

Procurement Manual

Guide for City Departments

- Policies and Procedures
- Legal Requirements
- Recommended Practices
- Sources of Information



City of Fitchburg
Purchasing Department

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OBJECTIVE

The goal of this manual is to provide a reference tool for staff to understand how the Purchasing Department makes procurement decisions, and to ensure that all procurements made by the city comply with general law, local ordinances, and best purchasing practices. This manual outlines the procurement process and defines the roles of staff, department heads, and the Chief Procurement Officer (CPO) and team, which will result in uniform specifications, fair and open solicitations, timely development of contracts, and proper contract management.

AUTHORITY TO PURCHASE

Each fiscal year, departments are budgeted funds by account code. This allocation gives department heads the authority to requisition for services, supplies, equipment, and construction related services, but does not give the authority to purchase directly from a vendor or contractor.

The Chief Procurement Officer (CPO) is designated by city ordinance to maintain a centralized purchasing function; therefore departments may not make purchases without proper authorization *in advance of the purchase*. Proper authorization shall be acknowledged as: 1) compliant with the policies and procedures outlined in this manual for “incidental” or low-threshold purchasing; or 2) certain delegations of authority in writing made by the CPO, in situations where the unique need exists and staff is appropriately qualified to perform procurements. Delegated staff must work within the written constraints of their delegated authority.

All departments will follow the purchasing regulations outlined in this manual. This includes the requirement of a purchase order for all transactions exceeding \$500 (individually or in circumstances that could be considered collectively). Unless a requisition is submitted and converted to a purchase order, the city is under no obligation to pay any related invoice. In this situation, liability for payment rests with the person who made the purchase.

AUTHORITY TO SIGN CONTRACTS

The Mayor is the only person authorized to execute a contract on behalf of the city, per the city Charter. Service agreements, construction contracts, contracts for goods/services, real estate, lease or purchase of equipment, and any document containing terms and conditions, must be signed by the Mayor or will be considered non-binding. The Mayor will not apply his signature to any contract without all prior authorized signatures being affixed, using the city’s standard signature block.

PROCUREMENT PROCEDURE

All city departments, including the schools, and departments which operate through an enterprise fund, are subject to the Commonwealth’s procurement laws, inclusive but not limited to Massachusetts General Laws Chapter 30B, Chapter 7, Chapter 30, §39M and Chapter 149.

In addition to providing legal procurements, it is our goal to also provide efficiency and best value to our customers – city departments and staff, and ultimately to the taxpayers. The Chief Procurement Officer, along with the Procurement Team, is available to provide guidance, internal support, and procurement assistance in the development and solicitation of public bids and proposals.

The Chief Procurement Officer is responsible for monitoring purchases to ensure procurement practices are compliant with applicable laws, to develop strategies for improvement, to implement policies and procedures, and to identify potential cost-savings and efficiencies in the procurement process.

PROCUREMENT LAWS AND APPLICABILITY

SUPPLIES AND SERVICES: MGL c. 30B

Massachusetts General Law, c. 30B applies to the procurement of all supplies, services, disposition of surplus supplies, and acquisition or disposition of real property. Under c. 30B procurement includes purchase, lease, lease-purchase, or rental.

Items exempt from c. 30B are contained in §1(b). If a department feels their purchase is exempt from c. 30B, that department must contact the Purchasing Department in advance for determination if the exemption applies.

DESIGN SERVICES: MGL c. 7C, §44 to 57

Procurement of design services (architect/engineer, etc.) in connection with a public building project are subject to the Designer Selection Law. Design services connected to a public works construction project are exempt from bidding requirements as long as the city hires a designer fitting the definition contained in c. 30B, §2.

PUBLIC BUILDING CONSTRUCTION: MGL c. 149, §44A to 44M

Procurement of a contractor for construction, reconstruction, installation, demolition, maintenance or repair of a building by a public agency is subject to the provisions of c. 149, including the provisions for filed sub-bids within certain monetary thresholds. This work is typically defined as “vertical construction.”

There has been much discussion about what defines a “building,” and case law has interpreted that to be any “structure with walls and a roof.” Any time you are physically making a change to any structural component of a building - that is considered a building contract.

PUBLIC WORKS CONSTRUCTION: MGL c. 30, §39M

Procurement of a contractor for construction, reconstruction, alteration, remodeling or repair of any public work, or for the purchase of any material so related, is subject to the provisions of this chapter.

This work is typically defined as “horizontal construction.” It includes construction and repair of road and bridges, water mains and sewers, improvements to public parking lots, parks, cemeteries, athletic fields and swimming pools. Any time there is “movement of earth” the work being performed is considered construction.

An exception to the “building” definition above, buildings which serve the sole function of housing pumps and related equipment for water or sewer service are considered a “public work” facility and are subject to c. 30, § 39M rather than c. 149.

PREVAILING WAGES: MGL c. 149, §27

The city is required to comply with the Massachusetts Prevailing Wage Law for all public works and public building projects regardless of cost of the contract.

The CPO will apply for a “blanket prevailing wage” sheet annually, for work not associated with larger projects. The blanket prevailing wage will be available on the Public Drive under Procurement, and found in the folder labeled Prevailing Wages.

Prevailing Wages must be paid to all persons employed on the project, regardless of whether they are employed by the contractor or subcontractor. The rates issues for a particular project must be paid for that entire project. For multi-year contracts, the CPO will apply for new wage rates as required annually.

Department heads will be responsible for collecting and reviewing Certified Payroll Report and Statement of Compliance. At the conclusion of any project, these reports shall be retained by the department head in their contract file for a minimum of three years following completion of the project.

PROCUREMENT THRESHOLDS AND STANDARDS

CHAPTER 30B (Supplies and Services)

Procurements estimated to cost less than \$10,000

Procurement of supplies and services estimated to cost less than \$10,000 must be conducted using “sound business practices” which is defined as checking price lists, seeking quotes, or conducting market research to ensure competitive pricing is received. Sound reasoning may also consist of consideration of quality, experience, or qualifications of a vendor providing the goods or services. Soliciting quotes is encouraged even when the potential purchase is less than \$10,000.

Procurements estimated to cost between \$10,000 and \$50,000

Procurement of supplies and services estimated to cost between \$10,000 and \$50,000 requires the solicitation of at least three (3) written quotes from potential vendors. Quote requests must be in writing and provided to each potential vendor. Documentation of quotes solicited must be included in the requisition process.

Procurements estimated to cost between \$50,000 and \$100,000

An “Invitation for Bid” (“IFB”) or a “Request for Proposals” (“RFP”) is required to promote participation and competition for all procurements estimated to cost \$50,000 or more. An IFB should be used for goods and services where award to the bidder offering the lowest price is preferred. An RFP should be used in circumstances when factors other than price should be considered, and a method is needed to award a proposal based on merit, before considering price.

Procurements made under this section are required to have a notice posted in a newspaper, on COMMBUYS, and posted at city Hall, at least two weeks prior to due date.

Procurements estimated to cost \$100,000 or more

In addition to the requirements above, a solicitation where the estimated cost is over \$100,000 must also include a notice in the Commonwealth’s “Goods and Services Bulletin.”

Real Property

For any real property the city has acquired, the Property Committee of the city Council will circulate a needs survey to city departments and officials to identify any city interest in retaining the property. Should no party be interested in retaining the property, it shall be declared surplus by a vote of the city Council and referred back to the city Property Committee for determination of value and referral to the bidding process.

Real property shall be disposed of in accordance with prescribed practices and in compliance with c. 30B and city ordinances.

Policy for Surplus Supplies, Materials, and Equipment

From time to time the City finds it necessary to dispose of scrap metals, materials, residue inventory and surplus/obsolete equipment. It is the intent of this policy to establish reasonable control over scrap, surplus and obsolete material generation, handling, sale and disposal, and to maximize revenue.

- Supplies, materials, or equipment (hereinafter described as “Surplus”) included in this policy are defined as items no longer useful to the governmental body.
- No tangible property owned by the City of Fitchburg, whether the same be controlled by any department or otherwise, shall be sold, alienated or otherwise disposed of except in accordance with this policy.
- The department head having control of surplus item(s) shall submit their written recommendation for disposal to the Mayor on the “Property Disposition Request Form.” Contained within this form shall be a good faith estimate value of the items individually listed. The good faith estimate shall reflect the estimate of either a single item, or a lot of similar items that would reasonably be assumed to go together. Transactions may not be split to avoid reaching a higher threshold amount and triggering a more restrictive procurement process.
- If approved by the Mayor, the form will be submitted to the Purchasing Department, recorded with the City Property Committee, and copied to the City Auditor for inventory purposes.

For surplus determined to have a value less than \$1,000:

- Items may be disposed of by any means on the departmental level, provided prior public disclosure takes place via the Property Disposition Request Form being signed by the Mayor, and provided the funds generated (if any) are deposited into the City’s General Fund.
- If the item may have value or be usable to another City department, as a courtesy, it should be offered to other departments prior to disposal or disposition. If there is a cost to dispose of the item, consider value of scrap or recycling. Disposal for cost should be the last resort for any surplus item that has a potential use.

For surplus determined to have a value more than \$1000 and less than \$10,000:

1. Upon receipt of the Property Disposition Request Form, the Purchasing Department will first offer the item(s) to other City departments via an email notification. City departments will have ten (10) business days to declare their interest and take ownership of the item(s).
2. If there is no internal interest in the item(s), the Purchasing Department shall determine the appropriate method of disposal and conduct the sale or disposition. The controlling department shall provide the item in for-sale condition (as cleaned up as possible and free of preventable defects) and shall inform Purchasing of the location and condition of the item(s).
3. The Purchasing Department will endeavor to obtain the greatest return, and in most cases, items will be provided to a competitive clearing-house to dispose of the item(s) in a timely manner and with little to no cost to the City. In certain circumstances, the Chief Procurement Officer may elect to use a more competitive process for an item that has particular interest or value.

For surplus determined to have a value in excess of \$10,000:

1. Upon receipt of the Property Disposition Request Form, the Purchasing Department will first offer the item(s) to other City departments via an email notification. City departments will have ten (10) business days to declare their interest and take ownership of the item(s).
2. If there is no internal interest in the item(s), the Purchasing Department shall perform the disposition in accordance with the provisions of MGL c. 30B relating to such higher value dispositions, by inter-municipal agreement, auction, or bid. The controlling department shall provide the item in sale condition (as cleaned up as possible and free of preventable defects) and shall inform Purchasing of the location and condition of the item(s).

The following shall apply to all disposition transactions:

1. All funds generated by the sale of surplus shall be deposited to the City's General Fund regardless of how the items were first acquired, except in the case of certain criminal forfeiture transactions.
2. Items declared and approved as surplus may be traded in towards the purchase of new supplies and equipment only as allowed under MGL c. 30B.
3. Departments shall retain the ability to destroy and/or discard outright any supplies, materials, equipment or scrap that are broken, unusable, or unsellable.
4. The City will furnish the buyer with a Bill of Sale detailing the items conveyed and the price paid for the item(s), and shall retain the documents as required by the Public Records Law.

Surplus supplies can also be traded in as part of a c. 30B bid or proposal process. However, c. 30B only permits trade-ins as part of a written quote/bid process if the value of the supplies is less than \$10,000. In any case, the solicitation must clearly describe the items to be traded in as part of the procurement and identify how the trade-in value will factor into deciding the lowest bid.

Bartering

Barter agreements are allowed under the following conditions:

- CPO must be provided a requisition for purchase, including specific items to be purchased or services to be provided, prior to any contact with potential barter partners, and;
- Procurement must be conducted by the CPO, and;
- All Commonwealth and local procurement procedures are followed.

Procurement must clearly state that the city will accept supplies/services in exchange for provision of supplies/services.

Value of the bartered supplies/services received must be in direct and indisputable relation to the value of the supplies/services offered by the city.

A form 1099 will be issued to the vendor/contractor in the tax year the work is performed.

Bartered prices will not be converted to cash value at any point during the contract.

Sole-Source Procurement

A sole-source procurement is one that is conducted without advertising or competition. Any department who believes they have a sole-source purchase must conduct a reasonable investigation showing there is only one

practicable source for the supply or service and submit documentation supporting that determination to the CPO, who will verify the information prior to approving a Purchase Order or contract.

Sole-source procurements do not apply to any purchase valued at more than \$50,000 except for software maintenance, library books, educational materials or utilities.

Collective and Collaborative Purchasing Opportunities

Certain types of collective purchases are allowed under c. 30B. The contracts resulting from these contracts comply with c. 30B and may be used without following a local quote or bid process. A description of approved alternative contracts follows:

COMMBUYS - The Commonwealth's Operation Services Division (OSD) procures and awards a number of statewide contracts that are available to municipalities. Departments who wish to procure an item or services from an OSD contract may request to be identified as a user on COMMBUYS, OSD's purchasing portal. Once approved, the COMMBUYS user will have full access to all COMMBUYS contracts and will have the ability to utilize the COMMBUYS portal.

COMMBUYS users will be expected to read the Contract User Guide for the purchase they are attempting to make, and shall comply with all terms of use for said contract. Remember that not all contractors listed on COMMBUYS are included on a State Contract. All purchases in COMMBUYS will be subject to confirmation by the CPO prior to approval in the city's MUNIS system.

Go to www.commbuys.com to access contract information, training resources, and buyer information.

MHEC – The Massachusetts Higher Education Consortium (MHEC) is a group purchasing consortium with contracts available to municipalities. Departments who wish to procure items from the MHEC contract may do so using the requisition process, indicating the MHEC contract number. Municipalities cannot procure services from the MHEC. The Procurement Office will verify eligibility under the MHEC contract and convert to a purchase order.

Go to www.mhec.net to access contract lists.

MAPC – The Metropolitan Area Planning Council (MAPC) has several contracts available to municipalities. Departments who wish to procure items or services from MAPC contracts may do so using the requisition process, indicating the title of the MAPC contract. The Procurement Office will verify eligibility under the MAPC contract and convert to a purchase order.

Go to www.mapc.org/collective-procurement to access contract information and buyer information.

Plymouth County Commissioners – This cooperative contract offers public service and municipal vehicles with equipment options. The city maintains a membership with the Plymouth County Commissioners and any department wishing to procure items from this contract may do so using the requisitions process, indicating the need for a procurements under the contract. The Procurement Office will verify eligibility under the contract and convert to a purchase order.

Go to www.plymouthcounty-ma.gov for more information.

GSA – Government Services Agency contracts are limited in variety, but cover items associated with Homeland Security, telecommunications, and disaster response. Departments who wish to procure from GSA contracts may do so using the requisition process, indicating the title of the GSA contract. The Procurement Office will verify eligibility under the GSA contract and convert to a purchase order.

Go to <http://www.gsa.gov/portal/content/105300> to access contract information and buyer information.

Houston Galveston Cooperative (H-GAC) – The H-GAC program has many items available, geared mainly towards public safety. Departments who wish to procure items or services from the H-GAC program should use the requisition process, indicating the item and the corresponding contract. The Procurement Office will verify eligibility under the GSA contract and convert to a purchase order.

Go to www.hgacbuy.org for more information.

Other Cooperative and Collaborative Contracts – From time to time, there may be other opportunities which become available to the city. Should any department become aware of a cooperative or collaborative they are interested in doing business with, the information must be provided to the CPO for a determination of eligibility and approval.

The Procurement Team will be aware of additional opportunities as well, and will communicate any such opportunity to city departments as a matter of routine.

CHAPTER 7C, §44-57 (Design Services)

Estimated construction cost of less than \$300,000 -OR- estimated design fee less than \$30,000

There is no formal procurement procedure for a design for which the estimated construction cost will be less than \$300,000 or the design fee will not cost more than \$30,000; however it is recommended that prices and qualifications be submitted from at least three design firms.

Estimated construction cost of more than \$300,000 -AND- estimated design fee more than \$30,000

Design projects where the estimated construction cost will be more than \$300,000 and the design fee will cost more than \$30,000 are subject to a qualifications based process. The city's "Designer Selection Procedures" shall be followed.

Under this type of procurement, the city must either set a design fee or set a not-to-exceed fee limit and negotiate with the top ranked designer within the fee limit. The CPO will work with the contracting department on establishment of the fee or fee limit.

Procurements made under this section are required to have a notice posted in the Central Register and in a newspaper with local circulation.

Fitchburg Designer Selection Procedures

These procedures govern the selection of designers for any City of Fitchburg building project subject to the designer selection law. Any other ordinance governing the procurement of services will be inapplicable to these procurements.

1. The Mayor has delegated the duties described herein to the extent such delegation is permissible by law, to the Chief Procurement Officer.

The Chief Procurement Officer shall designate the individual or group ("the Committee") to conduct the designer selection process. No person shall participate if that person, or any of their immediate family, has a direct or indirect financial interest in the award of the design contract to any applicant; is currently

employed by, or is a consultant to or under contract to, any applicant; is negotiating or has an arrangement concerning employment or contracts with any applicant; or has an ownership interest in, or is an officer or director of, any applicant.

2. The Request for Qualifications (RFQ) for shall be advertised in the newspaper, *Central Register*, and on the city's website at least two weeks before the application deadline.

Advertisement shall contain: project description, time period to complete project; estimated construction cost, if available; when and where a briefing session (if any) will be held; qualifications required of applicants; categories of designers' consultants, if any, for which applicants must list names of consultants they may use; whether the fee has been set or will be negotiated; if the fee has been set, the amount of the fee; how to obtain the RFQ; and where applications must be delivered.

3. The RFQ shall include the current "Standard Designer Application Form."
4. Committee shall evaluate applicants based on the following: prior similar experience; past performance; financial stability; identity and qualifications of consultants to the project; and any other criteria that the Committee considers relevant to the project.
5. The Committee shall select at least three finalists. An interview or additional information may be requested from finalists, so long as they are afforded equal opportunity.
6. The Committee shall rank finalists in order of qualification and transmit the list of ranked finalists to the Chief Procurement Officer. The list must be accompanied by a written explanation of the reasons for selection. The written explanation and recorded vote, if any, shall be public records and maintained in the contract file.

No person or firm, including listed consultants, debarred pursuant to MGL c. 149, § 44C, shall be included as a finalist.

7. If the fee was set prior to the selection process, the Chief Procurement Officer shall select from the list of finalists. If selected designer is not the one ranked first by the Committee, the Chief Procurement Officer shall file a written justification for the selection and maintain a copy in the contract file.
8. If the fee is to be negotiated, the Chief Procurement Officer shall request a fee proposal from the first ranked designer. The contracting department will commence negotiations. If unable to negotiate a satisfactory fee with the first ranked designer, negotiations shall be terminated and undertaken with the remaining designers, in the order in which they were ranked, until agreement is reached. In no event may a fee be negotiated which is higher than the fee set prior to selection of finalists.

If a satisfactory fee cannot be negotiated with any of the finalists, the Chief Procurement Officer shall recommend that the Committee select additional finalists.

9. The City of Fitchburg may allow a designer who conducted a feasibility study to continue with the design of a project. However, the city may commission, at its discretion, an independent review before allowing the designer to continue on the project, *provided* the city otherwise complies with the statutory requirements for selection under MGL c. 7C, § 54(a)(i).

10. Every contract for design services shall include:

- a. certification that the designer or construction manager has not given, offered, or agreed to give any person, corporation, or other entity any gift, contribution, or offer of employment as an inducement for, or in connection with, the award of the contract for design services;
- b. certification that no consultant to, or subcontractor for, the designer or construction manager has given, offered, or agreed to give any gift, contribution, or offer of employment to the designer or construction manager, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the designer or construction manager;
- c. certification that no person, corporation, or other entity, other than a bona fide full-time employee of the designer or construction manager, has been retained or hired by the designer or construction manager to solicit for or in any way assist the designer or construction manager in obtaining the contract for design services upon an agreement or understanding that such person, corporation, or other entity be paid a fee or other consideration contingent upon the award of the contract to the designer; and
- d. Certification that the designer has internal accounting controls as required by MGL c. 30, § 39R(c), and that the designer has filed and will continue to file an audited financial statement as required by MGL c. 30, § 39R (d).

All fees shall be stated in design contracts, and in any subsequent amendments thereto, as a total dollar amount. Contracts may provide for equitable adjustments in the event of changes in scope or services.

- 11. The city shall not enter into a contract for design services unless the designer has obtained professional liability insurance covering negligent errors, omissions, and acts of the designer or of any person or business entity for whose performance the designer is legally liable arising out of the performance of the contract. The total amount of such insurance shall at a minimum equal the lesser of one million dollars or ten percent of the project's estimated cost of construction, or such larger amounts as the city may require, for the applicable period of limitations. Designer shall furnish a certificate or certificates of insurance coverage to the city prior to the award of the contract.
- 12. Every contract for design services shall include a provision that the designer or its consultants shall not be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the designer in the preparation of the bid documents, as reasonably determined by the individual responsible for administering the design contract.
- 13. In the event of an emergency that precludes the normal use of these designer selection procedures, the Chief Procurement Officer may elect to authorize expedited procedures to address the emergency. The Chief Procurement Officer shall document in writing the reasons for the emergency declaration, the proposed scope of work, the estimated cost, and the established fee. The Chief Procurement Officer may select three finalists from a standing list of designers on projects of a similar nature, or may otherwise select three designers, rank the finalists and select a designer for the emergency work.
- 14. The Chief Procurement Officer shall publish designer award in the *Central Register*.
- 15. The contracting department shall evaluate designers' performance using the Designer Selection Board evaluation form, and file accordingly.

16. For any municipal design or construction project *that includes funding provided by the Commonwealth, in whole or in part* (such as reimbursements, grants and the like), the City of Fitchburg will incorporate minority-owned business enterprise and women-owned business enterprise participation goals.

CHAPTER 149 (BUILDING CONSTRUCTION)

Procurements estimated to cost less than \$10,000

Procurement of public building construction estimated to cost less than \$10,000 must be conducted using “sound business practices” defined as checking pricing, seeking quotes, or conducting market research to ensure competitive pricing is received. Sound reasoning may also consist of consideration of quality, experience, or qualifications of a contractor. Soliciting quotes is encouraged even when the potential contract will be less than \$10,000.

*As a result of the Municipal Modernization Act, building construction procurements under \$50,000 may also be made using a State Contract procured by OSD, or a Blanket Contract procured by the city.

Contracts under this section are subject to the Prevailing Wage Law from dollar one.

Procurements estimated to cost between \$10,000 and \$50,000

Procurement of building construction contracts estimated to cost between \$10,000 and \$50,000 requires the solicitation of at least three (3) written quotes from potential contractors. Quote requests must be in written form and well-communicated to each potential vendor. Documentation of quotes solicited must be included in the requisition process.

Procurements made under this section are required to have a notice posted on the city’s website, in COMMBUYS, in the Central Register and posted on the city website.

Proof of OSHA training must be provided prior to execution of a contract.

Prevailing Wages are mandatory.

*As a result of the Municipal Modernization Act, building construction procurements under \$50,000 may be made using a Blanket Contract (“On-Call” or “House Doctor”) procured by the city.

****COMMBUYS** – Also as a result of the Municipal Modernization Act, the Commonwealth’s Operation Services Division (OSD) procures and awards a number of statewide contracts that are available to municipalities for construction projects under \$50,000. Departments who wish to procure an item or services from an OSD contract may request to be identified as a user on COMMBUYS, OSD’s purchasing portal. Once approved, the COMMBUYS user will have full access to all COMMBUYS contracts and will have the ability to utilize the COMMBUYS portal.

COMMBUYS users will be expected to read the Contract User Guide for the purchase they are attempting to make, and shall comply with all terms of use for said contract. Remember that not all contractors listed on COMMBUYS are included on a State Contract. All purchases in COMMBUYS will be subject to confirmation by the CPO prior to approval in the city’s MUNIS system.

Go to www.commbuys.com to access contract information, training resources, and buyer information.

Procurements estimated to cost between \$50,000 and \$150,000

Procurement of public building construction contracts estimated to cost between \$50,000 and \$150,000 requires a sealed bid process.

Procurements made under this section are required to have a notice posted in a newspaper, in COMMBUYS, in the Central Register and posted at city Hall.

Proof of OSHA training must be provided prior to execution of a contract, as well as a payment bond of fifty percent (50%) of the total contract price.

Prevailing Wages are mandatory.

Procurements estimated to cost \$150,000 or more

In addition to the requirements above, a solicitation where the estimated cost is over \$150,000 must include a requirement of DCAMM certification for the general contractor and any sub-contractors. A payment bond of one hundred percent (100%) and a performance bond of one hundred percent (100%) are required.

Filed sub-bids are required for any trade within the construction contract where the estimated cost for the trade work will be twenty thousand dollars (\$25,000) or more.

For building contracts costing over \$150,000 there is a mandatory DCAMM evaluation process.

Procurements estimated to cost \$10 million or more

In addition to the requirements above, a solicitation where the estimated cost is over \$10 million must include a prequalification procedure for both general contractors and sub-bidders. This process is required before the actual bidding process can take place; the bidding process is then restricted to only those who have been approved in the prequalification process.

The prequalification process adds several weeks to the procurement and this should be kept in mind for scheduling purposes.

CHAPTER 30, §39M (PUBLIC WORKS CONSTRUCTION and CONSTRUCTION MATERIALS)

Construction materials

Procurement of construction materials for public buildings or public works is governed by this chapter. Construction materials is defined as any supplies or materials that will be utilized specifically by a contractor or public employee while performing a building or public works project.

Procurements estimated to cost less than \$10,000

Procurement of public works construction estimated to cost less than \$10,000 must be conducted using "sound business practices" which is defined as checking price lists, seeking quotes, or conducting market research to ensure competitive pricing is received. Sound reasoning may also consist of consideration of quality, experience, or qualifications of a contractor. Soliciting quotes is encouraged even when the potential contract is less than \$10,000.

Contracts under this section are subject to the Prevailing Wage Law from dollar one.

Procurements estimated to cost between \$10,000 and \$50,000

Procurement of public works construction contracts estimated to cost between \$10,000 and \$50,000 requires the solicitation of at least three (3) written quotes from potential contractors. Quote requests must be in written form and well-communicated to each potential vendor. Documentation of quotes solicited must be included in the requisition process.

Procurements made under this section are required to have a notice posted on the city's website, in COMMBUYS, in the Central Register and posted at city Hall.

Proof of OSHA training must be provided prior to execution of a contract.

Prevailing Wages are mandatory.

*As a result of the Municipal Modernization Act, public works construction procurements under \$50,000 may be made using a Blanket Contract ("On-Call" or "House Doctor") procured by the city.

**COMMBUYS – Also as a result of the Municipal Modernization Act, the Commonwealth's Operation Services Division (OSD) procures and awards a number of statewide contracts that are available to municipalities for construction projects under \$50,000. Departments who wish to procure an item or services from an OSD contract may request to be identified as a user on COMMBUYS, OSD's purchasing portal. Once approved, the COMMBUYS user will have full access to all COMMBUYS contracts and will have the ability to utilize the COMMBUYS portal.

COMMBUYS users will be expected to read the Contract User Guide for the purchase they are attempting to make, and shall comply with all terms of use for said contract. Remember that not all contractors listed on COMMBUYS are included on a State Contract. All purchases in COMMBUYS will be subject to confirmation by the CPO prior to approval in the city's MUNIS system.

Go to www.commbuys.com to access contract information, training resources, and buyer information.

Procurements estimated to cost more than \$50,000

Procurement of public works construction contracts estimated to cost more than \$50,000 requires a sealed bid process.

Procurements made under this section are required to have a notice posted in a newspaper, in COMMBUYS, in the Central Register and posted on the city website.

Proof of OSHA training must be provided prior to execution of a contract, as well as a payment bond of fifty percent (50%) of the total contract price.

Prevailing Wages are mandatory.

MASSDOT Prequalification

Although there is no prequalification process under c.30 §39m, prequalification of bidders by MASSDOT is required for contracts of \$50,000 or more if the city is to receive c.90 funding, or if the work will be performed on a state road, regardless of whether the city receives state funds.

RESPONSIBILITY FOR SOLICITATIONS AND CONTRACTS

For all competitive procurements (quotations, bids, proposals), the Chief Procurement Officer and the initiating department will work cooperatively to prepare the formal solicitation. The following section describes the procedures used by the Procurement Team, and the responsibilities of the initiating department with respect to preparing, issuing, receiving, awarding and administering the solicitation and subsequent contract.

It should be noted that all contract management functions are the responsibility of the initiating department(s), including issuing a notice to proceed, receipt and review of certified payroll reports, initiation of change orders, closeout and payment procedures, and subsequent contract evaluations.

DEPARTMENT RESPONSIBILITIES

For all anticipated solicitations over \$10,000, a “Procurement Request Form” must be completed by the requisitioning department, signed by the department head, and submitted to the CPO with the specifications (product description/scope of services). A completed Procurement Request form initiates the solicitation state in the Purchasing Department. The timeline for a solicitation does not begin until the form and specifications are accepted by the CPO and a contract number is assigned.

Product Description (for Goods)

For supplies, the department should provide sufficient detail for vendors to provide what is requested. Details could include things like size, capacity, dimensions, weight, performance rating, and expectations for guarantee/warranty. Keep in mind that if your description is vague or incomplete, the item you receive may not be of the quality or value you expect.

Scope of Services (for Services)

The department should provide a scope which includes a detailed description of the service or task to be performed. Details should include what the work entails, what talents or qualifications are required of the person(s) doing the work, and what is needed to accomplish the work. (An example would be: person to clear path to the building using a snow blower, whenever 1” or more of snow has fallen, and clearing on a recurring basis throughout any storm event).

Scope of Services (for Construction)

Typically, construction projects are complex and require intricate details that can only be provided from an architect or engineer. Often, drawings are necessary to accompany the specifications in order for the contractor to be clear on the work to be performed.

The department must provide, for both vertical and horizontal construction, a highly detailed description of the construction project. Not only should the scope include the specific materials and standards required, it should include the qualifications required of the contractor. Qualification requirements should indicate how many years’ experience the contracting firm should have, what types of projects the contractor should have worked on to make them qualified to perform the work, and any certifications or licenses that should be retained either by the firm or individuals performing the work.

Request for Proposal Justification (available for 30B contracts only)

If the department feels that a Request for Proposal (RFP) best suits their needs, rather than an Invitation for Bid (IFB), the department will provide the CPO with written documentation describing the specific reasons why an RFP process is more beneficial than an IFB process.

Contract schedule

Requestor should provide a basic timeline of need and/or implementation. Where applicable, the desired length of contract should be provided as well. If there are any other terms and conditions not included in the city's basic terms, the requestor should also provide those terms and conditions.

For any contract which may go beyond an initial five (5) year period, the requesting department shall petition the city Council for a longer-term contract.

Estimated Value

Since procurement laws are based upon dollar value thresholds, the department must provide an accurate estimate in order for the CPO to determine the appropriate procedure. For construction procurements it is recommended that a professional estimate be provided by an architect or engineer.

Communication with Vendors or Contractors

The requesting department is encouraged to provide contact information for vendors/contractors who may be interested in the solicitation. The Procurement Office will reach out to these parties. Departments shall refrain from providing solicitation documents directly to any vendor/contractor as this circumvents the solicitation registration process.

The CPO will communicate with the department head regarding any questions or comments received on the technical specifications. If necessary, an addendum will be prepared and issued to anyone who has registered to receive the solicitation. Please note: all questions, concerns and comments on the solicitation must be submitted to the CPO in writing. Departments must instruct all parties to communicate only with the Procurement Office.

Receipt of Quotations, Bids, Proposals

Unless permission is otherwise granted prior to solicitation, all quotations, bids and proposals are to be sent to/collected at the address of the Chief Procurement Officer and will be opened in the Procurement Office by the CPO or designee.

Review and Recommendation for Award

If the solicitation was an IFB, the department head will be responsible for reviewing the submitted bids and determining if the bidder is responsible. The department head should perform any reference checks and whatever reasonable research may be conducted to determine the bidder's reputation and ability to meet the requirements of the contract.

If the solicitation was an RFP, the department head will designate at least one member to be a part of the evaluation team, and will provide assistance to the CPO in choosing other members of the evaluation team.

Contract Management

The department head is responsible for monitoring the progress and performance of any contract for which they are the signatory, including reviewing certified payrolls when connected to a Prevailing Wage project.

All amendments, change orders, or extensions should be initiated by the department head, but the execution process for all of these documents will be coordinated by the CPO.

Department heads are responsible for tracking the expiration dates of their contracts. The department head will notify the CPO at least 90 days in advance of a contract expiration in order to facilitate a new contract, if necessary.

Department heads are responsible for providing a copy of any performance review to the Procurement Office, wherever such a review is required by DCAMM.

Department heads are also responsible for receiving and reviewing certified payroll reports for all projects that are subject to Prevailing Wage Laws. Department heads should maintain a file for each project which contains the certified payrolls. At the conclusion of the contract, certified payrolls shall be sent as a complete file to the CPO. The Purchasing Department will retain certified payroll files for seven (7) years following the completion date of the project in accordance with statutory records retention requirements.

Important Note: Invoices should not be paid until certified payroll associated with work performed in the invoice is received from the contractor.

PROCUREMENT TEAM RESPONSIBILITIES

Issuing the Solicitation

The Chief Procurement Officer will utilize all the information provided by the department and prepare a complete solicitation document which is in compliance with the applicable Massachusetts General Law. If any additional information is needed from the department, the CPO will request said information and incorporate into the solicitation.

The Procurement Team will be in constant communication with the requesting department. Once a due date is established for the solicitation, the department will receive a confirmation email including the due date and time, and location of any pre-bid, last day for questions, and for the bid opening.

For construction contracts, the CPO will work with the department to establish a date and time for any pre-bid meeting or walk-through, and will provide guidelines for the pre-bid activity.

For all solicitations that include labor, the Procurement Office will request and provide a Prevailing Wage rate sheet from the Massachusetts Department of Labor Standards (DLS) for the solicitation. This is a statutory requirement for contractors performing work on any public construction project, student transportation, some office and furniture moving, and public works transportation.

Should the department, at any time, be in need of assistance with developing a scope of work or any other challenges when developing the solicitation, the Procurement Office will provide professional assistance to the best of their ability. If possible, the Procurement Office will assist the department by researching specifications used in other municipalities or similar agencies, and will provide the sample documents to the department.

The Chief Procurement Officer is responsible for ensuring that public notice is legally and properly made.

Use of City Website for Procurement

All procurements requiring a quotation process, IFB or RFP will be posted on the city website, which will be the single source for vendors and contractors to obtain documents. Unless the solicitation documents are too complex or too large to make available through the website, potential vendors and/or contractors will be directed and required to download documents from the website.

Distribution of Solicitation

The Procurement Office is responsible for distribution of all solicitations over \$10,000. Should bid documents be provided from an architect/engineer/OPM, the documents will be provided to the Procurement Office who will distribute the correct number to appropriate department heads and project managers, as required.

The Procurement Office will maintain a record of all vendors/contractors who have registered to receive the solicitation, will maintain a record of bid plan fees received, and will be responsible for return of documents, bid deposits and plan fees. The collection of plan fees will be eliminated, for the most part, due to the use of electronic bid documents posted on the city website.

All monies received and associated with any procurement shall be turned over to the Treasurer and deposited into the city's account, where they will be held until thirty (30) days following the award of a contract. No checks will be held under any circumstances.

The CPO will communicate with the department head regarding questions or comments on the technical specifications. If necessary, the Procurement Team will prepare and issue an addendum to all plan holders who have registered to receive the solicitation. Please note: all questions, concerns and comments on the solicitation must be submitted to the CPO in writing. Departments must instruct all parties to communicate only with the Procurement Team. Responses that are not provided through the Procurement Team are not recognized or valid.

Receiving and Evaluating Responses

Unless permission is otherwise granted prior to solicitation, all quotations, bids and proposals are to be sent to/collected at the address of the Chief Procurement Officer and will be opened by the Chief Procurement Officer or designee.

For an IFB, the CPO will receive all bids, and at the time of the bid opening will open, read aloud, and prepare a bid tabulation sheet with the results. The CPO will consider each bidder's responsiveness to the basic requirement. Immediately following CPO review, the department head will receive the bids for evaluation. The department head will provide the CPO with a recommendation of award in a timely manner.

For an RFP, the CPO is authorized by the Mayor to create an evaluation committee that has the expertise and ability to evaluate, rank, and recommend an award. The CPO will receive all proposals, and at the time of opening will open and prepare a register of proposals. Price proposals will remain unopened at this time. The CPO will then provide the proposals to members of the evaluation committee, including the department head. Once the evaluation committee reaches a decision, the CPO will open the price proposals and provide to the evaluators for recommendation of award.

Handling Late Responses

A late bid or proposal is one that is delivered after the due date and time. If a bid or proposal is late, it must be rejected as non-responsive, and as such will be returned unopened to the person submitting the bid or proposal. Should a bid or proposal be received via USPS/UPS/FedEx or any other courier service, it shall be refused upon attempted delivery. If mailed, it shall be returned unopened.

Corrections or modifications to responses are also not accepted beyond the due date and time.

Deciding Tie Bids

On the rare occasion of a tie bid, the city must use a tie-breaking method which is fair to all responders. It will be the policy of the CPO to direct the tie bidders to conduct a "second heat" whereas they will be asked to send an additional response with a new bid form on a date and time specific. Should the second heat result in another tie, the bid will be awarded by coin toss with tied bidders in attendance.

Awarding and Executing Contracts

Once the vendor/contractor has been identified as eligible for a contract, the CPO will draft the contract. In the rare case that the vendor/contractor supplies a contract, the CPO will adapt that contract to the city's format prior to distribution for signatures. The first signature on any contract shall be the vendor/contractor's signature. The CPO will be responsible for corresponding with the vendor/contractor to obtain the appropriate signature. A "Notice of Award" will accompany the contract.

A contract packet will be considered complete when returned from the vendor/contractor with all required documents, which may include insurance certificates, bonds, guarantee or warranty documents. If any component is missing, the CPO will notify the vendor/contractor.

Routing of the contract shall be the responsibility of the Procurement Office. At the sole discretion of the CPO, the contract will either be distributed in hard copy or electronically. For the purposes of efficiency and tracking, the electronic signature process will be the process of choice.

The contract will travel the following track, once the vendor/contract has signed: 1) Chief Procurement Officer; 2) department head; 3) City Auditor; 4) city Solicitor; 5) Mayor.

Upon receiving the Mayor's signature, the contract is considered fully executed and ready for distribution. One fully executed copy is returned to the vendor/contractor. One contract will be retained by the Procurement Office; an electronic copy is provided to the department head and city Solicitor; and one hard copy is provided to the city Clerk. The contract will be posted on the city's public drive under "Procurement" in the folder labeled "Executed Contracts."

Once the contract is executed, the department may initiate a Purchase Requisition in MUNIS, which will be converted to a Purchase Order. The Requisition should contain the assigned Contract Number in the "General Description" field.

Notice to Proceed

The contracting department is responsible for issuing the "Notice to Proceed" once the contract is executed. A template is available on the city's public drive under "Procurement" in the folder "Documents for Departments."

Contract Database

The Procurement Office will maintain a database of current contracts and executed contract documents, and shall make that record available to all staff. Contract database function will notify Contract Managers of approaching expirations for contracts and renewals, and it is the responsibility of any department head or contract manager to communicate a response to the purchasing department.

Contract Management

The city should never be in the position to award contracts to a problem vendor or contractor. The Procurement Office will keep a central record of any recurring problems, quality issues, complaints, performance issues, or other items that may be used to disqualify a vendor or contractor in the future.

The Procurement Office will also keep a central record of performance reports where they are required by law.

PROCUREMENT PROCESS

As described in an earlier chapter, for all anticipated solicitations over \$10,000, a “Procurement Request Form” must be completed by the requisitioning department, signed by the department head, and submitted to the CPO with the specifications (product description/scope of services). A completed Procurement Request form initiates the solicitation state in the Purchasing Department. The timeline for a solicitation does not begin until the form and specifications are accepted by the CPO and a contract number is assigned. Following the execution of a contract, the requisition for these solicitations should be entered into MUNIS by the contracting department.

Every expenditure in excess of \$500 shall require a requisition in the MUNIS system and the department is responsible to initiate and release a requisition. The document “Purchasing Requisition Process” is available on the city’s public drive under “Procurement” in the folder “Department Training Materials.” All requisitions must meet the requirements listed in the “Purchasing Requisition Process” document which is a separate document.

The department head is accountable for the appropriation of funds at the time of requisition entry and the availability of funds accordingly.

No purchase, service, or work shall be furnished to any department prior to issuance of a valid, signed purchase order. An invoice submitted to the City Auditor without a valid purchase order may be deemed unlawful and payment of the invoice refused.

All requisitions entered will follow the MUNIS Workflow module, and will follow a series of approval levels prior to conversion to a purchase order. The initial series of approvals will be dictated by the department head, who will have the authority to grant access to requisition initiators (clerical staff) and decide the preliminary approvers. Approvals beyond the department head will be dictated by the CPO and Executive Office, in observance of accepted practices.

The routine procurement process for requisition to purchase order is described in the section below, as well as practices for other procurement situations.

PURCHASES LESS THAN \$500

For individual, one-time purchases under \$500, no requisition is necessary and the invoice may be paid directly through the Office of the City Auditor without approval of the CPO using exception code 9500 (Small Purchases). More on exception codes below.

Note: Incidental purchases are not meant to circumvent the procurement process. The CPO and City Auditor’s Office will routinely monitor incidental purchases for compliance with the intent of this section.

PURCHASES BETWEEN \$500 and \$10,000

For items that do not require quotes, bids, or proposals, the requisition will follow the approval workflow via MUNIS. After the final workflow approver, the requisition will be delivered to the CPO who will convert the requisition to a Purchase Order (assuming all components are in order).

PROCUREMENTS \$10,000 AND OVER

For items that require a quote, bid, or proposal, the requisition will follow the approval workflow via MUNIS. After the final workflow approver, the requisition will be placed in a “HOLD” status in MUNIS by the CPO, until such time that the associated procurement is complete and a contract is executed.

EXCEPTION CODES

Only for certain, specific items, invoices may be paid using a standard exception code, established by the CPO for use by city and School departments. The CPO reserves the right to discontinue use of exception codes by any department not properly utilizing the codes, or to add or remove codes as deemed appropriate. The exception codes are:

- 1000 Reserved for contract vendor WB Mason and Toshiba Leases only
- 1500 Postage
- 2000 Utilities (Verizon, Nation Grid, Unitil , Comcast, Wireless, Direct Energy)
- 3000 Vehicle Fuel (diesel and gasoline)
- 3500 Winter Operations (Plowing, Sanding, Road Salt)
- 4000 Advertising (Newspapers, Publication, Online Advertising)
- 4500 Professional Development, Travel Mileage, Dues, Subscriptions
- 5000 Parade and Performances (Bandstand, Movie Night, etc.)
- 5500 Police and Fire Details
- 6000 Housing Rehab Contractors - Comm Dev Use Only
- 6500 Veteran's Benefits-Veteran's Department Use Only
- 7000 Expenses Related to Solar Contracts
- 7500 Inter-department or Inter-governmental Transactions
- 8000 Fees and Taxes
- 8500 Debt Service
- 9000 Insurance and Payroll Withholdings, Medical, Employee Benefits
- 9500 Small Purchases - Less than \$500 and not needing a PO
- 9999 Special Circumstances - Prior approval by Chief Procurement Officer required
- 10000 SPED Assessment Services - School Department Use Only
- 11000 Legal Expenses and Insurance Expenses (not withholdings)

CHANGE ORDERS, AMENDMENTS AND EXTENSIONS

SUPPLY AND SERVICE CONTRACTS

Under c. 30B you may increase in the quantity of a supply or service, as long as the increase does not exceed twenty-five percent (25%) of the total contract price, and so long as the supply or service was described in the original bid documents. Unit prices cannot be higher than the original unit prices. A contract amendment must be signed by the original signatories.

Contracts for the purchase of heating oil, gasoline, fuel oil, road sand and salt are not subject to the percentage limit but must meet all other requirements stated above.

CONSTRUCTION CONTRACTS

There is no statutory limit on change orders for construction projects; however, recent case law suggests that change orders should not exceed thirty percent (30%) of the original contract.

The contractor suggesting the change order shall supply the department head with a written explanation of the need for a change, including a detailed cost breakdown of the proposed change. The change order cannot

significantly deviate from the original scope and must be directly related to work described in the original specifications. Work cannot be an unassociated “add on.”

It is the responsibility of the department head to ensure that the change order is, in fact, necessary for completion of the project and that the additional work being proposed was not included in the existing contract cost. The department head should also determine if the requested change is accurate and has value to the overall project.

ON-CALL CONTRACTS

In order to make most efficient use of the existing on-call contracts in place for the city, any task which will cost less than \$500 may be made by the department without a change order.

For tasks between \$500 and \$10,000, the department may accomplish the work by submitting a requisition in MUNIS, prior to commencement of work, which will be approved by the CPO.

For tasks which will cost between \$10,000 and \$50,000, the department head shall request a change notify the CPO, in writing, indicating the work to be performed and the estimated cost of the work. Concurrently, the department shall initiate a requisition in MUNIS, which may be converted to a Purchase Order if the CPO approves the scope and cost.

On-Call contracts may not be used for projects that exceed a good faith estimate of \$50,000. Any work exceeding this estimate must be solicited as a stand-alone procurement.

AMENDMENTS

Should a contract amendment become necessary for any reason, the department head is responsible for notifying the CPO in writing of the need and reasons for the amendment. The CPO will prepare and execute the amendment, which will follow the same requirements as an original contract.

Should the contract amendment require additional funding, the department head is responsible for securing that funding prior to requesting the amendment.

Upon final execution of the amendment, the CPO will approve an adjustment to the Purchase Order accordingly.

EXTENSIONS

A department head needing an extension on a contract should submit a written request to the CPO at least 30 days in advance of needing the extension. The CPO will verify the eligibility of the contract for being extended, pursuant to the terms of the existing contract and subject to the applicable General Law. If the extension is warranted, a “Notice of Extension” will be prepared and executed by the CPO.

EMERGENCY PROCUREMENTS

SUPPLIES AND SERVICES

The Chief Procurement Officer may approve an emergency procurement when the situation would “endanger the health or safety of the people or property.” In an emergency situation, a procurement must comply with the law to the greatest extent possible while attending to the emergency.

Any department head having an emergency procurement must document the situation and submit in writing to the CPO within one business day of the event. The document must contain:

- The basis for the emergency procurement
- The name(s) of the vendor/contractors used
- The dollar amount committed to the emergency
- List of supplies and/or services procured

BUILDING CONSTRUCTION

Prior approval of DCAMM is required on any emergency purchase under the provisions of c. 149. The provision states that an emergency is to “preserve the health or safety of persons or property, or to alleviate an imminent security threat.”

Any department head having an emergency procurement must document the situation and submit in writing to the CPO immediately in order for a DCAMM waiver to be submitted in a timely manner.

DCAMM approval may waive public notice or bidding requirements for the work necessary. If the nature of the emergency precludes prior approval, the city may contract for only the work that is absolutely necessary, and seek subsequent approval from DCAMM. Although formal bidding may be waived, the city should solicit more than one source if at all possible in the time constraint.

Emergency procurements are also subject to the Prevailing Wage Law; therefore the CPO will apply for prevailing wages as soon as notification of the emergency work is received.

Note: If DCAMM denies the city’s request, work must stop immediately.

You may not artificially create an emergency simply by putting off normal maintenance and repair work. If you knew or should have known that a repair was warranted and you had time to correct it using normal bidding procedures, DCAMM will not allow you to justify the use of emergency procedures.

PUBLIC WORKS CONSTRUCTION

Under the provisions of c. 30, 39M an emergency is defined as “extreme emergency caused by enemy attack, sabotage or other such hostile actions or resulting from an imminent security threat explosion, fire, flood, earthquake, hurricane, tornado or other such catastrophe.”

Any department head having an emergency procurement must document the situation and submit in writing to the CPO within one business day of the event in order to create a permanent record of the actions taken.

Note: Only work absolutely necessary to temporarily repair and restore service, or to preserve the health and safety of persons or property is allowed to be performed without a procurement; however, no permanent reconstruction, alteration, remodeling or repair of any public work is allowed. And similar to building construction emergencies under MCL c. 149, you cannot artificially create an emergency by putting off normal maintenance and repair work.

HOW TO USE THE CITY’S TAX EXEMPT STATUS

The city is exempt from state sales tax when procuring goods and services. Tax Exempt forms are found on the city's public drive under "Procurement" in the folder labeled "Tax Exempt Forms."

Please remember that the city's Tax Exempt status may not be used for personal purchases or reimbursable expenses that you pay for out of your own pocket.

CREDIT CARD AND PROCUREMENT CARD (P-CARD) POLICY

Use of credit cards to purchase items or services on behalf of the city, without prior encumbrance, is contrary to the purchase of procurement statutes and DOR regulations. Departments are not allowed to apply for, retain, or process credit card transactions. All credit cards shall be turned into the Procurement Office, who will determine the correct procedure for use or cancellation.

However, in light of the increase in online purchasing and the advantageous pricing available, the city has established a Procurement Card program (P-Card) to provide for the rapid acquisition of low dollar value items, and items available exclusively online.

Procurement card transactions shall be made in accordance with established procurement rules and policies contained in a separate document. The CPO and/or City Auditor may suspend or deny use of a P-Card to any staff member or department not following established rules and policies, or for inappropriate use of the P-Card. Any staff member utilizing the P-Card will be required to sign a User Agreement prior to receiving credit card access.

BID SPLITTING

Splitting purchases over several days, weeks, or months is considered "bid-splitting" when the appearance is that this is being done to avoid meeting thresholds which require a more complex procurement. Certain unexpected small expenses sometimes make good business sense and are not problematic. However, to purposely purchase items over time and under the procurement thresholds is illegal. The CPO will not approve requisitions or transactions that have the appearance of bid splitting and reserves the right to report said activity to the appropriate authority, should the activity appear to be purposeful.

OTHER POLICIES

SALES, MEALS, AND ROOM TAX

Per MGL c. 64H, §6(d), the City of Fitchburg is exempt from sales tax. Vendors should be given a properly executed Exemption Certificate when making a direct purchase or conducting a procurement. This exemption applies to purchases made directly by the city and does not apply to personal use purchases. In addition, the city will not reimburse sales tax.

Per MGL c. 64H, §6(d), the City of Fitchburg is exempt from meals tax. Vendors should be given a properly executed Exemption Certificate when making a direct purchase. This exemption applies to purchases made directly by the city and does not apply to personal use purchases. Because the exemption process may be cumbersome for an employee traveling on city business, purchases of meals while on city business may be reimbursed, along with a reasonable tip or gratuity, provided there is appropriate and adequate documentation of the purchase, including itemization. The city does not pay for or reimburse for alcohol, and any purchase or alcohol should be made as a separate transaction with personal funds.

There is no exemption for room tax. All properly documented invoices for lodging will be reimbursed.

BUY RECYCLED POLICY

The City of Fitchburg is committed to purchasing products that are environmentally preferable and/or made of recycled materials whenever such products meet quality requirements and are available at reasonable prices and terms. The following standards should be adhered to by all city departments:

- a) All purchases of printing and writing paper for in-house use or custom printed materials by professional printers, including copier paper, forms, stationary, envelopes and other applicable materials should be no less than 30% post-consumer recycled materials according to applicable standards.
- b) City departments shall ensure that all contracts for printing require the inclusion of an imprint identifying the recycled content of the paper whenever practicable, along with the recycling symbol.

POLICY FOR WINTER OPERATIONS

Authority

Snow plowing is exempt under MGL c. 30B, §1(b)(17). However, the service must still be procured through the Purchasing Department. The Chief Procurement Officer (CPO) provides guidance, internal support, and procurement assistance in the development and solicitation of snow operations contracts.

Procurement Procedure

Annually, the Department of Public Works (DPW) reviews competitive rates for snow operations contractors and submits a request for procurement to the CPO, along with any suggested changes to the contract and application. The following critical items are described or included in the contract/application packet:

- Hourly rates
- Application/Contract
- Application is accepted on a first-come, first-served basis
- Application, including proof of insurance and vehicle list, is due by deadline
- Not all applications are guaranteed a route assignment

The CPO utilizes information provided by the DPW and prepares a solicitation packet, which is provided to interested individuals and contractors. CPO is responsible for public notice; however, it is not required.

The DPW Business Manager is designated to collect and review applications and forms for compliance with requirements, and shall collect insurance certificates and exemption forms. The DPW Business Manager shall determine if the interested individual/contractor is responsible and able to perform the work. DPW will arrange for inspection of the equipment to be used in performance of the contract, and may schedule a meeting for contractors at or near the start of the winter season.

Contract

A contract packet is considered complete when all items are returned from the vendor, including:

- Signed Application/Agreement
- Certificate of Liability Insurance
- Certificate of Worker's Compensation Insurance or Exemption Form
- W-9 (Request for Taxpayer Identification) Form

The contract will travel the following track: 1) Chief Procurement Officer; 2) Department Head; 3) City Auditor; 4) City Solicitor; 5) Mayor. Routing of the executed contract shall be the responsibility of the Procurement Office. Upon receiving the Mayor's signature, the contract is considered fully executed and ready for distribution.

Contract Management

The City should not be forced to continually award contracts to a problem Contractor. The DPW Commissioner is responsible for monitoring the progress and performance of the contract, and shall report any performance issues in writing to the CPO. The DPW Commissioner shall utilize the contract language to terminate a contract if the Contractor is not performing the work according to the contract. Future contracts may not be awarded to a Contractor having documented performance issues.

Liability and Insurance

Contractors shall be responsible for protecting their own work and all nearby properties from damage from their performance with particular attention to trees, shrubs, lawns, steps, walks, mailboxes, etc. It shall be the Contractors' responsibility to immediately report any damage(s) to the Commissioner of Public Works or designee.

Contractor shall carry insurance to adequately protect against claims arising from snow removal operations. In no case shall the limits be less than:

Automobile Liability: at least \$100,000 per person/\$300,000 per accident for Bodily Injury, and \$100,000 Property Damage per accident.

Worker's Compensation Insurance: Individuals, independent contractors, owner/operators, sole proprietors, businesses, corporations, LLC's or any entities engaged in an employer/employee relationship are required to provide Worker's Compensation coverage for themselves and all employees, including substitute drivers and owner operators. Sole proprietors only may sign and submit an Exemption Form with respect to this requirement.

A Certificate of Insurance naming the City of Fitchburg as certificate holder shall be filed with the DPW Business Manager prior to commencement of any Contract operations. The "Description" section shall contain the following sentence: "The City of Fitchburg is an additional insured under this policy." All policies and certificates shall contain an endorsement requiring at least thirty (30) days written notice of non-renewal, restrictive amendment, or cancellation of coverage to the City. Compliance by the Contractor with the insurance requirements shall not relieve the Contractor from liability under the full indemnity provisions contained herein. Failure to provide insurance as established above shall be considered a breach of Contract and grounds for immediate termination of the Contract.

The City will perform random insurance verification on all policies during the term of the contract. Any Contractor found to be uninsured at the time of the verification check shall result in immediate termination of the contract.

CONTRACT COMPLIANCE AND PERFORMANCE POLICY

Contract management covers the entire contracting process, from pre-solicitation through the procurement request, and until contract closeout. This section focuses solely on monitoring and administration activities that occur after the contract has been executed until contract closeout (final payment).

Oversight of an executed contract/project is performed by the associated department and/or division head (hereinafter called "Contract Manager"). The information following this policy may be helpful to those administering contracts and performing contract evaluations.

1. The Contract Manager must keep their copy of the contract, correspondence related to the contract, and payment history, on file until the final payment has been made.
2. The Contract Manager must maintain certified payroll and wage sheets that have been submitted in relation to a closed contract, for three years following final payment.
3. The Contract Manager must provide a signed, written record of performance to the Purchasing Department to be kept with the official contract file, on the form provided by the Purchasing Department. The record of performance (Performance Evaluation for Contracts) will be completed and submitted within thirty (30) days of contract completion or final payment, whichever is later.
4. The Contract Manager must comply with all reporting procedures with respect to contracts requiring a DCAMM evaluation, and must provide a copy of the DCAMM evaluation to the Purchasing Department. For construction with a cost exceeding \$1.5 million, the Owner's Project Manager (OPM) is required to complete the form.

Contract Performance Monitoring – Best Practices

The Procurement Office uses the performance record to gather feedback about goods and services received and contractor performance for a number of reasons, especially for determining responsibility of the contractor to be assigned future work or projects.

Documenting and maintaining a contract file are good practices to ensure the delivery is in line with the contract requirements and issues are addressed timely. Your contract file should contain the following:

- ✓ Copy of the contract, including all attachments and amendments
- ✓ Award letter and Notice to Proceed
- ✓ Copies of all correspondence with the contractor
- ✓ Notes from meetings
- ✓ Documentation of performance issues/complaints/cure letters
- ✓ Contract amendments
- ✓ Documentation of deliverables
- ✓ Weekly Certified Payroll and Statement of Compliance Forms
- ✓ Payment records
- ✓ Contract closeout documentation

Regular communications with the contractor should identify problems in real-time. Dispute resolution is preferable to seeking legal remedies; therefore every effort should be made to identify and address problems as they occur, and in writing. Managing performance documents is especially important where there are disputes, to assess liquidated or actual damages, and in justifying termination for default.

Poor or non-performance should never be accepted. That is why documenting problems is critical when requesting a cure. Acceptable means to resolve disputes include:

- Informal dispute resolution through collaboration and negotiation
- Alternative Dispute Resolution
- Liquidated damages
- Contract Termination/Cancellation
- Termination without Cause - mutual consent of both parties.
- Termination for Convenience - contract no longer serves the best interest of the city.

- Termination for Cause - failure to perform, failure to deliver on time, or failure to comply with other terms and conditions, failure to remedy deficiencies identified.

Alternatives to termination for default that can be considered include: withholding payment until performance requirements are met, seeking an alternative source of supply, revising the contract or delivery schedule, or re-procuring the product or service.

End of Contract/Contract Closeout – Best Practices

Documenting the life of the contract, including the history of the contract from the planning stage to contract completion, consistently reviewing contractor performance, and promptly evaluating challenges and successes are key to wrapping up a project. The COF Evaluation Form will be a helpful tool to use during the final review of the contract to ensure that all the necessary steps in the closeout process are completed. Additional contract review activities you should conduct:

- Confirm that all contractual obligations have been completed
- Verify if the contract (including all optional renewals) expired
- Confirm that all testing reports or inspections have been completed and accepted
- Confirm that any City property and/or information has been returned
- Confirm that no claims, issues, or unresolved matters exist on the contract
- Confirm that all contractor invoices have been submitted and paid
- Determine if a termination was completed (if it was initiated)
- Verify that the contract file is complete
- Complete and submit COF Evaluation Form to Purchasing
- Provide Certified Payroll and Statement of Compliance Forms to Purchasing Department to complete the contract file.

COORDINATION OF POLICIES AND PROCEDURES

Should any policy or procedure contained herein not conform to prevailing laws of the city or otherwise, such policy or procedure shall be void.

All prevailing ordinances, policies, and procedures of the City of Fitchburg are incorporated herein without specific reference.

END OF MANUAL