

# PROCUREMENT POLICY

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*Gaithersburg*  
***A CHARACTER COUNTS! CITY***

For the City of Gaithersburg, Maryland

As of July 1, 2016

Adopted by Mayor & City Council on March 21, 2016

**Policy Owner:  
Finance & Administration**

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# POLICY OVERVIEW

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## 1. INTRODUCTION

The City Charter requires that the City Manager implement a purchasing policy, as adopted by the City Council, which identifies the purchasing methods and approval process to be used for purchasing. This Procurement Policy (“Policy”) sets forth City policies for purchasing methods and processes and is intended to facilitate the purchase of high quality goods and services at competitive prices using efficient and effective purchasing processes.

## 2. SCOPE

This Policy is applicable to all purchases made by the City and to all City personnel involved in the purchasing process, regardless of the funding source for a purchase. Additional requirements may apply to purchases made under certain grant programs.

The City has other policies in place that govern related City activities, such as: capital asset / property dispositions, travel rules, credit cards and ethics. This Policy is not intended to override those more specific policies, but rather to work in conjunction with other policy guidance.

This Policy applies to all purchases, unless otherwise exempted, regardless of payment method, i.e., invoice and check, credit card, store credit, or electronic payments.

The City will also develop staff regulations (“Regulations”) for implementation of this Policy. It is anticipated that the Regulations will include detailed guidance on implementing this Policy, roles and responsibilities, instructions, templates, clarifying questions and answers, and guidance on evaluation and selection criteria.

Although most guidance on selection criteria and procedures will be provided within the Regulations, it is intended that the Regulations will allow staff to take into the following into consideration:

- Local business - reasonable efforts should be made to inform business whose principal offices are located within the City of any solicitation currently being advertised. In the scoring of responses to these types of bids, such local businesses may be awarded a nominal advantage (i.e. 1 or 2 points on a 100 point scale) in acknowledgement of their commitment to the City. This policy is not intended to result in “set asides” to local companies or acceptance of bids that do not constitute “best value” for City purchases.
- Green purchasing - provisions may be made to incur slight cost premiums when purchasing products meeting widely recognized standards (such as energy star and EPEAT) that provide significant energy saving and other environmental benefits.
- Transparency – reasonable efforts should be made to ensure procurement information and decisions are accessible to the public.

### 3. OBJECTIVES

The goals of this Policy are to:

- a. provide guidance on the appropriate level of review over individual purchase decisions;
- b. establish competitive, fair and transparent procurement practices in order to maximize value in purchasing decisions;
- c. ensure vendors are held accountable through use of legal contracts and appropriate project scoping;
- d. provide reasonable protection from third party legal liability and internal conflict of interest; and
- e. establish a framework for procedures that can be administered efficiently and effectively by City staff.

### 4. DEFINITIONS

- a. **Purchase:** a financial transaction that results in the City making a payment, or otherwise giving up something of value, in order to obtain something of value in exchange. Purchases may be for goods, services or a combination of both. This Policy defines the following categories of purchases:
  - i. **Blanket Purchase:** a group of small-dollar, similar in nature purchases, made at multiple times from the same vendor in a fiscal year, typically, where individual item costs are less than the lowest purchasing threshold but when totaled for the fiscal year, would exceed the lowest purchasing threshold. Blanket purchases may be for goods or services.
  - ii. **Emergency Purchase:** a purchase that (1) was unforeseen, (2) calls for immediate action, and (3) cannot be responded to using established procurement methods. This may include the existence of a substantial time constraint that is beyond the City's control. Administrative delays or internal delays in completing the necessary steps or paperwork for purchasing approval do not constitute an emergency. Contracts entered into due to emergency purchases will be limited to the duration needed to satisfy the emergency situation.
  - iii. **Real Property:** land and affixed buildings and structures, including parking facilities.

**b. Purchasing Method:** identification of the process to be used for selecting a vendor or product. The City has identified the following purchasing methods:

**i. Best Judgment Level:** formal quotes are not required, nor is a formal solicitation process needed in order to make a purchase. The purchaser, through their best judgment, believes the purchase price and expected quality is reasonable. Purchasers are expected to make a reasonable effort to obtain multiple prices or perform other due diligence to obtain the best value.

**ii. Quote:** a written offer given by a vendor to the City stating the price, terms and conditions under which the contractor or vendor will furnish goods or services.

**iii. Formal Solicitation:** a public process during which the City will:

- ↳ Outline a clear description of the technical requirements for the purchase. This description shall not contain features which unduly restrict competition.
- ↳ Describe to potential vendors the form, timing and substantive requirements to be met in order to be evaluated by the City.
- ↳ Make the solicitation publicly available for a minimum of at least 21 calendar days to allow adequate time for vendor response.

**iv. Pre-Qualification:** a process used to streamline the procurement process by identifying a small pool of eligible vendors for future projects where the projects are similar in nature. When the need for future projects arise, quote or bids will only be accepted from the pool of eligible vendors. A formal solicitation process must be used to develop the vendor pool.

**v. Reliance on Other Jurisdictions:** When the City believes that the results of another jurisdiction's purchasing processes are substantially equal to the results the City would obtain if completing a formal solicitation for the same amount of effort, the results of another jurisdiction's process may be substituted for the City's formal solicitation. The City will consider reliance on another jurisdiction's process when the following conditions have been met:

- ↳ the other jurisdiction has completed its competitive process within the past two years; for the purchase of goods only, this may be extended to five years, if the contract's pricing was written as a discount from a list price;
- ↳ the process used by the other jurisdiction meets the City's definition of a formal solicitation;
- ↳ the vendor selected by the other jurisdiction is willing to extend the same pricing to the City and is able to meet the City's quality and timeline needs;

- ↳ the vendor and the City are able to contract upon their own terms and conditions and are not constrained by the vendor's contract with the other jurisdiction;
- ↳ the vendor is otherwise eligible to work with the City; and
- ↳ the other jurisdiction is a unit of local, state or federal government, or the entity is a purchasing cooperative sponsored by a unit(s) of local, state or federal government, located within Maryland or the Washington D.C. or Baltimore metropolitan statistical areas (MSA). Private purchasing cooperative contracts may only be used as one quote, but may not substitute for a formal solicitation.

The Metropolitan Washington Council of Governments (COG) and US Communities are both considered to be eligible other jurisdictions.

- c. **Purchase Order (PO):** a legal offer to purchase goods and/or services from a vendor. A PO may form a contract if accompanied by terms and conditions and accepted by the vendor; alternatively a PO may accompany a separate contract.
- d. **Purchase Price:** the purchase price is the amount that will be used to determine the purchasing method. For all purchases the purchase price is based on the annual cost of the purchase, even though a multi-year contract may be used, excluding any credits applied or trade-in values. When the exact quantities are not known, the purchase price should be developed using best judgment on the quantity needed for the project or on an annual basis. The purchase price will be calculated as follows:
  - i. **Blanket Purchases:** the three (3) year average costs. Blanket purchases may be departmental in nature or may cross-departmental lines. Procurement Staff will coordinate multi-departmental blanket purchasing, including identification of the procurement method and responsible department.
  - ii. **Goods:** the total cost for the item from a single vendor including: delivery, shipping, installation, training, maintenance, support, warranty and licensing costs included in the initial purchase.
  - iii. **Mixed:** the purchase price for purchases including both goods and services will be the total of the goods plus services both as described above/below.
  - iv. **Retainer or Pre-Qualifications:** the total cost of services on all projects that are expected to be rendered by all of the vendors to be retained/pre-qualified on an annual basis.
  - v. **Services:** the total cost of all billed time from a single vendor for services performed either during a year or for a separately identifiable project. This may include: set-up, training, maintenance or support, expenses, and travel.
- e. **Terms and Conditions:** a short form template that can be attached to a purchase order and together, if accepted by the seller, serve as a contract for the purchase of goods.

- f. **Sole Source:** a condition where only one provider of a good or service exists within the market. Due diligence, such as publicly posting for quotes or proposals to gain market visibility, may be required to substantiate this condition. Purchasers are prohibited from intentionally scoping projects so narrowly as to restrict competition.

**5. PROCUREMENT THRESHOLDS**

Formal solicitations are considered to be the most competitive of the procurement methods, followed by quotes, then best judgment. A more competitive method may always be followed at the option of the purchaser and the City Manager may require the purchaser to follow a more competitive method.

While purchasing may occur in phases, or the full scope of a project may not be known up front, purchasers are prohibited from intentionally phasing a project or breaking the purchase into parts in order to avoid engaging in a more competitive purchasing process.

The following section identifies which procurement method must be followed and the required approvals.

Procurement Methods	Thresholds	Approval Requirements
Best Judgment Level	≤ \$3,500	<ul style="list-style-type: none"> <li>▪ Department Head or designee(s)</li> </ul>
Quotes	> \$3,500 and ≤ \$30,000	<ul style="list-style-type: none"> <li>▪ Department Head</li> <li>▪ Finance Department</li> <li>▪ City Manager</li> </ul>
Formal Solicitation	> \$30,000	> \$30,000 and ≤ \$100,000 <ul style="list-style-type: none"> <li>▪ Department Head</li> <li>▪ Finance Department</li> <li>▪ City Manager</li> </ul>
		> \$100,000 <ul style="list-style-type: none"> <li>▪ Department Head</li> <li>▪ Finance Department</li> <li>▪ City Manager</li> <li>▪ Mayor &amp; City Council</li> </ul>

- a. **Best Judgment Level:** This method is used for purchases less than or equal to \$3,500 with approval by the Department Head or designee(s).
- b. **Quotes:** This method is used for purchases greater than or equal to \$3,500 but less than \$30,000. A minimum of one quote from two different vendors for comparable purchases is required. Only one of the two quotes may be from private purchasing cooperatives. Purchases within this dollar range must be approved by the Department Head, Finance Department and City Manager prior to purchase.

- c. **Formal Solicitation:** This method will be used for all purchases greater than \$30,000. This method requires approval prior to the purchase by the Department Head, Finance Department and City Manager. Purchases greater than \$100,000 will also require City Council approval. A separate Mayor and City Council approval process may be waived if the specific purchase, including vendor name has been previously approved through the budget process.

## 6. CHANGE ORDERS

Change orders may arise due to unforeseen conditions or circumstances where the original scope of the purchase needs to be adjusted. Change orders will be considered for approval as follows:

- a. Equal to or less than \$3,500, approval by Department Head or designee(s); and
- b. All other change orders will be approved by the City Manager or designee.

## 7. POLICY EXEMPTIONS

The following purchases are exempt from the procurement methods required within this Policy:

- a. Purchases for water, sewer, electric, telephone, postage, internet, or other utility services and state and federal regulatory fees;
- b. Sale, rental or purchases of real property and rights-of-way;
- c. Expenditures for travel, subscription, courses, seminars, and conventions, membership dues and subscription fees;
- d. Advertising and sponsorships;
- e. Procurement of entertainers for special events sponsored by the City, including revenue sharing agreements;
- f. Procurement of instructional services for public recreation programs, including revenue sharing agreements;
- g. Acquisition of works of art for public display;
- h. On-going proprietary maintenance, support or repair, when hardware and software maintenance is only provided by the company that has developed the product;
- i. Grants, contracts or memorandums of understanding with other public bodies;
- j. Community Services contracted grant funding for social services;
- k. Economic development payments made in accordance with executed agreements;
- l. Securities and investments;

- m. Purchases for specialized police work when the Chief of Police certifies in writing that the purchase is for covert police operations;
- n. Goods purchased from a public auction sale, including an internet auction, provided that a written determination is made in advance by the purchasing agent that such purchase is in the best interest of the City; and
- o. Specialty or emergency vehicle repairs where repair time is of the essence or when vehicle diagnostics would be required in order to provide cost estimates, making multiple quotes impractical. This does not apply to inventory part purchases.

Although the procurement method is not required to be followed, purchase for items noted above still need to adhere to the appropriate approval processes prior to purchase.

The City Manager, at his/her discretion, may require that a purchaser follow all or part of this Policy even if the purchase is exempted above.

## **8. WAIVERS**

The City Manager may waive the competitive procurement process for Emergency Purchases and other reasons documented to be in the best interest of the City. It is expected that these circumstances will be limited in frequency. City Manager approval is required for all waivers. Documentation of the reasons for and approval of all waivers will be retained by the Procurement Manager.

## **9. ROLES AND RESPONSIBILITIES**

Ultimately the City Manager is responsible for the enforcement of this Policy. Daily responsibility for enacting and operationalizing this Policy belongs to the Procurement Division under the Director of Finance & Administration.

All final purchasing documents including solicitations, vendor responses and contracts will be retained by the City Clerk in accordance with the City's document retention policy.