STAFF REPORT

Council Meeting Date: December 8, 2020

Subject: Update to the City of Asheville's Procurement, Surplus, Purchasing & Contracting Policy

Staff Resource(s): Barbara Whitehorn, Finance & Management Services Director and CFO
Frank McGowan, Financial & Strategic Services Manager
Amy Patterson, Purchasing Manager
Aarin Miles, Assistant City Attorney

Action Requested: Amendment and adoption of the Procurement, Surplus, Purchasing & Contracting Policy

Background:

- On October 27, 2020, City Council adopted the Asheville Business Inclusion (ABI) Policy. The ABI Policy replaced and expanded the previous Minority Business Plan.
- The adoption of the ABI Policy necessitated updates and revisions to the Procurement, Surplus, Purchasing & Contracting Policy.
- These changes included guidance to staff to follow the ABI policy regarding Minority and Women-Owned Business Enterprise (MWBE) outreach in their procurement efforts.
- The Procurement Policy had not been substantially updated since 2012.
- This policy will become effective on January 1, 2021, in order to coincide with the effective date of the ABI policy.
- This policy governs how all procurements for purchases and contracts are handled, as well as the disposal of surplus City personal property.
- Amendments and updates to the "Purchasing and Contracting Policy" are as follows:
    - The title was updated to "Procurement, Surplus, Purchasing, & Contracting Policy" in order to encompass all areas governed by the policy;
    - References to the ABI policy were included, specifically in regards MWBE outreach, which is required per the ABI policy;
    - General update to ensure policy is up to date with the North Caorlina General Statutes;
    - Procedures were removed from the policy and will be placed in separate document;
    - Addition of a conflicts of interest section for staff who participate in city procurement and contracting; and
    - A general reorganization of the policy for readability.

Council Goal(s):

- An Equitable and Diverse Community
- Thriving Local Economy

Committee(s):

- None

Pro(s):

- Provides necessary updates and revision to a policy that was adopted in 2012
- Ensures the City of Asheville is consistent with State, Federal, and other City policies
- Promotes competitive procurement
- Supports implementation of the Asheville Business Inclusion Policy

Con(s):

- None.

Fiscal Impact:
- None.

Suggested Motion:
- Motion to approve a resolution to amend and adopt the City of Asheville Procurement, Surplus, Purchasing & Contracting Policy.

Attachment(s):
- Resolution
- Draft Policy

RESOLUTION NO. 20-_____

RESOLUTION AMENDING THE PROCUREMENT, SURPLUS, PURCHASING AND CONTRACTING POLICY FOR THE CITY OF ASHEVILLE THAT AUTHORIZES THE CITY MANAGER TO EXECUTE CONTRACTS AND AWARD BIDS

WHEREAS, the City has the general authority to enter into contracts pursuant to G.S. 160A-11, and pursuant to Article 8 Chapter 143, may enter into contracts for construction, to include construction and repair of buildings and facilities, professional services, general services, contracts for the purchase of apparatus, supplies, materials, or equipment, and lease, rent, and dispose of City property pursuant to Article 12 of Chapter 160A; and

WHEREAS, the City Council enters into many contracts and agreements for construction, services, the purchase of apparatus, supplies, materials, or equipment, lease and rental agreements; and

WHEREAS, it is necessary, expedient and efficient for the City Manager to have authority to execute certain contracts and agreements on behalf of the City without specific Council approval in order effectively conduct the business of the City of Asheville, and City Council has previously adopted a resolution (Resolution 11-62) delegating such authority; and

WHEREAS, Council deems it advisable to amend and modify the Purchasing and Contracting policy adopted under Resolution 11-62, in order to ensure the policy is consistent with other recently adopted City policies and state, federal, and local law;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF COUNCIL OF THE CITY OF ASHEVILLE THAT:

1. Resolution 11-62 is hereby amended and adopted, as set forth in the policy revision date of December 8, 2020;

2. The City Manager may make amendments and modifications to the Purchasing and Contracting Policy in a manner not inconsistent with Council's policy goals. Modifications and amendments made by the City Manager shall exclude modifications to:
    a. Contract approval thresholds as codified by Resolution 11-62;
    b. The threshold of contracts reviewed under the Asheville Business Inclusion Policy;
    c. Delegation of authority to the City Manager under Resolution 11-62;
    d. Delegation of authority to the City Purchasing Manager under Resolution 98-118; and
    e. The procurement types governed by the Purchasing and Contracting policy.

    Any modifications to the excluded items listed above shall be brought before the City Council for consideration and approval; and

3. Should any section or provision of this policy be declared invalid or unconstitutional by any court of competent jurisdiction, the declaration shall not affect the validity of this policy as a whole or any part thereof that is not specifically declared to be invalid or unconstitutional.

4. The policy amendments and modifications dated December 8, 2020, shall not go into effect before January 1, 2021.

Read, approved and adopted this 8th day of December, 2020.

_____ _____

CLERK MAYOR

Approved as to form:

_____

CITY ATTORNEY

CITY OF ASHEVILLE

Financial Policy

Procurement, Surplus, Purchasing & Contracting Policy

Subject:	Procurement, Surplus, Purchasing & Contracting Policy
Origination Date:	March 28, 2011
Issued and maintained by:	Amy Patterson, Purchasing Manager
Revision Date:	Dec. 8, 2020

Approved by:

Debra Campbell, City Manager

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SECTION 1.0 STANDARDS FOR ALL PROCUREMENT TRANSACTIONS

This policy shall apply to all instances of procurement for construction, professional services, general services, purchasing of apparatus, supplies, materials, or equipment, leases and rentals. This policy shall be followed in conjunction with the Agreement and Partnership Policy, Asheville Business Inclusion Policy, the Procurement Card Policy and accompanying procedures.

1.1 AUTHORITY

Authority for this policy is derived from the State of North Carolina and delegated to the Governing Board, Asheville City Council, as defined in N.C.G.S 160A-11 (General Corporate Powers) and subsequent sections. This policy delegates authority to the City Manager, or their delegated designee, to enter into contracts and dispose of surplus; and this policy further delegates authority to the Purchasing Manager for bidding, awarding purchases, and disposing of surplus, consistent with State legislation and local resolutions 98-118 and 07-118.

The standards set out in this policy are governed and guided by State, Local, and Federal Law.

1.2 PURPOSE

It is the purpose of this Policy to create and maintain an efficient and uniform process in accordance with North Carolina statutes for the administration of procurement for construction, professional services, general services, contracting for services, purchasing of apparatus, supplies, materials, or equipment, leases, and rentals. that is consistent with the stewardship and objectives of the City of Asheville. A City Department shall conduct vendor outreach and award contracts according to this policy and accompanying procedures.

1.3 FEDERAL UNIFORM GUIDANCE

Purchases and Contracts funded with federal grant or loan funds must be procured in a manner that conforms with all applicable Federal laws, policies, and standards, including those under the Uniform Guidance (2 C.F.R. Part 200) Effective July 1, 2018 as well as increase in thresholds per Memo dated June 20, 2018 from the Office of Management and Budget (OMB) . (See Uniform Guidance (UG) procedures in Appendix B).

Purchases and Contracts funded by any Federal Transit Administration (FTA) funding MUST follow FTA regulations summarized in Appendix A.

1.4 ASHEVILLE BUSINESS INCLUSION POLICY

The purpose of the Asheville Business Inclusion policy is to cultivate equity within the City of Asheville procurement practices. This policy will allow small, minority and women owned businesses with a documented disparity more opportunity to participate in city contracts. The Asheville Business Inclusion Policy shall apply to all city procurement and contracts except those that are listed as exempt

within the policy and contracts that receive state and federal funds.

1.5 CONFLICT OF INTEREST

No city staff member shall make a final decision or an administrative decision, required by this policy or accompanying procedures, if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by this policy.

No city staff member shall be financially interested or employed by a business that is financially interested in City procurement. No city staff member or other individual or an employee of a company contracting with the city to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the City, as determined by the City.

It is impermissible for any city staff making contracting or administrative decisions, on behalf of the city, to receive a direct benefit from any city contract. Any action thereof may result in a criminal citation pursuant to N.C.G.S. § 14-234.

1.6 DEFINITIONS

- *Amendment(s)* - The alteration or change by modification, deletion, or addition to an agreement. An amendment further includes any change in scope.

- *Announce Professional Services* - Announce will follow the advertising method used by the City.

- *Bid and quote* - are interchangeable depending on the dollar threshold and the type of contract. Generally used in a solicitation for bid in construction and procurement contracts.

- *Building Construction & Repair* - Contracted services defined by N.C.G.S. 143-128 to include entering into contracts for the erection, construction, alteration or repair of any buildings.

- *Capital Lease or Lease with option to purchase* - A contract that transfers ownership of property, both real and personal, to the lessee at the end of the lease term. This type of agreement is handled as a purchase and shall follow purchase procedures.

- *Change Order(s)* - Change order(s) includes a change in scope, increase in total contract amount, and work schedule alteration. Change orders further include contract amendments or renewals for MUNIS tracking purposes.

- *City Manager* - The City Manager or position to act on behalf of the City Manager as designated by the City Manager.

- *Construction & Repair* - Contracted services defined by General Statute that include labor and material costs for construction, renovation and repair not involving buildings.

- *Days* - means calendar days unless otherwise indicated as business days

- *Department Head* - The Director of a City Department. The Director is responsible for ensuring the City's procurement, contracting and purchasing policies and goals are met. This responsibility cannot be designated to another party.

- *Disposal of Surplus* - Personal city property for which the city no longer has a need valued up to $30,000.

- *Emergency and Exigency procurement and contracting* - Situations that are detrimental to the health, safety, and well-being of the people, or property in jeopardy within declared emergencies that may require emergency or exigency procurement or contracting.

- *Familial Relationships* - for the purposes of this policy familial relationship means spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

- *Financial Interest* - Direct or indirect pecuniary or material benefit accruing to a staff member as a result of a procurement transaction which is or may be the subject of an official act or action by or with the city. Any financial interest shall be considered a conflict of interest except in such cases of a mere nominal or de minimus ownership stake such as ownership of stake amounting to less than 10% ownership of the benefiting entity. If there is a conflict of interest the Department Head shall be informed.

- *General Services* - General Services consist of all other services not defined by North Carolina General Statute and include maintenance agreements, contracts for semi-skilled and unskilled labor and contracts for services not covered by the Professional Services definition. Examples of these types of services include but are not limited to towing, leaf removal, elevator repair, lot cleanup, demolition, sludge removal, graphic design services, instructors, consultants, healthcare services, legal services and similar activities. Rentals are not included.

- *Lease* - Any agreement which gives rise to a relationship of lessor and lessee of real or personal property.

- *Maintenance* - The upkeep or preservation of condition of property, including cost of ordinary repairs necessary and proper from time to time for that purpose.

- *MUNIS* - ERP/Financial system used by the City.

- *MWBE* - Minority and Women business enterprises as defined by the Asheville Business Inclusion Policy.

- *PO Change Order* - A requisition entered into MUNIS against the "change order vendor (# 9999)" detailing the needed changes. The change order shall include the PO number that needs to be changed, the line number to be changed, price changes to the item, additions or

deletions, etc. The Change Order follows the same workflow approval as the original requisition.

- *Professional Services* - Professional Services are defined by N.C.G.S. § 143-64.31 as architectural, engineering, surveying and construction management at risk services. All Professional Services require Request for Qualifications (RFQ) regardless of the cost.

- *Proposal* - generally used for a request for proposal in general service contracts.

- *Purchase Order (PO)* - An order converted from the requisition. The PO is sent to the vendor from the Purchasing Division to communicate the contract to purchase.

- *Qualification Based Selection* - known as QBS is the standard of award for professional services Request for Qualifications (RFQ).

- *Rentals* - An agreement which provides for periodic compensation or fee being paid for the possession or use of property, to include real or personal property.

- *Repair*- To mend, remedy, restore, or renovate to a sound or good state, to the condition in which originally existed, after decay, injury, dilapidation, or partial destruction.

- *Request for Proposal (RFP)* - Used for services where development of detailed specifications is not practical. An RFP is usually written as a performance specification, delineating the result desired and asking responders to propose a method of reaching that result. Negotiations following receipt of proposals may be conducted and shall be included under procedures in the RFP as well as the standard by which the contract will be awarded.

- *Small Procurement Transaction* - The purchase of goods, supplies, materials and General Services up to $5,000.

- *Urgent service, procurement & repair or purchasing needs* - Situations that are detrimental to the health, safety, and well-being of property in jeopardy outside declared emergencies that may require urgent procurement.

1.7 CONTRACT REQUIREMENTS

All city contracts shall include terms and follow the requirements outlined below:

(a) All contracts must be in writing;

(b) Insurance and Indemnification Provisions - City contract templates contain insurance and indemnification provisions. All City contract insurance and indemnification provisions are drafted, reviewed, and approved by the Risk Management Division (Risk Management) and in some cases, Risk Management may modify the provisions. Contact Risk Management for guidance regarding contract insurance and indemnification provisions;

(c) Pre-Audit requirement - Where there is written contract or written agreement requiring the payment of money, or is evidenced by a written purchase order for supplies and materials, the written contract, agreement, or purchase order shall include a certificate stating that the instrument has been preaudited to assure that funds have been appropriated to pay within the current fiscal year. The certificate shall be signed by the finance officer, or any deputy finance officer approved for this purpose by the governing board pursuant to N.C.G.S. § 159-28 (a1);

(d) Iran Divestment and Israel Boycott - City of Asheville staff are responsible for verifying that the bidder/contractor is not listed on the Iran Divestment List or the Companies Boycotting Israel Final Divestment List published by the NC State Treasurer pursuant to N.C.G.S. 147-86.60 and 147-86.82. The City shall not contract with any company or their affiliates listed on these divestment lists;

(e) Vendor registration - All vendors must be registered with the City's vendor availability database prior to routing a contract through Munis;

(f) E-verify - Pursuant to N.C.G.S. § 143-133.33 E-verify compliance, no board or governing body of the State, or of any institution of the State government, or of any political subdivision of the State, may enter into a contract unless the contractor, and the contractor's subcontractors under the contract, comply with the requirements of Article 2 of Chapter 64 of the General Statutes. The City's standard terms and conditions include a statement with statutory requirements;

(g) Non-Appropriations Clause - If the City does not receive said funding for an Agreement from the City Council for any fiscal year applicable for any agreement, then the City shall have the right to terminate the Agreement without penalty by giving not less than thirty (30) days' written notice documenting the lack of funding;

(h) Governing Law - This clause should state that "the agreement or contract is entered into in North Carolina and shall be construed and governed by the statutes and laws of North Carolina."

(i) Terms and Conditions - Each city contract shall include the City's standard terms and conditions. If there is a deviation from the standard terms and conditions the Department shall seek approval from the Legal Department prior to the vendor signing the contract.

SECTION 2.0 SMALL PROCUREMENT TRANSACTIONS

The purchase of goods, supplies, materials and General Services up to $5,000 shall follow the standards set out within the policy and accompanying procedures.

2.1 AUTHORITY

Under $5,000 - Departments have been delegated authority for purchases for Small Procurement Transactions under $5,000. For transactions $5,000 or above, refer to the appropriate section for this policy for further instructions.

2.2 REQUIREMENTS

(a) Purchases less than $5,000 - Multiple quotes are encouraged when practical. A minimum of two is encouraged as best practice. Departments are encouraged to contact the Asheville Business Inclusion Manager for assistance with outreach to MWBE vendors. Telephone quotes are acceptable.

(b) General Services contracts less than $5,000 - All departments are encouraged but not required to receive three (3) quotes prior to award. The award shall be given to the Contractor with the lowest responsive and responsible quote. Departments participating in emergency and exigent procurement and contracting shall be exempt from receiving 3 quotes. Telephone quotes are acceptable. Outreach to MWBE vendors is encouraged and can be facilitated through the City's Asheville Business Inclusion Manager.

(c) Departments have been delegated the responsibility for maintaining appropriate documentation of all Small Procurement Transactions.

2.3 FEDERAL UNIFORM GUIDANCE

Federal Transit Administration (FTA) funded purchases MUST follow FTA regulations summarized in Appendix A.

Federal Uniform Guidance (UG) funded purchases MUST follow procedures in Appendix B .

SECTION 3.0 GENERAL SERVICE CONTRACTS

All General Service contracts including change orders must be in writing and have the pre-audit certification completed by the Chief Financial Officer. All contracts are to be submitted for electronic approvals in MUNIS and posting to the general ledger. In conjunction with this policy all general service contracts shall follow the ABI Policy and accompanying procedures.

Multiple quotes, or requests for proposals project dependent, for projects are strongly encouraged to ensure fair and open competition and to facilitate best pricing for any project.

Leases of real and personal property (where the City is the lessee) follow General Services contract authority and procedures. Leases of real property follow procedures determined by the City's Real Estate Division.

Please note: leases of personal property that offer an option of ownership at the end of the lease period are considered procurement and follow the procurement authority and procedures.

For the purposes of this policy, rental contracts & agreements shall be treated as non-standard contracts.

3.1 CONTRACT AUTHORITY

(a) General Service contracts of $5,000 less than $30,000 - Department Heads are authorized to approve General Service contracts of less than $30,000. The Department Head is required to ensure that the funds are budgeted and encumbered and the contractor has proper insurance. Department Heads are authorized to sign all change orders for said contract so long as the cumulative amount of the contract, including change orders, does not exceed $30,000 and otherwise complies with the law. All change orders where the cumulative contract amount is $30,000 or more shall be signed by the City Manager.

(b) General Service contracts of $30,000 or more, but less than $90,000 - The City Manager is authorized by the City Council to approve, award and execute General Service contracts of $30,000 or more, but less than $90,000, without City Council approval. The City Manager may sign change orders to contracts without Council approval when the cumulative contract amount, including the change order, does not exceed $90,000. Any change order which raises the cumulative contract amount to $90,000 and over must have City Council approval. The City Manager is also authorized to sign change orders on contracts $90,000 or more when the cumulative amount of the contract, including change orders, does not exceed the amount authorized in the resolution adopted by City Council.

(c) General Service contracts of $90,000 or more - All contracts of $90,000 or more must have City Council authorization before executing the contract. The City Manager is authorized to sign change orders on contracts $90,000 or more when the cumulative amount of the contract, including change orders, does not exceed the amount authorized in the resolution adopted by

City Council. Change orders that exceed the budgeted amount in the resolution regardless of the dollar value must have City Council approval.

3.2 CONTRACT REQUIREMENTS

(a) Length of service contracts: General Service contracts should ordinarily terminate at the end of the project, or projects, for which they are awarded. Contracts may be awarded to include a one (1) year agreement with two (2) one (1) year options to renew.

(b) Insurance requirements: See Section 1.6 of this policy.

(c) General Requirements: All general service contracts shall further follow the requirements identified in section 1.6 above.

3.3 FEDERAL UNIFORM GUIDANCE

General Service Projects funded by the Federal Transit Administration (FTA) funding MUST follow FTA regulations summarized in Appendix A.

General Service Projects funded by Federal Grants MUST follow Uniform Guidance (UG) procedures in Appendix B .

SECTION 4.0 PROFESSIONAL SERVICES CONTRACTS

All contracts for professional services to include architectural, engineering, surveying, or construction manager at risk are governed by N.C.G.S. § 143-64.31 and follow a qualification based selection process ("QBS"). Any contracts for professional services where the contract amount is $50,000 or less may be exempt ("QBS Exemption") from the request for qualifications (herein referred "RFQ") process pursuant to N.C.G.S. §143-64.32. Any contracts that will fall under the QBS exemption shall complete a written form signed by the City Manager prior to seeking quotes from potential vendors.

On-Call Professional Services contracts shall follow the above mentioned QBS process. Contractors will be placed on retainer under a master service agreement, with the option to enter into supplemental agreements. The Master agreement shall not last more than a combined three (3) years, to include a one (1) year agreement with two (2) one (1) year options to renew, without instituting a new QBS process for the contracted service.
The Department Head shall certify that the contract complies with the Asheville Business Inclusion Policy, Drug Free Workplace Policy, Americans with Disability Act Policy and insurance requirements when applicable.

4.1 AUTHORITY

(a) Professional Service contracts $0 to less than $30,000 - Shall be approved and signed by the Department Head following the procedures set forth in Section 3.4. Department Heads are permitted to sign all change orders for said contract so long as the cumulative contract amount, including change orders, is less than $30,000 and otherwise complies with the law. All change orders where the revised contract amount is $30,000 or more must be signed by the City Manager. Professional Service contracts in this range are required to meet the City's insurance requirements as outlined in Section 1.6.a and 3.3.b of this policy; however, Risk Management review is not required but encouraged if insurance for the service provided is not routine and customary. Any non-standard templates, amendments, renewals, and/or change orders must be reviewed and approved by the City's Legal Department.

(b) Professional Service contracts of $30,000 or more, but less than $90,000 - Shall be signed by the City Manager following the procedures set forth in Section 3.5. The City Manager is authorized to sign change orders to contracts without City Council approval when the cumulative contract amount, including change orders, is less than $90,000. The City Manager is also authorized to sign change orders on contracts $90,000 and over when the original amount plus the change order does not exceed the amount authorized in the resolution adopted by City Council. Professional Service contracts in this range must be reviewed and approved by the Risk Management Division, the City Legal Department and the Asheville Business Inclusion Office. Any non-standard templates, amendments, renewals, and/or change orders must be reviewed and approved by the City's Legal Department.

(c) Professional Service contracts of $90,000 or more - All Professional Service contracts $90,000 or more must have City Council authorization before executing the contract. Any change order which raises the total contract amount to $90,000 or more must have City Council approval. Change orders which exceed the budgeted amount in the resolution, regardless of the dollar value must have City Council approval. Professional Service contracts

in this range must be reviewed and approved by the Risk Management Division, the City Legal Department and the Asheville Business Inclusion Office. Any non-standard templates, amendments, renewals, and/or change orders must be reviewed and approved by the City's Legal Department.

4.2 CONTRACT REQUIREMENTS

(a) Length of Professional Service contracts: Professional Service contracts should ordinarily terminate at the end of the project, or projects, for which they are awarded. However, in those instances where contracts are awarded on an on call or continuing basis, they may be awarded for a period of one (1) year with two (2), one (1) year options to renew for a total of three (3) years.

(b) Insurance requirements: Professional Service contracts may require the provider to have an Errors and Omissions policy with amounts as determined by the Risk Manager. In addition, Risk Management may require additional insurance limits or conditions based on the contract exposures. The Risk Manager may issue waivers for specific contracts upon request.

4.3 FEDERAL UNIFORM GUIDANCE

Professional Services funded by any Federal Transit Administration (FTA) funding MUST follow FTA regulations summarized in Appendix A.

Professional Services funded by Federal Grants MUST follow Federal Uniform Guidance (UG) procedures in Appendix B .

SECTION 5.0 BUILDING, CONSTRUCTION, AND REPAIR CONTRACTS

Contracts for construction shall follow advertising, bidding, and contract award standards as indicated in N.C.G.S. §§ 143-129, 143-131. Building construction and repair contracts shall further follow the standards as outlined in N.C.G.S. § 143-128.2 for MWBE outreach in accordance with HUB standards. Construction and repair contracts in the informal range shall further follow N.C.G.S. § 143-131(b) standards for MWBE outreach and HUB reporting.

Alternative construction methods to include public private partnership, design build, design build bridging, and construction manager at risk are governed by N.C.G.S. § 143-64.31 and follow the QBS process identified above in section 3.0. Construction Manager at Risk (CMAR) contracts further governed by N.C.G.S. § 143-128.1.

If a Department chooses to utilize Pre-Qualification they must follow the prequalification policy adopted under resolution 15-133 and the procedures identified N.C.G.S. § 143-135.8. Pre-qualification cannot be utilized in alternative construction method contracts, except for the selection of first tier subcontractors when using the CMAR method. A firm contracted to complete city construction documents must follow the city's pre-qualification policy and procedures, with no exception.

5.1 CONTRACT AUTHORITY FOR BUILDING, CONSTRUCTION AND REPAIR CONTRACTS

(a) Building, Construction, & Repair contracts less than $30,000 - Department Heads are authorized to approve construction contracts of less than $30,000. Department Heads are allowed to sign all change orders for said contract so long as the cumulative amount of the contract, including change orders, does not exceed $30,000 and otherwise complies with the law. All change orders where the cumulative contract amount is $30,000 or more must be signed by the City Manager.

(b) Building, Construction, & Repair contracts of $30,000 or more, but less than $100,000 - The City Manager is authorized by the City Council to approve, award and execute construction contracts of $30,000 or more, but less than $100,000, without City Council approval. The City Manager may sign change orders to contracts without Council approval when the cumulative contract amount, including the change order, does not exceed $100,000. Any change order which raises the cumulative contract amount to $100,000 and over must have City Council approval. The City Manager is authorized to sign change orders on contracts $100,000 or more when the cumulative amount of the contract, including change orders, does not exceed the amount authorized in the resolution adopted by City Council. Change orders that exceed the budgeted amount in the resolution regardless of the dollar value must have City Council approval.

(c) Building and Construction & Repair contracts of $100,000 or more - All contracts of $100,000 or more must have City Council authorization before executing the contract. The City Manager is authorized to sign change orders on contracts $100,000 or more when the cumulative amount of the contract, including change orders, does not exceed the amount authorized in the resolution adopted by City Council. Change orders that exceed the budgeted amount in the resolution regardless of the dollar value must have City Council approval. In an

urgent, emergency, or exigent circumstances, approved by the City Manager, City Council authorization is not required until the total contract cost is $500,000 or more in accordance with N.C.G.S. § 143-129(a).

5.2 CONTRACT REQUIREMENTS

(a) All Building, Construction, & Repair contracts $30,000 or more are subject to the City's Asheville Business Inclusion policy, in addition to this policy and accompanying procedures.

(b) Building, Construction, & Repair contracts below $30,000 - Department Head is responsible for using authorized selection process and maintaining appropriate and necessary contract documentation, including information related to insurance requirements and other applicable policies. Review by the Risk Management Division and the Legal Department is not required at this threshold. Each contract shall include the terms and requirements identified above in section 1.6. For Building Construction and repair contracts, N.C.G.S. § 143-128.2 further requires participation with the Office of Historically Underutilized Businesses (HUB) to advertise bids if the work is part of a State funded project worth $100,000 or more. More information about HUB participation can be found at http://www.doa.state.nc.us/hub/.

(c) Building, Construction, & Repair contracts of $30,000 or more, but less than $300,000 - Department Head is responsible for using authorized selection process and maintaining appropriate and necessary contract documentation, including information on compliance with the Asheville Business Inclusion Policy. Each contract shall include the terms and requirements identified above in section 1.6. Contracts over $50,000 that are part of a project costing more than $300,000 require performance and payment bonds pursuant to N.C.G.S. § 44A-26. For Building Construction contracts, North Carolina General Statute requires documentation of good faith outreach efforts to historically underutilized businesses. Contracts $100,000 and above require City Council approval.

(d) Building, Construction, & Repair contracts of $300,000 or more, but less than $500,000 – Subject to informal bidding procedures described pursuant to North Carolina General Statute. Informal contract procedures are outlined below in section 4.4. Contracts in this dollar threshold require Payment and Performance Bonds per N.C.G.S. § 44A-26(a).

(e) Building, Construction, & Repair contracts of $500,000 or more - All construction and repair contracts requiring the estimated expenditure of $500,000 or more shall follow the procedures set forth in N.C.G.S. § 143-129. The Department should use the formal construction contract documents for the Formal Bid Package as set forth on the City's Contracting page of One Asheville in Construction Contracts $500,000 (herein FBP) or more. Contracts in this dollar threshold require Payment and Performance Bonds per N.C.G.S. § 44A-26(a). Formal contract procedures are outlined below in section 4.5.

5.3 FEDERAL UNIFORM GUIDANCE

Building, Construction, and Repair Projects funded by Federal Transit Administration (FTA) funding MUST follow FTA regulation summarized in Appendix A.

Building, Construction, and Repair projects funded by Federal Grants MUST follow Federal Uniform Guidance (UG) procedures in Appendix B .

6.0 EXCEPTIONS TO BIDDING (NOT EXEMPTED FROM CONTRACTING)

The level of authority for the contracts listed below follows the authority of the corresponding contract type (General Services, Construction & Repair, or Professional Services).

The following contracts are exemptions to competitive bidding in this policy, in accordance with NC General Statutes:

(a) **Civic Center (AKA Harrah's Cherokee Center Asheville) Leases and Promotions:** The Civic Center Director shall continue to have the authority to execute facilities lease agreements, food service provider agreements, advertising agreements and to promote or co-promote events on behalf of the City of Asheville at the Asheville Civic Center, in accordance with State Public Bidding Laws. These agreements shall be reviewed by Legal prior to execution. When possible, ABI Policy requirements and procedures shall be implemented in order to increase MWBE participation and utilization.

(b) **Other Contracts:**

a. **Utilities**. Services from regulated utilities such as but not limited to Electric, Water, Sewage, Gas, NCDOT, Railroad Utilities and Regional Cable companies;
b. **Cooperative Purchasing Groups.** Services acquired through Cooperative Purchasing Groups;
c. **Governmental Units.** Service agreements with other governmental units, (federal, state,county, Cities and Schools);
d. **Health and Safety.** Services needed to protect public health and safety in time of emergency;
e. **Force Work Account.** Construction and repair projects are exempt from bidding, pursuant to N.C.G.S. § 143-135, when the City utilizes its own forces and when the total project is below $500,000 or the total project labor cost is below $200,000. If utilizing this exception departments must follow the procedures set out in N.C.G.S. § 143-135(c);
f. **Financial and Legal Services.** Bond counsel or other specialized, or performance related, areas of legal expertise.

All exempted contracts and their change orders must be reviewed and approved by the Legal Department and presented to the Asheville City Council for consideration prior to execution.

7.0 PURCHASING OF APPARATUS, SUPPLIES, MATERIALS, OR EQUIPMENT

All purchases shall follow the standards set out within this policy. Purchases within the informal range, between $30,000 or more, but less than $90,000, shall follow the standards set out within N.C. G.S. § 143-131. Purchases that are $90,000 or more, formal bidding range, shall follow the standards and procedures set forth in N.C.G.S. § 143-129.

Prior to awarding a purchase MWBE outreach shall be conducted as set forth within the Asheville Business Inclusion Policy and the Risk Management exposure level considered.

7.1 AUTHORITY

(a) Purchases of $5,000 or more - Must have a purchase order and the requisitions shall be approved in MUNIS by the Department Head or their designee.

(b) Purchase Orders – The authority to bid and award all apparatus, supplies, materials or equipment for use by the City has been delegated to the City's Purchasing Manager per Resolution 98-118. The City's Purchasing Manager will be responsible for coordinating the appropriate Risk Management and Legal reviews for these transactions.

7.2 REQUIREMENTS

(a) Requisition - To begin the purchasing process, a requisition must be entered in MUNIS. The approved requisition is the authority for the Purchasing Division to initiate quotes or bids.

(b) Specifications – Departments are responsible for developing the minimum technical requirements (specifications) for the items they wish to purchase with review and approval of Purchasing.

(c) Vendor List – Departments are encouraged to provide a contact list of vendors, for outreach purposes, to Purchasing.

(d) Purchases of $5,000 or more but less than $30,000 – Purchases in this range require quotes to be documented and in writing. Three (3) quotes are encouraged and purchases shall be awarded to the lowest responsive, responsible bidder. Purchasing is responsible for this process.

(e) Purchases of $30,000 or more, but less than $90,000 (Informal Bids) - Purchases in this range are governed by N.C.G.S. §143-131, and shall follow the ABI Policy for MWBE outreach. Once informal bids are received and evaluated, the Purchasing Division may award. Bids are not required to be sealed and may be faxed, e-mailed, delivered or mailed. There is no requirement for a public bid opening and bids in this range are not public information until after award.

(f) Purchases of $90,000 or more (Formal Bids) – Purchases in this range are governed by N.C.G.S. §143-129. Bids must be sealed and a public bid opening is held. Bids become public information once opened. Purchasing is delegated the authority to award.

The Department is required to advertise the bid per N.C.G.S. § 143-129(b). The Department can advertise through electronic means (City's website and the State of North Carolina's Interactive Purchasing System, and Twitter through the Purchasing Department) in accordance with Resolution No. 04-156, or the Department has the option to advertise in a newspaper having general circulation. All advertisements must be made at least ten (10) days before the date of bid opening. Any advertisement must contain, at a minimum, the following:

- The time and place where the plans and specifications of the proposed work may be had;
- State the time and place for the opening of proposals; and
- Reserve to the City the right to reject any and all proposals.

(g) Urgent, Emergency, Exigent Procurement or Purchasing Needs – This policy and accompanying shall be followed as closely as possible during urgent, emergency, and exigent situations. The Department Head should advise the Purchasing Division of the urgent situation as soon as practically possible. Any urgent purchases of $90,000 or more must be communicated by the Department Head to the City Manager for City Council ratification.

(h) MUNIS Unavailable - Purchasing provides a list of PO numbers for use when MUNIS is unavailable. These PO numbers shall be created on an annual basis by the Purchasing Division. These numbers are only to be used when MUNIS is down and the requisition process can not be followed. The Purchasing Division can supply PO numbers during normal business hours as needed in a declared emergency. The urgent requisition should be entered into MUNIS, once MUNIS is available referencing the urgent PO number supplied to the vendor.

7.3 FEDERAL UNIFORM GUIDANCE

Purchases funded by any Federal Transit Administration (FTA) funding MUST follow FTA regulations summarized in Appendix A.

Purchases funded by Federal Grants MUST follow Federal Uniform Guidance (UG) procedures in Appendix B.

7.4 EXCEPTIONS TO FORMAL BIDDING/COUNCIL APPROVAL REQUIRED

All purchase contracts listed within this section shall be reviewed by purchasing prior to being submitted to City Council for consideration and approval.

(a) Lack of Price Competition, Sole Source, Standardization- N.C.G.S. §143-129 (e)(6) provides that purchases for are exempt from the bidding standards set forth within if:

1. Performance or price competition for a product are not available;
2. A needed product is available from only one source of supply; or
3. Standardization or compatibility is the overriding consideration.

(b) Waiver to Bid, AKA "piggybacking" - N.C.G.S. §143-129 (g) provides that if the governing body, City Council, determines that it is in the best interest of the City, the formal bidding requirements may be waived for the purchase of apparatus, supplies, materials, or equipment and a contract from any person or entity that has, within the previous 12 months, after having completed a public, formal bid process substantially similar to that required by by N.C.G.S. § 143-129, contracted to furnish the apparatus, supplies, materials, or equipment may be used. An advertisement to waive bidding must be published once, at least 10 days prior to the Council Meeting.

(c) Consortium- N.C.G.S. Chapter 160A Article 20 Part 1 provides the authority for local government to enter into interlocal agreements with other governmental units. When entering into a consortium legal review is required and council consideration and approval.

8.0 DISPOSAL OF SURPLUS

(a) Requirements - North Carolina General Statute 160A Article 12 Sale and Disposition of Property sets methods and limitations for the disposal of real or personal property. This statute states that a city may dispose of property by (a) private negotiation and sale (b) advertisement for sealed bids (c) negotiated offer, advertisement, and upset bid, (d) public auction or (e) exchange. The N.C.G.S. § 160A-270 authorizes the establishment of an electronic auction procedure which the City has approved.

(a) Under $30,000 in value - The disposal of City owned personal property valued under $30,000 has been delegated to the Purchasing Division per Resolution No.07-118. If a Department or division has items declared as surplus, the designated property control officer completes the disposal forms for Department Head approval. Forms are then routed to the Purchasing Division.

(b) Above $30,000 in value - If the personal property value is $30,000 or more, the Purchasing Division will work with the Department to prepare a package for City Council approval.

(c) Donation of surplus - N.C.G.S. §§ 160A-279, 160A-280 provides that the City may donate both personal and real property to other governmental units and non-profits and provides procedures therefore.

(d) Disposal Per Grantor agency

Personal property purchases funded by any Federal Transit Administration (FTA) funding MUST follow FTA regulations for disposal summarized in Appendix A.

Personal property funded by any Federal Agency MUST follow Federal Uniform Guidance for disposal in Appendix B.

9.0 PROCUREMENT, SURPLUS, PURCHASING, AND CONTRACTING POLICY PROCEDURES

The Purchasing Manager is responsible for development and maintenance to the policy administration procedures as needed to facilitate implementation and fulfill policy objectives. These procedures may be updated periodically to reflect necessary changes and process improvements. Any such updates to procedures will be communicated by the Purchasing Division to City staff. All staff is responsible for adhering to this policy and procedures when participating in city procurement transactions.

10.0 REVISION HISTORY

Revision Date & #:	Revision Description:
7/1/2012, #1	Updated Living Wage
7/1/2012, #2	Updated Living Wage
4/21/2014, #3	Added FTA Requirements to all sections. Deleted Living Wage per NC Legislative Changes
7/1/2018. #4	Added Federal Uniform Guidance Compliance Statement
8/31/2019 #5	Updated FTA Procurement Thresholds
12/8/2020 #6	Major revisions and updates, including Asheville Business Inclusion Policy