

Memorandum



CITY OF DALLAS

DATE March 15, 2018

Honorable Members of the Government Performance & Financial Management
TO Committee: Jennifer S. Gates (Chair), Scott Griggs (Vice Chair), Sandy Greyson,
Lee M. Kleinman, Philip T. Kingston, Tennell Atkins, Kevin Felder

SUBJECT **Procurement: Recommended Changes to Chapter 2 (Administration) and 15B
(Equal Employment Opportunity Contract Compliance) of Dallas City Code**

On Monday, March 19, 2018, the Office of Procurement Services will brief the Government Performance & Financial Management Committee on recommended changes to Chapter 2 and 15B of the City Code.

During staff review of the Administrative Directive governing City contracting (AD 4-5), the Office of Procurement Services and City Attorney's Office identified a number of proposed changes to Dallas City Code. Although many of the changes are simply codifications of State statute language, several changes to the Code are being recommended to provide operational efficiencies.

I have attached the briefing and draft ordinance for your review.

Please let me know if you need additional information.

A handwritten signature in blue ink that reads "M. Elizabeth Reich".

M. Elizabeth Reich
Chief Financial Officer

Attachments

c: Honorable Mayor and Members of the City Council
T.C. Broadnax, City Manager
Larry Casto, City Attorney
Craig D. Kinton, City Auditor
Billierae Johnson, City Secretary (Interim)
Daniel F. Solis, Administrative Judge
Kimberly Bizer Tolbert, Chief of Staff to the City Manager
Majed A. Al-Ghafry, Assistant City Manager

Jon Fortune, Assistant City Manager
Joey Zapata, Assistant City Manager
Jo M. (Jody) Puckett, Assistant City Manager (Interim)
Nadia Chandler Hardy, Chief of Community Services
Raquel Favela, Chief of Economic Development & Neighborhood Services
Theresa O'Donnell, Chief of Resilience
Directors and Assistant Directors

Procurement: Recommended Changes to Chapter 2 (Administration) and Chapter 15B (Equal Employment Opportunity Contract Compliance) of Dallas City Code

**Government Performance and
Financial Management**

March 19, 2018

**Mike Frosch, Director
Office of Procurement
Services**



City of Dallas

Purpose

- Discuss the Office of Procurement Services review of Administrative Directive 4-5
- Discuss recommended Chapter 2 and Chapter 15B City Code amendments
- Discuss operational efficiencies
- Discuss next steps

Background

- Office of Procurement Services (OPS) is committed to delivering timely service to its clients through strategic and competitive purchasing
- Effective public procurement is grounded in the following key values
 - Transparency
 - Accountability
 - Ethics
 - Impartiality
 - Professionalism

Background

- The City must comply with all local, State, and Federal procurement laws
 - State Laws of Texas
 - Dallas City Charter
 - Dallas City Code
 - City Administrative Directives

Background

- OPS and the City Attorney's Office have worked in collaboration to review and recommend changes to the Administrative Directive governing Contract (AD 4-5) – Latest revision date – April 2013
 - This group is independent of the Construction Task Force
 - Changes were circulated to all departments for review and recommendations
- During the review, changes were identified to Chapter 2 of the Dallas City Code governing the procurement process and Chapter 15B, Equal Employment Opportunity Contract Compliance

Background

- Changes are recommended for two primary reasons: administrative clean-up and to provide operational efficiencies
- Administrative Directives (ADs) provide references to the employees on areas of daily operations
- ADs often reference the applicable state statutes, City Charter, or City Code
- Changes were identified within the City Code during the review of AD 4-5

Administrative Directive 4-5 – Changes

- Major Highlights

- Added section requiring attestation engagement for any construction related project over \$50M
 - Recommended by Government Performance and Financial Management Committee on February 5, 2018
- Removed the requirement for the City Auditor’s Office to review all sole source and single bid solicitations
 - Recommendation of the City Auditor’s Office to Budget, Finance, and Audit Committee in 2017
 - Already implemented
- Added a new internal document referred to as “service order” for certain types of minor services, such as mail and delivery services not requiring a contract
 - Recommendation of the OPS and the City Attorney’s Office

Administrative Directive 4-5 – Changes

- Minor Changes
 - Changed the layout of the document and modified definitions to provide clarity
 - Administrative clean-up for references to statutes, department names, etc.

Recommended Changes to Chapter 2

Section 2-27 Definitions

- (1) ALTERNATIVE DELIVERY METHOD means one of the methods by Chapter 2269 of the Texas Government Code, as amended, for contracting for facility construction.
- ~~(3) CONSTRUCTION SERVICES means the following activities, but does not include facility construction:~~
 - ~~(A) the construction of capital improvements to city owned real property or right of way, including but not limited to streets, traffic signals, signal systems or control devices, storm drainage facilities, sidewalks, alleys, water or wastewater mains or appurtenances, process plants, or other similar facilities;~~
 - **IMPACT:** Updates City Code with current state statutes.

Recommended Changes to Chapter 2

Section 2-27 Definitions (continued)

- ~~• (B) the renovation, modification, alteration, modification, or repair activities that are treated or defined under state law as public works.~~
- ~~• (C) other construction, renovation, alteration, modification, or repair activities that are treated or defined under state law as public works.~~
- (5) FACILITY has the meaning given that term in Chapter 2269 of the Texas ~~CONSTRUCTION means the construction, rehabilitation, alteration, or repair of a building or any portion of a building, the design and construction of which is governed by accepted building codes, but does not include construction that is specifically excluded from the definition of “facility” contained in Section 271.111, Texas~~ Local Government Code, as amended
- **IMPACT:** Updates City Code with current state statutes.

10

Recommended Changes to Chapter 2

Section 2-27 Definitions (continued)

- (16) SERVICE ORDER means a legal instrument, similar to a purchase order for equipment or supplies, used to authorize payment, without the requirement of a contract, for certain types of minor services, such as mail and delivery services, or minor repair, restoration and remediation services necessary for a timely and efficient response to equipment failure or damage to a facility.
- **IMPACT:** Significant operational efficiency. Creates a new definition within City Code to process small service related orders not to exceed \$3,000. This will function as a purchase order (PO) for services. Administrative Actions are required today for all service orders.

Recommended Changes to Chapter 2

Section 2-30 General Delegation of Contracting Authority

- (d) The city manager is authorized to approve the following by administrative action, without further city council action:
 - (1) A contract for the purchase of goods, general services, ~~construction services~~, or facility construction, or for any other lawful municipal purpose not specifically described in this subsection, that requires a city expenditure not exceeding \$50,000.
 - **IMPACT:** Clean-up

Recommended Changes to Chapter 2

Section 2-30 General Delegation of Contracting Authority (continued)

- (2) A contract requiring a city expenditure exceeding \$50,000, but not exceeding \$70,000, for:
 - (a) the purchase of goods, or general services, ~~or construction services~~ required to be procured through competitive bid or competitive sealed proposal in accordance with Chapter 252, Texas Local Government Code, as amended, including purchases made utilizing a cooperative purchasing program; or
 - (b) facility construction required to be procured through competitive bid or competitive sealed proposal in accordance with Chapter 252, Texas Local Government Code, as amended, or through an alternative delivery method in accordance with Chapter 2269, Texas Government Code, as amended.
- **IMPACT:** Updates City Code with current state statutes.

Recommended Changes to Chapter 2

Section 2-31 Rules Regarding Expenditures Not Exceeding \$50,000

- (a) Except as otherwise provided by this section, all purchases of goods, general services, or facility construction, ~~or construction services~~ under this section must be made by the director after giving reasonable opportunity for competition under procedures that are established by the director, with city manager approval, and that are consistent with the purpose of this section
- **IMPACT:** Clean-up

Recommended Changes to Chapter 2

Section 2-31 Rules Regarding Expenditures Not Exceeding \$50,000 (continued)

- (b) If the city expenditure for the purchase of goods, general services, or facility construction ~~, or construction services~~ exceeds ~~\$1,000~~ 3,000, price quotations from not less than three independent vendors or contractors, if available, must be secured.
- **IMPACT:** Updates City Code with current state statutes, and amends to allow for small dollar purchases under \$3,000 to be purchased more efficiently.

Recommended Changes to Chapter 2

Section 2-32 Rules Regarding Expenditures Exceeding \$50,000

- (a) Advertisement. No city expenditure exceeding \$50,000 may be made without advertising for competitive bids or competitive sealed proposals pursuant to Chapter 252, Texas Local Government Code, as amended, and this division, or without following the advertisement requirements in Chapter 2269, Texas Government Code, as amended, and this division, for alternative delivery methods, except in cases ~~of facility construction as provided in Section 2-33 of this division~~, an immediate emergency, or where competitive bidding, or sealed proposal, or an alternative delivery method is not otherwise required by state law or the city charter.
- **IMPACT:** Updates City Code with current state statutes.

16

Recommended Changes to Chapter 15B

Section 15B-1 Definitions

- (6) DISCRIMINATE, DISCIMINATES, OR DISCRIMINATION means to distinguish, differentiate, separate, or segregate solely on the basis of race, color, age, religion, marital status, sexual orientation, gender identity and expression, genetic characteristics, national origin, disability, military or veteran status, sex, political opinions or affiliations ~~age, color, religion, sex, sexual orientation, or national origin.~~
- (7) SEXUAL ORIENTATION has the meaning assigned to it in Chapter 34 of the Dallas City Code, as amended ~~means an individual's real or perceived orientation as heterosexual, homosexual, or bisexual or an individual's real or perceived gender identity.~~
- **IMPACT:** Conforms with the Dallas City Charter and same change was made in Chapter 2 of the City Code.

Recommended Changes to Chapter 15B

Section 8 Equal Employment Opportunity Clause

- (1) The contractor shall not discriminate against any employee or applicant for employment because of race, color, age, religion, marital status, sexual orientation, gender identity and expression, genetic characteristics, national origin, disability, military or veteran status, sex, political opinions or affiliations ~~age, color, religion, sex, sexual orientation, or national origin.~~
- **IMPACT:** Conforms with the Dallas City Charter and same change was made in Chapter 2 of the City Code.

Operational Efficiencies



Summary of Operational Efficiencies

- Procurement management tool was developed, tested, and fully implemented in Oct. 2017
 - Salesforce platform will provide additional dashboards for reporting, and milestone tracking
- Office of Procurement Services is researching available options for online bidding systems to further automate the bid receipt, tabulation, evaluation, and vendor notification process.
 - Fall 2018
- Implementation of electronic signatures for contracting and administrative actions
 - Pilot is successful with additional departments being added

20

Master Agreement for Goods and Services: Process

- Used for goods and general services based primarily on demand analysis
 - Estimates annual requirements based on the previous year plus anticipated use for upcoming contract term
- Contracts are “not to exceed” contracts (capped)
 - Departments ordering items must have available budget appropriations
- Pricing is fixed firm pricing, for a specific term, ordered on an as needed basis
- Terms are typically one to five years based on market analysis
 - Product availability, market volatility, supply and demand, and price

Master Agreement for Goods and Services: Recommended Changes

- Continue use for goods and general services based primarily on demand analysis
 - Estimates annual requirements based on the previous year plus anticipated use for upcoming contract term
- Contracts will NOT be capped providing departments the ability to purchase items for firm pricing for a specific period of time, however purchases may not exceed the budgeted amounts for those goods and services
- Pricing remains fixed firm pricing, for a specific term, which are ordered on an as-needed basis

Master Agreement for Goods and Services: Recommended Changes – Benefits

- Provides indefinite quantities which allows the City to respond to policy and unforeseen events expeditiously.
 - Current process requires departments to limit quantities to forecasted projections
- Recommended process allows the City to respond to changes such as:
 - New Grants: Allows the utilization of existing agreements to make immediate purchases without depleting agreement when accepting grants to purchase goods and services
 - Policy changes which increased the number of spay and neuter cases
 - Emergency Response: Allows department to utilize existing agreements in response to weather and unforeseen events without risk of depleting agreement

23

Next Steps

- Schedule agenda item to revise Chapter 2 and 15B on the April 11, 2018 Council agenda
- Publish the revised Administrative Directive 4-5 for Contracting following Council approval

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City of Dallas

Appendix

ORDINANCE NO. _____

An ordinance amending Chapters 2, “Administration,” 15B, “Equal Employment Opportunity Contract Compliance,” of the Dallas City Code by amending Sections 2-17.3, 2-27, 2-29, 2-30, 2-31, 2-32, 2-33, 15B-1, and 15B-3; providing clarifying changes to the city’s nondiscrimination provisions in Chapters 2 and 15B; adding and deleting definitions; updating state law references; clarifying that the city manager may approve purchases made utilizing a cooperative purchase program if under a certain amount; adding alternative delivery method as another form of procurement; authorizing the director to use a service order to approve payment for minor services under \$3,000; providing a decision making process for facility construction procured through an alternative delivery method; making other grammatical and structural changes; providing a penalty not to exceed \$500; providing a saving clause; providing a severability clause; and providing an effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Subsection (a) of Section 2-17.3, “Nondiscrimination in the Provision of City Services,” of Article I, “In General,” of Chapter 2, “Administration,” of the Dallas City Code, as amended, is amended to read as follows:

“(a) The city of Dallas will not discriminate because of a person’s race, color, age, religion, marital status, sexual orientation, gender identity and expression, genetic characteristics, national origin, disability, military or veteran status, sex, [~~marital status, sexual orientation, national origin, disability,~~] political opinions, or affiliations in the provision of services to the general public.”

SECTION 2. That Section 2-27, “Definitions,” of Division 1, “Purchasing and Contracting Generally” of Article IV, “Purchasing,” of Chapter 2, “Administration,” of the Dallas City Code, as amended, is amended to read as follows:

“SEC. 2-27. DEFINITIONS.

In this article:

(1) ALTERNATIVE DELIVERY METHOD means one of the methods authorized by Chapter 2269 of the Texas Government Code, as amended, for contracting for facility construction.

(2) CITY EXPENDITURE means the payment of money by the city directly to a vendor or contractor pursuant to a city-awarded contract in consideration of goods furnished to or services performed on behalf of the city, or in consideration of the accomplishment of some other lawful public or municipal purpose, regardless of the source or nature of the funds used by the city to make payment and regardless of the form of contract used.

(3[2]) COMMUNITY DEVELOPMENT ITEM means the purchase, by competitive sealed proposal as required in Section 252.021(d) of the Texas Local Government Code, as amended, of goods or services pursuant to a community development program established under Chapter 373 of the Texas Local Government Code, as amended, in which the source of the city expenditure for the purchase is derived exclusively from an appropriation, loan, or grant of funds from the federal or state government for community development purposes.

[~~(3) CONSTRUCTION SERVICES means the following activities, but does not include facility construction:~~

~~(A) the construction of capital improvements to city owned real property or right of way, including but not limited to streets, traffic signals, signal systems or control devices, storm drainage facilities, sidewalks, alleys, water or wastewater mains or appurtenances, process plants, or other similar facilities;~~

~~(B) the renovation, modification, alteration, or repair of existing capital improvements upon or within city owned real property or right of way; or~~

~~(C) other construction, renovation, alteration, modification, or repair activities that are treated or defined under state law as public works.]~~

(4) DIRECTOR means the director of the department designated by the city manager to administer this chapter [~~office of business development and procurement services,~~] or the director's authorized representatives.

(5) FACILITY has the meaning given that term in Chapter 2269 of the Texas [~~CONSTRUCTION means the construction, rehabilitation, alteration, or repair of a building or any portion of a building, the design and construction of which is governed by accepted building codes, but does not include construction that is specifically excluded from the definition of "facility" contained in Section 271.111, Texas Local~~] Government Code, as amended.

(6) GENERAL SERVICES means insurance (including insurance-related services such as claims adjustment and policy administration), technical services related to the purchase of a high technology item, or other types of manual, physical, or intellectual labor performed on behalf of the city and purchased for a lawful municipal purpose. The term does not

include personal services, professional services, planning services, or facility construction [~~or construction services~~].

(7) **GOODS** means supplies, equipment, or other personal property, including but not limited to high technology items, purchased and used for a lawful municipal purpose.

(8) **GOVERNMENTAL CONTRACT** has the meaning given that term in Chapter 2252, Subchapter A, Texas Government Code, as amended.

(9) **HIGH TECHNOLOGY ITEM** means an item of equipment, goods, or services of a highly technical nature, including but not limited to:

(A) data processing equipment and software and firmware used in conjunction with data processing equipment;

(B) telecommunications equipment and radio and microwave systems;

(C) electronic distributed control systems, including building energy management systems; and

(D) technical services related to those items listed in Paragraphs (A) through (C) of this subsection.

(10) **LOCAL BUSINESS** means a business with a principal place of business within the city.

(11) **NONRESIDENT BIDDER** has the meaning given that term in Chapter 2252, Subchapter A, Texas Government Code, as amended.

(12) **PERSONAL SERVICES** means any service personally performed by the individual with whom the city has contracted.

(13) **PLANNING SERVICES** has the meaning given that term in Section 252.001, Texas Local Government Code, as amended.

(14) **PRINCIPAL PLACE OF BUSINESS** means:

(A) the headquarters of a business or the primary executive or administrative office of a business from which the operations and activities of the business are directed, controlled, and coordinated by its officers or owners; or

(B) an established office, plant, store, warehouse, or other facility where the majority of the business' operations and activities are conducted and located, except that a location solely used as a message center, post office box, mail drop, or similar service or activity that provides no substantial function to the business is not a principal place of business.

(15) PROFESSIONAL SERVICES means those services defined as professional services under state law applicable to municipal purchases or contracts, including but not limited to services provided by accountants, architects, artists, attorneys, auditors, court reporters, doctors, engineers, optometrists, real estate appraisers, land surveyors, scientists, and teachers.

(16) SERVICE ORDER means an authorization to make a payment under \$3,000, without the requirement of a contract, and on a form approved by the city attorney.

SECTION 3. That Section 2-29, “Approval of Plans and Specifications,” of Division 1, “Purchasing and Contracting Generally” of Article IV, “Purchasing,” of Chapter 2, “Administration,” of the Dallas City Code, as amended, is amended to read as follows:

“SEC. 2-29. APPROVAL OF PLANS AND SPECIFICATIONS.

If the director determines that preparation of plans and specifications is necessary and practical for the purchase of goods, general services, or facility construction [~~services~~], the director shall require the preparation of the plans and specifications in cooperation with the department concerned. The plans and specifications must be approved by both the director and the director of the department concerned. If the plans and specifications are approved, the director shall keep a copy of the plans and specifications on file in the director’s office and make the copy available for public inspection for five years after the date of approval of the plans and specifications. Subject to state law requirements governing the retention and disposal of records, the director may dispose of any plans and specifications that have been on file in the director’s office longer than five years after the date of their approval.”

SECTION 4. That Subsection (d) of Section 2-30, “General Delegation of Contracting Authority,” of Division 1, “Purchasing and Contracting Generally” of Article IV, “Purchasing,” of Chapter 2, “Administration,” of the Dallas City Code, as amended, is amended to read as follows:

“(d) The city manager is authorized to approve the following by administrative action, without further city council action:

(1) A contract for the purchase of goods, general services, [~~construction services,~~] or facility construction, or for any other lawful municipal purpose not specifically described in this subsection, that requires a city expenditure not exceeding \$50,000.

(2) A contract requiring a city expenditure exceeding \$50,000, but not exceeding \$70,000, for:

(A) the purchase of goods[;] or general services[; ~~or construction services~~] required to be procured through competitive bid or competitive sealed proposal in

accordance with Chapter 252, Texas Local Government Code, as amended, including purchases made utilizing a cooperative purchasing program; or

(B) facility construction required to be procured through competitive bid or competitive sealed proposal in accordance with Chapter 252, Texas Local Government Code, as amended, or through an alternative delivery method in accordance with Chapter 2269, Texas Government Code, as amended.

(3) A change order to a contract required by state law to be procured through ~~either~~ competitive bid, ~~or~~ competitive sealed proposal, or an alternative delivery method that increases or decreases the contract price by \$50,000 or less, provided that the original contract price may never be increased by more than 25 percent. This paragraph does not delegate authority to the city manager to approve a change order amending a contract provision or a specification for the purpose of altering an existing payment schedule, payment method, time or date of payment, or interest rate on a payment, regardless of whether the payment obligation under the contract belongs to the contractor or the city and regardless of the amount of the increase or decrease in the contract price.

(4) A contract for personal, professional, or planning services requiring a city expenditure not exceeding \$50,000, except that no formal administrative action is required to execute a contract for real estate appraisal services requiring a city expenditure not exceeding \$50,000.

(5) An amendment to a contract not required by state law to be procured through competitive bid, ~~or~~ competitive sealed proposal, or an alternative delivery method, which amendment increases the contract price by \$50,000 or less or causes any decrease in the contract price, except that approval of the city council is required on an amendment that increases the contract price by \$50,000 or less if:

(A) the original contract price does not exceed \$50,000 and the amendment increases the total contract price to an amount greater than \$50,000; or

(B) the original contract price exceeds \$50,000 and the amendment increases the original contract price by more than 25 percent.

(6) The exercise of a renewal option of a contract required by state law to be procured through ~~either~~ competitive bid, ~~or~~ competitive sealed proposal, or an alternative delivery method, if the city expenditure required during the renewal term does not exceed \$70,000.

(7) The exercise of a renewal option of a contract not required by state law to be procured through competitive bid or competitive sealed proposal, if the city expenditure required during the renewal term does not exceed \$50,000.

~~[(8) A contract for facility construction procured pursuant to Chapter 271, Subchapter H, Texas Local Government Code, as amended, that requires a city expenditure exceeding \$50,000, but not exceeding \$70,000.]”~~

SECTION 5. That Section 2-31, “Rules Regarding Expenditures Not Exceeding \$50,000,” of Division 1, “Purchasing and Contracting Generally” of Article IV, “Purchasing,” of Chapter 2, “Administration,” of the Dallas City Code, as amended, is amended to read as follows:

“SEC. 2-31. RULES REGARDING EXPENDITURES NOT EXCEEDING \$50,000.

(a) Except as otherwise provided by this section, all purchases of goods, general services, or facility construction [~~-, or construction services~~] under this section must be made by the director after giving reasonable opportunity for competition under procedures that are established by the director, with city manager approval, and that are consistent with the purpose of this section.

(b) If the city expenditure for the purchase of goods, general services, or facility construction [~~-, or construction services~~] exceeds \$3~~[+]~~,000, price quotations from not less than three independent vendors or contractors, if available, must be secured. If three independent vendors or contractors are not available, the director shall secure such price quotations as will, in the director’s judgment, ensure that the city is purchasing the property or contracting for the best quality at the lowest possible cost. If the city expenditure for the purchase of goods, general services, or facility construction [~~-, or construction services~~] exceeds \$3,000, the director shall follow the procedures for contacting disadvantaged businesses prescribed in Section 252.0215 of the Texas Local Government Code, as amended.

(c) The director may, with prior authorization by city council resolution, purchase goods, including high technology items, through a cooperative purchasing program established pursuant to Chapter 271, Subchapter D, F, or G, Texas Local Government Code, as amended, or through a cooperative purchasing program established by interlocal agreement pursuant to Chapter 791, Texas Government Code, as amended. Authorized participation in a cooperative purchasing program satisfies the requirements of this section.

(d) The city manager may establish procedures for purchasing goods, general services, or facility construction [~~services~~] under this section through electronic means, including but not limited to the Internet, to the extent the procedures do not conflict with state law, the city charter, or other provisions of this code.

(e) A contract for [~~construction services or~~] facility construction that requires a city expenditure not exceeding \$50,000 must provide that, in lieu of requiring performance and payment bonds, no money will be paid to the contractor for any work under the contract until the final completion and acceptance of the work by the city.

(f) The director may use a service order for minor services under \$3,000, including mail and delivery services, repair, restoration, and remediation services necessary for a timely and efficient response to equipment failure or facility damage.”

SECTION 6. That Section 2-32, “Rules Regarding Expenditures Exceeding \$50,000,” of Division 1, “Purchasing and Contracting Generally” of Article IV, “Purchasing,” of Chapter 2, “Administration,” of the Dallas City Code, as amended, is amended to read as follows:

“SEC. 2-32. RULES REGARDING EXPENDITURES EXCEEDING \$50,000.

(a) Advertisement. No city expenditure exceeding \$50,000 may be made without advertising for competitive bids or competitive sealed proposals pursuant to Chapter 252, Texas Local Government Code, as amended, and this division, or without following the advertisement requirements in Chapter 2269, Texas Government Code, as amended, and this division, for alternative delivery methods, except in cases of [facility construction as provided in Section 2-33 of this division,] an immediate emergency, or where competitive bidding, ~~[or]~~ sealed proposal, or an alternative delivery method is not otherwise required by state law or the city charter.

(b) Emergency expenditures. In cases of immediate emergency, the director may make the necessary emergency expenditure, subject to the approval of the city manager or a designee. If an emergency expenditure is made, a written report setting out the emergency purchase, accompanied by a definite statement of the occasion and the reasons for the purchase, must be submitted by the director to the city manager for presentation to the city council for its approval prior to payment for the purchase.

(c**[b]**) Administratively authorized purchases. The following rules govern purchases authorized administratively as described in Section 2-30(d)(2) of this division:

(1) If the purchase is for goods, the director or the director’s designee, or the city council if the purchase is being considered under Subsection (b)(~~6~~[5]), shall tabulate the bids or sealed proposals and shall select the vendor or contractor with the lowest responsible bid (or with the most advantageous proposal if the purchase is by competitive sealed proposal under Chapter 252, Texas Local Government Code, as amended), or the vendor or contractor who provides the best value if the bid specifications or requirements indicate contract selection on a best value basis.

(2) If the purchase is for general services, the director or the director’s designee shall tabulate the bids or sealed proposals and present to the city manager a recommendation as to the lowest responsible bidder (or as to the most advantageous proposal if the purchase is allowed by competitive sealed proposal under Chapter 252, Texas Local Government Code, as amended), or present a recommendation as to who provides the best value if the bid specifications or requirements indicate contract selection on a best value basis. The city manager, or the city council if the contract is being considered under Subsection (b)(~~6~~[5]), shall select the contractor that provides the lowest responsible bid, the most advantageous proposal, or the best value, whichever applies.

(3) If the purchase is for facility construction ~~[services]~~, and an alternative delivery method is not being used, the director or the director’s designee shall tabulate the bids or

sealed proposals and present to the city manager a recommendation as to the lowest responsible bidder or proposer. The city manager, or the city council, if the contract is being considered under Subsection (b)(~~6~~5), shall select the contractor with the lowest responsible bid or the most advantageous proposal.

(4) If the purchase is for facility construction, and an alternative delivery method is being used, the director or the director's designee shall present to the city manager a recommendation based on the applicable standard in Chapter 2269, Texas Government Code, as amended.

(5) If, in the opinion of the city manager[;] or the city council, if the purchase is being considered under Subsection (b)(~~6~~5)[;] and no bid or sealed proposal is satisfactory or it is otherwise in the best interest of the city, the city manager or the city council may reject all bids or sealed proposals, and the director may readvertise for competitive bids or competitive sealed proposals.

(~~6~~5) A member of the city council may request that a purchase or contract be brought before the city council for consideration any time before 48 hours have elapsed after bid or proposal opening.

(c) Contracts requiring council approval. The following rules govern competitive bid or sealed proposal contracts requiring a city expenditure exceeding \$70,000:

(1) The director or the director's designee shall tabulate the bids or sealed proposals.

(2) If the purchase is for goods or general services, the city manager shall recommend to the city council who, in the city manager's opinion, provides the lowest responsible bid; the most advantageous proposal if the purchase is by competitive sealed proposal under Chapter 252, Texas Local Government Code, as amended; or the best value to the city if the bid specifications or requirements indicate contract selection on a best value basis. The city council shall determine which bidder provides the lowest responsible bid, the most advantageous proposal, or the best value, whichever applies, and, if that bidder or proposer is acceptable, approve the contract. If, in the judgment of the city council, no bid or sealed proposal is satisfactory or it is in the best interest of the city, then the city council may reject all bids or sealed proposals.

(3) If the purchase is for facility construction [~~services~~], and an alternative delivery method is not being used, the city manager shall recommend who, in the city manager's opinion, is the lowest responsible bidder. The city council shall determine the lowest responsible bidder and, if that bidder is acceptable, approve the contract. If, in the judgment of the city council, no bid or sealed proposal is satisfactory or it is in the best interest of the city, then the city council may reject all bids.

(4) If the purchase is for facility construction, and an alternative delivery method is being used, the director shall present to the city manager a recommendation. The city manager shall then present a recommendation to the city council. If, in the judgment of the city

council, no bid, proposal, or other offer is satisfactory or it is in the best interest of the city, then the city council may reject all bids. All recommendations and determinations under this subsection must be made according to the criteria set out in Chapter 2269 of the Texas Government Code, as amended.

(5) If all bids or sealed proposals are rejected, the city council may authorize the director to readvertise or proceed otherwise, as may be determined at the discretion of the city council, in accordance with state law. The original specifications, as amended or changed, must be kept on file in the office of the director in accordance with Section 2-29 of this division.

(d) Additional rules for competitive bids. The following additional rules govern all purchases made by competitive bid, including purchases on a best value basis, in accordance with Subsections (b) and (c) of this section:

(1) If there is a single responsive bid, the director, the city manager, or the city council may consider the bid as the lowest responsible bid.

(2) A nonresponsive bid has the effect of being a no bid and may not be considered for any purpose.

(3) A bid that has been opened is not subject to amendment, alteration, or change for the purpose of correcting an error in the bid price. This restriction is not intended to alter, amend, or revoke the common law right of a bidder to withdraw a bid due to a material mistake in the bid.

(e) Competitive sealed proposals. For the purchase of goods and general services (including but not limited to community development items, high technology items, and insurance) requiring a city expenditure exceeding \$50,000, the director may follow the competitive sealed proposal procedures authorized in this division and in Chapter 252, Texas Local Government Code, as amended. If the director chooses not to follow the competitive sealed proposal process, the purchase must be competitively bid as required by this division and by Chapter 252, Texas Local Government Code, as amended.

(f) Electronic procurement and reverse auctions. The city manager may establish procedures for purchasing goods, general services, or facility construction [~~services~~] under this section through electronic means, including but not limited to the Internet, to the extent the procedures do not conflict with state law, the city charter, or other provisions of this code. The city manager may also establish procedures for purchasing goods or general services pursuant to the reverse auction method defined in Section 2155.062(d), Texas Government Code, as amended, to the extent the procedures do not conflict with state law, the city charter, or other provisions of this code.

(h) Local preferences.

(1) Where a contract is required to be awarded to the lowest responsible bidder and a competitive bid is received from a nonresident bidder, the city may not award a governmental

contract to the nonresident bidder unless the nonresident's bid is lower than the lowest bid submitted by a responsible Texas resident bidder by the same amount that a Texas resident bidder would be required to underbid a nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located. This requirement does not apply to a contract involving federal funds.

(2) In a purchase for goods, general services, [~~construction services,~~] or facility construction through competitive bid, if one or more bids are received from a local business whose bid is within five percent of the lowest responsible bid received from a bidder who is not a local business, a contract for [~~construction services or~~] facility construction in an amount less than \$100,000 or a contract for goods or general services in an amount less than \$500,000 may be awarded to:

(A) the bidder with the lowest responsible bid; or

(B) the local business if the city council determines, in writing, that the bid submitted by the local business offers the city the best combination of contract price and additional economic development opportunities for the city created by the contract award, including employment of residents of the city and increased tax revenue to the city.

(3) In a purchase for goods through competitive bid, if one or more bids are received from a local business whose bid is within three percent of the lowest responsible bid received from a bidder who is not a local business, a contract in an amount of \$500,000 or more may be awarded to:

(A) the bidder with the lowest responsible bid; or

(B) the local business if the city council determines, in writing, that the bid submitted by the local business offers the city the best combination of contract price and additional economic development opportunities for the city created by the contract award, including employment of residents of the city and increased tax revenue to the city.

(4) Subsection (h)(2) of this section does not apply to the purchase of telecommunication services or information services, as those terms are defined by 47 U.S.C. Section 153, as amended.

(5) Subsections (h)(2) and (h)(3) of this section do not prohibit the city from rejecting all bids."

SECTION 7. That Section 2-33, "Alternative Methods of Procurement For Facility Construction," of Division 1, "Purchasing and Contracting Generally" of Article IV, "Purchasing," of Chapter 2, "Administration," of the Dallas City Code is amended to read as follows:

“SEC. 2-33. ALTERNATIVE METHODS OF PROCUREMENT FOR FACILITY CONSTRUCTION.

(a) The city council finds that, in general, the methods of procuring a contractor to perform facility construction established in Chapter 2269 [~~271, Subchapter H~~], Texas [~~Local~~] Government Code, as amended, provide a better value for the city than the methods set forth in Chapter 252, Texas Local Government Code, as amended. The provisions of Chapter 2269 [~~271, Subchapter H~~], Texas [~~Local~~] Government Code, as amended, are therefore adopted for use in procuring a contract for facility construction, superseding any conflicting provisions in the city charter.

(b) The city manager is authorized, in accordance with Chapter 2269 [~~271, Subchapter H~~], Texas [~~Local~~] Government Code, as amended, to choose which method of contractor selection provides the best value for the city on each facility construction project, subject to the applicable provisions of Sections 2-30 through 2-32 of this division. The city manager may, by administrative directive, establish procedures for choosing the method of contractor selection and to conduct the selection process, to the extent the procedures do not conflict with state law or Sections 2-30 through 2-32 of this division.

(c) If, in the case of an individual facility construction project, the city manager finds that there is better value in following the methods of procurement authorized in Chapter 252, Texas Local Government Code, as amended, the city manager is authorized to secure a contractor in accordance with the rules of that state law. If the procedures of Chapter 252, Texas Local Government Code, as amended, are used to procure a facility construction contract, the award of the contract must be to the lowest responsible bidder or to a local business when allowed under Section 2-32(h) of this division. The rules of Section 2-32(b) and (c) of this division also apply to an award made under this subsection.”

SECTION 8. That Section 15B-1, “Definitions,” of Chapter 15B, “Equal Employment Opportunity Contract Compliance,” of the Dallas City Code is amended to read as follows:

“SEC. 15B-1. DEFINITIONS.

In this chapter:

(1) **AFFIRMATIVE ACTION** means the positive steps taken to ensure compliance with the equal employment opportunity clause described in Section 15B-3 of this chapter.

(2) **BIDDER** means any person, partnership, corporation, association, or joint venture seeking to be awarded a contract.

(3) **CITY MANAGER** means the city manager of the city of Dallas or the city manager’s designated representative.

(4) CONSTRUCTION CONTRACT means any public contract for the construction, rehabilitation, alteration, conversion, extension, or repair of city facilities.

(5) CONTRACTOR means any person, partnership, corporation, association, or joint venture that has been awarded a contract by the city.

(6) DISCRIMINATE, DISCRIMINATES, OR DISCRIMINATION means to distinguish, differentiate, separate, or segregate solely on the basis of race, color, age, religion, marital status, sexual orientation, gender identity and expression, genetic characteristics, national origin, disability, military or veteran status, sex, political opinions or affiliations [~~age, color, religion, sex, sexual orientation, or national origin~~].

(7) SEXUAL ORIENTATION has the meaning assigned to it in Chapter 34 of the Dallas City Code, as amended [~~means an individual's real or perceived orientation as heterosexual, homosexual, or bisexual or an individual's real or perceived gender identity~~].”

SECTION 9. That Paragraph (1) of Section 15B-3, “Equal Employment Opportunity Clause,” of Chapter 15B, “Equal Employment Opportunity Contract Compliance,” of the Dallas City Code is amended to read as follows:

“(1) The contractor shall not discriminate against any employee or applicant for employment because of race, color, age, religion, marital status, sexual orientation, gender identity and expression, genetic characteristics, national origin, disability, military or veteran status, sex, political opinions or affiliations [~~age, color, religion, sex, sexual orientation, or national origin~~]. The contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, age, color, religion, sex, sexual orientation, or national origin. This action shall include, but not be limited to, the following:

- (A) employment, upgrading, demotion, or transfer;
- (B) recruitment or recruitment advertising;
- (C) layoff or termination;
- (D) rates of pay or other forms of compensation; and
- (E) selection for training, including apprenticeship.”

SECTION 10. That, unless specifically provided otherwise by this ordinance or by state law, a person violating a provision of this ordinance is, upon conviction, punishable by a fine not to exceed \$500.

SECTION 11. That Chapters 2 and 15B of the Dallas City Code shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 12. That any act done or right vested or accrued, or any proceeding, suit, or prosecution had or commenced in any action before the amendment or repeal of any ordinance, or part thereof, shall not be affected or impaired by amendment or repeal of any ordinance, or part thereof, and shall be treated as still remaining in full force and effect for all intents and purposes as if the amended or repealed ordinance, or part thereof, had remained in force.

SECTION 13. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of Chapter 1 of the Dallas City Code, as amended.

SECTION 14. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

LARRY E. CASTO, City Attorney

By _____
Assistant City Attorney

Passed _____