in these Procurement Guidelines**

**§1-301 Definitions.** The words defined in these Procurement Guidelines shall have the meanings set forth in the appendix, unless:

- (a) the context in which they are used clearly requires a different meaning; or
- (b) a different definition is prescribed for a particular Chapter or provision.

### **Part D - Public Access**

**§1-401 Public Access to Procurement Information.** Procurement information shall be a public record to the extent provided in Connecticut Statutes and shall be available to the public as provided in such statute.

**§1-402 Authorization for the Use of Electronic Transmissions.** The use of electronic media, including acceptance of electronic signatures, is authorized consistent with the State of Connecticut's applicable statutory, regulatory or other guidance for use of such media, so long as such guidance provides for:

- (a) appropriate security to prevent unauthorized access to the bidding, approval, and award processes; and
- (b) accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.

## CHAPTER 2 - PROCUREMENT ORGANIZATION

### *Part A – Division of Purchasing*

**§2-101 Creation of the Division of Purchasing.** The Division of Purchasing (hereafter the Purchasing Department) was created by section 1-241 of the Norwalk City Code, headed by the Purchasing Agent.

**§2-102 Appointment and Qualifications.** The Mayor, subject to the confirmation of the Common Council shall appoint the Purchasing Agent. The Purchasing Agent shall have relevant, recent experience in public procurement and in the large-scale procurement of supplies, services, or construction, and shall be a person with demonstrated executive and organizational ability.

#### **§2-103 Tenure, Removal, and Compensation.**

- (1) *Tenure and Removal.* The Purchasing Agent shall be a full-time public official of the City appointed to serve a term of four years and his or her successor shall be appointed and qualified.
- (2) *Compensation.* The salary of the Purchasing Agent shall be fixed by the Common Council.

#### **§2-104 Authority of the Purchasing Agent.**

- (1) *Principal Procurement Officer of the City.* The Purchasing Agent shall serve as the central procurement officer of the City. The Purchasing Agent derives his authority from 1-241 of the City Code, which shall include the power to review, approve and issue Purchase Orders.
- (2) *Power to Adopt Operational Procedures.* The Common Council shall have the power to establish and amend the Procurement Guidelines, consistent with generally accepted procurement practices, as it may deem necessary or appropriate to define and govern the powers, duties, responsibilities and operations of the Purchasing Division, in accordance with 1-241 of the City Code.
- (3) *Duties.* Except as otherwise specifically provided in these Procurement Guidelines, the Purchasing Agent shall, in accordance with the City Code:
  - (a) procure or supervise the procurement of all supplies, services, and construction needed by the Board of Education and City;
  - (b) exercise general supervision and control over all inventories belonging to the City;
  - (c) execute any resolution duly passed by the Common Council to sell, trade or otherwise dispose of surplus property, both real and personal, belonging to the City as set forth in §9-3 of the City Charter for items with a market value of more than \$1,000.00 (for market values less than \$1,000.00 see Charter §1-220.1);
  - (d) establish and maintain programs for the inspection, testing, and acceptance of supplies, services, and construction; and
  - (e) ensure compliance with these Procurement Guidelines and implement procedures to review and monitor procurements conducted by any designee, department, agency or official delegated authority under Section 2-105 (Delegation of Authority by the Purchasing Agent).

**§2-105 Delegation of Authority by the Purchasing Agent.** The authority conferred on the Purchasing Agent may be delegated, in writing, by the Purchasing Agent, subject to the approval of the Finance Director to designees or to any department, agency or official of the City. Such delegations of authority shall remain in effect unless modified or until revoked in writing by the Purchasing Agent, the Finance Director or by resolution of the Common Council.

#### **§2-106 Procurement - Areas of Responsibility.**

- (1) *Purchasing Department.* The Purchasing Agent or his designee shall be responsible for:
  - (a) reviewing the technical specifications submitted by the User Department to ensure that such specifications are suitable, complete and consistent and conform to all applicable specification requirements;

- (b) reviewing the insurance requirements with the Risk Manager;
- (c) preparing the bid package to facilitate the bidding process (except for those specific areas that are exempt, see §2-203 );
- (d) approving the bid evaluation criteria that will be included in bid package;
- (e) recommending the award and /or rejection of bids;
- (f) completing and processing of the Purchase Order(s) for the awarded item(s);
- (g) insuring that all required insurance and bond requirements are secured and satisfied by the vendor when acquired by Purchase Order.

(2) *User Department(s)*. The Department Head or his designee shall be responsible for:

- (a) proposing the technical specifications to be used in the bids or proposals;
- (b) providing any special procurement requirements that may need to be incorporated into the bid document, from a Grant Agreement, State Agency, etc.;
- (c) forwarding all required materials, in a timely manner, to the Purchasing Department for reviewing, processing;
- (d) ensuring that all bids and proposals award recommendations, that were processed through the Purchasing Department, are reviewed and approved by the Purchasing Agent prior to the submission of that award recommendation to any City Common Council Committee;
- (e) coordinating the bid award recommendation through the contracting process.

(3) *Law Department*. The Corporation Counsel or his designee shall be responsible for:

- (a) supervising the preparation of all contracts, agreements and other legal papers of any nature;
- (b) representing, advising and providing legal counsel in the negotiation and development of agreements.

## **Part B - Organization of Purchasing Department**

**§2-201 Centralization of Purchasing.** Except as otherwise provided in these Procurement Guidelines, all rights, powers, duties, and authority relating to the procurement of supplies, services, and construction, and the management, control, warehousing, sale, and disposal of supplies, services, and construction now vested in, or exercised by, any City governmental body under the several statutes relating thereto are hereby transferred to the Purchasing Agent, as provided in these Procurement Guidelines.

**§2-202 Authority to Contract for Legal Services.** No contract for the services of legal counsel may be awarded without the approval of the Law Department, per §63-5 of the City of Norwalk Code, Appointment of special counsel can be made by Mayor with confirmation of Common Council.

**§2-203 Exemptions.** Unless otherwise ordered, with the approval of the Common Council, the following supplies, services need not be procured through the Purchasing Department but shall nevertheless be procured by the appropriate Purchasing Agency subject to the requirements of these Procurement Guidelines.

- (a) works of art for museum and public display;
- (b) published books, maps, periodicals and technical pamphlets.

## **Part C – Competitive Bidding Requirements**

**§2-301 Bid Thresholds** In all purchases, leases or rentals of supplies, services and construction which are listed on a requisition to a single vendor, and which are anticipated to exceed \$20,000.00 or such amount as

subsequently established by the State of Connecticut, or such other maximum amount as set by amendment to these Procurement Guidelines, shall be made by the Methods of Source Selection outlined in section 3-202 or 3-203. Requisitions shall not be split to avoid this requirement.

In all purchases, leases or rentals of supplies, services and construction which are listed on a requisition to a single vendor, and which are anticipated to *exceed \$1,000.00 and not greater than \$19,999.99*, shall be made by the Methods of Source Selection outlined in section 3-204 or 3-205. Requisitions shall not be split to avoid this requirement.

**§2-302 Waiver of Public Bidding Requirements** All procurements, funded out of capital and operating budgets, are subject to procurement guidelines as outlined herein.

## **Part D – Terms and Conditions**

**§2-401 Construction.** The Purchasing Agent or the head of a Purchasing Agency shall establish general terms and conditions that shall be included within the construction bidding documents.

**§2-402 Professional Services.** The Purchasing Agent or the head of a Purchasing Agency shall establish general terms and conditions that shall be included within professional services bidding documents.

**§2-403 Equipment, Supplies and Miscellaneous Services.** The Purchasing Agent or the head of a Purchasing Agency shall establish general terms and conditions that shall be included within equipment, supplies and miscellaneous services bidding documents.

**§2-404 State, Federal Grant Funded Purchases.** The Purchasing Agent or the head of a Purchasing Agency shall assist the User Department in the formation of unique general terms and conditions that may need to be included within bidding documents involving the use of State, Federal or other Grant funds. In the formation of such unique general terms and conditions it shall be the responsibility of the User Department to forward such requirements to the Purchasing Agent or the head of the Purchasing Agency so they are included within the bidding documents.

## **Part E - Bonds, Insurance, Guarantees**

### **§2-501 Bid Security.**

- (1) *Requirement for Bid Security.* Bid security shall be required for all competitive sealed bidding for all contracts when the price is estimated by the Purchasing Agent to exceed \$25,000. Bid security shall be a bond provided by a surety company having a Best rating of A- or better and be Treasury listed, submitted with necessary contact information to verify authenticity of the bond and authorized to do business in this State, or the equivalent in cash, or otherwise supplied in a form satisfactory to the City. Nothing herein prevents the requirement of such bonds on such contracts under \$25,000 when the circumstances warrant.
- (2) *Amount of Security.* Bid security shall be in an amount equal to at least 10% of the amount of the bid.
- (3) *Rejection of Bids for Noncompliance with Bid Security Requirements.* When the Invitation for Bids requires security, noncompliance requires that the bid be rejected.
- (4) *Withdrawal of Bids.* After bids are opened, they shall be irrevocable for the period specified in the Invitation for Bids (except as provided for bids in Section 3-202 (6)). If a bidder is permitted to withdraw its bid (or proposal) before award, or is excluded from the competition before award, no action shall be had against the bidder or the bid security.

### **§2-502 Contract Performance and Labor & Material Bonds.**

- (1) *When Required -Amounts.* When a construction, design-build, design-build-operate-maintain, or design-build-finance-operate-maintain contract is awarded in excess of \$50,000, the following bonds or security shall be delivered to the City and shall become binding on the parties upon the execution of the contract:
  - (a) a performance bond satisfactory to the City, executed by a surety company having a Best rating or A- or better and be Treasury listed, submitted with necessary contact information to verify authenticity of the

bond and authorized to do business in the State of Connecticut , or otherwise secured in a manner satisfactory to the City, in an amount equal to 100% of the contract price; and

- (b) a labor & material payment bond satisfactory to the City, executed by a surety company having a Best rating of A- or better and be Treasury listed, submitted with necessary contact information to verify authenticity of the bond and authorized to do business in the State of Connecticut or otherwise secured in a manner satisfactory to the City, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the construction work provided for in the contract. The bond shall be in an amount equal to 100% of the contract price.

(2) *Reduction of Bond Amounts.* The Law Department in its sole discretion is authorized to reduce the amount of performance bonds to 50% of the amounts established in Subsection (1) of this Section.

(3) *Authority to Require Additional Bonds.* Nothing in this Section shall be construed to limit the authority of the City to require a performance bond or other security in addition to such bonds, or in circumstances other than specified in Subsection (1) of this Section.

### **§2-503 Bond Forms and Copies.**

(1) *Bond Forms.* The City shall outline in the proposal the form of the bonds required by this Part.

(2) *Certified Copies of Bonds.* Any person may request and obtain from the Purchasing Department a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be *prima facie* evidence of the contents, execution, and delivery of the original.

### **§2-504 Insurance.**

The Risk Manager, in coordination with the Law Department, shall determine insurance requirements. The approved insurance requirements shall be included within the bid document. The insurance requirements shall be project specific and shall be reviewed and revised in the best interests of the City. The Purchasing Agent, in coordination with the Risk Manager and Law Department, shall determine when a bidder shall be required to provide the City with a Certificate of Insurance.

When a Certificate of Insurance is required, the approval of such shall be made by the Law Department. An approved Certificate of Insurance must be on file with the City prior to the commencement of any work.

### **§2-505 Other Forms of Security.**

The Purchasing Agent or head of a Purchasing Agency may require that certain Request for Proposals include one or more of the following forms of security to assure the timely, faithful, and uninterrupted provision of operations and maintenance services procured separately:

- (a) Operations period surety bonds that secure the performance of the contractor's operations and maintenance obligations.
- (b) Letters of credit in an amount appropriate to cover the cost to the City of preventing infrastructure service interruptions for a period up to twelve months under the project delivery methods set forth in Section 5-201 (1) (b), (d) and (e); and
- (c) Appropriate written guarantees from the contractor (or depending upon the circumstances, from parent corporations) to secure the recovery of re-procurement costs to the City in the event of a default in performance by the contractor.

## **Part F - Coordination, Training, and Education**

**§2-601 Collection of Data Concerning Public Procurement.** The Purchasing Agent shall cooperate with the Finance Director, Office of Management & Budgets and the Office of the Comptroller in the preparation of statistical data concerning the procurement, usage, and disposition of all supplies, services, and construction, and employ such trained personnel as may be necessary to carry out this function. All Using Agencies shall furnish such reports as the Purchasing Agent may require concerning usage, needs, and stocks on hand, and the Purchasing Agent shall have authority to prescribe forms to be used by the Using Agencies in requisitioning, ordering, and reporting of supplies, services, and construction.

## CHAPTER 3 - SOURCE SELECTION AND CONTRACT FORMATION

### Part A - Methods of Source Selection

#### **§3-201 Methods of Source Selection.**

Unless otherwise authorized by law, all City Purchase Orders and Agreements shall be awarded by one of the following methods:

- (a) Section 3-202 (Competitive Sealed Bidding);
- (b) Section 3-203 (Competitive Sealed Request for Proposals);
- (c) Section 3-204 (Informal Competitive Quotations);
- (d) Section 3-205 (Informal Competitive Request for Proposals);
- (e) Section 3-206 (Single Source Procurement);
- (f) Section 3-207 (Emergency Procurements);
- (g) Section 3-208 (Special Procurements);
- (h) Section 5-205 (Professional Services).

#### **§3-202 Competitive Sealed Bidding.**

- (1) *Conditions for Use.* All Purchases, leases or rentals of supplies, services and construction which are listed on a requisition to a single vendor, and which are anticipated to exceed the City's bid threshold shall be made by Competitive Sealed Bidding as described herein, except as otherwise provided in Section 3-201 (Methods of Source Selection).
- (2) *Invitation for Bids.* An Invitation for Bids shall be issued requesting sealed bids from qualified potential vendors who have requested that their names be placed on the appropriate bidder list. The invitation shall include a purchase description, and all contractual terms and conditions applicable to the procurement. The mailing of such invitation to qualified potential vendors shall solely be for the convenience of the suppliers. The failure to provide any supplier with an invitation of any bid shall not invalidate the bid process nor shall it prejudice the City in any manner.
- (3) *Public Notice.* Notice of the Invitation for Bids shall be published at least once in a daily local newspaper in the City of Norwalk. The notice shall be published not less than seven (7) working days before the final date for opening of the bids. The notice shall contain a general description of supplies, services or construction desired, the location where the bid documents may be obtained and the day, hour and location the bids will be opened.
- (4) *Bid Opening.* Bids shall be opened publicly by the Purchasing Agent or his designee, in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. The amount of each bid, and such other relevant information as may be specified by the bid, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection.
- (5) *Bid Acceptance and Bid Evaluation.* Bids shall be accepted without alteration or correction, except as authorized in these Procurement Guidelines. Bids shall be evaluated based on the requirements set forth in the Invitation for Bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The Invitation for Bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the Invitation for Bids.
- (6) *Correction or Withdrawal of Bids; Cancellation of Awards.* Correction or withdrawal of inadvertently erroneous bids before the scheduled bid opening shall be permitted in accordance with these Procurement Guidelines. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the City shall be permitted.
- (7) *Award.* The award of a Contract may not be based solely on price. Rather, the City reserves its rights to accept or reject any and all proposals / bids, or any part thereof, to waive defects in the same, or accept any proposal / bid or a combination of proposals / bids deemed to be in its best interests. Such contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. In the event all

bids for a construction project, of less \$20,000.00, exceed available funds as certified by the Comptroller, and the low responsive and responsible bid does not exceed such funds by more than five percent, the Purchasing Agency is authorized in situations where time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. In the event all bids for a construction project, in excess of \$20,000.00 or more, exceed available funds as certified by the Comptroller, approval of the Common Council is required prior to the commencement of any negotiations regarding adjustments in price or changes in the bid requirements. There shall also be the requirement of obtaining at least two sealed competitive bids before making the award for purchases over \$20,000.00, however with the approval of the Common Council this requirement may be waived.

- (7) *Multi-Step Sealed Bidding.* When it is considered impractical to initially prepare a purchase description to support an award based on price, an Invitation for Bids or Request for Qualifications may be issued requesting the submission of unpriced offers to be followed by an Invitation for Bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

**§3-203 Competitive Sealed Request for Proposals.** Any procurement of special or professional services or design-bid-build, which are in excess \$20,000.00, shall be based upon competitive sealed request for proposals. The Purchasing Department shall assist the User Department. The procurement of these services shall not be artificially divided so as to avoid this requirement under this Section.

- (1) *Conditions for Use.*
  - (a) A contract may be entered into by competitive sealed request for proposals when the Purchasing Agent, or a designee above the level of the Procurement Agent determines in writing, pursuant to these Procurement Guidelines, that the use of competitive sealed bidding is either not practicable or not advantageous to the City.
  - (b) Specific project that it is either not practicable or not advantageous to the City to procure specified types of supplies, services, or construction by competitive sealed bidding.
  - (c) Contracts for the project delivery methods specified in CHAPTER 5 shall be entered into by competitive sealed proposals, except as otherwise provided in Subsections (c), (d), (e), and (f) of Section 3-201 (Methods of Source Selection).
- (2) *Selection Committee.* In the procurement of special or professional services, the Purchasing Agent shall include within the bid documents an overview of the award process. When the award process involves a selection committee the Mayor may designate the members of this committee. The Mayor may designate: the Purchasing Agent, City Architect/Project Manager, either the Director of Public Works or the Assistant Director or their designees, either the Superintendent of Schools or the Assistant Superintendent of Schools, the Mayor or his designee and the chairman of the Land Use Committee of the Common Council to comprise the Selection Committee for each contract over \$100,000. The Selection Committee for contracts under this amount shall be established in accordance with procedures established by the Purchasing Department. The Selection Committee shall evaluate current statements of qualifications and performance data on file with the State of Connecticut together with information that may be submitted regarding the proposed contract. The Selection Committee may conduct discussions with a shortened list of proposers regarding the project and the relative utility of alternative methods of approach for furnishing the required services, and then shall select there from, in order of preference, based upon criteria established and published in the bid documents.
- (3) *Invitations Soliciting Request for Qualification or Proposals.* Requests for Proposals shall be solicited in the same manner as provided in Section 3-202(3) (Competitive Sealed Bidding, Public Notice, Invitation for Bids).
- (4) *Public Notice.* Adequate public notice of the Request for Proposals shall be given in the same manner as provided in Section 3-202(3) (Competitive Sealed Bidding, Public Notice).
- (5) *Receipt of Proposals.* Proposals shall be opened so as to avoid disclosure of contents to competing proposers during the process of negotiation. A Register of Proposals shall be prepared in accordance with these Procurement Guidelines, and shall be open for public inspection after contract award.

- (6) *Evaluation Factors.* The Request for Proposals shall state the relative importance of the factors and other subfactors if any, in addition to the price, that will be considered in the award.
- (7) *Discussion with Responsible Proposers and Revisions to Request for Qualifications or Proposals.* As provided in the Request for Qualifications or Proposals, and these Procurement Guidelines, discussions may be conducted with responsible proposers for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Such proposers 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 proposers.
- (8) *Negotiation.* The Purchasing Agent, head of a Purchasing Agency, Professional Selection Committee or designee shall negotiate a contract with the highest qualified firm for Professional Services at compensation which they determine in writing to be fair and reasonable to the City. In making this decision, they shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. Should they be unable to negotiate a satisfactory contract with the firm initially considered to be the most qualified, at a price they determine to be fair and reasonable to the City, negotiations with that firm shall be formally terminated. They shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, they shall formally terminate negotiations. They shall then undertake negotiations with the third most qualified firm. Should they be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, they shall select additional firms in order of their competence and qualifications, and continue negotiations in accordance with this Section until an agreement is reached or a decision is rendered to re-advertise the RFQ or RFP.
- (9) *Award.* The award of a Contract may not be based solely on price. Rather, the City reserves its rights to accept or reject any and all proposals / bids, or any part thereof, to waive defects in the same, or accept any proposal / bid or a combination of proposals / bids deemed to be in its best interests. Award shall be made to the responsible proposer whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to the City taking into consideration price and the evaluation factors set forth in the Request for Proposals. The contract file shall contain the basis on which the award is made. Written notice of the award of a contract to the successful Proposer shall be promptly given to all proposers. In all awards of \$20,000.00 or more, there shall be the requirement of obtaining at least two proposals before making the award, however with the approval of the Common Council this requirement may be waived.
- (10) *Debriefings.* The Purchasing Agent is authorized to provide debriefings that furnish the basis for the source selection decision and contract award.

**§3-204 Informal Competitive Quotations.** Any procurement of supplies, services or construction, which are in excess of \$999.99 but less than \$20,000.00, shall be based upon informal competitive quotations. The procurement of supplies, services and construction shall not be artificially divided so as to avoid this requirement under this Section.

(1) \$1,000.00 - \$4,999.99

(a) Purchase quotations, either oral or written, shall be solicited from at least two (2) vendors or service providers or obtained from current catalogues or price sheets. The refusal to quote from an otherwise valid supplier shall qualify as a quotation. The process shall be documented in writing by the department.

(b) A purchase of supplies, services or construction shall be counted as one (1) purchase for like items. Unlike items, grouped together on one (1) purchase requisition, shall require price quotations only for those items on the purchase requisition that are in excess of \$999.99 but less than \$5,000.00. The determination of like and unlike items shall be based on the commodity codes assigned such items under the then current City Financial system.

(2) \$5,000.00 - \$19,999.99

(a) Purchase quotations, either oral or written, shall be solicited from at least three (3) vendors or service providers or obtained from current catalogues or price sheets. The refusal to quote from an otherwise valid supplier shall qualify as a quotation. The process shall be documented in writing by the department.

(b) A purchase of supplies, services or construction shall be counted as one (1) purchase for like items. Unlike items, grouped together on one (1) purchase requisition, shall require price quotations only for those items on the purchase requisition that are in excess of \$4,999.99 but less \$20,000.00, The determination of like and unlike items shall be based on the commodity codes assigned such items under the then current City Financial system.

**§3-205 Informal Competitive Request for Proposals.** Any procurement of special or professional services or design-bid-build, which are in excess of \$999.99 but less than \$20,000.00 shall be based upon informal competitive request for qualifications or proposals. The procurement of these services shall not be artificially divided so as to avoid this requirement under this Section.

(1) \$1,000.00 - \$4,999.99

(a) Request for Proposal quotations, either oral or written, shall be solicited from at least two (2) vendors or service providers or obtained from current catalogues or price sheets. The refusal to quote from an otherwise valid supplier shall qualify as a quotation. The process shall be documented in writing by the department.

(b) A purchase of these services shall be counted as one (1) purchase for like services. Unlike services, grouped together on one (1) purchase requisition, shall require price quotations only for those services on the purchase requisition that are in excess of \$999.99 but less than \$5,000.00. The determination of like and unlike services shall be based on the commodity codes assigned such items under the then current City Financial system.

(2) \$5,000.00 - \$20,000.00

(a) Request for Proposal quotations, either oral or written, shall be solicited from at least three (3) vendors or service providers or obtained from current catalogues or price sheets. The refusal to quote from an otherwise valid supplier shall qualify as a quotation. The process shall be documented in writing by the department.

(b) A purchase of these services shall be counted as one (1) purchase for like services. Unlike services, grouped together on one (1) purchase requisition, shall require price quotations only for those services on the purchase requisition that are in excess of \$4,999.99 but less than \$20,000.00, The determination of like and unlike services shall be based on the commodity codes assigned such items under the then current City Financial system.

**§3-206 Single Source Procurement.** A contract may be awarded for a lease, rental, supply, service, or construction item without competition when, the Purchasing Agent, designee and Department Head determines that, in the best interests of the City, the City should procure the required supply, service, or construction item from a specific source. When such determination is made by a Department Head that there is only one source, the written justification for such determination must be submitted to the Purchasing Agent for approval. However every, such single source purchase in excess of \$20,000.00, shall be subject to the approval of the Common Council.

*Application:* The provisions of this section apply to all single source purchases unless emergency conditions exist as defined by the policy on Emergency Procurements, see section 3-207.

**§3-207 Emergency Procurements.** Notwithstanding any other provision of these Procurement Guidelines, the Purchasing Agent or a designee, any Department Head, the Mayor, the Common Council may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances.

(1) *Funding.* The source and availability of funding for such emergency procurement(s) must be verified through the Comptroller's Office, where practical, prior to any procurement. If it is not possible to verify

the source and availability of funds prior to the procurement they must be identified and verified as soon as is practical after any emergency procurement.

- (2) *Source Selection Method.* The procedure(s) used shall be selected to assure that the required supplies, services or construction items are procured in adequate time, with such competition as is practicable, to meet the emergency. The emergency procurement shall be limited to those supplies, services or construction items necessary to meet and satisfy the emergency.
- (3) *Determination & Recording.* See section §3-704.

**§3-208 Special Committee Procurements.** The Common Council may empower special committees to obtain for the City supplies, services or construction and the requirements for advertising and bidding shall apply to such committees. The Common Council shall further have the power to establish and amend by ordinance such rules, regulations, policies and procedures as it may deem necessary or appropriate to define and govern the powers, duties, responsibilities and operations of such Purchasing Division.

**§3-209 D-Orders** Any procurement of supplies, services and construction, which are less than \$1,000.00 shall be pre-authorized by the Purchasing Agent and processed on a D-Order form.

### **Part C - Cancellation of Invitations for Bids or Requests for Proposals**

**§3-301 Cancellation of Invitations for Bids or Requests for Proposals** An Invitation for Bids, a Request for Proposals, or other solicitation may be cancelled at any time, or any or all bids or proposals may be rejected at any time in whole or in part as may be specified in the solicitation, when it is in the best interests of the City in accordance with these Procurement Guidelines. The reasons shall be made part of the contract file.

### **Part D - Qualifications and Duties**

#### **§3-401 Responsibility of Bidders and Proposers.**

- (1) *Determination of Non-responsive.* A non-responsive bid is any bid or proposal that omits a material or substantive requirement or fails in any way to meet the prescribed criteria required of all bidders or proposals. A written determination of a particular bid or proposal shall be made by the Purchasing Agent or Purchasing Agency in accordance with the above standard. The unreasonable failure of a bidder or proposer to promptly supply information in connection with a bid, proposal or subsequent inquiry with respect to responsibility may be grounds for a determination of non-responsive with respect to such bidder or proposer.
- (2) *Right of Nondisclosure.* Confidential trademark information furnished by a bidder or proposer pursuant to this Section may not be disclosed outside of the Purchasing Department or the Purchasing Agency; unless such trademark information is deemed a public record pursuant to §1-401.

**§3-402 Prequalification of Bidders and Proposers.** Prospective bidders and proposers may be pre-qualified for particular types of supplies, services, and construction. The method of submitting pre-qualification information, and the information required in order to be pre-qualified, shall be determined by the Purchasing Agent.

**§3-403 Substantiation of Offered Prices.** The Purchasing Agent may request factual information reasonably available to the bidder or proposer to substantiate that the price or cost offered, or some portion of it, is reasonable, if:

- (1) the price is not:
  - (a) based on adequate price competition;
  - (b) based on established catalogue or market prices; or
  - (c) set by law or ordinance

**§3-404 Unauthorized Procurements** An unauthorized procurement means those procurements that do not conform to either the requirements of these Procurement Guidelines or the provisions of the Norwalk Charter and Code. Such procurements include those made by individuals acting outside of their prescribed limits of authority and those procurements made without the required fiscal appropriations in place. Any individual doing business

with the City is presumed to know the extent and, specifically, the limits of the authority of the employee(s) with whom it conducts business.

The City is not obligated to accept or pay for unauthorized procurements. Section 1-213 of the Norwalk City Charter provides that any officer or employee who willfully or knowingly incurs, in the name of the City, any debt or obligation which the City may be compelled to pay without any appropriation having been made for the benefit of same, or who willfully or knowingly incurs any such debt or obligation in excess of any appropriation that may have been made, shall be personally liable for the payment of such debt or obligation, and the Corporation Counsel is authorized to sue said employee to recover same, in the name and for the benefit of the City.

In addition, any such officer or employee may be fined up to \$100.00. Questions as to whether a Department Head or staff has authority to make procurements should be referred to the Purchasing Agent or Law Department. All procurements, whether for single or multiple items, must be supported by a Purchase Order or other document appropriately encumbering the necessary funds which must be authorized in advance.

## **Part E - Types of Contracts**

**§3-501 Types of Contracts.** Subject to the limitations of this Section, any type of contract which will promote the best interests of the City may be used.

Pursuant to Charter Section §1-226, it is the Mayor alone who shall, on behalf of the City, execute all contracts and other papers necessary. Pursuant to the Norwalk Code Section §1-241, the Purchasing Agent is to procure competitive bids to insure the procurement of quality supplies, services and construction on a timely basis for the City. Pursuant to Code Section §63-2, the Law Department is to supervise the preparation of all contracts and any other legal papers of whatever nature.

Pursuant to Charter Section §1-189, the powers of the Common Council include the power to provide for the due execution of contracts and of indebtedness issued by said City. Under Code Section §95-2 it is the duty of the Director of Public Works to execute, cause to be executed, and supervise the execution of all orders of the Common Council for the construction, maintenance and repair of all public works not ordered to be supervised by other officers or persons.

### A. Purchase Orders

(1) Determination of use. A Purchase Orders' use is limited to ordinary routine procurements of supplies, services or construction. A Purchase Order may be executed by the Purchasing Agent utilizing the following guidelines:

(a) Expenditures Up to \$25,000.00: The Purchasing Agent shall be authorized to execute a Purchase Order to acquire supplies, services or construction, including equipment up to \$25,000.00. Except for in the acquisition of (a) Fire Apparatus; (b) Police or other vehicles or vessels, or (c) additions and replacements of existing equipment, which The Purchasing Agent shall be authorized to execute a Purchase Order up to \$100,000.00.

(b) Expenditures Over \$25,000.00: All other purchases of supplies, services or construction, except as noted above, in excess of \$25,000.00 must be authorized by the Common Council. The acquisition and retention of trade services, professional services and construction work in excess of \$25,000.00 must be authorized by the Common Council and shall require the execution of a formal contract signed by the Mayor.

(2) Scope. Purchase Orders are an accepted type of commercial contract for the procurement or lease or rental of supplies, services or construction. Purchase Orders, when read together with the bid documentation, form the entire contract between the parties; there is no separate agreement form signed by the supplier and the City.

### B. Formal Contracts

(1) *Trade Services, Professional Services and Construction Services*

(A) Determination of use. The acquisition and retention of trade services, professional services and construction services in projects exceeding \$25,000.00.

(B) Scope. Construction contracts allow for the inclusion of specific and protective terms and conditions in the performance of the project, and (B) to allow for the monitoring of the contractor's compliance with these specific terms, to insure compliance, or, where necessary, to facilitate the City's legal recourse where the contractor is in breach of the terms. In addition, with the inclusion of an indemnification/hold harmless clause and insurance clause, the City's exposure to liability for any damage or injuries that occur as a result of the performance of the contract is greatly reduced.

(2) *Performance Based Services*

(A) Determination of use. Performance Based service contracts are used in projects exceeding \$25,000.00.

(B) Scope: Performance Based contracts allow for the inclusion of specific efficiency measures and protective terms and conditions in the performance of the project, and (B) allow for the monitoring of the bidder or proposer's compliance with these specific efficiency requirements, to insure compliance, or, where necessary, to facilitate the City's legal recourse where the bidder or proposer is in breach of the terms. In addition, with the inclusion of an indemnification/hold harmless clause, a penalty clause and an insurance clause, the City's exposure to liability for any damage or injuries that occur as a result of the performance of the contract is greatly reduced

**§3-502 Approval of Accounting System.** The Purchasing Agent or head of the Purchasing Agency may require that bidder or proposer submit appropriate documentation prior to the award of contracts in which the City agrees to reimburse costs, confirming that:

- (a) the bidder or proposer's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and
- (b) the bidder or proposer's accounting system is adequate to allocate costs in accordance with generally accepted accounting practices.

**§3-503 Multi-Year Contracts.**

- (1) *Specified Period.* Unless otherwise provided by law, a contract for supplies, services or construction may be entered into for any period of time deemed to be in the best interests of the City provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds.
- (2) *Use.* A multi-year contract is authorized where:
  - (a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and;
  - (b) such a contract will serve the best interests of the City by encouraging effective competition or otherwise promoting economies in City procurement.
- (3) *Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods.* When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled at the City's sole discretion and the contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for such purposes.
- (4) *Extensions.* No contract may be extended more than two times unless: (a) a written determination is made that solicitation of competitive bids for such purchase would cause hardship or interruption services, such solicitation would cause a major increase in cost, or contractor is a single source supplier; (b) a written determination is made that no such competitive quote which complies with the existing specification for the contract is lower than or equal to the existing contractor's present quotation.

## **Part F - Inspection of Plant and Audit of Records**

**§3-601 Right to Inspect Plant.** The City may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the City.

### **§3-602 Right to Audit Records.**

- (1) *Audit of Cost or Pricing Data.* The City may, at reasonable times and places, audit the books and records of any person who has submitted data in substantiation of offered prices pursuant to Section 3-403 (Substantiation of Offered Prices) to the extent that such books and records relate to that data. Any person who receives a contract, change order, or contract modification for which such data is required, shall maintain such books and records that relate to such cost or pricing data for five years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.
- (2) *Contract Audit.* The City shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

## **Part G - Determinations and Reports**

**§3-701 Finality of Determinations.** The determinations required by Section 3-202(6) (Competitive Sealed Bidding, Correction or Withdrawal of Bids; Cancellation of Awards), Section 3-203(1) (Competitive Sealed Proposals, Conditions for Use), Section 3-203(7) (Competitive Sealed Proposals, Award), Section 3-205 (Single Source Procurement), Section 3-206 (Emergency Procurements), Section 3-207 (Special Procurements), Section 3401(1) (Responsibility of Bidders and Proposers, Determination of Non-responsibility), Section 3-403(3) (Substantiation of Offered Prices), Section 3501 (Types of Contracts), Section 3-502 (Approval of Accounting System), Section 3-503(2) (Multi-Year Contracts, Use) and Section 5-203 (Choice of Project Delivery Methods) are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

**§3-702 Reporting of Anti-competitive Practices.** When for any reason collusion or other anti-competitive practices are suspected by the Purchasing Agent, or any Purchasing Agency, among any bidders or proposers, a written notice of the relevant facts shall be transmitted to the Law Department.

**§3-703 Retention of Procurement Records.** All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the State of Connecticut Public Records Administrator. All retained documents shall be made available to the State of Connecticut Public Records Administrator a designee upon request and proper receipt therefor.

### **§3-704 Record of Procurement Actions Taken Under Section 3-205 (Single Source Procurement), Section 3-206 (Emergency Procurements), and Section 3-207 (Special Procurements).**

- (1) *Contents of Record.* The Purchasing Agent shall maintain a record listing all contracts made under Section 3-205 (Single Source Procurement), Section 3-206 (Emergency Procurements), or 3-207 (Special Procurements) for a minimum of five years. The record shall contain:
  - (a) each contractor's name;
  - (b) the amount and type of each contract; and
  - (c) listing of the supplies, services, or construction procured under each contract.
  - (d) justification for procurement.
- (2) *Submission to Law Department* A copy of the record required by Subsection (1) shall be submitted to the Law Department on an annual basis. The record shall be available for public inspection.

## CHAPTER 4 - SPECIFICATIONS

### Part A - Specifications

**§4-201 Specification Preparation.** The Purchasing Agent or designee, together with the user department or agency, shall set standards for the preparation, maintenance, and content of specifications for supplies, services, and construction required by the City.

The Purchasing Agent or designee, together with the user department or agency shall have the authority to standardize any products, supplies, services or construction or require minimum performance standards when such standardization or minimum performance standards best serves the interests of the City.

**§4-202 Duties of the Purchasing Agent.** The Purchasing Agent or designee, together with the user department or agency shall monitor the preparation, maintenance, content and use of specifications for supplies, services, and construction required by the City.

#### **§4-203 [Reserved]**

**§4-204 Relationship With User Departments.** The Purchasing Agent shall obtain expert advice and assistance from personnel of User Departments in the development of specifications.

**§4-205 Maximum Practicable Competition.** All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the City's needs.

**§4-206 Specifications Prepared by Other Than City Personnel.** The requirements of this Chapter regarding the preparation of specifications shall apply to all specifications prepared other than by City personnel, including, but not limited to, those prepared by architects, engineers, and designers.

## CHAPTER 5 - PROCUREMENT OF INFRASTRUCTURE FACILITIES AND SERVICES

### **Part A - Contracting for Infrastructure Facilities and Services**

#### **§5-201 Project Delivery Methods Authorized.**

- (1) The following project delivery methods are authorized for procurements relating to infrastructure facilities and services in this City:
  - (a) Design-bid-build (including construction management advisor or at-risk);
  - (b) Operations and maintenance;
- (2) Participation in a report or study that is subsequently used in the preparation of design requirements for a project shall not disqualify a firm from participating as a member of a proposing team in a design-bid-build, procurement unless such participation would provide the firm with a substantial competitive advantage.

#### **§5-202 Source Selection Methods Assigned to Project Delivery Methods.**

- (1) *Scope.* This Section specifies the source selection methods applicable to procurements for the project delivery methods identified in Section 5-201 (Project Delivery Methods Authorized), except as provided in 3-206 (Single Source Procurement), 3-207 (Emergency Procurements), and 3-208 (Special Procurements).
- (2) *Design-bid-build.*
  - (a) Design: Professional Services.

The qualifications based selection process set forth in Sections 3-203 & 3-205 shall be used to procure Professional services in design-bid-build procurements.
  - (b) Construction Management Services (at risk or advisor).

The qualifications based selection process set forth in Sections 3-203 & 3-205 shall be used to procure Construction Management services in design-bid-build procurements.
  - (c) Construction: Competitive sealed bidding, as set forth in Section 3-202 (1)(b) (Competitive Sealed Bidding), shall be used to procure construction in design-bid-build procurements, except where procedures authorize the use of competitive sealed proposals, as set forth in Section 3-203 (Competitive Sealed Proposals), for contracts for construction management advisor or at-risk.
- (3) *Operations and Maintenance.* Contracts for operations and maintenance shall be procured as set forth in Section 3-201 (Methods of Source Selection).

**§5-203 Choice of Project Delivery Methods.** The Purchasing Agent or the head of the Purchasing Agency shall have the authority to select the project delivery method to be used for a particular project. When the value of the project exceeds \$100,000.00, a written justification by the Purchasing Agent or the head of the Purchasing Agency of the project delivery method chosen shall be provided and included in the project file. At minimum, such justification shall include:

- (a) criteria to be used in determining which project delivery method is to be used for a particular project;
- (b) description of the bond, insurance, and other security provisions that apply to each project; and
- (c) description of the appropriate contract clauses and fiscal responsibility requirements that apply to each project.

## **§5-204 Additional Procedures Applicable to Procurement of Certain Project Delivery Methods.**

- (1) *Applicability.* In addition to the requirements of Section 3-203 (Competitive Sealed Proposals), the procedures in this Section shall apply to procurements for design-bid-build (Section 5-202(2)).
- (2) *Content of Request for Proposals.* Each Request for Proposals for design-bid-build,:
  - (a) shall include design requirements;
  - (b) shall solicit proposal development documents; and
  - (c) may, when the Purchasing Agency determines that the cost of preparing proposals is high in view of the size, estimated price, and complexity of the procurement:
    - (i) prequalify proposers by issuing a Request for Qualifications in advance of the Request for Proposals; and
    - (ii) select a short list of responsible proposers prior to discussions and evaluations under Subsection 3-203(6), provided that the number of proposals that will be short listed is stated in the Request for Proposals and prompt public notice is given to all proposers as to which proposals have been short-listed.
- (3) *Evaluation Factor For Each Request for Proposals for design-bid-build,:*
  - (a) Proposal shall state the relative importance of (1) demonstrated compliance with the design requirements, (2) Proposer qualifications, (3) financial capacity, (4) project schedule, (5) price (or life-cycle price), and (6) other factors, if any;
  - (b) Proposal shall require each Proposer, when the contract price is estimated to exceed \$10,000,000.00 or when the contract period of operations and maintenance is ten years or longer, to identify an Independent Peer Reviewer whose competence and qualifications to provide such services shall be an additional evaluation factor in the award of the contract.

## **§5-205 Professional Services.**

- (1) *Policy* It is the policy of this City to publicly announce all requirements for Professional Services, exceeding the required bid threshold, in the same manner as provided in section 3-202(3) (Competitive Sealed Bidding Public Notice) and to negotiate contracts for Professional Services on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices.

## CHAPTER 6 - MODIFICATION AND TERMINATION OF CONTRACTS

### §6-101 Contract Clauses and Their Administration.

- (1) *Contract Clauses.* Contract clauses provided are sample terms only and the City reserves the right to modify or amend such clauses based on the specific arrangement and terms of the procurement. The Purchasing Agent shall have the authority permitting or requiring the inclusion of such clauses providing for adjustments in prices, time of performance, or other contract provisions as appropriate covering the following subjects:
  - (a) the unilateral right of the City to order in writing:
    - (i) changes in the work within the scope of the contract; and
    - (ii) temporary stopping of the work or delaying performance; and
  - (b) variations occurring between estimated quantities of work in a contract and actual quantities.
- (2) *Price Adjustments.*
  - (a) Adjustments in price pursuant to clauses promulgated under Subsection (1) of this Section shall be computed in one or more of the following ways:
    - (i) by agreement on a fixed-price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
    - (ii) by unit prices specified in the contract or subsequently agreed upon;
    - (iii) by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
    - (iv) in such other manner as the contracting parties may mutually agree; or
    - (v) in the absence of agreement by the parties, by a unilateral determination by the City of the costs attributable to the events or situations under such clauses, with adjustment of profit or fee, all costs are computed by the City in accordance with applicable sections of the guidelines promulgated under CHAPTER 7 (Cost Principles) .
  - (b) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section 3-403 (Cost or Pricing Data).
- (3) *Additional Contract Clauses.* The Purchasing Agent , the Law Department or Head of a Purchasing Agency shall have the authority, permitting or requiring the inclusion in City contracts of clauses providing for appropriate remedies and covering the following subjects:
  - (a) liquidated damages as appropriate;
  - (b) specified excuses for delay or nonperformance;
  - (c) termination of the contract for default; and
  - (d) termination of the contract in whole or in part for the convenience of the City.
- (4) *Modification of Clauses.* The Purchasing Agent, the Law Department or the head of a Purchasing Agency may vary the clauses established under Subsection (1) and Subsection (3) of this Section for inclusion in any particular City contract; provided that any variations are supported by a written determination that states the circumstances justifying such variation and provided that notice of any such material variation be stated in the Invitation for Bids or Request for Proposals.

## **§6-102 Fiscal Responsibility.**

Every contract modification, change order, or contract price adjustment under a contract with the City in excess of the maximum amount payable under the contract terms shall be subject to prior written certification by the City Comptroller as to the effect of the contract modification, change order, or adjustment in contract price on the total project budget or the total contract budget. In the event that the certification of the City Comptroller discloses a resulting increase in the total project budget and/or the total contract budget, the Purchasing Agent or purchasing agency shall not execute or make such contract modification, change order, or adjustment in contract price unless sufficient funds are available, or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget and/or total contract budget as it existed prior to the contract modification, change order, or adjustment in contract price under consideration; provided, however, that with respect to the validity, as to the contractor, of any executed contract modification, change order, or adjustment in contract price which the contractor has reasonably relied upon, it shall be presumed that there has been compliance with the provisions of this Section. If such allowance for change orders, or change order has been duly approved by the Common Council, approval of the Purchasing Agent is not required.

## **CHAPTER 7 - COST PRINCIPLES**

### **§7-101 Cost Principles Guidelines Required.**

The Purchasing Agent, the head of the Purchasing Agency or Law Department shall establish guidelines setting forth cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under any award. Such guidelines shall provide for the reimbursement of costs, provided that such determination has approved by the Purchasing Agent, the head of the Purchasing Agency or Law Department, such cost principles may be modified by contract.

## **CHAPTER 8 - SUPPLY MANAGEMENT**

### **Part A – Supply Management Procedures**

#### **§8-201 Supply Management Procedures.**

The Purchasing Agent shall establish procedures governing: (a) the management of supplies during their entire life cycle; (b) the sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate method designated by procedures, provided that no employee of the owning or disposing agency shall be entitled to purchase any such supplies as set forth in the Norwalk Code §9-3 (items with a market value over \$1,000.00) and §1-220.1 (items with a market value less than \$1,000.00); and (c) transfer of excess supplies.

### **Part B - Proceeds**

#### **§8-301 Allocation of Proceeds from Sale or Disposal of Surplus Supplies.**

Unless otherwise provided by law, the Purchasing Agent shall be empowered, pursuant to existing procurement guidelines, to allocate proceeds from the sale, lease, or disposal of surplus supplies unless otherwise specified by the Common Council or the Board of Estimate and Taxation.

## **CHAPTER 9 - RESERVED**

## CHAPTER 10 – INTERGOVERNMENTAL RELATIONS

### Part A - Definitions

#### **§10-101 Definitions of Terms Used in this Chapter.**

- (1) *Cooperative Purchasing* means procurement conducted by, or on behalf of, one or more Public Procurement Units, as defined in these Procurement Guidelines.
- (2) *External Procurement Activity* means any buying organization not located in this State which, if located in this State, would qualify as a Public Procurement Unit. Agencies of the United States and of any other State in the United States of America are External Procurement Activities.
- (3) *Local Public Procurement Unit* means any county, city, town, and any other subdivision of the State or public agency of any such subdivision, public authority, educational, health, or other institution, and to the extent provided by law, any other entity which expends public funds for the procurement of supplies, services, and construction, and any nonprofit corporation operating a charitable hospital.
- (4) *Public Procurement Unit* means any one of the following:
  - (a) a Local Public Procurement Unit,
  - (b) an External Procurement Activity,
  - (c) a State Public Procurement Unit, and
  - (d) any not-for-profit entity comprised of more than one Unit or Activity listed in subparagraphs (a), (b), or (c).
- (5) *State Public Procurement Unit* means the Department of Administrative Services of this or any other State and any other Purchasing Agency of this State or any other State.

#### **§10-201 Cooperative Purchasing Authorized**

- (1) The Purchasing Agent may either participate in, sponsor, conduct, administer or use a Cooperative Purchasing agreement for the procurement of any supplies, services, or construction with one or more Public Procurement Units in accordance with an agreement entered into between the participants. Such Cooperative Purchasing associations may include, but are not limited to, State of Connecticut, Federal Agency, or through a cooperative association of municipalities contracts that are made available to other Public Procurement Units.
- (2) The Purchasing Agent may, at his discretion, in the best interest of the City, and for the purpose of satisfying the bid requirements set forth previously, employ such agreements secured by these other Public Procurement Units, provided that the Purchasing Agent receives verification from these Units that said agreements are still valid for the purposes of price, quality and quantity. Purchases secured by use of these agreements do not require quotes or competitive bids. This does not apply to purchases secured by GSA contracts, which do require prior approval for use, as set forth herein, from the Purchasing Agent.
- (3) All Cooperative Purchasing conducted under this CHAPTER shall be through contracts awarded through full and open competition, including use of source selection methods substantially equivalent to those specified in CHAPTER 3 (Source Selection and Contract Formation) of these Procurement Guidelines.

#### **§10-202 Sale, Acquisition, or Use of Supplies by a Public Procurement Unit.**

Any Public Procurement Unit may sell to, acquire from, or use any supplies belonging to another Public Procurement Unit independent of the requirements of CHAPTER 3 (Source Selection and Contract Formation) and CHAPTER 8 (Supply Management) of these Procurement Guidelines.

#### **§10-203 Cooperative Use of Supplies or Services.**

Any Public Procurement Unit may enter into an agreement, independent of the requirements of CHAPTER 3 (Source Selection and Contract Formation) and CHAPTER 8 (Supply Management) of these Procurement

Guidelines, with any other Public Procurement Unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

#### **§10-204 Joint Use of Facilities.**

Any Public Procurement Unit may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another Public Procurement Unit under the terms agreed upon between the parties.

#### **§10-205 Supply of Personnel, Information, and Technical Services..**

- (1) *Supply of Personnel.* Any Public Procurement Unit is authorized, in its discretion, upon written request from another Public Procurement Unit to provide personnel to the requesting Public Procurement Unit. The Public Procurement Unit making the request shall pay the Public Procurement Unit providing the personnel the direct and indirect cost (worker's comp, overtime, union approval and similar related costs) of furnishing the personnel, in accordance with an agreement between the parties.
- (2) *Supply of Services.* The informational, technical, and other services of any Public Procurement Unit may be made available to any other Public Procurement Unit. The requesting Public Procurement Unit shall pay for the expenses of the services so provided, in accordance with an agreement between the parties.

#### **§10-206 Use of Payments Received by a Supplying Public Procurement Unit**

All payments from any Public Procurement Unit or External Procurement Activity received by a Public Procurement Unit supplying personnel or services shall be available to the supplying Public Procurement Unit as authorized by law.

#### **§10-207 Public Procurement Units in Compliance with Code Requirements.**

Where the Public Procurement Unit administering a Cooperative Purchase complies with the requirements of these Procurement Guidelines, any Public Procurement Unit participating in such a purchase shall be deemed to have complied with these Procurement Guidelines. Public Procurement Units may not enter into a Cooperative Purchasing agreement for the purpose of circumventing these Procurement Guidelines.

#### **§10-208 Review of Procurement Requirements.**

To the extent possible, the Purchasing Agent of any Public Procurement Unit may collect information concerning the type, cost, quality, and quantity of commonly used supplies, services, or construction being procured or used by Public Procurement Units. The Purchasing Agent may make available all such information to any other Public Procurement Unit upon request.

## CHAPTER 11 – VENDOR RELATIONS

**§11-101 Objective** – Regarding Connecticut General Statute (C.G.S.) section 4a-60, the City recognizes its responsibility to minorities and the population of disadvantaged and physically challenged persons. This responsibility is twofold: (a) to insure nondiscrimination in its purchasing and contracting policies; and (b) to take affirmative steps to purchase from and contract with those businesses that themselves fairly employ those disadvantaged groups. It is the stated objective of the City to give such disadvantaged groups the opportunity to compete on an even and equal basis with other vendors and contractors in the competitive marketplace.

**§11-102 Applicability** This policy shall apply to all purchasing and contractual functions of the City.

### **§11-103 Procedure --**

- (a). It is the responsibility of all Purchasing personnel to identify disadvantaged enterprises and assist them in becoming familiar with City requirements for supplies, services and construction. Such Purchasing personnel are also encouraged to develop suppliers and contractors who might not be disadvantaged enterprises, but whose work force statistics can be defined as being predominantly consisting of disadvantaged persons.
- (b). While it is the firm policy of the City to expand its business relationship with disadvantaged group suppliers and contractors, none of the provisions of this policy are to be construed as diminishing the Purchasing Department's responsibility to the City, and to the taxpayers, for providing a quality product on a timely basis, at a reasonable cost.
- (c). The criteria of ownership of a disadvantaged enterprise, as defined herein, is to be used because of the importance of entrepreneurship in any future economic growth of the disadvantaged group community. The willingness to take risks, the ability to manage and control a business in order to produce a useful product or service, a talent to market these, and the ability to maintain continuity of the organization, are all vital factors to the growth of disadvantaged group businesses. Recognizing that managerial expertise and control are the necessary ingredients, the aim of the program is to stimulate these areas and, therefore, the program is directed at firms which have the greatest concentration of disadvantaged group ownership.
- (d). The contractor agrees and warrants that in the performance of this contract it will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, gender, sexual orientation, mental retardation or physical disability, including, but not limited to, blindness, unless it is shown by the contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut. The contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated in a nondiscriminatory manner.

The contractor agrees to provide the commission on human rights and opportunities with such information requested by the commission concerning its practices and procedures.

The contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered under these guidelines so that such provisions will be binding upon each subcontractor.

- (e). The contractor or supplier may, upon request, be required to submit a list of those persons whose ownership of the company is represented by the contractor or supplier as qualifying said company as a disadvantaged group enterprise as defined herein.

### **§11-104 Debarment --**

No contract shall be awarded by the City to the persons, firms, corporations, partnership or association noted on the Labor Commissioner's State List for having disregarded their obligations pursuant to Connecticut General Statute Section 31-53a and 31-76c or having been barred from the Federal Government contracts pursuant to the provisions of the Davis-Bacon and Related Acts (DBRA). The Labor Commissioner shall determine when a period of up to three years has elapsed from the date of publication of the list containing the names of such persons or firms.

## **CHAPTER 12 – CODE OF ETHICS**

### **REFER TO THE NORWALK CODE - CHAPTER 32 Code of Ethics.**

All employees and officers of the City of Norwalk, salaried and unsalaried, including the members of all boards, agencies and commissions elected or appointed in the City of Norwalk, shall be subject to the Code of Ethics contained in Chapter 32 of the Norwalk Code, as it may be amended from time to time. (Charter Amendment 9-12-2000.EN)

#### **Norwalk Code of Ethics Preamble:**

The proper operation of democratic government requires that public officers, members of commissions, boards and/or agencies and employees be independent, impartial, and responsible to the people; that government decisions and policies be made in the proper channels of the governmental structure; that public office be not used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals there is hereby established a Code of Ethics for all officers, members of commissions, boards and/or agencies and employees whether elected or appointed, paid or unpaid. The purpose of this code is to establish ethical standards of conduct for all such officers and employees by setting forth those acts or actions that are incompatible with the best interest of the city and by directing disclosure by such officers and employees of private financial or other interests in matters affecting the city. The provisions and purposes of this code and such rules and regulations as may be established are hereby declared to be in the best interest of the City of Norwalk.

Public officers, members of boards, commissions and agencies and employees are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the Constitution of the United States and the Constitution of the State of Connecticut and to carry out impartially the laws of the nation, state and municipality and thus to foster respect for all government. They are bound to observe in their official acts duties of their office regardless of personal considerations recognizing that the public interest must be their primary concern.

#### **GIFTS AND GRATUITIES**

Pursuant to Section 8 of the Personnel Rules and Regulations (May, 1980), an employee should not engage in any business or transaction that is incompatible with the proper discharge of his/her official duties or accept any gift of significant value from any person, firm, or corporation which has any business dealings with the City. Such action may result in the dismissal of the employee and the vendor may be barred from further business with the City.

## APPENDIX DEFINITIONS OF TERMS USED IN THIS GUIDE

**Bidder** means any person submitting a competitive bid to a solicitation.

**Business** means any corporation, limited liability corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

**Change Order** means a written order signed by the Purchasing Agent, directing the contractor to make changes which the Change Order clause of the contract authorizes the Purchasing Agent to order without the consent of the contractor.

**Construction** means the process of building, altering, repairing, improving, or demolishing any public infrastructure facility or public building, or other public improvements of any kind to real property. It does not include the routine operation, routine repair, or routine maintenance of any existing public infrastructure facility or public building.

**Contract** means all types of City agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, or construction.

**Contract Modification** means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, quality or other provisions of any contract accomplished by mutual action of the parties to the contract.

**Contractor** means any person or entity having a contract with the City.

**Data** means recorded information, regardless of form or characteristic.

**Design-bid-build** means a project delivery method in which the Purchasing Agent sequentially awards separate contracts, the first for Professional Services to design the project; the second for a Construction Manager Services to oversee the project; and third to obtain bids for construction of the project according to the design.

**Designee** means a duly authorized representative of a person holding a superior position.

**Design requirements** means the written description of the infrastructure facility or service to be procured under this CHAPTER, including:

- (a) required features, functions, characteristics, qualities, and properties that are required by the City;
- (b) the anticipated schedule, including start, duration, and completion; and
- (c) estimated budgets (as applicable to the specific procurement) for design, construction, operation and maintenance. The design requirements may, but need not, include drawings and other documents illustrating the scale and relationship of the features, functions, and characteristics of the project.

**Direct or Indirect Participation** means involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

**Disadvantaged individual/group** -- shall mean that individual or group fitting within the definition of "personally/physically challenged" individual or group as such terms as defined herein.

**Disadvantaged business / enterprise** -- shall mean any contractor or supplier of materials, of which 51% or more of the capital stock, if any, or assets of which is owned by a person or persons: (a) who are active in the daily affairs of the enterprise; (b) who have the power to direct the management and policies of the enterprise; and (c) who are members of a "disadvantaged group", as such terms are defined herein.

**Electronic** means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

**Employee** means an individual drawing a salary from a governmental body, whether elected or not, and any noncompensated individual performing personal services for any governmental body.

**Established Catalog Price** means the price included in a catalog, price list, schedule, or other form that:

- (a) is regularly maintained by a manufacturer or contractor;
- (b) is either published or otherwise available for inspection by customers; and

- (c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

**Excess Supplies** means any supplies other than expendable supplies having a remaining useful life but which are no longer required by the User Department in possession of the supplies.

**Expendable Supplies** means all tangible supplies other than nonexpendable supplies

**Financial Interest** means:

- (a) ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, any monetary remuneration or item of value which would create the perception of impropriety or undue influence;
- (b) ownership of such interest in any property or any business as may be specified by the Norwalk Code of Ethics; or
- (c) holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

**Governmental Body** means any department, commission, council, board, bureau, committee, agency, authority or other establishment of the City of Norwalk.

**Grant** means the furnishing by the City, State or Federal Government of assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services, or construction; a contract resulting from such an award is not a grant but a procurement contract.

**Gratuity** means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

**Highest Scoring Bidder in a multiple criteria bid** means the bidder that achieves the highest score in providing the City with a unique combination of attributes including, but not limited to, price, skill, ability based on multiple criteria considering quality of product, warranty, life cycle cost, past performance and other objective criteria to be established for the award.

**Immediate Family** means a spouse, children, parents, brothers and sisters, and such other relatives as may be designated by the Norwalk Code.

**Independent Peer Reviewer** means any design professional that provides the City with an independent professional opinion, advice or assurance that concerning keys elements of the design.

**Invitation for Bids** means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

**Lowest Responsible Qualified Bidder** means the bidder whose bid is the lowest of those bidders possessing the skill, ability and integrity necessary to faithful performance of the work based on objective criteria considering past performance and financial responsibility.

**May** denotes the permissive.

**Nonexpendable Supplies** means all tangible supplies having an original acquisition cost of over (\$100) per unit and a probable useful life of more than one year.

**Non-responsive bid** means A non-responsive bid is any bid or proposal that omits a material or substantive requirement or fails in any way to meet the prescribed criteria required of all bidders or proposals.

**Operations and Maintenance** means a project delivery method whereby the Purchasing Agent enters into a single contract for the routine operation, routine repair, and routine maintenance of a public building or public infrastructure facility.

**Person** means any business, individual, union, committee, club, organization, group of individuals or legal entity.

**Physically/personally disabled** -- shall mean a person previously classified as such term as is defined in CGS §46a-51, as amended.

**Procurement** means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

**Procurement Officer** means any person duly authorized to enter into and administer contracts and make written determinations with respect thereto. The term also includes an authorized representative acting within the limits of authority.

**Professional Services means:**

- (a) professional services of an architectural, surveying, professional design or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services as described in this Subsection;
- (b) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and
- (c) such other professional services of an architectural or engineering nature, or incidental services, which members of the Professional professions (and individuals in their employ) may logically or justifiably perform, including: studies, investigations, surveying, mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

**Proposal development documents** means drawings and other design related documents that are sufficient to fix and describe the size and character of a public building or public infrastructure facility as to architectural, structural, mechanical and electrical systems, materials, and such other elements as may be appropriate to the applicable project delivery method.

**Proposer** means any person submitting a proposal in response to Request for Proposal (RFP).

**Public Building** means a building, structure or network or buildings. Included are government office buildings; public school buildings.

**Public Infrastructure Facility** means pipes, controls, and equipment that provide transportation, utilities, or public safety services. Included are: water treatment plants, distribution systems, and pumping stations; wastewater treatment plants, collection systems, and pumping stations; solid waste disposal plants, incinerators, landfills, and related facilities; public roads and streets; highways; public parking facilities and public transportation systems.

**Public Notice** means the distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods will often include publication in newspapers of general circulation, electronic or paper mailing lists, and web site(s) designated by the City and maintained for that purpose.

**Purchase Description** means the 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.

**Purchase Request** means that document whereby a User Department requests that a contract be entered into for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation, suggested sources of supply, and information supplied for the making of any written determination required by these Procurement Guidelines.

**Purchasing Agency** means any governmental body, official or department head, other than the Purchasing Agent, which is duly authorized by these Procurement Guidelines to undertake certain purchasing functions.

**Purchasing Agent** means the person holding the position created in the Norwalk City Code section 1-241 (Division of Purchasing), as the head of the Purchasing Department of the City.

**Request for Proposals** means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

**Request for Qualifications** means all documents, whether attached or incorporated by reference, utilized for soliciting qualifications.

**Responsible Bidder** or *Proposer* means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

**Responsive Bidder** means a person who has submitted a bid which conforms in all material respects to the Invitation for Bids.

**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. This definition of "services" includes, but is not limited to, consulting, personal, professional, technical, and purchase-of-client services. This term shall not include employment agreements or collective bargaining agreements.

**Shall** denotes the imperative.

**Signature** means a manual or electronic identifier, or the electronic result of an authentication technique attached to or logically associated with a record that is intended by the person using it to have the same force and effect as a manual signature.

**Specification** means any description of the physical or functional characteristics, or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

**Supplies** means all property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding and or a permanent interest in land.

**Surplus Supplies** means any supplies other than expendable supplies no longer having any use to the City. This includes obsolete supplies, scrap materials, and nonexpendable supplies that have completed their useful life cycle.

**Unauthorized Purchase** means those purchases that do not conform to either the requirements of these Procurement Guidelines or the provisions of the Norwalk Charter and Code. Such purchases include those made by individuals acting outside of their prescribed limits of authority and those purchases made without the required fiscal appropriations in place. Any individual or entity doing business with the City is presumed to know the extent and, specifically, the limits of the authority of the employee(s) with whom it conducts business.

**User Department** means any governmental body of the City which utilizes any supplies, services, or construction procured under these Procurement Guidelines.

**Written or In writing** means the product of any method of forming characters on paper, other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.