

CITY OF WALNUT GROVE

STATE OF GEORGIA

ORDINANCE NO. 2021-02

AN ORDINANCE TO AMEND ARTICLE V, PURCHASING POLICY, OF THE CITY OF WALNUT GROVE CODE OF ORDINANCES TO PROVIDE A PROCUREMENT POLICY; TO REPEAL CONFLICTING ORDINANCES; AND FOR OTHER PURPOSES

WHEREAS the Mayor and the Council of the City of Walnut Grove, Georgia, the governing body of the City of Walnut Grove, Georgia, desire to amend Article V of the Code of Ordinances of the City of Walnut Grove to add a procurement policy to provide for the fair and equitable treatment of all persons involved in public purchasing and contracting by the city;

WHEREAS, the Mayor and Council of the City of Walnut Grove, Georgia deem such amendment to be for the betterment and general welfare of the City of Walnut Grove and its inhabitants;

IT IS HEREBY ORDAINED BY THE GOVERNING AUTHORITY OF THE CITY OF WALNUT GROVE, GEORGIA, and by the authority thereof:

**SECTION 1.** Article V of the Code of Ordinances of the City of Walnut Grove is hereby deleted and replaced with the following amended to add the follows:

“ARTICLE V. PURCHASING POLICY AND PROCUREMENT POLICY

DIVISION 1. PURCHASING POLICY

**Section 4-501 Purchasing Policy.**

(a) Unless otherwise stated in this Section, all purchases and contracts made by the City must be made with approval of the Mayor and Council.

(b) The Mayor is authorized to make purchases and contracts for the city without Council approval in amounts not exceeding \$5,000.00 provided the expenditure is made within the constraints of the Budget. In cases of emergencies, the Mayor is authorized to make purchases and contracts for the city, subject to ratification by Mayor and Council at the next council meeting, in amounts not exceeding \$10,000.00.

## DIVISION 2. PROCUREMENT POLICY.

### **Sec. 4-502. - Purpose.**

The purpose of this division is to provide for the fair and equitable treatment of all persons involved in public purchasing and contracting by the city; to maximize the purchasing value of public funds in procurement; and to provide safeguards for maintaining procurement and contracting systems of quality and integrity.

### **Sec. 4-503. - Definitions.**

*Absolute value* means the numerical value of an acquisition or change order request without regard to its sign.

*Best and final offer* means, in competitive negotiation, the final proposal submitted after negotiations are completed that contains the vendor's most favorable terms for price and services or products to be delivered.

*Bid* means submission of information from a bidder that describes the bidder's commodities or services, and any other information necessary to respond to the specifications and other requirements set forth in an Invitation to Bid.

*Brand name or equal specification* means a specification limited to one or more items by manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet City requirements, and which provides for the submission of equivalent products.

*Brand name specifications* means a specification limited to one or more items by manufacturers' names or catalogue numbers.

*Business* means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

*Change order* means a written order signed by a person authorized to act on behalf of the City directing the contractor to make changes that the "Changes" clause of the contract authorizes.

*Commodity* means a discrete and distinct item of tangible personal property, including, without limitation, any such item which is intended to become an integrated part of another item of tangible personal property or of any improvement to real property.

*Confidential information* means any information which is available to an employee only because of the employee's status as an employee of the City and is not a matter of public knowledge or available to the public on request.

*Contract* means any agreement, purchase order, lease, or other document which creates or is intended to create binding reciprocal obligations including, without limitation, any document evidencing a bid or proposal award which has been accepted by the bidder.

*Contractor* means any person who is party to a contract.

*Cooperative purchase* means an arrangement whereby two or more public procurement units purchased from the same supplier using a single Invitation to Bid or Request for Proposal.

*Intangible* means incapable of being perceived by the senses.

*Invitation to bid* means all information and documentation disseminated by the City to solicit bids.

*Offeror* means any person who has submitted a bid or proposal to the City or otherwise offered to form a contract with the City.

*Person* means any individual or legal entity.

*Professional service* means a service consisting in material part of advice, evaluation, planning, design, or other effort involving the exercise of judgement, discretion, and knowledge, including, without limitation, a service provided by a person whose profession is licensed or regulated by the state or federal government.

*Proposal* means submission of information from a proposer (including a consultant) which states how that proposer intends to fulfill the specifications and other requirements described in a Request for Proposal.

*Qualified products list* means an approved list of supplies, services or construction items described by model or catalogue numbers, which prior to competitive solicitation, the City has determined will meet the applicable specification requirements.

*Request for Proposals* means all information and documentation disseminated by the City to solicit proposals.

*Responsible bidder* means a person who has the capability in all respects to perform fully the contract requirements, and the experience, reliability, capacity, facilities, equipment and credit which will assure good faith performance.

*Responsive bidder* means a person who has submitted a bid or proposal that conforms in all material respects to the requirements set forth in the invitation to bids or Request for Proposals.

*Services* means the furnishing of labor, time or effort by a contractor that is not intended to accomplish the delivery of a specified tangible product other than reports which are merely incidental to the required performance, including, without limitation, a professional or consulting service.

#### **Sec. 4-504. - Eligibility.**

Every new contractor contracting with the City of Walnut Grove, and any subcontractor that contractor hires, must register with the federal work authorization program, or E-Verify, in order to be eligible to perform work for the city. Contracts between the city and contractors, and between the contractors and their subcontractors, must be accompanied by sworn affidavits attesting to affiant's registration with E-Verify and compliance with E-Verify's citizenship requirements.

#### **Sec. 4-505. - Utilization of facilities agreements.**

(a) The Mayor or any designee of the Mayor is authorized to approve and execute facility use agreements that involve the request of a single party to use a city facility (park, community room, etc.) for a one-time event.

(b) The Mayor is authorized to approve and execute programming agreements that involve the request of an organization to use a city facility (park, community room, etc.) for a series of connected events that span an entire season (e.g., a baseball organization's use of the park for the season).

#### **Sec. 4-506. - Competitive sealed bidding.**

(a) *Conditions for use.* All contracts or purchases of the City over \$5,000.00 shall be awarded by competitive sealed bidding except as provided in this paragraph or as otherwise provided in sections 4-507 through 4-513. With regard to purchases for contracts under \$5,000.00 that are not emergency expenditures, the official or authorized employee shall invite at least 3 qualified parties

to provide written quotes by informal email or phone notification. The lowest quote shall be used unless there is a written justification for excluding the lowest quote.

(b) *Invitation for bids.* An invitation for bids shall be issued and shall include specifications, and all contractual terms and conditions applicable to the procurement.

(c) *Public notice.* Adequate public notice of the invitation for bids shall be given a reasonable time, not less than 15 calendar days prior to the date set forth therein for the opening of bids. Such notice may include publication in a newspaper of general circulation a reasonable time prior to the bid opening. The public notice shall state the place, date, and time of the bid opening.

(d) *Receipt of bid.* No written bid shall be eligible for consideration by the City unless it is placed in a sealed envelope or package and actually received by the City Clerk by the date and time specified in the Invitation to Bid. All bids shall be stamped or annotated with the date and time of receipt and secured until the designated opening time. A bid delivered late shall under no circumstances be eligible for consideration by the City.

(e) *Bid opening.* Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid together with the name of each bidder shall be recorded. The record shall be open to public inspection in accordance with state law.

(f) *Bid acceptance and bid evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized in this article. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation unless it is set forth in the invitation for bids.

(g) *Correction or withdrawal of bids; cancellation of awards.* Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice received in the office designated in the invitation for bids prior to the time set for the bid opening. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the City or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

(1) The mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or

(2) The bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. The bidder shall give notice in writing of his claim of right to withdraw his bid due to an error within two business days after the conclusion of the bid opening procedure.



All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Mayor.

(h) *Award.* The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. In the event the low responsive and responsible bid exceeds available funds as certified by the appropriate fiscal officer, and such bid does not exceed such funds by more than five percent, the Mayor is authorized, when time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. Any such negotiated adjustment shall be based only upon eliminating independent deductive items specified in the invitation for bids.

(i) *Multi-step sealed bidding.* When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

(j) *Tie bids.* In the event two responsive bids are tied for the lowest price and the other terms and conditions of the two bids are substantially the same, the bid shall be awarded to the local firm if only one of the bidders has a current City business license and office located within the boundaries of the City of Walnut Grove. If both or neither of the tied bidders are local firms, the City Clerk shall request the firms' best and final offers, and the award shall be to the lowest bid. If both firms have the same price after best and final offer, then the bid award shall be made to the winner of a coin toss by Mayor in a public session. Bidders will be invited to attend and one or more witnesses may be present.

#### **Sec. 4-507. - Competitive sealed proposals.**

(a) *Conditions for use.* When the Mayor determines that the use of competitive sealed bidding or other procurement methods is either not practicable or not advantageous to the City, a contract may be entered into by use of the competitive sealed proposals method.

(b) *Public notice.* Public notice shall be advertised as required by Georgia law. The public notice shall contain a general description of the item or service to be purchased, shall state the location where documents may be obtained and the date, time and place of proposal receipt. Notice of any required bonding and insurance shall be included in the public notice.

(c) *Receipt.* No written proposal shall be eligible for consideration by the City unless it is placed in a sealed envelope or package and actually received by the City Clerk by the date and time specified in the Request for Proposals. All proposals shall be stamped or annotated with the date and time of receipt and secured until the designated opening time. A proposal delivered late shall under no circumstances be eligible for consideration by the City.

(d) *Opening proposals.* Proposals shall be opened publicly in the presence of one or more witnesses on the date and at the time and place designated in the Request for Proposals. The name of each Proposer shall be announced.

(e) *Proprietary information.* Information submitted by a Proposer that is specifically marked "proprietary" shall not be disclosed outside of the City Clerk without prior notification to the Proposer. The City of Walnut Grove is required to comply with the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq. and therefore may not be able to protect information submitted in any response. Entire proposals may not be deemed "proprietary."

(f) *Evaluation.* Each proposal shall be evaluated to determine whether it is responsive to the specifications and other terms and conditions contained in the Request for Proposals. With the approval of the Mayor, or his or her delegate, the evaluating team may communicate with each proposer to clarify and amplify each Proposer's proposal. No information concerning any other Proposer's proposal shall be communicated in any way to the Proposer. Additional information may be requested of Proposers. The City Clerk will initiate such requests.

(g) *Discussion with responsible offerors and revisions to proposals.* As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to ensure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of competing offerors or of any information derived from proposals submitted by competing offerors.

(h) *Award.* Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the City, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

#### **Sec. 4-508. - Exemptions.**

(a) Professional services are exempt from the provisions of this purchasing policy. The term "professional services" shall mean services rendered by accountants, engineers, architects, physicians, lawyers and other professions as defined by the laws of the State of Georgia.

(b) Real property, real estate brokerage and appraising, abstract of titles for real property, title insurance for real property and other related costs of acquisition of real property.

(c) Dues and membership fees.

(d) Public works construction contracts to the extent governed by O.C.G.A. § 36-91-1 et seq.

(e) Advertisements and legal advertisements that are required by law to publicly advertise meetings or actions in the legal organ.

(f) Intangible repairs that are cost prohibitive to seek competitive quotations.

(g) Subscriptions.

(h) Utilities, where there is no reasonable basis for competitive procurement, for example electric power, water, and sewerage.

(i) Training, travel, lodging or meal expense covered by other City policies and regulations.

(j) Entertainment services for City-sponsored events.

(k) Proprietary maintenance and software agreements.

(l) Works of art or other creative/artistic endeavors that require a demonstrated skill or talent to include, but not limited to, artists, musicians, and writers.

(m) The procurement of employee benefits that are procured through a quotation and negotiating process conducted by an expert on behalf of the City (i.e., broker).

**Sec. 4-509. - Sole source procurement.**

Based upon evidence that a particular commodity or service may be obtained from only one source and no similar commodity or service available from a different source will adequately meet an acquiring department's requirements and specifications, the Mayor may decide that the commodity or service be purchased sole source or by brand name based upon supporting documentation from the requesting department. Supporting documentation will be reviewed by the City Clerk and findings will be presented to the Mayor. Requesting department shall present any sole source procurement over \$5,000.00 for approval by the City Council in an officially called public meeting. A record of sole source procurements shall be maintained as a public record and shall list each contractor's name, the amount and type of each contract, a listing of the items procured under each contract, and the identification number of each contract file.

**Sec. 4-510. - Emergency procurements.**

Notwithstanding any other provisions of this article, the Mayor may make or authorize others to make emergency procurements of supplies, services, or construction items when there exists a threat to public health, welfare, safety, or to the soundness and integrity of public property or to the delivery of essential services and where the adverse effects of such emergency may worsen materially with the passage of time provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file and shall be submitted for approval to the City Council as a consent agenda item at the next meeting following the emergency procurement. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and

type of the contract, a listing of the items procured under the contract, and the identification number of the contract file.

**Sec. 4-511. - Cooperative purchases.**

The City may participate in a cooperative purchase for commodities, supplies and services when determined that it is in the best interest of the City. The sponsoring entity, whether federal, state, local, or non-profit must have performed a competitive procurement process and entered into a contract that stipulates allowance for other governmental entities to purchase from the supplier at the same price and under the same terms and conditions as extended to itself. If such arrangement has not been made a part of the contract, written permission from the sponsoring entity and the awarded supplier must be obtained. Documentation to substantiate this decision will be maintained by the City Clerk.

**Sec. 4-512. - Governmental and affiliated entity purchases.**

The City may purchase services and incidental commodities from other federal, state or local governments, associations and non-profit organizations when determined to be in the best interest of the City. Documentation to substantiate this decision will be maintained by the City Clerk.

**Sec. 4-513. - Change orders and contract modifications.**

(a) *General provisions.* Except as hereinafter provided, any change order or other modification of a contract term shall be approved by the City Council.

(b) *Mayor authority.* The Mayor or his/her designee shall have authority to approve all change orders to purchase orders and contracts up to an absolute value of \$5,000.00.

**Sec. 4-514. - Cancellation of invitations for bids or request for proposals.**

An invitation for bids, a request for proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is for good cause and in the best interests of the City. The reasons therefor shall be made part of the contract file. Each solicitation issued by the City shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the City. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar items. Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.

**Sec. 4-515. - State requirements.**

The City of Walnut Grove hereby incorporates herein by reference the notice, bonding, and other procurement requirements of the State of Georgia as specified in O.C.G.A. tit. 13, ch. 10 and



O.C.G.A. tit. 36, ch. 91. Any project or contract governed by these statutes shall follow and satisfy the requirements therein, notwithstanding any conflicting provision of this division.

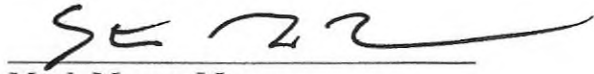
Secs. 4-516—2-600. - Reserved.”

**SECTION 2.** Except as provided otherwise herein, all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

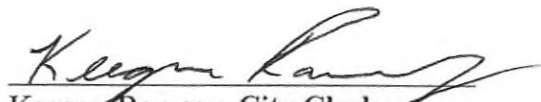
**SECTION 3.** It is hereby declared that if any phrase, sentence, or paragraph hereof shall be found or declared unconstitutional or invalid by a court of competent jurisdiction, the remaining phrases, sentences and paragraphs hereof shall remain in full force and effect as if enacted without the phrase, sentence, or paragraph declared unconstitutional or invalid.

It is so ordained on this 11<sup>th</sup> day of May, 2021.

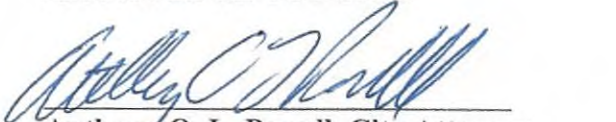
City of Walnut Grove, Georgia

  
Mark Moore, Mayor

ATTEST:

  
Keegan Ramsey, City Clerk

APPROVED AS TO FORM:

  
Anthony O. L. Powell, City Attorney  
Powell & Edwards, Attorneys at Law, P.C.