

EXHIBIT A

ARTICLE XII. PROCUREMENT POLICY

Sec. 2-1350. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Authorized person.* Any city employee approved by the city manager, a department director or this policy to effect procurements on behalf of the city.
- (2) *Award.* The presentation, after careful consideration, of a purchase agreement or contract to the selected bidder.
- (3) *Bidder.* A person who submits a bid in response to a public notice or invitation for bid.
- (4) *Blanket purchase order.* A contract under which a vendor agrees to provide products or services to a purchaser on a demand basis; the contract generally establishes prices, terms, conditions and the period covered (no quantities are specified); shipments are to be made as required by the purchaser.
- (5) *City.* The City of St. Joseph, Missouri, and its authorized representatives.
- (6) *City manager.* The chief administrative officer of the city.
- (7) *Construction.* The process of building, altering, repairing, improving, or demolishing any public structure, building or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.
- (8) *Contract.* Any type of city agreement, regardless of what it may be entitled, for the procurement of supplies, services or construction.
- (9) *Contractor.* Any person or entity pursuing, or currently a party to, a contract with the city.
- (10) *Council.* The individuals elected to serve as members of the St. Joseph, Missouri city council.
- (11) *Employee.* Any individual receiving a salary from the city.
- (12) *Instruction to bidders.* Any document utilized for defining guidelines to follow for the submission of bids.
- (13) *Invitation for bids.* Any document utilized for soliciting sealed bids. No confidential or proprietary data shall be solicited in any invitation for bids. Bids are publicly opened and prices are fixed.

(14) Master agreement. An agreement that governs on-call services or work of a specified nature through which separate work orders not to exceed a specified amount established by ordinance or resolution are issued for individual projects as such projects arise during the term of the agreement.

- (15) *Person.* Any business, individual, union, committee, club or other organization, or group of individuals.
- (16) *Price agreement.* A contract under which a vendor agrees to provide what is required by a purchaser at a predetermined price for a limited period of time.
- (17) *Procurement card.* A payment mechanism designed to facilitate small dollar purchases.
- (18) *Professional services.* Services including, but not limited to, appraisal, architectural, engineering, environmental, financial, geo-technical, legal, real estate, surveying and title.
- (19) *Public agency.* A public entity subject to, or created by, local ordinance.
- (20) *Purchase order.* A purchaser's written document to a supplier formally stating all terms and conditions of a proposed transaction.
- (21) *Request for proposals.* Any document utilized for soliciting proposals. Proposals are not publicly opened and prices can be negotiated.
- (22) *Responsible bidder.* A person who has the capability in all respects to fully perform the contract requirements and the tenacity, perseverance, experience, integrity, reliability, facilities, equipment and credit to assure good faith performance.
- (23) *Responsive bidder.* A person who has submitted a bid in compliance with the instructions to bidders, which conforms in all material respects to the invitation for bids.
- (24) *Small business.* A United States business which is independently owned and which is not dominant in its field of operation.
- (25) *Specification.* Any description of the physical or functional characteristics of a supply, service or construction item. It may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery.

Sec. 2-1351. Purpose.

The purpose of this procurement policy is to provide a process for the fair and equitable treatment of all persons involved in public procurement with the city, to maximize the procurement value of public funds in procurement and to provide safeguards for maintaining a procurement system of quality and integrity.

Sec. 2-1352. Application.

This procurement policy shall apply to all contracts or commitments for the expenditure of any public funds under the city's control on or after the effective date of this policy, unless the parties agree to its

application to contracts entered into prior to the effective date. It shall apply to every expenditure of public funds by the city irrespective of their source. When the procurement involves the expenditure of federal assistance or contract funds, the procurement shall be conducted in accordance with any applicable federal laws and/or regulations, which have not been set out in this policy. Nothing in this policy shall prevent the city from complying with the terms and conditions of any grant, gift or bequest, which is otherwise consistent with the law.

Sec. 2-1353. Administration.

It shall be the responsibility of the purchasing agent to administer the provisions of this procurement policy.

Sec. 2-1354. Bidder's responsibility.

The city shall maintain, on a best effort basis, a list of products or services with an anticipated potential bidders to be solicited for the procurement total cost exceeding \$5,000. It shall be the responsibility of the vendor to contact the purchasing agent to be placed on the bidder's list. Any request by a vendor to be placed on the bidder's list shall be in writing. The city shall provide notice to all potential bidders through media publications, including, but not limited to, the public notice section of the newspaper.

Sec. 2-1355. Procurements less than \$5,000.

Authorized persons may make procurements of goods or services that are less than \$5,000 directly from vendors.

Sec. 2-1356. Procurements between \$5,000 and \$25,000 (informal bids).

(a) Authorized persons may make procurements of goods or services that are \$5,000, but less than \$25,000, after obtaining three written bids from vendors and receiving written approval from his/her department director and the purchasing agent on a form or in a format prescribed by the purchasing agent.

(b) Each written bid obtained shall include the name of the vendor and contact person, the date and the amount of each quotation and shall be maintained as a public record.

Sec. 2-1357. Procurements \$25,000 or greater (formal bids).

(a) The procurement of goods or services anticipated to be \$25,000 or greater shall be formally bid, except as otherwise provided in this policy.

(b) It shall be the purchasing agent's responsibility to establish rules and procedures governing the invitation for bids, public notice, bid opening, bid evaluation and bid acceptance, correction or withdrawal of bids, cancellation of awards, awards and multi-step sealed bidding.

(c) Program and certified/pre-owned passenger vehicles. For purposes of determining the lowest responsible bid for passenger vehicles (cars, trucks, vans) the city shall follow the following procedures:

- (1) All bid solicitations for passenger vehicles shall include both new and program vehicles including, as an option, certification for program vehicles.
- (2) Following receipt of the bids, city staff shall prepare a financial analysis comparing the costs, savings and other factors relevant to the selection of the lowest responsible bid. While the city shall solicit bids for both new and program cars, it shall not be mandatory for bidders to submit bids for both types of vehicles. The financial analysis sheet and all other relevant information shall be affixed, if applicable, to the ordinance, and shall be maintained for inspection in the purchasing division of the financial services department.
- (3) In order to provide a rational and measurable basis for comparing new and program/certified pre-owned vehicle bids, the condition and remaining life of the program/certified pre-owned vehicles must be sufficiently similar. Accordingly, in order to be considered sufficiently similar a program/certified pre-owned passenger vehicle shall not have an in-service date more than 12 months prior to the bid date nor shall it have an odometer reading in excess of 15,000 miles at that same date. Failure to meet these basic criteria shall render the bid for that vehicle invalid.
- (4) Subsection (c) shall apply solely to passenger vehicles and shall not apply to non passenger vehicles designed for special uses, emergency functions, police patrol and/or fire response nor shall it apply to procurements of other types of motorized, mechanized, custom and/or specially-designed transport equipment.
- (5) Exceptions, if any, to the requirements of Subsection (c) shall be approved by the city manager and brought to the attention of the city council, prior to the bid award.

Sec. 2-1358. **Master Agreements.**

On-call services or work of a specified nature may be performed pursuant to the terms and conditions of a master agreement. Work orders for such on-call services or work shall be authorized in accordance with ordinary contract authority except in circumstances when a master agreement, or an ordinance or resolution authorizing execution of a master agreement, provides the city manager with authority to execute work orders in an amount established by ordinance or resolution that exceeds ordinary contract authority, which shall in no event be greater than \$75,000.

Sec. 2-1359. Single feasible source procurements.

(a) Whenever competitive market conditions for any particular product or service are such that competitive sealed bids cannot be practically used in the best interest of the city due to special limited-time discounts, the product or service may be purchased based on written or telephonic bids solicited without public notice and bid opening.

(b) Whenever a particular product or service is proprietary and only available from the manufacturer, a single distributor, or a professional service provider, the product or service may be purchased based on written or telephonic bids solicited without public notice and bid opening.

(c) Any and all procurements requested under this section must comply with the rules and procedures established by the purchasing agent and must be submitted in writing for the city manager's prior approval.

Sec. 2-1360. Emergency Procurements.

(a) An emergency exists when there is a threat to the public health, safety or welfare or when immediate expenditure is necessary for repairs to city property in order to protect against further loss of or damage to city property, to prevent or minimize serious disruption in city services or to ensure the integrity of city records.

(b) To the extent practical under the circumstances, emergency procurements should be competitively bid by obtaining quotations via telephone or facsimile.

(c) Any and all procurements requested under this section must be submitted in writing for the city manager's prior approval.

(d) If the emergency procurement exceeds the budget appropriation, an ordinance to appropriate the funds must be submitted to the city council as soon as is practical, given the nature of the emergency, but in no case more than 30 days after initiating the emergency procurement.

(e) A procurement will not be considered an emergency due to lack of appropriate planning on the part of department or city personnel.

Sec. 2-1361. Blanket purchase orders and price agreements.

Blanket purchase orders and price agreements are used in long term situations. The blanket purchase order or price agreement remains open for one fiscal year to purchase the products or services specified on an "as needed" basis and awarded using a competitive bid process. It shall not be necessary to obtain competitive sealed bids or comparative prices for products covered under price agreements.

Sec. 2-1362. Special procurement requirements.

The city shall comply with any special procurement requirements mandated by federal, state, county, or other granting or funding authorities, provided such requirements achieve the minimum standards established by this policy and other applicable sections of the city charter and code of ordinances, which will include cost and price analysis for every United States Department of Transportation procurement, including contract modifications.

Sec. 2-1363. Prohibition against splitting of procurements.

No proposed procurement shall be artificially divided, delayed or scheduled in such a fashion so as to avoid bidding or in any way circumvent the requirements of this policy.

Sec. 2-1364. Cancellation/rejection of bids or proposals.

An invitation for bids or any other solicitation may be canceled or rejected in whole or in part for good cause, if in the best interests of the city. The reasons, therefore, shall be documented and made a part of the contract file.

Sec. 2-1365. Nonresponsive bids.

If a bid is deemed nonresponsive, the reasons, therefore, shall be documented and made a part of the contract file.

Sec. 2-1366. Bid Security.

(a) Bid security may be required for competitive sealed bids, regardless of the amount, to protect the interest of the city in the event a bidder refuses the contract or fails to provide a performance or payment bond. Bid security also serves as a device to screen out financially irresponsible bidders.

(b) Bid security shall be in an amount equal to at least 5% of the amount of the bid.

(c) Bid security, if required, may be in the form of a bid bond, cashier's check or certified check for bids \$25,000 and less.

(d) Bid security, if required, shall be in the form of a bid bond for bids greater than \$25,000.

Sec. 2-1367. Performance and payment bonds.

(a) For any contract **for public works estimated to exceed \$50,000, each contractor performing work may be required to furnish the city with** a performance and maintenance bond, **which (if required)** shall become binding on the parties upon the execution of the contract. A performance and maintenance bond provides for responsibility by a third party for the contractor's faithful performance of all contract requirements; and

(b) For any contract **for public works estimated to exceed \$50,000, each contractor performing work shall be required to furnish the city with** a payment and materials bond, **which** shall become binding on the parties upon the execution of the contract. **Such bond shall be conditioned for the payment of any and all materials incorporated, consumed or used in connection with the construction of such work; all insurance premiums, both for compensation and for all other kinds of insurance, on such work; and for all labor performed in such work whether by a subcontractor, a supplier at any tier, or otherwise.** A payment and materials bond provides for responsibility by a third party for the contractor's payment to its subcontractors and suppliers and insures property or equipment used in the contract.

Sec. 2-1368. Debarment or suspension.

A person may be debarred or suspended by the city manager in accordance with the guidelines set forth in Section 9-102 of the American Bar Association's Model Procurement Code for state and local governments. Said person may be reinstated at the discretion of the city manager, provided he/she/it has remedied the initial cause of the debarment or suspension. A suspension shall automatically occur if there is litigation pending between the city and a contractor.

Sec. 2-1369. Debarment certification.

(a) Potential bidders, vendors, or suppliers who perform work on any project funded, in whole or in part, with any federal or state moneys, shall certify, upon submitting a proposal, that neither it nor its

principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal, state, or local department or agency.

(b) If potential peddlers, vendors or suppliers are found on the debarment or suspension list provided by the government, the Purchasing Division will not process the requisition. All results of searches will be attached to the filed paperwork for verification of search.

Sec. 2-1370. Anticompetitive practices.

When, for any reason, collusion or other anticompetitive practices are suspected among any bidders, a notice of the relevant facts shall be provided to the state attorney general.

Sec. 2-1371. Awards.

Unless otherwise provided under Section 2-1378, awards will be made to the lowest responsible bidder considering price, responsibility, qualification and capability of the bidder and all other established objective and subjective criteria; provided the bid satisfies the specifications and other requirements of the invitation for bids and/or price solicitations.

Sec. 2-1372. Cancellation of awards.

(a) An award may be delayed, rescinded or cancelled for non-payment of any tax, license fee or charge, including applicable interest, penalties, or collection fees assessed by the city against the bidder and/or any owner or officer of said bidder.

(b) The bidder shall have five working days after notification of the delay, rescission or cancellation to provide proof of payment to the purchasing agent. Failure to provide such proof by the end of the fifth working day shall constitute a voluntary cancellation of the contract.

Sec. 2-1373. Cancellation of contract.

(a) A contract may be delayed, rescinded or cancelled for non-payment of any tax, license, fee or other charge including applicable interest, penalties or collection fees assessed by the city against the contractor, any owner or officer of said contractor or any of its subcontractors.

(b) The contractor shall have five working days after notification of the delay, rescission or cancellation to provide proof of payment to the purchasing agent. Failure to provide such proof by the end of the fifth working day shall constitute a voluntary cancellation of the contract and the city shall have the right to pursue the contractor's performance bond.

Sec. 2-1374. City manager's contract authority.

Notwithstanding other provisions of the city charter, the city code, or this article:

- (1) The city manager is authorized to execute contracts **with values** of \$25,000 or less without approval of the city council, subject to the availability of funds and the requirements of city code Section 2-1052(4) regarding budget transfers.

- (2) The city council shall approve, by resolution, contracts with values in excess of \$25,000.
- (3) The city council shall approve, by special ordinance, contracts with values in excess of \$25,000 that
 - a. exceed the amount appropriated,
 - b. are not specifically referred to in the annual appropriation ordinance or resolution authorizing a greater amount, or
 - c. require compliance with city code Section 2-1052(4) regarding budget transfers.
- (4) The city manager is authorized to execute contracts for emergency procurements, as described in Section 2-1360, without the prior approval of the city council.

Sec. 2-1375. Purchasing agent's authority.

Notwithstanding other provisions of the city charter, the city code, or this article, the purchasing agent may, on a case by case basis, establish such additional procedures as may be necessary to comply with and carry out the scope, application and administration of this policy, as defined in Sections 2-1351, 2-1352 and 2-1353, respectively.

Sec. 2-1376. Intergovernmental procurement agreement.

Other provisions of this procurement policy regarding competitive bidding notwithstanding:

- (1) The city may make any purchases under cooperative procurement agreements with the United States Government, the State of Missouri, and other local governmental jurisdictions. Whenever possible, comparative direct pricing should be obtained through informal price solicitations.
- (2) The city may enter into cooperative procurement agreements with other governmental jurisdictions providing for the solicitation of bids for the combined needs of the city and of the cooperating governmental jurisdiction. Such cooperative procurements would be in the form of "price agreements", specifying firm unit pricing based on estimated combined annual quantities.

Sec. 2-1377. Record retention.

(a) All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained by the purchasing agent in a contract file.

(b) All procurement records shall be retained and disposed of in accordance with record retention guidelines and schedules defined by the city code, the State of Missouri Municipal Records Manual, and state statutes. If a contract is being funded in whole or in part by assistance from a federal, state, or other agency, then all procurement records pertaining to that contract shall be in accordance with that agency's guidelines, or upon the final disposition of any controversy arising out of the assistance agreement.

Sec. 2-1378. Local purchasing preference policy.

(a) If a local bidder is within three percent of the lowest bid from an out of town bidder on a construction or other formally bid project from \$5,000.00 up to \$500,000.00; within two percent on such

project from \$500,001.00 up to \$1,000,000.00, and within one percent on such project from \$1,000,001.00 up to \$5,000,000.00, then the local bidder will be awarded the bid unless otherwise provided in this section.

(b) The local purchasing preference policy shall not apply in the following instances:

- (1) When purchases and/or contracts are funded in whole or in part by federal funds;
- (2) When purchases are less than \$5,000.00 or more than \$5,000,000.00;
- (3) When purchases are not required to be formally bid, such as sole source procurements, emergency procurements and any other such procurements as defined in the city procurement policy or the city emergency management policy;
- (4) When professional services are procured through the issuance of requests for qualifications and/or requests for proposals, including design-build contracts; or,
- (5) When such preference is in conflict with any applicable state or federal laws, rules or regulations.

(c) The local purchasing preference policy shall not apply to private construction projects financed with public assistance, including, but not limited to, tax increment financing, Chapter 100 bonds, Chapter 353 redevelopment projects and enterprise zone redevelopment.

(d) "Local" is defined as a business operating within the corporate limits of the city of St. Joseph, with the majority of its primary business operations, including, but not necessarily limited to, production, operation, purchasing, billing, marketing, management, administration and ownership, occurring within the city limits. "Local" shall not include the following:

- (1) Those businesses with only a local St. Joseph post office box; or
- (2) Those businesses with a sales presence in the city, but no physical business location within the city limits; or
- (3) Home based businesses that merely take orders for products shipped from out-of-town to their customers.

Exceptions will be considered on a case-by-case basis when a written request is submitted to the city manager.

(e) Notwithstanding the foregoing, the local bidder must otherwise meet all qualifications and procurement policy requirements of the city, including, but not limited to, the "best bid" requirements, in order to be awarded a bid under this section.

Sec. 2-1379. Conflicts of interest.

No employee, officer, or agent of the City of St. Joseph will participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his

or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the City of St. Joseph must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts, unless the financial interest is not substantial or the gift is an unsolicited item of nominal value. Disciplinary actions will be applied for violations of such standards by officers, employees, or agents of City of St. Joseph.

Sec. 2-1380. Design-build contracts.

(a) *Authorized.* Project development and construction may be procured through a design-build contract and procurement process under which one or more firms coordinate and perform all design and construction services and are responsible for all architectural, engineering, and related design services and all labor, materials, supplies, equipment, and other construction services required to complete the project.

(b) *Design criteria consultant.* A design or construction consultant for the procurement of design-build services for the purpose of preparing a design criteria package, organizing, developing, and administering the selection process, reviewing the design criteria, monitoring with construction process for compliance with a request for proposals, and for other consulting services related to the design-build project. The scope and role of the owner's consultant's services may be further defined during the design-build procurement and award process. The city may procure the services of an owner's consultant under master agreement for professional services or the issuance of a request for qualifications.

(c) *Design-build procurement methods.* Either of the following procurement methods may be utilized for design-build projects:

(1) *Qualification-based.* Following the issuance of a request for qualifications for a design-build project, a qualification-based selection may be made based upon statements of qualifications submitted by responding firms. A contract may be awarded to the firm deemed most qualified and with which a contract for the project can be agreed upon. If a contract with a qualified firm cannot be agreed upon, the scope of the project may be re-evaluated and a qualification-based selection process may be reinitiated.

(2) *Two-phase.* A two-phase selection may be made based upon the following procedures:

a. *Phase 1 - Issuance of request for qualifications (RFQ).* The purchasing agent shall issue a request for qualifications, including the design criteria package and the amount of technical proposal payment available to firms invited to submit technical proposals, in the same manner that would be required by this article for the procurement of professional or construction services.

b. *Phase 2 – Issuance of request for proposal (RFP).* The firms best demonstrating the qualifications to complete the design-build project through their responses to the requests for qualifications, or through an interview process, shall be invited to submit a technical proposal including conceptual design for the project. At least two such firms shall be invited to submit such proposal. Any firm determined by the director of public works and transportation, or his or her designee, to lack the qualifications to complete the project shall be disqualified for the

remainder of the selection process. The following conditions will be used in choosing the winning proposal:

- i. *Selection of winning proposal.* Firms invited to submit a technical proposal must submit the technical proposal in compliance with the requirements and schedule stated in the request for qualifications and the invitation to submit a technical proposal. Firms failing to submit a compliant technical proposal will be disqualified.
- ii. *Selection criteria.* The selection criteria or scoring system for selection of a technical proposal for award of a contract shall be stated in the invitation to submit a proposal.
- iii. *Technical proposal payment.* As an inducement to submit a technical proposal, each firm invited to submit a technical proposal that is not awarded a contract to construct the project shall be entitled to a technical proposal payment (commonly referred to in design-build contracts as a stipend) as stated in the request for proposals, provided the firm submits a technical proposal that complies with this section, the request for qualifications, and the invitation to submit a technical proposal. When a project has been designated in the capital improvement projects budget or by resolution of the city council as a design-build project, the city manager shall have authority to issue technical proposal payments from budgeted funds to all firms entitled to such payments in amounts not more than one-half of one percent of the total project budget.
- iv. *Use of design.* Upon payment of a technical proposal payment to any firm not awarded a design-build contract, the city shall have a nonexclusive right to use the design submitted by the firm and the firm shall have no further liability for the use of the design in any manner. If the firm desires to retain all rights and interest in the design proposed, the design-builder shall forfeit the technical proposal payment.

Secs. 2-1381--2-1399. Reserved.