

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

PROCUREMENT REGULATIONS

1.0 RESPONSIBILITY AND DELEGATION OF AUTHORITY

These Regulations, along with applicable portions of Kentucky Revised Statutes and the Charter, Ordinances, and Resolutions of the Lexington-Fayette Urban County Government shall govern all procurement activities of the Lexington-Fayette Urban County Government (hereinafter “LFUCG”).

- 1.1 The Director, Division of Procurement (hereinafter the “Director”), is responsible for performing the procurement function of LFUCG pursuant to these regulations. As used in these regulations, the Director is the incumbent in that position or any member of the staff of the Division of Procurement (hereinafter “Purchasing” or the “Division”) designated by the Director to perform a specific task.
- 1.2 The Director may delegate to the various Departments, Divisions and Agencies of LFUCG such purchasing authority as may be appropriate and necessary for the proper performance of the procurement function. Any such delegation of purchasing authority shall be made in writing and shall be included in procedures issued pursuant to these regulations.
- 1.3 The Responsibilities of the Division are derived from Article 6, Section 6.06 of the Charter of the LFUCG. These responsibilities may be divided into two (2) functional areas: procurement and information.
- 1.4 Procurement responsibilities include:
 - A. To procure those goods and services enumerated in the Charter in a manner consistent with the laws of the Commonwealth, the Ordinances or Resolutions of LFUCG and the established policies of LFUCG.
 - B. To be aware of and responsive to the changing procurement needs of LFUCG.
 - C. To secure for LFUCG the best value for monies spent and to obtain the greatest economic savings by using a system of comparative pricing for all purchases and by utilizing and encouraging a system of competitive bidding, by establishing price contracts where feasible, and by using to its

advantage price contracts established or other competitively bid cooperative purchasing contracts procured by other public entities

- D. To develop, implement and maintain procedures that ensure the timely supply of all materials and services necessary to ensure the continuous operation of LFUCG.
- E. To develop, implement and maintain procedures that provide maximum control of the procurement function.
- F. To delegate certain procurement functions to the various governmental units where such delegation would best service the interest of LFUCG.
- G. To maintain the highest standard of fairness in dealing with vendors and to avoid and show of favoritism toward any vendor.
- H. To cooperate fully with other units of LFUCG to ensure the orderly and efficient performance of governmental functions.

1.5 Information responsibilities include:

- A. To maintain awareness of market conditions, products, sources of supply, new products, services and price trends.
- B. To maintain open and efficient communication with all other government units and with vendors.
- C. To develop, initiate and maintain an on-going training program for personnel in other governmental units to promote understanding of purchasing procedures and to facilitate correct and efficient use of those procedures.
- D. To develop, distribute and keep current a manual of purchasing procedures containing clear and precise guidelines for the procurement function.
- E. To maintain awareness of price contracts that have been established by LFUCG, the Commonwealth of Kentucky, and other public entities.
- F. To maintain all records necessary for the efficient operation of the procurement system in general and the Division in particular; and to maintain those records systematically to permit the extraction of information from them. Such records include, but are not necessarily limited to purchase orders, requisitions, bids, maintenance agreements, price contract and vendor's performance files.

- G. To develop standards and maintain specifications for goods and services procured by LFUCG.
- H. To assist with the development and maintenance of a list of authorized purchasers and a file of authorized signatures.
- I. To develop and refine internal procedures within the Division.
- J. To advise other LFUCG units, when necessary, on procurement decisions.
- K. To participate in and provide pertinent information for both the short-term and long-term planning processes.
- L. To provide pertinent information to other units of LFUCG as may be needed to aid the management process.

2.0 **PURCHASE REQUESTERS/PROCUREMENT CARD HOLDERS**

- 2.1 It shall be the responsibility of each unit of LFUCG as determined by the Mayor or Chief Administrative Officer to appoint the personnel responsible for coordinating purchasing for that unit (“procurers”) and to keep Purchasing advised of the current appointee.
- 2.2 Method of Appointment - Each Commissioner or other person designated above shall appoint a sufficient number of procurers to fulfill the needs of the respective Department or Division. Larger units may require several procurers while others may find that a single procurer can serve several units.
- 2.3 Responsibilities of Procurers:
 - A. To serve as the primary contact in communication between the various LFUCG units and Purchasing. This function shall include the transmission of all pertinent information concerning purchasing policies and procedures to personnel within that unit.
 - B. To transmit all purchasing documents from that unit to Purchasing.
 - C. To purchase goods and services in accordance with these regulations and any approved policies, procedures or guidelines.
 - D. To fully inform Purchasing of any problems with vendor performance, including timing of the problem and all pertinent circumstances related to the problem. Purchasing shall take all appropriate action to resolve problem.

- 2.4 It shall be the responsibility of each Department or Division head to assure that all employees in his/her unit understand and follow these regulations and any applicable Purchasing policies, procedures or guidelines.

3.0 **SOURCE SELECTION: PURCHASES THAT EXCEED \$50,000**

- 3.1 Pursuant to the Kentucky Revised Statutes, all purchases that exceed \$50,000 in aggregate amount shall be procured by competitive sealed bids. The aggregate amount shall be considered to be the amount spent by LFUCG for any “severable category” of goods or services during a fiscal year. Multiple purchases of the same item or service should be treated as one purchase and may not be divided or split to circumvent purchasing procedures.
- A. A severable category shall mean any group of items that can reasonably be expected to be purchased at the same time from a single vendor. For example, severable categories within the broad class of food products include dairy products, bakery goods, meat products, etc.
- 3.2 The decision as to whether a purchase must be made by competitive sealed bid shall be made by Purchasing.
- 3.3 Categories of Purchases that may be made *without* competitive sealed bids, regardless of amount, include:
- A. Purchase of goods or services pursuant to a Declaration of Emergency by the Mayor of Lexington-Fayette Urban County as provided herein.
- B. Purchase of services provided by a public utility or other contractual services provided within LFUCG pursuant to a franchise for such service awarded by LFUCG as permitted or required by law.
1. Except for public utility services, award of a contract by competitive sealed bids for other contractual services performed under a franchise awarded by LFUCG shall not be precluded when it is determined by the Purchasing Director that award of such contract on a competitive basis would best serve the interest of LFUCG.
2. The procurement by competitive bids of a telephone system to serve the internal needs of LFUCG shall not be precluded.
- C. Purchase of services from non-profit agencies that provide such services for the benefit of the citizens of Lexington-Fayette Urban County.
- D. Purchase of services from professionals shall be handled in accordance with Section 7.0.

- E. Purchase of services from craftsmen or tradesmen, provided that such craftsmen or tradesmen supply only labor and tools and that LFUCG supply all materials for the project for which the services are purchased.
- F. Purchase of real property or an interest in real property.
- G. Purchase or sale of services, goods, or equipment from or to the Commonwealth of Kentucky, its political subdivisions, the Government of the United States, or other public entities which have utilized a competitive procurement process.
- H. Purchase of services, goods or equipment available under terms of a Commonwealth of Kentucky Price Contract established for All State Agencies, contracts established by other governmental agencies and competitively bid cooperative purchasing contracts.
- I. Purchase of services, goods or equipment available under terms of an LFUCG Price Contract.
- J. Purchase of perishable meat, fish and vegetables.
- K. Exemption of the listed categories of items and services from competitive sealed bids does not preclude the use of other competitive techniques (informal quotes, competitive proposals, etc.) when the Director determines that use of alternate techniques in purchasing such items and/or services best serves the interest of LFUCG.
- L. Any other exemption provided by law.

4.0 **SOURCE SELECTION: COMPETITIVE SEALED BIDS**

4.1 Bidders List Application

- A. Any person, firm or corporation desiring to receive written or electronic notice of procurement requirements of the LFUCG may make application to have his/her name placed on a bidders list for the types or kinds of goods or services he/she wishes to supply or provide. The Director shall specify the form to be followed by the prospective vendor to make application for inclusion on LFUCG's bidders list.
- B. The Director shall have the discretion to establish a program for vendor pre-qualification. To establish such a program, the Director shall solicit from each prospective vendor sufficient information to permit evaluation of the vendor's qualifications in terms of:

1. The ability and capacity to perform on a timely basis under contract for the goods or services the vendor wishes to bid on and supply
 2. Good character, integrity, reputation, and experience.
 3. Satisfactory performance in dealings with other local governments, the Commonwealth of Kentucky and other state governments.
 4. Be in good standing in regard to the payment of all undisputed taxes, fees, fines, penalties, or other monies owed to LFUCG and in compliance with any regulatory or other licensing requirements imposed by LFUCG. This provision may also be applied to the principal owners, partners and/or officers of any entity at the discretion of LFUCG.
 5. Required insurance coverage – vendors must provide minimum insurance coverage to LFUCG as determined by LFUCG
- C. The Director may refuse to list any prospective vendor if that vendor does not meet the minimum criteria established for entry on a bidders list. It is the responsibility of the vendor to show that it meets criteria established for entry on the bidders list to which it seeks to gain entry.
- D. The prospective bidder will be promptly notified in writing or by electronic means if its application is disapproved. The reason(s) for disapproval shall be stated in such notification.
- E. A prospective bidder may appeal the disapproval of its application by written appeal to the Director. The appeal must be filed within two (2) weeks after the date of the notice of disapproval, must state the grounds for appeal with reasonable particularity and must relate directly to the reason(s) for disapproval.
- F. The Director may establish the time at which and the conditions under which a prospective bidder whose application has been rejected may reapply for placement on a bidders list.
- G. A bid may be accepted from a bidder who has not pre-qualified, provided that the bidder submits all information required by the Director to make a determination of the bidder's qualifications prior to the award of a contract.

4.2 Public Notice

- A. All Invitations for sealed bids shall be published in advance of the date set for opening bids as required by law.

- B. The Invitation for Bids shall be published as a Legal Notice in the newspaper with the largest circulation in Fayette County
- C. The Invitation for Bids may be placed in other publications when, in the judgment of the Director, such placement would best serve the interests of LFUCG.
- D. The Director may postpone a bid opening date if he or she determines that such action is in the best interest of LFUCG. If a bid opening is postponed, the Director shall:
 - 1. Notify in writing or by electronic means all prospective bidders of the postponement and inform prospective bidders of the revised bid opening date.
 - 2. Place an additional Public Notice for the Invitation for Bids if such action is necessary to meet legal publication requirements

4.3 An Invitation for Bids may be canceled when the Director determines that:

- A. Conditions leading to the issuance of an Invitation for Bids change sufficiently to make the proposed purchase unnecessary.
- B. Funds become unavailable for the proposed purchase.
- C. It becomes apparent that no bids will be received because:
 - 1. The item or service requested is currently unavailable.
 - 2. Bid prices will apparently exceed available funds.
 - 3. Major revisions in specifications are necessary to ensure that responsive and reasonable bids are received.
- D. Cancellation of an Invitation for Bids may be accomplished by newspaper advertisement or by the delivery of written notice (which may include e-mail or like form of electronic transmission) of such cancellation to all known holders of the bid documents.

4.4 Specifications

- A. All specifications used for procurement by LFUCG shall be designed to provide the maximum practicable competition consistent with the level of quality required by LFUCG.

- B. The Director shall review all specifications for openness and accuracy. If a restrictive element is found in specifications submitted by the division or department of LFUCG requesting the procurement (the “Requesting Division”), the Director may require that the specifications be revised to eliminate the restrictive element or that the head of the Requesting Division provide written justification for use of the restrictive element.
- C. LFUCG shall determine the level of quality required for any item or service to be purchased. LFUCG shall not modify the established level of quality for a purchase for the sole purpose of improving the competitive position of any prospective bidder for that purchase.
- D. The Director may, at the request of a Requesting Division, draft specifications for use in the proposed purchase. The Requesting Division shall inform the Director fully, in writing, of all requirements concerning the proposed purchase. A draft of such specifications shall be submitted to the Requesting Division for written approval.
- E. The Director may adopt a standard format for use in developing specifications and may restructure specifications submitted by a Requesting Division to conform to that format.
- F. The Director shall use design specifications, performance specifications or a combination of design and performance specifications as may be appropriate for each procurement.
- G. “Brand name or equivalent” specifications shall be used only when other types of specifications are unavailable or inappropriate. If “brand name or equivalent” specifications are used, the specifications must:
 - 1. Specify more than one brand name, if possible.
 - 2. Specifically state that an equivalent product may be supplied.
 - 3. Set forth all salient criteria to be met by all products proposed.

It shall be the responsibility of the bidder proposing an equivalent product to demonstrate that the equivalent product proposed meets all criteria established for the product to be furnished.
- H. The Director may establish a program for the development of standard specifications, including the procedures to be used to develop standard specifications, and may set forth conditions under which variance from standard specifications may be permitted.

- 4.5 All bids shall be submitted on forms provided for that purpose by LFUCG. Bids submitted on non-LFUCG forms may be rejected as non-responsive. Submission of or modification of bids by telephone, facsimile or email is not permitted.
- 4.6 All bids submitted shall include any and all attachments and/or supplementary material required by the Invitation for Bids. Bids submitted without required supplementary material may be rejected as non-responsive.
- 4.7 A contract shall be awarded to the responsible bidder who submits a responsive bid for either the lowest evaluated bid price or the best value to LFUCG consistent with the scoring criteria.
- A. If a bid is to be awarded on the basis of lowest bid price, the method of award shall be clearly stated in the Invitation for Bids.
 - B. If the bid is to be awarded on the basis of the best value to the Urban County Government, the method of award shall be clearly stated in the Invitation for Bids, along with the objective measurable criteria and formulas or computation methods to be used in evaluation.
 - C. LFUCG retains the right to reject any and all bids for any reason as further provided in Section 4.11, below.
- 4.8 Mistakes in Bids and Bid Withdrawal
- A. No changes or modifications shall be made to any bid after bids have been opened, except for clarification of bid contents when written clarification is specifically requested by the Director . No modifications shall be made to the original bid documents, and changes in price shall not be made under any circumstances. This shall not preclude LFUCG from negotiating a lower price once the recommended bidder(s) has been determined.
 - B. If an error has been made that is obvious on the face of the bid, or if the bidder can demonstrate from worksheets or other documents that an error has been made in the preparation of the bid, the Director may allow the bidder to withdraw the bid without penalty.
 - C. Errors in extension of unit prices shall not be cause for withdrawal of a bid. When unit prices are requested, the unit price shall govern over the total price shown. If a discrepancy between the unit price and the item total exists, the unit price prevails except if the unit price is illegible, omitted, or is same as the item total then item total prevails and the unit price is the quotient of the item total and the quantity.

- D. A bid may be withdrawn before the time set for bid opening if the bidder requests such withdrawal in writing.
- E. Withdrawal of any bid, except under conditions set forth herein, shall require forfeiture of bid security if such security has been required by the Invitation for Bids.

4.9 Opening of Sealed Bids

- A. An opening time and place for each bid shall be stated in the Public Notice and Invitation for Bids.
- B. The time set for bid openings shall be established by a clock at the bid opening location designated by the Director. It shall be the bidder's responsibility to assure that his/her bid is at the bid opening location before the time set for bid opening.
- C. The Director shall, at the time set for opening bids, declare bids to be closed and shall publicly open all bids submitted. All bids shall be posted electronically.
- D. Bids shall not be examined, inspected or reviewed by any persons present at the bid opening until all bids have been opened.
- E. Bids must be received by LFUCG before the time set for opening bids. Late bids shall not be accepted.
- F. The Director shall, with reasonable promptness, prepare a tabulation of all bids received in response to an Invitation for Bids and shall make such tabulation available to the public upon reasonable request.

4.10 Evaluation and Award of Sealed Bids

- A. Within a reasonable time after bids are opened, Purchasing shall review all bids which were timely submitted for compliance with specifications, terms and conditions, and shall also arrange for review of the bids by the head or designee of the Requesting Divisions. The Requesting Divisions shall submit a written recommendation concerning bid acceptance to the Director.
- B. Every bidder shall, upon the request of the purchasing official responsible for the particular procurement, clarify or explain in writing, any matter contained in its bid which Purchasing determines needs clarification or explanation. The bid of any bidder who fails to provide such clarification

or explanation when such clarification or explanation is requested shall not be considered for award. The written clarification or explanation of a bid shall be incorporated in and become part of any contract awarded on the basis of that bid.

- C. Alternate bids will be considered for award only if the Invitation for Bids specifically requests that alternates be submitted and establishes conditions under which alternate bids will be considered for award.
- D. After a reasonable evaluation, the bidder(s) whose bid (or alternate bid if alternates are requested in the Invitation for Bids) is fully compliant and either the lowest evaluated bid price or the best value to LFUCG, will be recommended for award to the Urban County Council.
- E. Acceptance of bids and award of contracts shall be accomplished by enactment of an Ordinance or Resolution by the Urban County Council or by such other process as the Urban County Council may establish.
- F. If the Director determines, in writing, that no satisfactory bids have been received, all bids may be rejected and new bids solicited on the basis of the same or revised specifications. The basis for rejection of all bids and subsequent action taken with respect to the Invitation for Bids shall be recorded in writing and filed in the bid file relating to the particular procurement.
- G. The Director will provide appropriate notification to Requesting Division and other interested parties within the Urban County Government of the recommendation of the bid(s) to be awarded.
 - 1. Any recommendation to accept a bid other than the lowest responsive bid must be accompanied by an explanatory memorandum from the Requesting Division
 - 2. If a bid is recommended which will exceed funds budgeted for the procurement, the Requesting Division shall contact the Division of Budgeting to request appropriation of additional funds.
- H. After review and approval of the bid documents by the Chief Administrative Officer or his or her designee, the documents will be transmitted to the Department of Law.
- I. The Department of Law shall draft an Ordinance or Resolution to accept the bid and shall forward all documents to the Clerk of the Urban County Council

- J. The Clerk of the Urban County Council shall place the bid Ordinance or Resolution on the docket. After enactment by the Urban County Council, the Clerk of the Urban County Council or his or her designee shall transmit a copy of the Ordinance or Resolution to the Division.
 - K. The Division shall issue a Purchase Order when an appropriate requisition is submitted by the Requesting Division.
- 4.11 The Director reserves the right to reject any and all bids and waive technicalities and informalities where such waiver serves the best interest of LFUCG. Grounds for rejection of bids include:
- A. Failure of a bid to conform to the essential requirements of an Invitation for Bids.
 - B. Failure to conform to specifications contained in or referred to in any Invitation for Bids unless the Invitation authorized submission of alternate bids, and the alternate proposal meets the requirements specified in the Invitation for Bids.
 - 1. LFUCG may consider, without rejecting as non-responsive, a bid that proposes to furnish an item or service with minor variances (exceptions) from established specifications, provided that such variances (exception) do not adversely affect the utility or durability of the item or service to be purchased.
 - C. Failure to conform to a delivery schedule established in an Invitation for Bids.
 - D. Imposition of conditions that would materially modify the terms and conditions of the Invitation for Bids, or which would limit the bidder's liability to LFUCG under terms of a contract awarded on the basis of such Invitation for Bids.
 - E. Failure of a bid, as determined by the Director, to be reasonable in price.
 - F. Determination that a bid was non-responsive.
 - G. Failure to furnish bid security when such security is required by the Invitation for Bids.
- 4.12 Bid Conditions
- A. The Director shall adopt and revise as necessary general conditions for bidding. The general conditions for bidding shall be applicable to, and

shall be included in or incorporated by reference in all Invitations for Bids issued by LFUCG.

- B. The Director may, when required by a particular procurement, develop and adopt special bid conditions supplemental to the general bid conditions.
- C. Any bidder who submits a bid in response to an Invitation for Bids shall be deemed to have agreed to comply with all terms, conditions, and specifications of such Invitation for Bids.

4.13 Contract Pricing

The following matters shall be applicable to Invitations for Bids issued, bids submitted, and contracts awarded for the purchase of commodities, supplies, equipment and services.

- A. Discounts shall not be considered unless the Invitation for Bids specifically requests that discounts be shown and are included in the bid price.
- B. If a discrepancy between the unit price and the item total exists, the unit price prevails. However, if the unit price is illegible, omitted, or is the same as the item total, then the item total prevails and the unit price will be reflected as the quotient of that item total and the quantity.
- C. A bid may be awarded to the lowest aggregate bidder for all items, to the lowest aggregate bidder for each group of items, or on an individual item basis, whichever is determined to be in the best interest of LFUCG. The methods and basis of evaluation of bids and award of contracts shall be stated in the Invitation for Bids.

5.0 **SOURCE SELECTION: SMALL PURCHASE PROCEDURES**

The procedures shown herein shall be used by LFUCG to make all purchases for less than \$50,000 or such other upper limit for small purchase procedures as may be established by law. Multiple purchases of the same item or service should be treated as one purchase and may not be divided or split to circumvent purchasing procedures.

5.1 Procedures to make purchases for less than \$50,000:

- A. Petty Cash – Petty Cash procedures may be used to make purchases for \$25.00 or less. Petty Cash may also be used to pay freight bills in excess of \$25.00 if such freight bills are C.O.D.

B. Procurement Card or similar means – A procurement card or similar means and associated procedures should be used to make all one-time purchases of \$4,999.99 or less except:

1. Petty cash procedures may be used or
2. In instances where a procurement card may not be accepted by vendor or is not available.
3. Purchase Requisitions and Purchase Order – These forms and associated procedures shall be used to make all purchases of \$5,000 or more (but below \$50,000) including those instances where the goods or services to be purchased are available from LFUCG or a Commonwealth of Kentucky Price Contract, other public entity competitively bid

5.2 Supplies, services or construction normally supplied as a unit cannot be artificially divided for the sole purpose of using small purchase procedures. Supplies, services or construction to be supplied over a period of time at the same unit price shall be considered a single purchase contract.

5.3 Delegations of Authority

A. Authority is hereby delegated to the heads of LFUCG Departments of Divisions and their respective procurer appointees to make purchases in accordance with the procedures set forth in Section 5. However, the limit of the purchasing authority delegated to a procurer shall not exceed \$4,999.99. All purchases require approval and the signature of the Director except for procurement card transactions.

5.4 Purchases are to be made from existing LFUCG or Commonwealth of Kentucky Price Contracts when the goods or services required if available

5.5 Purchasing shall make available to all Commissioners, Division Directors and procurers a Purchasing Manual that sets forth and explains all small purchase procedures. The Purchasing Manual shall specify the forms to be used for each procedure and shall provide instructions for use of those forms.

5.6 The use of Small Purchase Procedures does not eliminate the requirement that all purchases be subjected to the maximum practicable competition. Informal quotations for non-contract purchases between \$5,000 and \$49,999.99 shall be obtained as set forth herein.

A. Buyer or Purchasing Requester shall, for purchases between \$5,000 and \$19,999.99, obtain quotations from at least three (3) vendors unless the

Buyer determines that acquisition of three (3) quotations is impossible or is not in the best interest of LFUCG.

- B. Buyer shall, for purchases between \$20,000 and \$49,999.99 obtain formal quotations using the formal quotation process as stipulated in the Purchasing Manual from at least three (3) vendors unless the Buyer determines that acquisition of three (3) quotations is impossible or is not in the best interest of LFUCG.
- C. The required quotations must be obtained prior to transmitting any Purchase Requisition to Purchasing.
- D. Purchasing may request that the Purchasing procurer obtain quotations if an adequate description of the work to be performed cannot be developed or if inspection of the work by potential vendors is otherwise necessary.

5.7 The Buyer or Purchasing Requester shall, for all purchases between \$.01 and \$4,999.99 from employees or companies owned or managed by employees of the LFUCG, obtain quotations from at least three (3) vendors unless the Buyer or Purchasing Requester determines that acquisition of three (3) quotations is impossible, cost ineffective, or is otherwise not in the best interest of LFUCG.

6.0 **SOURCE SELECTION: EMERGENCY PURCHASES**

6.1 Statutory Authority: KRS 424.260 and KRS 39A.100 allows for the Mayor to temporarily suspend compliance with procurement codes and regulations during certain emergencies.

6.2 Procedure.

- A. This procedure requires Form CAO-6 (Certificate of Emergency) and Form 280-12 (Purchase Requisition).
- B. Commissioner or Division Head requesting the emergency service shall complete Part I of form CAO-6.
- C. Commissioner or Division Head shall obtain the approval and signature of the Chief Administrative Officer and, after such approval, shall take the signed form to the Mayor.
- D. Mayor shall complete Part II of Form CAO-6. Mayor shall seek the advice of the Department of Law and shall transmit the form to the Commissioner of Finance for his/her signature.
- E. Commissioner of Finance shall, upon approval, transmit completed Form CAO-6 with attached Purchase Requisition to Purchasing.

- F. Purchasing shall issue Purchase Order and shall file Form CAO-6 with the Purchase Requisition.
 - G. The certificate of Emergency (Form CAO-6) shall be attached to any action of the Urban County Council authorizing the emergency purchase.
- 6.3 This procedure shall not be used as a subterfuge to circumvent the bidding statute. A *bona fide* emergency must exist before this procedure may be used.
- 6.4 This procedure *does not* budget funds. If a Budget Amendment is required to complete the purchase, contact the Division of Budgeting.
- 6.5 Commissioners and Division Heads are strongly encouraged to obtain prices from more than one (1) vendor.
- 6.6 This procedure is not required for expenditures of less than \$50,000. If the Commissioner or Division Head is not sure that the cost of the emergency purchase will be less than \$50,000, it is preferred that the Certificate of Emergency be filed when the emergency occurs rather than after the fact.

7.0 **SOURCE SELECTION: PERSONAL/PROFESSIONAL SERVICES**

As used in these regulations “Personal/Professional Services” shall mean services whereby an individual, firm, partnership or corporation (the “Consultant”) is to provide LFUCG certain services requiring professional skill or judgment.

LFUCG will only procure Personal/Professional Services if LFUCG personnel are not available or if it is not feasible for LFUCG personnel to perform the service. Purchasing shall determine whether any LFUCG personnel (regardless of Department or Division) can reasonably provide the needed service prior to initiating the Personal/Professional Service procurement procedure provided for herein. If a dispute exists as to the necessity of acquiring the services from outside the LFUCG, the decision to proceed will be made by the Chief Administrative Officer.

The retention of Personal/Professional Services pursuant to these regulations will not be used if as a result of the procurement there would be established an employee/employer relationship between the LFUCG and the service provider or its employees or agents. An employee/employer relationship exists when the LFUCG has the right to direct and control the worker in the way he or she works, both as to the final results and as to the details of when, where and how the work is done.

The acquisition of commodities or non-Personal/Professional Services may not be undertaken through the “Personal/Professional Services” process provided herein.

The provisions of these regulations shall not apply to any purchase constituting an emergency within the meaning of KRS 424.260.

It is not the intent of these regulations to eliminate the ability of LFUCG to advertise, as appropriate and in accordance with any applicable publication laws, any announcement soliciting general letters of interest from those parties who may be qualified to perform various Personal/Professional Services on behalf of LFUCG.

These regulations shall not limit LFUCG's ability to pursue the acquisition of Personal/Professional Services pursuant to state law, in which instances the LFUCG may elect to follow those provisions in lieu of these regulations, or modify these regulations as necessary to accommodate the process and procedure provided pursuant to the law.

These regulations shall not limit the LFUCG's ability to create a specific program or programs which are limited to certain categories of participants, including but not limited to local small businesses.

7.1. Procurement of Personal/Professional Services of \$50,000 or more

A. The procurement of architectural or engineering services may be undertaken either through a Qualifications Based Selection (QBS) Process or the RFP process depending on the funding source for the project. ***Additionally, the LFUCG may choose to utilize a "design-build", "construction management-at-risk", or "construction manager-agency" method for the management, design and/or construction of a particular construction project. In so doing, LFUCG shall model its processes and procedures after those adopted by the state or federal government.***

B. All departments/divisions requiring Personal/Professional Services must submit a request to Purchasing. The request should be submitted well in advance of the need for the services as the procurement process for Personal/Professional services typically requires considerable time to complete. In most instances the entire process takes at least 60-90 days.

1. The request must be provided by the appropriate Director or Commissioner and include any information required by Purchasing, including, for example, a description of the services desired, the estimated amount of work involved, the estimated cost per fiscal year, and the appropriate contact person who is able to answer any questions or provide any additional information.

2. Requests for legal services, auditing services, computer services, or other areas of expertise for which LFUCG has professional employees on staff will be submitted by Purchasing to the appropriate department or division for a determination as to whether the services can or should be performed by LFUCG personnel.

C. Purchasing will review the request and any additional information submitted to determine whether to proceed with procuring the services.

D. If the decision is made to proceed with procurement, Purchasing will work with the requesting department/division and any other necessary LFUCG personnel to develop the appropriate Request for Proposal ("RFP") and any other necessary documents, including an agreement for services.

E. Purchasing will issue an RFP to solicit proposals for the services required. Each RFP shall at a minimum describe the services required, list the type of information and data required of each offeror, and state the evaluation factors or criteria.

F. Purchasing will distribute the RFP, giving adequate (and any legally required) public notice of the need for services, which may include newspaper advertising and other means when available such as placing a notice on the LFUCG Procurement database. The notice will contain, at a minimum, a brief description of services requested, estimated amount of work involved, and the name of the person to contact in order to obtain additional information and a copy of the RFP.

G. Upon receipt of the responses to the RFP, Purchasing may conduct discussions with any offeror submitting a proposal to determine the offeror's qualifications for further consideration, but such discussions shall not disclose information derived from another offeror's proposal. If discussions are conducted with offerors for purposes other than to secure qualification information, the same discussions must be conducted with all offerors.

H. Purchasing will appoint a proposal evaluation committee comprised of LFUCG officers or employees. Purchasing has the discretion to appoint representatives of other entities (i.e., state or local governments or educational institutions) if such representation would be of value to LFUCG. However, under no circumstance shall a party with any conflict of interest be appointed. In most instances a private party or citizen would have a conflict of interest.

I. Purchasing and the evaluation committee shall review the proposals received and record the committee's final determination of the qualification rankings of the offerors based on the evaluation factors or criteria set forth in the RFP. This written determination shall be maintained by Purchasing.

J. After determining the best qualified offeror(s), Purchasing or the requesting department/division (with assistance from Purchasing) will negotiate fair and reasonable compensation for the provision of the services with the selected offeror(s).

1. In instances involving a single unique project or in which LFUCG intends to only retain a single prime consultant to perform the services, negotiations will take place with the best qualified offeror. If a final agreement cannot be reached, negotiations may then be conducted with the other offer(s) in order of their respective qualification ranking.
2. Purchasing and the department/division requesting the services may determine that it is in LFUCG's best interest to create a list of multiple consultants which are pre-qualified, as defined by the advertised scope of services, to work on multiple projects which are similar in nature. In those instances, negotiations with consultants for a specific project may occur simultaneously, and the entity submitting the lowest price while meeting the intent of the specific project scope will be selected. The

specific process that is used for such selections must include a component or components which is intended to avoid the same consultant(s) being awarded all of the projects and provides each consultant on the list with the opportunity to negotiate for a project, but not necessarily all of the projects. An example of this would be a process in which the list rotates in a manner in which a Consultant previously awarded a similar project is placed at the end of the list.

K. The requesting department/division in coordination with the Department of Law and Purchasing will generate documents which include an agreement, scope of the services to be performed, the compensation for such services, and all other terms and conditions agreed upon, which shall also include, at a minimum, the following:

1. The duration of the Agreement;
2. A sworn statement regarding campaign finance laws;
3. A provision indicating that the offeror and its employees or agents are not employees of the LFUCG;
4. A termination clause under which LFUCG may terminate the agreement;
5. A provision that Kentucky law applies to interpretation of the agreement and any disputes and that venue shall be in Fayette County, Kentucky;
6. A provision that the services cannot be assigned without the prior approval of the LFUCG;
7. Any indemnity and insurance requirements deemed necessary by the Department of Law or the Division of Risk Management; and
8. Any other necessary provisions from the RFP.

L. All agreements must be signed by a representative of each party having the legal authority to bind that party to the agreement. The Mayor will sign all agreements on behalf of LFUCG unless legal authority has otherwise been provided for someone else to obligate the LFUCG to the terms of the agreement. If a final agreement cannot be reached with the best qualified offeror, negotiations may be conducted with other offeror(s) in order of their respective qualification ranking.

M. LFUCG may make payments for services under the agreement once final approval is obtained but shall not pay in advance of receipt of services.

N. Legal services (including the retention of expert witnesses) or professional services related to the issuance of bonds or debt service may be obtained by using a Request for Qualifications (RFQ) or similar process which ensures that qualified individuals or firms are duly considered prior to retention by LFUCG.

7.2. Procurement of Personal/Professional Service of Less Than \$50,000

A. If the Personal/Professional Services required is less than \$50,000, the department/division may informally solicit proposals, make a determination of the best qualified provider and establish a Personal/Professional Service Agreement if necessary. At a minimum, the department/division must use a Personal/Professional Service Scope document and have the provider sign and submit the documents to Purchasing for processing. The department/division must retain for seven years all proposals received and considered by the department/divisions for review by Purchasing. A properly authorized On-Line requisition is required to request Purchasing to issue a purchase order.

B. As an alternative, the department/division requiring the services may submit an On-Line Requisition to Purchasing and forward the services required scope. Purchasing will solicit competitive proposals, negotiate pricing and contract for the necessary services. If this process is used, Purchasing will communicate with the department/division for any additional information necessary to complete the process. Purchasing will also generate a purchase order authorizing the provider to begin work and allowing payments to be processed.

8.0 MULTIPLE AND PARTIAL CONTRACTS

8.1 Multiple contracts may be awarded on the basis of a single Invitation for Bids when it is determined in writing by the Director, in advance of the Invitation for Bids, that due to the geographic distribution of agencies or their employees requiring supplies of the kind to be sought through the procurement, the need for a variety of kinds and qualities of supplies of the same general nature, or when it is otherwise determined that the award of multiple contracts may be in the best interest of LFUCG, and that its needs may be met at reasonable cost through the award of multiple contracts.

A. A determination and notice to potential offerors that multiple contracts may be awarded for any procurement shall not preclude the award of a single contract for such procurement where it is determined by the Director that award of a single contract would best serve the interests of LFUCG.

8.2 When it is determined in writing by the Director after evaluation of competitive bids that acceptable bids or offers have been received for only part(s) of the requirements of the procurement:

A. A contract may be awarded for part(s) of the procurement for which acceptable bids or offers have been received.

B. All bids or offers may be rejected and a new Invitation for Bids or Request for Proposals based on the same or revised terms, conditions, and specifications may be issued.

- C. All bids found unacceptable for part(s) of the procurement may be rejected and an Invitation for Bids or Request for Proposals, based on the same or revised terms, conditions and specifications for the part(s) of the procurement for which no acceptable bids were received may be issued.

9.0 **CONTRACT MODIFICATION AND TERMINATION**

- 9.1 The Director shall be authorized to provide, by appropriate clauses to contracts for supplies or services of all types, for changes and modifications to such contracts and to provide for the method or methods of calculating the costs of any decrease, increase, or other change in the contract price resulting from such change or modification.
 - A. In contracts for the purchase of fixed amounts of commodities, supplies, and equipment, increases in quantities in excess of ten (10) percent of the original quantity fixed by contract shall not be permitted unless the Invitation for Bids or Requests for Proposals for competitive negotiation informed prospective bidders or offerors that an increase in quantities might be forthcoming.
 - B. Increases in unit prices shall not be permitted in such contracts for increased quantities except as provided by a price adjustment formula authorized by the Invitation for Bids.
 - C. All changes or modifications to contracts for the purchase of commodities, supplies, equipment, and construction services shall be affected by an advice of change in order to the contract which shall document the reason and basis for the change or modification to the contract.
 - D. A copy of the advice of change in order and the supporting documentation relative to any change or modification to a contract shall be filed and maintained in the contract file by the Purchasing Director.
 - E. Every contractor awarded a contract containing clauses authorizing changes or modifications to the contract shall be deemed, by acceptance of the contract, to have agreed to the changes or modifications of the contract as provided therein.
- 9.2 Any contractor who is determined by the Director and the Department of Law to be in breach of any of the terms and conditions of a contract with LFUCG shall, in the discretion of the Director, be declared in default and such contract may be terminated as a result of such default.
- 9.3 A default in performance by a contractor for which a contract may be terminated shall include:

- A. Failure to perform the contract according to its terms, conditions and specifications.
 - B. Failure to make delivery within the time specified or according to a delivery schedule fixed by the contract.
 - C. Late payments or non-payment of bills for labor, materials, supplies or equipment furnished in connection with a contract for construction services as evidenced by mechanic's liens filed pursuant to the provisions of KRS Chapter 376, or letters of indebtedness received from creditors by the Division of Central Purchasing.
 - D. Failure to diligently prosecute the work under a contract for construction services.
- 9.4 LFUCG shall not be liable for any further payment to a contractor under a contract terminated for the contractor's default after the date of such default as determined by the Director, except for commodities, supplies, equipment, or services delivered and accepted on or before the date of default and for which payment had not been made as of that date.
- A. The contractor and/or his surety, if performance and/or payment bond has been required under the contract, shall be jointly and severally liable to LFUCG for all loss, cost or damage sustained by LFUCG as a result of the contractor's default provided, however, that a contractor's surety's liability shall not exceed the final sum specified in the contractor's bond.
- 9.5 LFUCG shall be authorized to terminate for its own convenience all contracts for the procurement of supplies and services when the Director determines in writing that such termination will be in the best interest of LFUCG, provided that the contract provides for cancellation for convenience by either party.

10.0 **SURETIES AND BONDS**

- 10.1 Each bidder responding to Invitations for Bids for construction contracts estimated by LFUCG to exceed \$100,000 or to other Invitations for Bids wherein bid security is required shall submit required security with his/her bid.
- A. Bidder's security shall be in form of a bond, executed by a surety company authorized to do business in the Commonwealth of Kentucky, or the equivalent in cash in a form acceptable to LFUCG.
 - B. Bidder's security shall be in an amount equal to at least five (5) percent of the amount bid. LFUCG may require that bidder's security be furnished in an amount greater than five (5) percent of the amount bid.

- C. When a bidder fails to comply with the security requirement of an Invitation for Bids, his bid shall be rejected except under exceptions provided in these regulations.
- 10.2 When a construction contract is awarded in an amount in excess of one hundred thousand dollars (\$100,000) (or less than \$100,000 when such bonding is required by the Invitation for Bids), the following bonds shall be furnished to LFUCG prior to the execution of such contract, and shall become binding on the parties upon the award of the contract:
- A. A performance bond satisfactory to the LFUCG executed by a surety company authorized to do business in this Commonwealth, or otherwise supplied, satisfactory to the LFUCG, in an amount equal to one hundred percent (100%) of the contract price; and
 - B. A payment bond satisfactory to the LFUCG, executed by a surety company authorized to do business in this Commonwealth, or otherwise supplied, satisfactory to the LFUCG, for the protection of all persons supplying labor and material to the contractor or his subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the contract price as it may be increased.
 - C. The bonds required herein shall bind the contractor, as principal, and the surety to the performance of the contract according to the terms conditions and specification of the contract, including changes and modifications thereto, and to the payment of all costs for labor, materials, equipment, supplies, taxes, and other proper charges incurred or to be incurred in performance of the contract.
 - D. In the event of a change order resulting in an increase to the contract price, the actual amount of any required increase to the bonds required herein will be determined by the Director to be sufficient to ensure faithful performance of the contract by the contractor according to its terms.
- 10.3 Every contractor to whom it is proposed to award a contract for the purchase of commodities, supplies, equipment or services by LFUCG shall, when required by the terms of an Invitation for Bids or Request for Proposals, give bond to LFUCG as obligee, with surety satisfactory to LFUCG, in a penal amount not to exceed one hundred percent (100%) of the contract price. The actual amount of the bond required will be determined by the Director as sufficient to ensure the performance of the contract by the contractor according to its terms. A contract shall not be awarded to any contractor who fails or refuses to give bond to LFUCG when required as provided by these regulations.
- 10.4 A contractor may be declared in default of its contract with LFUCG, and its bond forfeited, when it is determined by the Director and the Department of Law that the contractor is in breach of the terms and conditions of the contract, including, in

contracts for construction services, failure to make timely payment of bills for labor, materials, and supplies as evidenced by liens filed against the construction fund by laborers and suppliers pursuant to KRS 376.195 to 376.260, or by letters of indebtedness filed with the Director evidencing that such bills are due and have not been paid by the contractor.

- 10.5 The form of performance and payment bond required to be given by contractors for construction services contracts that exceed \$100,000 shall be in the form published as part of LFUCG's Bid Conditions for Construction Services. The form of bond required to secure the performance of all other contracts for procurement shall be the standard form of performance and payment bond customarily written and issued by surety companies authorized to do business in the Commonwealth of Kentucky, together with such additional terms as may be required by the Director and agreed to by the surety.

11.0 **DISCIPLINARY ACTION FOR FAILURE TO PERFORM**

- 11.1 Any bidder or contractor to LFUCG who, except for good cause shown, may have committed or failed to perform, as the context may require, one or more of the following acts or omissions, shall be liable to disciplinary action by Purchasing. Specific grounds for disciplinary action include:
- A. Failure to post bid or performance bonds, or to provide alternate bid or performance guarantee in a form acceptable to Purchasing in lieu of a bond as required by an Invitation for Bids or a Request for Proposals.
 - B. Substitution of commodities without the prior written approval of Purchasing.
 - C. Failure to comply with the terms and conditions of the Invitation for Bids or Request for Proposals or with the terms, conditions and specifications of a contract, including failure to complete performance of a contract within the time specified in the contract.
 - D. Failure to replace inferior or defective materials, supplies or equipment immediately after notification by Purchasing or the agency to which such materials have been delivered that such replacement is required.
 - E. Failure by a bidder listed on a bidders list to respond to Invitations for Bids sent to such bidder.
 - F. Refusal to accept a contract awarded pursuant to the terms of an Invitation for Bids.
 - G. Falsifying invoices or making false representations to any LFUCG agency or official or untrue statements about any payment under a contract, or to procure award of contract, or to induce modifications in the price or the

terms of a contract to contractor's advantage.

- H. Collusion or collaboration with another bidder or other bidders in the submission of a bid or bids for the purpose of lessening or reducing competition.
- I. Falsifying information in the submission of an application for listing on Purchasing bidder's lists.
- J. Failure to report and to pay over to the Department of Revenue of the Commonwealth of Kentucky any Kentucky sales and/or taxes as may be due in connection with procurement contracts provided by law.
- K. Failure to obtain any licenses or permits required by a procurement contract, or to pay to LFUCG, Division of Revenue, any fees and/or taxes due in connection with a procurement contract as provided by law.
- L. Failure to comply with the prevailing wage requirements of state or federal laws as may be applicable to any public works contract of LFUCG.

11.2 Penalties

- A. Any bidder or contractor determined by the Director to have done any act prohibited, or failed to do any act required by sections 11.1 (A-F and J) of this Article, shall, in the discretion of the Director, be placed on probation or suspended from bidding (or some combination thereof) for not more than twelve (12) months.
- B. Any bidder or contractor determined by the Director to have done any act prohibited by Sections 11.1 (G-I, K, L) of this Article shall be removed from the bidders lists and shall be ineligible for reinstatement on such lists for a period not to exceed twenty-four (24) months following the date of removal. Any contractor removed from the bidder's lists under this section shall be eligible to apply for inclusion in the approved bidders list as provided in this Article after the expiration of the removal period.
- C. Any bidder, contractor or any subcontractor determined to have violated the prevailing wage requirements of KRS Chapter 337 or federal law shall be suspended from bidding to LFUCG, or from participating in a public works contract of LFUCG, effective on and after the date Purchasing receives notice that such contractor or subcontractor has been determined to have violated the prevailing wage law, and until such time as the relevant authority has determined the contractor or subcontractor to be in compliance with the requirement of such law.
- D. These penalties are intended to apply in instances in which a bidder or contractor that is a person, or a member of closely held corporation (e.g., a

limited liability corporation), or like entity attempts to utilize a different entity in order to avoid the penalty.

- 11.3 Except for grounds mentioned in Sections 11.1 (E, F, K) a preliminary written determination shall be made concerning the facts of any allegation or claim that a bidder or contractor has either committed an act prohibited or failed to perform an act required by Section 11.1 before any disciplinary action is taken against such contractor. Such preliminary determination shall be submitted to the Commissioner of Law for review prior to the administration of any disciplinary action as authorized herein. Notice of disciplinary action shall be sent to the bidder or contractor at the address shown in the records of Purchasing by certified mail, return receipt requested.
- 11.4 Bidders or contractors against whom disciplinary action has been taken under this section may appeal the action to the Commissioner of Finance.
- A. The appeal must be filed, in writing, in the office of the Commissioner of Finance within ten (10) working days after the date notice of the disciplinary action has been received by the bidder or contractor as shown by the certified mail receipt.
 - B. The appeal must provide a factual basis for why the penalty should be set aside. An appeal constituting a general denial of the charges contained in a notice of disciplinary action, unless supported by specific facts rebutting such charges, shall be automatically dismissed.
 - C. The appellant may request a hearing before the Commissioner of Finance or his/her designee. The hearing must be requested when the appeal is filed, or it shall be deemed waived.
 - D. Following the hearing, the Commissioner of Finance shall either sustain or deny the appeal in writing and provide the basis for the decision. The decision of the Commissioner of Finance shall be final and shall remain in effect until rescinded or modified or until the expiration of any penalty imposed.
 - E. The rules of evidence shall not strictly apply, and any matter considered pertinent to the issues of the hearing shall be admissible, subject only to the determination of the Commissioner as to the proper weight to be accorded all matters introduced at the hearing.
- 11.5 No purchase of any kind shall be made by LFUCG from a bidder or contractor who has been suspended or removed from the bidders list, except for those removed for the grounds stated in Section 11.1 (E). All departments and divisions of LFUCG shall be promptly informed about bidders or contractors suspended or removed from the lists of bidders and shall immediately comply with this section.

- 11.6 The administration of disciplinary action against a bidder, potential bidder or contractor under this section shall not preclude the taking of other action by LFUCG, based on the same facts, as may be otherwise available, either at law or in equity, including, without limitation to the generality thereof, suits for damages or actions for specific performance.

12.0 **APPROPRIATIONS**

- 12.1 No contract shall be awarded for any procurement when the contract price exceeds the funds appropriated for the procurement by the Urban County Council. If all bids or proposals received in response to an Invitation for Bids or Requests for Proposals exceed the funds appropriated for the procurement, the Director may:
- A. Request that the head of the agency initiating the procurement apply to the Urban County Council for the additional appropriation necessary for the award of the contract.
 - B. Reject all bids and issue a new Invitation for Bids or Request for Proposals based on the same or revised specifications.
- 12.2 If the Director determines that it is in the best interest of LFUCG to invite bids or request proposals for a particular procurement in anticipation of an appropriation of funds for the procurement, the Invitation for Bids or Request for proposals shall clearly state that funds for the procurement, while anticipated, have not been appropriated.
- 12.3 A contract may be awarded for the procurement of supplies, equipment or services for a period that exceeds a Fiscal year if it is determined that such a contract best services the interest of LFUCG, and if the contract includes a provision, acceptable to the Director and agreed to by the contractor, that permits cancellation of the contract, without either penalty or further payment, in the event that funds for the contract are not appropriated in succeeding Fiscal Years.

13.0 **VERIFICATION AND PUBLIC AVAILABILITY OF RECORDS**

- 13.1 The records of Purchasing shall be audited, as part of the general Urban County Government audit, by a qualified, independent auditor at the close of each Fiscal year.
- 13.2 The public records of Purchasing shall be open to public inspection during normal business hours and upon reasonable request.
- 13.3 Copies of records, specifications, procedures and regulations of Purchasing shall be available to the public upon request and at a cost not to exceed the cost of copying.

13.4 The Director may not disclose to the public or to a prospective vendor's competitors:

- A. Information furnished in response to a request from Purchasing for information necessary to determine a bidder's responsibility.
- B. Information obtained from a prospective vendor during bidding or negotiation which qualifies as confidential technical information or trade secrets, and/or the disclosure of which would constitute violation of patent rights or copyrights.

14.0 **MISCELLANEOUS PROVISIONS**

14.1 Grant Requirements

Nothing in these regulations shall be construed in such a manner as to relieve LFUCG of the responsibility to comply with any procurement requirements imposed by any Agency from which LFUCG may receive funds, including, but not limited to State and Federal grantor Agencies.

14.2 Equal Employment Opportunity

The Director shall include as part of any Invitation for Bids or Requests for Proposal for supplies, equipment or services, Equal Employment Opportunity language as may be required by local ordinance, Kentucky Revised Statute and the procurement requirements of any Agency from which LFUCG may receive funds, to the extent permitted by law.

14.3 Reports of Suspected Collusion

Purchasing will report all instances of suspected collusion on the part of bidders responding to an Invitation for Bids or Request for Proposals to the Attorney General of the Commonwealth of Kentucky.

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