

**AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT
SYSTEM FOR THE CITY OF WATERBURY**

Adopted 6/20/2005
(Scrivner's error, Sec 38.03, corrected 6/30/05)

**NOW THEREFORE BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY
OF WATERBURY:**

1. Chapter 38, entitled "Centralized Procurement System," of Title III of the Code is repealed and the following new Chapter 38 to said Title III, is added in lieu thereof, as follows:

| | |
|--|-----------|
| Part A – Commencement of the Procurement Process | 1 |
| <i>Purposes and Objectives of the Centralized Procurement System</i> | <i>1</i> |
| §38.00 Purposes. Rules of Construction | 1 |
| <i>Definitions of Terms Used in Chapter 38.....</i> | <i>1</i> |
| §38.01 Definitions..... | 1 |
| §38.02 The Requisition..... | 8 |
| §38.03 Encumbrance of Funds..... | 8 |
| <i>Specifications</i> | <i>9</i> |
| §38.04 Preparation of Specifications..... | 9 |
| §38.05-§38.09 Reserved for Future Use..... | 9 |
| Part B – The Procurement Process: Solicitation and Award. | 10 |
| <i>Methods of Source Selection.....</i> | <i>10</i> |
| §38.11 Methods of Source Selection..... | 10 |
| <i>The General Rule: Competitive Sealed Bidding or Proposals</i> | <i>10</i> |
| §38.12 Competitive Sealed Bidding..... | 10 |
| §38.13 Competitive Sealed Proposals..... | 13 |
| §38.14 Requests for Qualifications | 15 |
| §38.15 Recurring Procurements..... | 16 |
| <i>Exceptions to the General Rule.....</i> | <i>17</i> |
| §38.16 Small Purchases..... | 17 |
| §38.17 Sole Source Procurement..... | 18 |
| §38.18 Procurements Pertaining to Public Emergencies..... | 18 |
| §38.19 Waiver of Bid or Proposal Requirement: Extraordinary Conditions..... | 18 |
| §38.20 Exempt Professional Services..... | 19 |
| §38.20a Exempt Investment and Insurance..... | 20 |
| §38.21 Record of Procurement Actions Taken With Regard to Sole Source, Waiver and Emergency Procurements..... | 20 |
| §38.22 Federal and State Procurement Standards: Application for Competitive Grants..... | 20 |
| §38.23-38.24 Reserved for Future Use..... | 20 |
| <i>Cancellation of Invitations for Bids or Request for Proposals</i> | <i>20</i> |
| §38.25 Cancellation of Invitation for Bids or Requests for Proposals. Waiver of Minor Irregularities. | 20 |
| §38.26-§38.34 Reserved for Future Use..... | 21 |
| <i>Qualifications and Duties.....</i> | <i>21</i> |
| §38.35 Responsibility of Bidders and Offerors..... | 21 |
| §38.36 Prequalification of Suppliers..... | 21 |
| §38.37 Substantiation of Offered Prices..... | 21 |
| §38.38-§38.41 Reserved for Future Use..... | 21 |
| §38.42 Preference for Bidders and Offerors Located in the City..... | 21 |
| §38.43 Reporting of Anticompetitive Practices..... | 21 |

**AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT
SYSTEM FOR THE CITY OF WATERBURY**

Adopted 6/20/2005

(Scrivner's error, Sec 38.03, corrected 6/30/05)

| | |
|---|-----------|
| §38.44 Retention of Procurement Records..... | 21 |
| <i>Determinations and Reports</i> | 22 |
| §38.45 Finality of Determinations..... | 22 |
| §38.46-§38.47 Reserved for Future Use..... | 22 |
| Part C – Contracts and Purchase Orders | 23 |
| §38.48 Obligations of Persons Seeking a Contract or Purchase Order with the City; Affidavits, Disclosures and Encumbrances..... | 23 |
| §38.49 Disclosures required by the Federal or State Governments..... | 23 |
| §38.50 Contractor Accounting Requirements..... | 23 |
| §38.51-§38.57 Reserved for Future Use..... | 23 |
| <i>Contracts and Purchase Orders</i> | 24 |
| §38.58 Purchase Orders: When Required..... | 24 |
| §38.59 Contracts: When Required..... | 24 |
| §38.60 Exceptions..... | 27 |
| §38.61 Issuance of Purchase Orders..... | 27 |
| §38.62 Execution of Contracts..... | 27 |
| §38.64 Amendments to Contracts..... | 28 |
| <i>Legal Clauses and Fiscal Responsibility</i> | 29 |
| §38.65 Legal Clauses for Contracts or Purchase Orders and Their Administration..... | 29 |
| §38.66 Cancellation Due to Unavailability of Funds in Succeeding Fiscal Years: Non-Appropriation..... | 30 |
| §§38.67-71 Reserved for Future Use..... | 30 |
| <i>Bonds, Insurance and Guarantees</i> | 30 |
| §38.72 Bid or Proposal Security..... | 30 |
| §38.73 Contract Performance and Payment Bonds..... | 31 |
| §38.75-38.79 Reserved for Future Use..... | 31 |
| Part D– Legal and Contractual Remedies | 32 |
| <i>Pre-Litigation Resolution of Controversies</i> | 32 |
| §38.80 Authority to Resolve Protested Solicitations and Awards..... | 32 |
| §38.81 Authority to Debar or Suspend..... | 32 |
| §38.82 Authority to Resolve Contract or Purchase Order and Breach of Term Controversies..... | 33 |
| §38.83-38.89 Reserved for Future Use..... | 34 |
| Part E– Intergovernmental Relations | 35 |
| §38.90 Cooperative Purchasing Authorized..... | 35 |
| §38.91-§38.94 Reserved for Future Use..... | 35 |
| Part F - Vendor Payment | 36 |
| <i>Administration by the Department of Finance</i> | 36 |
| §38.95 Payment Processing Requirements..... | 36 |
| §38.96 Payment..... | 36 |
| §38.97 Payment by Credit Card..... | 36 |
| §38.98 - §38.99 Reserved for Future Use..... | 36 |
| Part G – General Provisions | 37 |
| <i>Purposes, Construction and Application</i> | 37 |
| §38.100 Supplementary General Principles of Law Applicable..... | 37 |
| §38.101 Requirement of Good Faith..... | 37 |
| §38.102 Application of this Chapter..... | 37 |

**AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT
SYSTEM FOR THE CITY OF WATERBURY**

Adopted 6/20/2005

(Scrivner's error, Sec 38.03, corrected 6/30/05)

| | |
|---|-----------|
| §38.103 Severability. | 38 |
| §38.104 Construction Against Implicit Repealer. | 38 |
| §38.105 Effective Date. | 38 |
| <i>Determinations</i> | 38 |
| §38.106 Determinations. | 38 |
| §38.107 Reserved for Future Use. | 38 |
| <i>Public Access</i> | 38 |
| §38.108 Public Access to Procurement Information. | 38 |
| §38.109 Authorization for the Use of Electronic Transmissions. | 38 |
| Part H – Procurement Organization and Leadership | 39 |
| <i>Department of Purchases</i> | 39 |
| §38.120 Charter Authority for the Department of Purchases. | 39 |
| §38.121 Authority and Duties of the Department of Purchases. | 39 |
| §38.122-38.124 Reserved for Future Use. | 39 |
| <i>Director of Purchasing (Purchasing Agent)</i> | 39 |
| §38.125 Charter Authority for the Director of Purchasing. | 39 |
| §38.126 Appointment and Qualifications. | 39 |
| §38.127 Tenure, Removal, and Compensation. | 39 |
| §38.128 Authority of the Director of Purchasing. | 39 |
| §38.129-38.134 Reserved for Future Use. | 42 |
| <i>Organizational Issues Pertaining to Public Procurement and Management</i> ... | 42 |
| §38.135 Centralization of Procurement Authority. | 42 |
| §38.136 Delegation of Authority by the Director of Purchasing. | 42 |
| <i>Role of the Corporation Counsel</i> | 42 |
| §38.137 Authority to Contract for Legal Services. | 42 |
| §38.138 Contracts to be Approved by the Corporation Counsel. | 42 |
| §38.139 Duties of the Corporation Counsel. | 42 |
| <i>Role of the Using Agencies and Department Heads</i> | 42 |
| §38.140 Estimate of Needs. | 42 |
| §38.141 The Roles and Responsibilities of Using Agencies, Department Heads and Others Pertaining to the Procurement System. | 43 |
| §38.142-38.144 Reserved for Future Use. | 45 |
| <i>City Procurement Regulations and Policies</i> | 45 |
| §38.145 Regulations. | 45 |
| §38.146 Prohibition Against the Delegation of the Power to Promulgate Regulations and Establish Policy. | 45 |
| §38.147 Regulations and Policies Shall Not Change Existing Contract Rights. | 45 |

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

Adopted 6/20/2005
(Scrivner's error, Sec 38.03, corrected 6/30/05)

CHAPTER 38: PROCUREMENT AND CONTRACTUAL AGREEMENTS

Part A – Commencement of the Procurement Process

Purposes and Objectives of the Centralized Procurement System

§38.00 Purposes. Rules of Construction.

(A) Interpretation. This Chapter shall be construed and applied to promote the underlying purposes and objectives pertaining to the Centralized Procurement System, as set forth in the Charter and herein.

(B) Purposes and Objectives Regarding the Centralized Procurement System. The underlying purposes and objectives of this Chapter are:

- (1) to simplify, clarify and modernize the provisions governing Procurement for the City;
- (2) to permit the continued development of the best Procurement practices as required by the Charter of the City;
- (3) to provide for increased public confidence in the procedures followed in public Procurement by the City;
- (4) to ensure the fair and equitable treatment of all persons and entities that deal with the Procurement system of the City;
- (5) to provide increased economy in City Procurement activities and to maximize, to the fullest extent practicable, the purchasing value of public funds expended by the City, taking into account, where applicable, performance and cost of Contracts and Purchase Orders;
- (6) to foster effective broad-based competitive values and protocols within the Centralized Procurement System;
- (7) to provide safeguards for the maintenance of a Procurement system of quality and integrity; and,
- (8) to obtain in a cost-effective and responsive manner the Commodities, Services and construction required by the Agencies of the City in order to better serve the residents of the City.

Definitions of Terms Used in Chapter 38

§38.01 Definitions.

The words defined in this section shall have the meanings set forth below whenever they appear in this Chapter, unless the context in which they are used clearly requires a different meaning; or a different definition is prescribed for a particular section or provision.

(A) "Affiliated Entity means an entity (including any natural person) which is currently engaged in a relationship with another entity, or which was engaged in such a relationship at any time during which any facts or circumstances germane to issues governed by any provision of this chapter arose (for example: an entity which is not currently related but was related as an affiliated entity at the time when currently past due

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

Adopted 6/20/2005

(Scrivner's error, Sec 38.03, corrected 6/30/05)

taxes of the principal entity, or of the affiliated entity, became due and payable, etc.), if as a consequence of such relationship said entity directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another entity.

[Note: For purposes of this definition, control shall mean having the power to direct or cause the direction of the management or policies of another entity through any direct or indirect means. Control will be presumed to exist if any entity, directly or indirectly owns, controls, holds with power to vote, or holds proxies representing, twenty percent or more of any voting securities or membership interests in another entity.]"

(B) Agency means an -entity, authority, board, bureau, commission, department, government corporation, legislative body or official of the City over which the City exercises budgetary or administrative responsibility and which uses Commodities, Equipment, Materials, Supplies or Contractual Services.

(C) Architectural and Engineering Services means:

(1) Professional Services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or provided by a person licensed, registered or certified to provide such services as described in Part B;

(2) Professional Services of an architectural or engineering nature performed by Contract that are associated with research, planning, development, design, construction, alteration, or repair of City property or other property or space in which the City has an interest; and

(3) Such other Professional Services of an architectural or engineering nature, or incidental Services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including: studies, investigations, surveying, mapping, tests, evaluations, consultation, comprehensive planning, program management, conceptual designs, plans and Specifications, value engineering, construction phase Services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related Services.

(D) Blanket or Consolidated Purchase means an arrangement under which a purchaser contracts with a vendor to provide the purchaser's requirements for a Commodity or Service, on an as-required and often over-the-counter basis. Said order or purchase shall contain a limit on the period of time it is valid and the maximum amount of money that may be spent at one time or within a specified time period.

(E) Business means any individual or sole proprietorship, partnership, firm, corporation, trust, limited liability company, limited liability partnership, joint stock company, joint venture or other legal entity through which business for profit or not for profit is conducted.

(F) Change Order means a written order made within the context of the scope of Services and amount of the Contract or Purchase Order, signed by the official(s) designated by the appropriate Department Head, directing the Contractor to make changes, which are authorized by the Contract or Purchase Order.

(G) City Funds means all appropriations set forth in the General and Capital budgets, including projects identified in the long-term capital plan, and funds appropriated in the Water and Water Pollution Control enterprise fund budgets.

(H) Commodities means an article of trade, a movable article of value, something that is bought or sold; any movable or tangible thing that is produced or used as the subject of barter or sale. When used alone the term "Commodities" shall include Equipment, Materials and Supplies.

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

Adopted 6/20/2005

(Scrivner's error, Sec 38.03, corrected 6/30/05)

(I) **Competitive Negotiation** means a procedure for contracting for Commodities, Contractual Services (including construction), in which (A) proposals are solicited from qualified suppliers by a request for proposals, and (B) changes may be negotiated in proposals and prices after being submitted;

(J) **Competitive Grant Process** means a process that commences with an application for funding that is scored and ranked by relative merit (in comparison to proposals submitted by other applicants) based upon specific criteria established by the funder, in order to determine grant award recipients.

(K) **Competitive Sealed Proposal Process** is the purchasing process set forth in §38.13 of this Chapter. The process shall include the utilization of Competitive Negotiation.

(L) **Construction** means the process of building, altering, repairing, improving, or demolishing any public infrastructure facility, including any public structure, public building, or other public improvements of any kind to City property or other property or space in which the City has an interest. It does not include the routine operation, routine repair, or routine maintenance of any existing public infrastructure facility, including structures, buildings or real property.

(1) **Construction Item** means Commodities or Services involved in the process of building, designing, altering or repairing a public structure or building, or other improvements to any City property. It does not include routine operation, routine repair or routine maintenance of existing structures, buildings or property.

(M) **Contract** means a written agreement between two or more competent persons to perform or not to perform a specific act or acts pertaining to Services and Professional Services or as otherwise set forth in this Chapter. Whenever a subcontract exists under Procurements approved under this Chapter the requirements applicable to "Contracts" shall be applicable to "Subcontracts". Whenever the term "agreement" is used in this Chapter it shall mean either a Contract or Purchase Order depending on the context.

(N) **Contract Modification or Amendment** means any written alteration in Specifications, delivery point, rate of delivery, period of performance, price, quantity or other provisions of any Contract accomplished by mutual action of the parties to the Contract, other than Change Orders, which were previously defined.

(O) **Contractor** means any person having a Contract or Purchase Order with the City or any of its Agencies.

(P) **Data** means recorded information, regardless of form or characteristic.

(Q) **Design-Build-Finance-Operate-Maintain** means a project delivery method in which the City enters into a single Contract for at least two of the following: design, Construction, finance, maintenance, and operation of an infrastructure facility over the contractually defined period.

(R) **Designee** means a duly authorized representative of a person holding a superior position.

(S) **Design Requirements** means the written description of the infrastructure facility or service to be procured under this Part B including: (1) required features, functions, characteristics, qualities, and properties that are required by the City; (2) the anticipated schedule, including start, duration, and completion; (3) estimated budgets (as applicable to the specific Procurement) for design, Construction, operation and maintenance. The design requirements may, but need not, include drawings and other documents illustrating the scale and relationship of the features, functions, and characteristics of the project.

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

Adopted 6/20/2005

(Scrivner's error, Sec 38.03, corrected 6/30/05)

(T) Director of Purchasing or Purchasing Agent means the person holding the position established in §7C-4(b) of the Charter of the City as the head of the Centralized Procurement System and the procurement officer of the City.

(U) Electronic means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

(V) Employee means an individual employed by the City, whether as a classified or unclassified, permanent or temporary, full-time or part-time employee, or employed by Contract on a continuing basis and all Employees of the Board of Education. For purposes of this Chapter the term "Employee" may include Public Officials.

(W) Equipment means personal property of a durable nature that retains its identity throughout its useful life.

(X) Established Catalog Price means the price included in a catalog, price list, schedule or other form that:

(1) is regularly maintained by a manufacturer or Contractor;

(2) is either published or otherwise available for inspection by customers; and

(3) states prices at which sales are currently or were last made to a significant number of any category of buyer or buyers constituting the general buying public for the Commodities or Services involved.

(Y) Excess Supplies means any Supplies other than expendable Supplies having a remaining useful life but which are no longer required by the Using Agency in possession of the Supplies.

(Z) Expendable Supplies means all tangible Supplies other than non- expendable Supplies.

(AA) Grant or Loan means the furnishing by the government of assistance, whether financial or otherwise, to any person to support a program authorized by law.

(BB) Infrastructure Facility means a building; structure; or networks of buildings, structures, pipes, controls, and Equipment that provide transportation, utilities, public education, or public safety Services. Included are government office buildings, public schools; jails; water treatment plants, distribution systems and pumping stations; waste water treatment plant, collections systems, and pumping stations; solid waste disposal plants, incinerators, landfills, and related facilities; public roads and streets; highways; public parking facilities; public transportation systems, terminals, and rolling stock; rail, air and water port structures, terminals and Equipment.

(CC) Invitation for Bids means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

(DD) Lease means a Contract conveying from one person to another use of real estate or personal property for a designated period of time in return for rental payment or other compensation.

(EE) Lease Purchase Agreement means a Lease containing a purchase option in which the lessee's periodic payments or parts thereof may be applied to serve both as the rental obligation and as installments for acquiring ownership of the property upon lessee's exercising the purchase option; a conditional sales Contract.

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

Adopted 6/20/2005
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(FF) *May* denotes the permissive.

(GG) *Materials* means items required to perform a function or used in a manufacturing process, particularly those incorporated into an end product or consumed in its manufacture.

(HH) *Multi-Step Competitive Sealed Bidding* means a competitive process calling for separate submissions of proposals or responses following the issuance of a Request for Information, Request for Qualifications or other solicitation prior to the issuance of an Invitation for Bid. The issuance of these solicitations may constitute the first step or steps of a process followed by a call for non-negotiable competitive-price bid. A Request for Qualifications may also be utilized as the first step in the Competitive Sealed Proposal process.

(II) *Operations and Maintenance* means a project delivery method whereby the City enters into a single Contract for the routine operation, routine repair, and routine maintenance of an infrastructure facility.

(JJ) *Person* means any individual, firm, partnership, joint venture, association, social club, fraternal organization, corporation, limited liability company, estate, trust, syndicate, union, other organization or group or association of individuals however formed.

(KK) *Policies* refers to the policies pertinent to this Chapter established by the Director of Purchases.

(LL) *Procurement* means buying, purchasing, renting, leasing, or otherwise acquiring any Commodities, Services, property or Construction or obtaining a benefit from the City even in the event the City is not responsible for compensation. It also includes all functions that pertain to the obtaining of any Commodity, Service, or Construction, including description of requirements, selection and solicitation of sources, preparation and award of a Contract or Purchase Order, and all phases of Contract administration.

(MM) *Professional Services* means any type of Service to the public that requires that members of a profession rendering such service obtain a license or other legal authorization as a condition precedent to the rendition thereof, limited to the Professional Services of architects, professional engineers, or jointly by architects and professional engineers, landscape architects, certified public accountants and public accountants, land surveyors, attorneys-at-law, psychologists, licensed marital and family therapists, licensed professional counselors and licensed clinical social workers as well as such other Professional Services set forth, now or hereafter, in C.G.S. §33-182a or as otherwise established by Ordinance.

A Contract for Professional Services may run to individuals or to business entities established:

(1) For the sole and specific purpose of rendering professional services and which has as its owners, members, partners or shareholders only individuals who themselves are licensed or otherwise legally authorized to render the same professional service as the business entity; or,

(2) For the sole and specific purpose of rendering professional services by members of two or more of the following professions: psychology, marital and family therapy, social work, nursing, professional counseling and psychiatry and that has as its owners, members, partners or shareholders only individuals who themselves are licensed or otherwise legally authorized to render one of the Professional Services for which the business entity was created.

(NN) *Proposal Development Documents* means drawings and other design related documents that are sufficient to fix and describe the size and character of an infrastructure facility as to architectural,

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

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structural, mechanical and electrical systems, Materials, and such other elements as may be appropriate to the applicable project delivery method.

(OO) Public Notice means the distribution or dissemination of information to interested parties using methods that are reasonably available and comport with the requirements of the Freedom of Information laws set forth in the Connecticut General Statutes. Such methods will often include publication in newspapers of general circulation, electronic or paper mailing lists, and web site(s) designated by the City and maintained for that purpose.

(PP) Public Official means any elected officer or official, any person appointed to any office, board or commission of the City by the Mayor or Board of Aldermen, or a Department Head of the City appointed by the Mayor, as set forth in the Charter or ordinances, with or without the approval of the Board of Aldermen.

(QQ) Purchase Order means a document that formalizes certain purchase transactions with the City. The Purchase Order shall contain statements as to the quantity, description, and price of the items ordered; legal terms and conditions; applicable terms as to payment discounts, date of performance and transportation and other factors or suitable references pertinent to the purchase and its execution by the vendor. Delivery of the Services or Commodities set forth in a Purchase Order constitutes acceptance and the creation of an enforceable contractual obligation by the vendor. Whenever the term "agreement" is used in this Chapter it shall mean either a Contract or Purchase Order depending on the context.

(RR) Regulation means a governmental body's statement, having general or particular applicability and future effect, designed to implement, interpret, or prescribe law.

(SS) Request for Information means the document used in informal, uncompetitive solicitation of information, data, comments, or reactions from possible suppliers preceding the issuance of a Request for Proposal, a Request for Qualifications or an Invitation for Bid.

(TT) Request for Proposals means the solicitation document used in the competitive sealed proposals process. The procedure allows changes to be made to the responses after other proposals are opened and contemplates that the scope of services of the proposals and/or prices offered will be negotiated prior to award.

(UU) Request for Qualification means the solicitation document generally used to seek information required for the pre-qualification of a bidder or offeror and used in the solicitation of an Architect or Engineer.

(VV) Services or Contractual Services means the furnishing of labor, time, or effort by a Contractor, not involving the delivery of a specific end product other than reports, which are merely incidental to the required performance. This term shall include the design, development and implementation of technology, communications or telecommunications systems or the infrastructure pertaining thereto, including hardware and software. Moreover, this term shall include services for which a contractor is conferred a benefit by the City, whether or not compensated by the City. This term shall not include employment agreements, collective bargaining agreements or Professional Services, as defined herein.

(WW) Shall denotes the imperative.

(XX) Specification means any description of the physical or functional characteristics, or of the nature of a Commodity, Service, or Construction Item. It may include a description of any requirement for inspecting, testing, or preparing a Commodity, Service, or Construction Item for delivery. Said Specifications are to be attached to or, otherwise, made a part of the solicitation.

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

**Adopted 6/20/2005
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(YY) Supplies means items that are consumed or expended in the course of being used, as distinguished from Equipment or Materials or items that are the property of the City, including, but not limited to, insurance and printing Materials.

(ZZ) Surplus Supplies means any Supplies other than expendable Supplies that no longer have any use to the City. This includes obsolete Supplies, scrap metals and non-expendable Supplies that have completed their useful life cycle.

(AAA) Taxes, when that term is used herein with regard to "delinquent" or "back" taxes, shall include any amounts owed to the City of Waterbury, or to any of its agencies or subordinate or related entities, for any and all service fees or charges and any and all assessments and any and all fines or penalties as may have been assessed by the City or said agencies or subordinate or related entities including, but not limited to, water and sewer use charges, fines due pursuant to parking tickets issued.

(BBB) Transfer of Appropriation means an authorization, made pursuant to the Charter and Ordinances, to shift part or all of the sum budgeted for one appropriation to another general fund appropriation.

(CCC) Using Agency See Agency

(DDD) Vendor Means, with respect to any transaction, agreement, contract or other arrangement for which the solicitation or consummation thereof is otherwise governed by the provisions of this Chapter 38, any person or entity which or who, in relation to said transaction, agreement, contract or other arrangement, is providing, or proposing to provide, any goods, services, interest in property of any kind or other thing of value to the City, or any person receiving, or proposing to receive, any service, interest in property of any kind or other thing of value from the City and any other person or entity otherwise entering into, in any capacity, any such transaction with the City.

(EEE) Written or In Writing means the product of any method of forming characters on paper, other Materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

(FFF) Year shall mean the calendar year. Where the Fiscal Year is so intended it shall be specifically referenced. The Fiscal Year of the City commences on July 1 and ends on June 30, or as otherwise mandated by the State.

**AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE
CITY OF WATERBURY**

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The Requisition and Attachments

§38.02 The Requisition.

(A) Commencement of the Process: Requisition or Notice of Intent. At the commencement of the Procurement process, the Using Agency shall file either (a) with the Budget Director, a requisition for the acquisition of Services, Commodities or Leases or (b) other notice of intent to the Director of Purchasing according to policies or practices established by the Director of Purchasing.

§38.03 Encumbrance of Funds.

(A) Encumbrance of Funds. Except as provided in §38.18, the Mayor shall not execute a Contract or the Director of Purchasing shall not issue a Purchase Order until the Budget Director has (1) certified the availability of unexpended appropriated City Funds and (2) encumbered such City Funds, as defined below; or (3) determined that funds in the proposed municipal or state budgets or from other sources will be available on or after July 1st of the ensuing Fiscal Year, for the Commodity, Services or Leases set forth in a requisition.

(1) No Payments or Incurred Obligations Without Encumbrance. The City shall make no payment and no obligation shall be incurred against any appropriation unless the encumbrance required of the Budget Director by this provision is contained in the records of the City.

(B) Encumbrance of Other Funds and Funding Sources. Except as provided in §38.18, the Mayor shall not execute a Contract or the Director of Purchasing shall not issue a Purchase Order until the Budget Director has certified the availability of funds pursuant to the terms of an executed and effective Grant, Loan or reimbursement program of the federal or state governments, or their subdivisions.

(1) No Payments or Incurred Obligations Without Encumbrance. The City shall make no payment and no obligation shall be incurred against any federal or state Grant, Loan or reimbursement agreement unless the encumbrance required of the Budget Director by this provision is contained in the records of the City.

(C) Encumbrance of Funds For Multi-Year Agreements or Options to Extend. The City shall make no payment and no obligation shall be incurred for multi-year obligations or options to extend for all Contracts set forth in §38.03(A) and (B), above, unless an encumbrance of funds occurs, for which annual appropriation is required.

(1) Responsibility of the Department Head. Except for capital projects that are funded from a capital improvement fund, the Department Head shall, on an annual basis, be responsible for requesting an encumbrance through the filing of a requisition of the multi-year Contract following approval of the budget for the subsequent year.

(2) Encumbrance by the Budget Director. The encumbrance shall include the same findings required of the Budget Director in initially encumbering said funds.

(D) Valid Obligation. No Contract or Purchase Order shall be the valid obligation of the City unless certified by said Budget Director prior to execution thereof. No Using Agency shall incur any liability or expense by Contract, Purchase Order or otherwise for which the City shall be responsible, in excess of the appropriations so authorized by the Board of Aldermen or in excess of the amounts contained in federal or state Grants, Loans or reimbursements. Notwithstanding the foregoing, this provision shall not apply to exempt transactions pursuant to §38.20 (A), (B), (D) and (E).

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

Adopted 6/20/2005
(Scrivner's error, Sec 38.03, corrected 6/30/05)

(E) Consequences of Executing Contracts and Purchase Orders in Violation of the Charter and Code of Ordinances.

(1) Expenditures and Obligations Voided. Every expenditure or obligation authorized or incurred in violation of this Chapter shall be void, unless approved by the Budget Director and the Director of Purchasing.

(2) Violative Payments Deemed Illegal: Joint and Several Liability for Public Officials, Employees and Other Persons. Payments made in violation of the provisions of the Charter and this Chapter shall be deemed illegal and all Public Officials and employees who shall authorize or make such payment, or cause such payment to authorized or made, and all persons who shall receive such payment or any part thereof shall be jointly and severally liable to the City for the full amount so paid or received.

(3) Cause for Removal or Termination of Employment. If any Public Official or Employee of the City shall knowingly incur any obligation or shall authorize or make any expenditure in violation of this provision such action shall be cause for removal from office or termination of employment.

Specifications

§38.04 Preparation of Specifications.

(A) Generally. In accordance with the schedule or any Regulations or Policies established by the Director of Purchasing, the Using Agency shall prepare Specifications (including, but not limited to, standard terms and conditions), which shall be attached or included in the bid or proposal documents set forth in Part B of this Chapter.

(1) Assistance to the Using Agencies. The Director of Purchasing may retain or authorize the retention of expert advisors to assist the Using Agencies.

(2) Maximum Practicable Competition. All Specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the City's needs, and shall not be unduly restrictive.

(3) Specifications Prepared by Other than City Personnel. The requirements of this Chapter regarding standards established for the Specifications shall apply to all Specifications prepared by City and non-City personnel, including, but not limited to, those prepared by architects, engineers, and designers.

(B) The Role of the Director of Purchasing: The Director of Purchasing shall monitor use of Specifications for Commodities, Services, and Construction required by the Department of Purchases. Moreover, the Director of Purchasing, is authorized to issue Regulations or Policies as a means of setting standards for the preparation, maintenance, and content of Specifications for Commodities, Services, and Construction Items required by the City.

§38.05-§38.09 Reserved for Future Use.

**AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE
CITY OF WATERBURY**

Adopted 6/20/2005
(Scrivner's error, Sec 38.03, corrected 6/30/05)

Part B – The Procurement Process: Solicitation and Award.

Methods of Source Selection

§38.11 Methods of Source Selection.

Unless otherwise authorized by the Charter of the City or this Code, all Contracts and Purchase Orders shall be awarded by one of the following methods:

- (A) **Competitive Sealed Bidding** as set forth in §38.12 of this Chapter.
- (B) **Competitive Sealed Proposals** as set forth in §38.13 of this Chapter.
- (C) **Request for Qualifications** as set forth in §38.14 of this Chapter.
 - (1) **Architectural and Engineering Services** shall be solicited as set forth in §38.14 of this Chapter.
- (D) **Recurring Procurements** as set forth in §38.15 of this Chapter.
- (E) **Small Purchases** as set forth in §38.16 of this Chapter.
- (F) **Sole Source Procurement** as set forth in §38.17 of this Chapter.
- (G) **Emergency Procurements** as set forth in §38.18 of this Chapter.
- (H) **Waiver of Bid or Proposal Requirement for Extraordinary Conditions** as set forth in §38.19 of this Chapter.
- (I) **Exempt Services** are set forth in §38.20 of this Chapter.
- (J) **Investments or Insurance** as set forth in §38.20a of this Chapter.
- (K) **Other methods of source selection may be established by regulation as may be promulgated by the Director of Purchasing.**

The General Rule: Competitive Sealed Bidding or Proposals

§38.12 Competitive Sealed Bidding.

(A) **Conditions for Use.** Purchase Orders or Contracts, in an amount in excess of \$10,000.00, shall be awarded by competitive sealed bidding unless the Director of Purchasing determines that an alternate method of source selection, as set forth in §38.11 and the referenced sections therein of this Chapter, is appropriate.

(B) **Invitation for Bids.** An Invitation for Bids shall be issued and shall include Specifications and any other descriptions of the Commodity, and all proposed and/or mandatory contractual terms, special terms and conditions applicable to the Procurement, other legal and regulatory requirements, including, but not limited to the requirements of Chapter 93 of the Code of Ordinances. With respect to any particular Invitation for Bids, the Director of Purchasing or the Corporation Counsel may vary any clauses that may have, prior

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

Adopted 6/20/2005

(Scrivner's error, Sec 38.03, corrected 6/30/05)

thereto, been promulgated by the Department of Purchases for inclusion in all Invitation for Bids. However, the Director of Purchasing does not have the discretion to vary the specifically enumerated legal requirements of the Code of Ordinances.

(C) Public Notice. Adequate Public Notice of the Invitation for Bids shall be given a reasonable time period prior to the date set forth therein for the opening of bids and in a manner that the Director of Purchasing determines will maximize public participation and competition in the Competitive Sealed Bidding process.

(1) Such notice shall be inserted, at least ten (10) calendar days before the final date of submitting bids, in the major daily newspaper published in the City and may, in the sole discretion of the Director of Purchasing, be posted on the Internet.

(i) *Notice following pre-qualification of Bidders.* In the event of a Multi-Step Competitive or Sealed Bid, said notice may be sent only to the vendors qualified to bid.

(2) Each notice of a planned purchase under this Chapter shall indicate the type of Commodities or Services to be purchased.

The Using Agency shall provide the Director of Purchasing with special notice requirements necessary to comply with the provisions of federal or state Grants, Loans or reimbursement agreement, when applicable.

(D) Bid Opening. Bids shall be opened publicly at the time and place designated in the Invitation for Bids. The amount of each bid, and such other relevant information as may be specified by policy adopted by the Director of Purchasing, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection.

(1) Each bid shall be kept sealed or secured until opened publicly at the time stated in the notice soliciting such bid.

(E) Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Chapter. The Invitation for Bid may set forth the evaluation criteria to be used. No criteria may be used in a bid evaluation that are not set forth in the Invitation for Bids. In the event there is no specific evaluation criterion set forth in the Invitation for Bids, evaluation will be based on a determination of the lowest responsible, qualified and responsive bidder as set forth in this Chapter.

(1) **Evaluation Criteria.** Bids shall be evaluated by the Director of Purchasing, or the Using Agency and/or consultants if so designated by the Director, 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; and,

(2) **Objectively Measurable Criteria.** 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.

(F) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards of Contracts or Purchase Orders based on such bid mistakes, shall be permitted with the approval, in writing, of the Director of Purchasing.

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

Adopted 6/20/2005

(Scrivner's error, Sec 38.03, corrected 6/30/05)

Said actions by the Director of Purchasing shall take into consideration preservation of the integrity of the Competitive Sealed Bidding process under this Chapter.

(1) **Prohibited Practices Following 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.

(2) **Written Determination Regarding Cancellation of Awards or Contracts or Purchase Orders.** Except as otherwise provided by Regulation and/or Policy, all decisions to permit the correction or withdrawal of bids, or cancel awards of Contracts or Purchase Orders based on bid mistakes shall be supported by a written determination made by the Director of Purchasing.

(G) **Award.**

(1) **Lowest Responsible, Qualified and Responsive Bidder.** The Contract or Purchase Order shall be awarded with reasonable promptness by written notice to the lowest responsible, qualified and responsive bidder whose bid meets the requirements and evaluation criteria, if any, set forth in the Invitation for Bids, or criteria established by the Director of Purchasing.

(a) In considering past performance of a bidder for the purpose of determining the "lowest responsible, qualified and responsive bidder", the Director of Purchasing shall evaluate the skill, ability and integrity of the bidder in terms of the bidder's fulfillment of past contractual obligations and the bidder's experience or lack of experience in delivering Equipment, Materials, Supplies or Contractual Services of the size or amount for which bids have been solicited.

(b) The Director of Purchasing may reject any or all bids or parts of bids or bids for any one or more Commodities or Contractual Services, when he shall deem that the public interest will be served.

(2) **Construction Project Exception: Permissible Adjustment of the Bid Price.** Unless otherwise prohibited by federal or state law, regulation or Agency requirement, with respect to Construction projects only, the Director of Purchasing is authorized to negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsible and responsive bidder, in order to bring the bid within the amount of available funds, in the event,

(a) all bids for a Construction project exceed available funds;

(b) the low responsible and responsive bid does not exceed such funds by more than ten (10%) percent; and,

(c) the time or economic considerations preclude re-solicitation of work of a reduced scope.

(H) **Multi-Step Competitive Sealed Bidding.** When it is considered impractical to initially issue an Invitation for Bid, the Director of Purchasing may issue a Request for Information or Request for Proposals (requesting technical information) or Request for Qualifications (requesting the qualifications of bidders) as the first step(s) in the process, to be followed by an Invitation for Bids which may be limited to those bidders who have been qualified under the criteria set forth in the first solicitation.

**AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE
CITY OF WATERBURY**

Adopted 6/20/2005

(Scrivner's error, Sec 38.03, corrected 6/30/05)

§38.13 Competitive Sealed Proposals.

(A) Conditions for Use.

(1) **Finding by Director of Purchasing Required.** Purchase Orders or Contracts, in excess of \$10,000.00, may be entered into following the issuance of competitive sealed proposals when the Director of Purchasing determines that the use of Competitive Sealed Bidding is either not practicable or not advantageous to the City. As a general rule the competitive sealed proposal shall be utilized for Services, Construction contracts and other Commodities or services not susceptible to a competitive sealed bid.

(2) **Professional Services Other Than Architectural and Engineering** are exempt from the provisions of this Chapter; however, Using Agencies may, in the Director of Purchasing's discretion, utilize the Competitive Sealed Proposal process set forth in §38.13 of this Chapter.

(B) Requests for Proposals. Proposals shall be solicited through a Request for Proposals. As required by the Director of Purchasing, a Request for Information, Request for Qualifications or other forms of solicitation may be utilized to ascertain information, to establish qualifications, or to establish a list of those eligible to submit bids or proposals at subsequent steps in the procurement process in a manner established by the Director of Purchasing. The solicitations shall also contain, among other things, a description of the projected scope of services or system requirements, a notice of mandatory City contractual provisions or terms and conditions required by this Chapter or other state or federal agencies as well as the requirements of Chapter 93 of the Code of Ordinances. Services shall be selected on the basis of a Request for Proposals. The Director of Purchasing shall establish guidelines identifying the content of Requests for Proposals. With respect to any particular Request for Proposals, the Director of Purchasing or the Corporation Counsel may vary any clauses that may have, prior thereto, been promulgated by the Department of Purchases for inclusion in all Request for Proposals. However, the Director of Purchasing does not have the discretion to vary the specifically enumerated legal requirements of the Code of Ordinances.

(C) Public Notice. Adequate Public Notice of the Request for Proposals shall be given a reasonable time period prior to the date set forth therein for the opening of proposals and in a manner that the Director of Purchasing determines will maximize public participation and competition in the Competitive Sealed Proposal process.

(1) Such notice shall be inserted, at least ten (10) calendar days before the final date of submitting proposals in the major daily newspaper published in the City and may, in the sole discretion of the Director of Purchasing, be posted on the Internet.

(a) *Notice following pre-qualification of Offerors.* In the event of pre-qualification of offerors, said notice may be sent only to the vendors qualified to respond.

(2) Each notice of a planned purchase under this Chapter shall indicate the type of Commodities or Services to be purchased.

The Using Agency shall provide the Director of Purchasing with special notice requirements necessary to comply with the provisions of federal or state Grants, Loans or reimbursement agreements.

(D) Receipt of Proposals: Register of Proposals. Proposals shall be opened publicly at the time and place designated in the Request for Proposals. Proposals shall be opened and only the names of each offeror recorded so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared in a format established by the Director of Purchasing..

**AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE
CITY OF WATERBURY**

Adopted 6/20/2005
(Scrivner's error, Sec 38.03, corrected 6/30/05)

(1) The Register shall be open for public inspection after the award of the Contract or Purchase Order, with the exception of confidential trade and business information withheld in accordance with the General Statutes.

(E) Evaluation Factors and Criteria. The Request for Proposals shall state all evaluation criteria including, but not limited to

- (i) demonstrated compliance with the design or other requirements;
- (ii) offeror qualifications;
- (iii) financial capacity;
- (iv) project schedule;
- (v) price or life cycle price, where appropriate; and,
- (vi) other factors, if any.

Notwithstanding the aforementioned criteria, additional factors may be considered at the discretion of the Director of Purchasing prior to the opening of the proposals.

(F) Correction or Withdrawal of Proposals; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous proposals before or after award, or cancellation of awards of Contracts or Purchase Orders based on such mistakes, may be permitted by the Director of Purchasing, provided that such determinations by the Director of Purchasing shall take into consideration preservation of the integrity of the Competitive Sealed Proposal process under this Chapter.

(1) **Prohibited Practices Following Opening of Proposals.** After opening the proposals, no changes in prices or other provisions of proposals prejudicial to the interest of the City or fair competition shall be permitted.

(2) **Written Determination Regarding Cancellation of Awards or Contracts or Purchase Orders.** Except as otherwise provided by any Regulation and/or Policy, all decisions to permit the correction or withdrawal of proposals, or cancel awards of Contracts or Purchase Orders based on proposal mistakes shall be supported by a written determination made by the Director of Purchasing.

(G) Selection Committee. The Director of Purchasing or his designee shall establish a Selection Committee of two or more people to review Responses to Requests for Proposals, No member of the Selection Committee shall have a financial interest in the transaction.

(1) **Review of Responses to Request for Proposals.** The Selection Committee shall evaluate the Responses to Requests for Proposals. Such selection process may include interviews or oral presentations, with the determination of those to be invited to be interviewed or to make an oral presentation to be based on the established evaluation factors.

(2) **Recommendation.** Based on its review, the Selection Committee shall submit to the Director of Purchasing a list, in rank order based on the established evaluation factors, of no fewer than three firms, if possible.

(3) **Negotiation.** The Director of Purchasing, or his Designee, shall negotiate a Contract, including in regard to cost and scope, with the firm rated highest by the Selection Committee.

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

Adopted 6/20/2005

(Scrivner's error, Sec 38.03, corrected 6/30/05)

(4) **Failure to Negotiate a Contract.** Should the Director of Purchasing, or his Designee, be unable to negotiate a satisfactory Contract that he determines to be fair and reasonable to the City with the firm selected for negotiations in accordance with this section, the Director of Purchasing, or his designee, may then continue this process, starting with the next highest rated firm on the list established by the Selection Committee, until such time as a contract determined by the Director of Purchasing to be fair and reasonable to the City is negotiated or until the Director of Purchasing determines that the existing procurement process should be terminated.

(H) **Award.**

(1) **Offer Most Advantageous to the City.** Award shall be made by the Director of Purchasing, or his Designee, to the responsible offeror whose proposal conforms to the solicitation and is determined in writing by the Purchasing Director, or his Designee, to be the most advantageous to the City, in accordance with the criteria set forth in the Request for Proposals or other solicitation, including price and the evaluation factors.

(2) **Contents of Transactional Files.** The Contract or Purchase Order files shall contain the basis on which the award is made.

(3) **Written Notice of Award.** Notice of the award of a Contract or Purchase Order shall be promptly given to the successful offeror.

§38.14 Requests for Qualifications

(A) **Policy.** The City, at the request of a Using Agency, may issue a Request for Qualifications for Services for a means of prequalifying a firm prior to proceeding with a Competitive Sealed Bid as set forth in §38.12 or a Request for Proposal as set forth in §38.13. The remaining requirements of §38.12 and §38.13 shall be followed for those firms that are prequalified.

(B) **Solicitation of Professional Service Firms.** The Director of Purchasing shall, upon request of a Using Agency, issue a Request for Qualifications in order to encourage firms engaged in the lawful practice of their profession to submit a statement of qualifications and performance data. The Request for Qualifications shall be published in appropriate trade and professional publications in order to attain the objectives of the policies set forth in this section.

(C) **Selection Committee.** The Director of Purchasing or his designee shall establish a Selection Committee of two or more people to review Responses to Requests for Qualifications. No member of the Selection Committee shall have a financial interest in the transaction.

(1) **Review of Responses to Request for Qualifications.** The Selection Committee shall evaluate the Responses to Requests for Qualifications.

(2) **Recommendation.** Based on its review, the Selection Committee shall submit to the Director of Purchasing a list, in rank order based on the evaluation factors and criteria established by the Selection Committee, of no fewer than three firms, if possible,

(3) **Services Other Than Architectural And Engineering Services.** For services other than Architectural and Engineering services, upon submission to the Director of Purchasing of the list contemplated under §38.14 (C) (2) above, in lieu of the negotiations as contemplated in section

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

Adopted 6/20/2005

(Scrivner's error, Sec 38.03, corrected 6/30/05)

§38.14 (C) (4) below, invitations to bid or requests for proposals, which ever is applicable given the nature of the procurement involved, shall be sent to those appearing on such list. The successful bidder or respondent shall, thereafter, be chosen in accordance with the provisions of either §38.12 or §38.13 above, whichever is applicable.

(4) Architectural And Engineering Services Negotiations. It is the policy of the City to publicly announce all requirements for Architectural and Engineering services and to negotiate Contracts for Architectural or Engineering Services on the basis of demonstrated competence and qualifications for the type of Services required and at fair and reasonable prices.

(a) With respect to the procurement of Architectural and Engineering Services costing \$25,000 or more, a list of qualified firms shall be chosen as provided for in sections (B) and (C) (1) and (2) of this §38.14. Upon submission to the Director of Purchasing of the list contemplated under §38.14 (C) (2) above, the Director of Purchasing, or his Designee, shall negotiate a Contract with the highest qualified firm at the compensation, which the Director of Purchasing, or his Designee, determines in writing to be fair and reasonable to the City.

(i) Considerations. In preparing a decision the Director of Purchasing, or his Designee, shall take into account the estimated value, the scope, the complexity, and the professional nature of the Services to be rendered.

(ii) Failure to Negotiate a Contract. Should the Director of Purchasing, or his Designee, be unable to negotiate a satisfactory Contract with the firm considered to be the most qualified, at a price the Director of Purchasing determines to be fair and reasonable to the City, negotiations with that firm shall be formally terminated. If negotiations are to continue, the Director of Purchasing, or his Designee, shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the Director of Purchasing, or his Designee, shall formally terminate negotiations. Should the Director of Purchasing, or his Designee, be unable to negotiate a Contract at a fair and reasonable price with any of the selected firms, the Director of Purchasing, or his Designee, shall select additional firms in order of their competence and qualifications and the Director of Purchasing, or his Designee, shall continue negotiations in accordance with this Section until an agreement is reached. If, at any time during this process, the Director of Purchasing determines that cancellation of the existing procurement process would be in the best interests of the City, he may do so in writing.

(b) With respect to the procurement of Architectural and Engineering Services under \$25,000, all such services shall be solicited and selected in accordance with the Regulations or Policies promulgated by the Director of Purchasing.

§38.15 Recurring Procurements.

(A) The Blanket or Consolidated Procurement. The Director of Purchasing shall, wherever appropriate, consolidate the purchase of Commodities or Services required by the various departments, on a recurring basis, in order to obtain Competitive Sealed Bids or other forms of solicitation to assure the best possible prices. Upon award, the Director of Purchasing shall notify all Using Agencies of the Blanket or Consolidated Procurement, which shall be valid for the Fiscal Year in which it was issued. The Director of Purchasing shall circulate to all Department Heads the pertinent information or catalogs relative to each Blanket or Consolidated Procurement.

**AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE
CITY OF WATERBURY**

Adopted 6/20/2005
(Scrivner's error, Sec 38.03, corrected 6/30/05)

(1) **Submission of Recurrent Commodities and Services.** By May 1st of each year, each Department Head shall submit to the Director of Purchasing an inventory and estimated annual expenditure for Commodities or Services utilized, on a recurrent basis, in the customary and usual activities of the Department. Within sixty (60) days thereafter the Director of Purchasing shall determine whether the Commodities and Services fall into the category of recurrent Commodities and, if so, shall solicit such recurrent Commodities or Services in the appropriate manner set forth in this Chapter.

(2) **Issuance of Purchase Orders on behalf of Using Agencies.** Upon notice of the award of the Blanket or Consolidated Procurement, the Using Agencies may submit a requisition, pursuant to §38.02, for the purchase of the Commodities or Services. Each Using Agency shall be limited to the unexpended and unencumbered funds in their budget designated for such purchases and shall be required to file a §38.03 Encumbrance with the Director of Purchasing.

Exceptions to the General Rule

§38.16 Small Purchases.

(A) **Small Purchases between \$2,500.00 and \$9,999.** All Procurements where the amount involved is less than \$10,000.00 but equal to or greater than \$2,500.00 shall be made without newspaper advertisement and without observing the procedures for the award of Contracts and Purchase Orders.

(1) **Price Alternatives.** All Small Purchases shall, wherever possible, be based on at least three written price alternatives from qualified bidders, as solicited by the Director of Purchasing or, at his discretion, a representative of the Using Agency. Said notice pertaining to the solicitation shall set forth the time and place for the submission. The notice may be tendered to qualified bidders, by telephone, facsimile or electronically. A record of all notices and price alternatives shall be kept in the records of the Department of Purchases.

(2) **Award.** The Director of Purchasing shall award the Purchase Order to the lowest responsible bidder. If the Purchase Order is not given to the lowest responsible bidder, a written explanation shall be made by the Director of Purchasing and be filed as a public record with the other papers to the transaction.

(B) **Small Purchases in an Amount Less than \$2,500.00.** All Procurements where the amount involved is less than \$2,500.00 may be awarded on a single bid and, at the Director's discretion, accepted orally by the Using Agency.

(C) **Sustaining Purchase Orders.** Sustaining Purchase Orders may be issued by the Director, in his sole discretion, for the contingent needs of the various departments; but no sustaining Purchase Orders shall exceed the sum of \$1,500.

(D) **Artificial Division of Procurements Prohibited.** The Director of Purchasing has the authority to determine that a Using Agency has artificially divided Procurement requirements so as to constitute a small purchase under this section and thereby prohibit the Using Agency from utilizing the small purchase procedures.

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

Adopted 6/20/2005

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§38.17 Sole Source Procurement.

(A) A Single Available Source for a Commodity, Service or Construction Item. A Contract or Purchase Order may be awarded for a Commodity, Service, or Construction Item without competition when, under this section the Director of Purchasing determines, in writing, that there is only one source for the required Commodity, Service, or Construction Item.

(B) Factors Considered by the Director of Purchases. Among the factors the Director of Purchasing may take into consideration are the following:

- (1) Equipment, Material, Services, or Supplies for which there is no comparable competitive product from more than one supplier;
- (2) Public utility services from natural or regulated monopolies;
- (3) A component or replacement part for which there is no commercially available substitute, and which can be obtained only from the manufacturer;
- (4) An item where compatibility is the overriding consideration, such as computer operating software enhancements for an existing system; or
- (5) Whether there is only one authorized service provider; or,
- (6) A used item that becomes immediately available and is subject to prior sale.

§38.18 Procurements Pertaining to Public Emergencies.

Notwithstanding any other provisions of this Chapter, the Mayor may authorize the Director of Purchasing to make emergency Procurements when there exists a threat to the lives, health, property, welfare or safety of the citizens of the City.

(A) Determination of Public Emergency. To so authorize such emergency Procurements, the Mayor shall act in accordance with a determination of public emergency by: (1) the President of the United States; or, (2) the Governor of the State of Connecticut; or, (3) the affirmative vote of eight (8) members of the Board of Aldermen; or, (4) the Mayor, only upon the written advice of the Director of Health, or the Superintendent of Police or Fire Chief.

(B) Written Determination. The Mayor's authorization shall be in writing and include a determination of the basis for the public emergency and the reasons for the selection of the particular Contractor. Said determination shall be filed with the City Clerk for public inspection within twenty-four (24) hours of said authorization and forwarded, by the City Clerk, to the Board of Aldermen and Finance and Audit Review Commission.

§38.19 Waiver of Bid or Proposal Requirement: Extraordinary Conditions.

(A) Extraordinary Conditions or Contingencies. Whenever a situation (that is not deemed a Public Emergency, as set forth in §38.18) exists by reason of extraordinary conditions or contingencies that could not reasonably be foreseen and guarded against (or within the purview of §38.18, above), or because of unusual trade or market conditions, the Director of Purchasing, may, if it is in the best interest of the City, waive the competitive bid or proposal requirements set forth in §38.12 and §38.13.

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

Adopted 6/20/2005

(Scrivner's error, Sec 38.03, corrected 6/30/05)

(1) Basis for the Determination. The determination shall be based upon need and shall not be utilized in order to satisfy preferences or convenience of the Using Agency, for preventing funds from lapsing at the end of a Fiscal Year or for any reason that would circumvent the Procurement methods set forth in this Chapter.

(B) Filing of an Annual Report. A statement of all purchases made under the provisions of this section shall be set forth in the annual report of the Finance and Audit Review Commission.

§38.20 Exempt Services.

The following shall be exempt from the Competitive Bid and Proposal process. Using Agencies may, nonetheless, elect to undertake a competitive selection process to solicit Professional Services which are exempt from the Competitive Bid and proposal process.

- (A) Procurement of the services of attorneys-at-law hired by the Corporation Counsel and approved by the Mayor, in accordance with the standards set forth in §7B-1(d)(5) of the Charter of the City;
- (B) Procurement of Professional Services as defined in §38.01;
- (C) Procurement of Architectural and Engineering Services where entered in compliance with §38.14 of this Chapter;
- (D) Procurement of Services, Equipment or Leases of Equipment that are necessary for instruction and related services to be provided to individual students with disabilities in accordance with the requirements of the Individuals with Disabilities Act ("I.D.E.A.") and their respective regulations.
- (E) Agreements between (i) the City, state and/or federal governments pertaining to grants; or, (ii) the City and other community based organizations, universities and other nonprofit entities participating as potential service providers in the application for a Competitive Grant offered by the federal or state governments.

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

Adopted 6/20/2005
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§38.20a Exempt Investment and Insurance.

Investment of City funds, including those of the pension plan, are exempt from the Competitive Bid and Proposal process contained in this ordinance except for the selection of any investment advisors or managers who direct the investment of such funds. The placement of insurance coverage is exempt from the Competitive Bid and Proposal process contained in this ordinance except for the selection of the broker who places any insurance on behalf of the City.

§38.21 Record of Procurement Actions Taken With Regard to Sole Source, Waiver and Emergency Procurements.

The Director of Purchasing shall maintain a record, at the Office of the Department of Purchases, listing all Contracts or Purchase Orders made under §38.17 through §38.19 pertaining to Sole Source, Emergency and Waiver purchases for a minimum of five (5) Fiscal Years. The record shall contain:

- (A) each Contractor's name;
- (B) the amount and type of each Contract or Purchase Order; and,
- (C) a listing of the Commodities, Services, or Construction procured under each Contract or Purchase Order.

§38.22 Federal and State Procurement Standards: Application for Competitive Grants.

Notwithstanding the requirements of this Chapter, all Procurements that include funding by federal or state funds, including the application for Competitive Grants, shall comply with the Procurement and legal requirements of the federal or state laws or Regulations.

§38.23-38.24 Reserved for Future Use.

Cancellation of Invitations for Bids or Request for Proposals

§38.25 Cancellation of Invitation for Bids or Requests for Proposals. Waiver of Minor Irregularities.

- (A) **Cancellation.** The Director of Purchasing may:
 - (1) cancel an Invitation for Bids, a Request for Proposals, or other solicitation; or,
 - (2) reject any or all bids or proposals, in whole or in part, as may be specified in the Invitation for Bids, Request for Proposals, or other solicitation, when he deems it in the best interest of the City, in accordance with Regulations and/or Policies, if any. The Director shall set forth his reasons, in writing, which shall be part of the Contract file. No written determination shall be required for the cancellation of an entire Invitation for Bid or Request for Proposals.
- (B) **Waiver of Minor Irregularities.** The Director of Purchasing may waive minor irregularities in bids and proposals if he determines that such a waiver would be in the best interest of the City. The Director of Purchasing shall state the reasons for any such waiver in writing and include such statement in the Contract file.

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

Adopted 6/20/2005

(Scrivner's error, Sec 38.03, corrected 6/30/05)

§38.26-§38.34 Reserved for Future Use.

Qualifications and Duties

§38.35 Responsibility of Bidders and Offerors.

(A) Determination of Nonresponsibility. The Director of Purchasing shall make a determination of nonresponsibility of a bidder or offeror. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror. The Director of Purchasing may seek the advice of the Using Agency and such consultants, if any. If requested by the bidder or offeror deemed nonresponsible the Director of Purchasing may provide a written determination.

(B) Right of Nondisclosure. To the extent permitted by the Connecticut General Statutes, confidential information furnished by a bidder or offeror pursuant to this Chapter shall not be disclosed outside of the Department of Purchases without prior written consent by the bidder or offeror.

§38.36 Prequalification of Suppliers.

As set forth in §38.12(H) and §38.13(B), prospective suppliers may be prequalified for particular types of Commodities, Services, and Construction. The Director of Purchasing shall determine the method of submitting prequalification information and the information required in order to be prequalified.

§38.37 Substantiation of Offered Prices.

The Director of Purchasing may request factual information reasonably available to the bidder or offeror to substantiate that the price or cost offered, or some portion of it, is reasonable.

§38.38-§38.41 Reserved for Future Use.

§38.42 Preference for Bidders and Offerors Located in the City.

A preference shall be given to a qualified bidder or offeror whose business is located in the City whose bid or proposal falls within two (2%) percent of the lowest bid or the preferred proposal. Notwithstanding the foregoing, the said two (2%) percent preference shall not apply when the bid or proposal exceeds the amount of Twenty Thousand (\$20,000.00) Dollars over the lowest qualified bid or preferred proposal. This provision shall apply to Commodities or Services that are funded entirely by the City general or capital funds.

§38.43 Reporting of Anticompetitive Practices.

When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the Corporation Counsel who shall refer the matter to the Attorney General of the State of Connecticut.

§38.44 Retention of Procurement Records.

All Procurement records shall be retained and disposed of in accordance with the records retention guidelines established by the laws of the State of Connecticut.

**AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE
CITY OF WATERBURY**

Adopted 6/20/2005

(Scrivner's error, Sec 38.03, corrected 6/30/05)

Determinations and Reports

§38.45 Finality of Determinations.

The determinations of the Director of Purchasing required by the following sections are final and conclusive:

- (A) §38.59(D) (Contracts: Rental, Lease, Purchase and Lease/Purchase Agreements);
- (B) §38.12(F) (Competitive Sealed Bidding – Correction or Withdrawal of Bids; Cancellation of Awards);
- (C) §38.13(A) (Competitive Sealed Proposals – Conditions for Use);
- (D) §38.13(H) (Competitive Sealed Proposals – Award);
- (E) §38.14 (Requests for Qualifications);
- (F) §38.15 (Recurring Procurements);
- (G) §38.16 (Small Purchases);
- (H) §38.17 (Sole Source Procurement);
- (I) §38.18 (Procurements Pertaining to Public Emergencies);
- (J) §38.19 (Waiver of Bid or Proposal Requirements);
- (K) §38.20 (Exempt Services);
- (L) §38.22 (Federal and State Procurement Standards);
- (M) §38.35(A) (Responsibility of Bidders and Offerors – Determination of Nonresponsibility);
- (N) §38.37 (Substantiation of Offered Prices);
- (O) §38.42 (Preference for Bidders and Offerors Located in the City); and
- (P) §38.50 (Contractor Accounting Requirements).

§38.46-§38.47 Reserved for Future Use.

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

Adopted 6/20/2005
(Scrivner's error, Sec 38.03, corrected 6/30/05)

Part C – Contracts and Purchase Orders

§38.48 Obligations of Persons Seeking a Contract or Purchase Order with the City; Affidavits, Disclosures and Encumbrances.

(A) No Contract, regardless of how procured, shall be awarded by the City to any person until the following documents have been received by the City:

(1) An affidavit of such person that such person, or affiliated entity, has no delinquent taxes or other financial obligation owed to the City; and,

(2) Disclosures as required by Chapter 40 this Code.

Said affidavits and disclosures, if not submitted as part of competitive bid provisions, shall be obtained by the City Agency or official seeking the Contract.

(B) No Contract, regardless of how procured, shall be awarded by the City to any person until a certification has been obtained from the Tax Collector for the City that such Person or any affiliated entity, either directly or through a Lease, has no back taxes.

(C) No Purchase Order shall be awarded:

(1) in the event it has been determined that a bidder, offeror or any affiliated entity, either directly or through a Lease, owes back taxes to the City.

(2) in the event it has been determined that the bidder, offeror or any affiliated entity has not filed a current list of taxable personal property as required by the general statutes; unless it is otherwise certified that such person is not required to file such list.

§38.49 Disclosures required by the Federal or State Governments.

In addition to the foregoing, no Contract or Purchase Order shall be awarded by the City to any Person, until all affidavits, disclosures and certifications required by the federal or state governments have been executed and delivered as required.

§38.50 Contractor Accounting Requirements.

The City may require Contractors to submit appropriate documentation prior to the award of Contracts or Purchase Orders in which the City agrees to reimburse costs, confirming that:

(A) the proposed Contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific Contract type contemplated; and

(B) the proposed Contractor's accounting system is adequate to allocate costs, if required, in accordance with generally accepted accounting principles.

§38.51-§38.57 Reserved for Future Use.

**AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE
CITY OF WATERBURY**

Adopted 6/20/2005

(Scrivner's error, Sec 38.03, corrected 6/30/05)

Contracts and Purchase Orders

§38.58 Purchase Orders: When Required.

Purchase Orders shall be required for all Commodities regardless of the amount, unless the Director of Purchasing determines that a Contract is necessary. All agreements for Services and Professional Services in an amount less than \$50,000.00 shall be documented by Purchase Order, unless the scope of Services requires the utilization of a Contract, as determined by the Director of Purchasing following consultation with the Corporation Counsel.

§38.59 Contracts: When Required.

(A) When Required. Contracts shall be required for Leases (or other real estate agreements) and for all Services and Professional Services in the amount of \$50,000.00 or more.

(B) Grants with the Federal or State Government

(1) Required Documentation. All grants with the federal or state government, otherwise exempt from certain provisions of this Chapter, shall be documented in writing and executed as set forth in §38.62.

(2) Required Review. All federal or state government grant requests and applications other than those for the Board of Education shall be reviewed by the Office of the City's Budget Director prior to submission.

(3) Required Approvals. All grant applications and Contracts may be subject to approval by the Board of Aldermen if required by federal or state law or as may be otherwise set forth in this Code. Notwithstanding the exemption of grants from any other provisions of this Chapter 38, the City will not execute a written agreement pertaining to grants that require matching funds by the City, unless approved by the Board of Aldermen.

(C) Grants with Other Agencies

(1) Required Documentation All grants with Agencies other than the federal or state government (Other Agencies), which are otherwise exempt from certain provisions of this Chapter, shall be documented in writing and executed as set forth in §38.62.

(2) Required Review. All Other Agencies grant requests and applications shall be reviewed by the Office of the City's Budget Director prior to submission.

(3) Required Approvals. All Other Agencies grant Contracts shall be subject to review and approval of the Director of Finance and Corporation Counsel. Notwithstanding the exemption of grants from any other provisions of this Chapter 38, the City will not execute a written agreement pertaining to grants that require matching funds by the City, unless approved by the Board of Aldermen.

(D) Sale, Lease, or Rental of City Property. Rental, Lease, Purchase and Lease/Purchase Agreements shall be subject to the requirements of this Chapter for competition. The Director of Purchasing shall determine the method of selection and issue a written determination relating thereto. The forgoing notwithstanding, any agreement to transfer or dispose of any City held interest in real property is subject to the following requirements:

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

Adopted 6/20/2005
(Scrivner's error, Sec 38.03, corrected 6/30/05)

(1) The Director of Purchasing shall instruct the City Planner to compile and maintain a list of all real property in which the City may have an interest which, in the opinion of the City Planner, are eligible for transfer or disposition by the City. Said list shall, for each interest in real property appearing thereon, include a description of any conditions to which any such transfer or disposition must be subject in order to ensure the property's use in compliance with any City Plan, Neighborhood Revitalization Plan, or other similar plan or plans, (as that term is defined under applicable laws, statutes and ordinances), which may have been adopted by, or is otherwise in effect, at the time of said transfer or disposition. The City Planner shall make determinations as to the ownership of any such real property in which the City is suspected to have an interest only after consultation with the Corporation Counsel.

(2) Any such transfer or disposition must first be requested in writing by, or recommended in writing by, the using agency, if any, having direct control over said interest in real property prior to its transfer or disposition and the City's Property Manager (as designated by the Director of Finance). If any such request or recommendation is made by the Property Manager without identifying a using agency having direct control over said interest, said Property Manager's request or recommendation shall state the reasons for concluding that no using agency is identifiable. If a request or recommendation for such a transfer or disposition is made by a using agency, then such request or recommendation must be forwarded to the Property Manager for approval of the transfer or disposition prior to initiating further proceedings to effectuate said transfer or disposition.

(3) The City may entertain requests for transfer or disposition of any interest in real property from members of the general public and such requests shall be directed to the Property Manager. Upon receipt of such a request by the Property Manager, the Property Manager shall have the discretion to refuse to process such request. Any refusal to process such request shall, upon the request of any interested party, be subject to review by the Board of Alderman and, upon a simple majority vote thereof, may be overridden.

(4) If a request for transfer or disposition as contemplated under subsection 3 above is received and a decision to process the same is made, either by the Property Manager or by the Board of Alderman subsequent to a review of a refusal by the Property Manager, the Property Manager must then determine which using agency has direct control over said interest in real property and obtain said using agency's written approval of said transfer or disposition. If no such using agency can be identified the Property Manager shall state in writing the reasons for concluding that no using agency is identifiable.

(5) Prior to approving any transfer or disposition, the Property Manager shall be responsible for assuring that the interest in real property sought to be transferred or disposed of appears upon the aforementioned list prepared by the City Planner. If said interest does not appear on such list, then the Property Manager must obtain written authorization for the City Planner for such transfer or disposition. The City Planner's authorization must also state any and all conditions, as mentioned in subsection 1 above, to which any such transfer or disposition must be subject or state that no such conditions exist.

(6) After obtaining any and all approvals as may be required pursuant to subsections 1 through 5 above, the Property Manager shall, subject to the approval of the Purchasing Director, choose the method of solicitation of bids to be used relative to the given transfer or disposition. Thereafter, and after consultation with the Director of Purchasing and the Corporation Counsel, the Property Manager shall prepare any required solicitation documents relative to the transfer and disposition of the interest in real property in question. Said documents shall include, amongst other things, any relevant selection criteria as recommended by the Director of Purchasing. Upon the

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

Adopted 6/20/2005

(Scrivner's error, Sec 38.03, corrected 6/30/05)

completion of said solicitation documents, they shall be presented by the Property Manager to the Director of Purchasing for final approval. The Director of Purchasing shall, thereafter and after consultation with the Corporation Counsel, either approve or reject such solicitation documents. In the event that said documents are rejected the Director of Purchasing shall, by any reasonable means, inform the Property Manager of the perceived deficiencies and of the Director of Purchasing's recommendations for curing the same. Upon curing any such deficiencies the solicitation documents shall be resubmitted to the Director of Purchasing for approval. Upon ultimate approval of the solicitation documents, the Director of Purchasing shall provide written notice thereof to the Property Manager and to the Corporation Counsel. After such approval by the Director of Purchasing, said Director of Purchasing shall advertise such solicitation or provide such other notice of the proposed transfer or disposition as he deems appropriate under the solicitation method being employed. Any approvals given by, or actions taken by, the Director of Purchasing under this paragraph (6) shall be given or taken in a manner which said Director of Purchasing reasonably deems to be consistent with the principles of competition which are applicable to the solicitation of procurements under this chapter and any restrictions or exceptions provided for in relation to effectuating said principles hereunder.

(7) Upon the receipt of responses to any solicitation as contemplated in subsection 6 above, the Director of Purchasing shall open them in a manner said Director deems to be consistent with the provisions applicable to the solicitation of procurements under this chapter and shall, thereafter establish a committee to review the same. The committee shall consist of, at a minimum, the Director of Purchasing the Property Manager and the Chief Executive Officer of the Waterbury Development Corporation or his designee. The Mayor may, however, elect to participate on the committee, or to appoint a designee to do so in his stead, if the Mayor deems it to be in the City's best interest to do so. The committee shall either reject all bids or choose one bidder as the successful bidder based upon the selection criteria identified in the solicitation documents.

(8) The Property Manager shall prepare a recommendation to award a contract for the transfer or disposition in question to the successful bidder chosen as contemplated under subsection 7 above. The Property Manager shall submit the recommendation to the City Plan Commission for a report pursuant to Section 8-24 of the Connecticut General Statutes, as the same shall be amended from time to time. The Property Manager shall, after a failure of the City Plan Commission to act within the requisite statutory time period or upon issuance of a report by the City Plan Commission, submit the recommendation, and a copy of any related City Plan Commission report, to the Board of Alderman for action pursuant to the applicable provisions of the Charter of the City of Waterbury as same may be amended from time to time.

(9) The Property Manager shall be responsible for providing the Board of Alderman with any and all information required, including evidence of value if applicable and copies of all bids or responses received by the City in pursuant to the solicitation of such bids or responses relative to any given property, to evaluate and take action on any such recommendation. The Property Manager shall, furthermore, be responsible for obtaining any and all appraisals for properties for which, in the Board's opinion as evidenced by resolution of the Board, a transfer or disposition may be subject to referendum pursuant to the applicable provisions of the Charter of the City of Waterbury as same may be amended from time to time.

(10) No such transfer or disposition as governed by this section shall be effectuated without the terms thereof having first been included in a contract executed by the City and the successful bidder. Such contract shall be in a form as provided by the Corporation counsel and shall be subject to any and all other legal requirements relating to approvals of contracts to which the City is a party including approval requirements contained in any applicable state statute, the Charter of the

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

Adopted 6/20/2005

(Scrivner's error, Sec 38.03, corrected 6/30/05)

City of Waterbury, this Chapter and any other applicable provisions of the City of Waterbury Code of Ordinances.

(11) Any assignment by the City of any liens it may own, as may be authorized pursuant to the Connecticut General Statutes, shall be exempt from the provisions of this Chapter and shall be governed by the applicable state statutory provisions. Nothing herein, however, shall prohibit compliance with any provisions of this Chapter in relation to any such assignment if doing so would be in City's best interest.

§38.60 Exceptions.

Notwithstanding the requirements of §38.58 and §38.59, neither a purchase order or a contract shall be required for the following:

- (A) *Natural gas or electric utilities;*
- (B) *City employee expense reimbursements;*
- (C) *Inter-City Department charges; or*
- (D) *Other expenditures at the discretion of the Director of Purchasing.*

The encumbrance of funds requirements of §38.03 of this Chapter apply to §38.60 EXCEPTIONS.

§38.61 Issuance of Purchase Orders.

(A) *Issuance by the Director of Purchasing.* Requisitions by the Using Agency for the purchase of all Commodities regardless of the amount and Services under \$50,000.00 shall be reviewed, encumbered and approved by the Budget Director and processed by the Purchasing Department prior to the issuance of a Purchase Order.

(1). In order to meet finance system requirements, purchase orders shall be issued for each contract. In such cases, contract language shall govern over purchase order language.

(B) *Required Contents.* A Purchase Order shall not be complete without inclusion of terms and conditions approved by the Office of the Corporation Counsel, special terms and conditions required by federal and state government funding sources and the identity of the personnel of the Using Agency responsible for the administration of the transaction covered by the Purchase Order.

Further, the Director of Purchasing shall review, with the consultation of the Corporation Counsel, if deemed necessary, the insurance and bond requirements in order to ascertain compliance with the standards set by the Director of Finance or his designee.

§38.62 Execution of Contracts.

(A) *Execution by the Mayor.* The Mayor, on behalf of and in the name of the City, shall execute all Contracts made by the City.

(B) *Role of the Corporation Counsel.* Upon award of a Contract by the Director of Purchasing the Corporation Counsel or an attorney acting under the authority of the Corporation Counsel shall approve all Contracts, both as to form and compliance with all legal requirements of said Charter. In addition to such other legal requirements as may be examined by the Corporation Counsel, a Contract shall not be deemed to

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

Adopted 6/20/2005

(Scrivner's error, Sec 38.03, corrected 6/30/05)

comply with the legal requirements of the Charter if the Corporation Counsel determines that satisfactory proof of the availability of unexpended, appropriated funds does not exist or if the file does not include each of the following:

(1) a recitation, by the Using Agency, of the amount of funds to be expended by the terms of the Contract, including, but not limited to, a breakdown of funds in each Fiscal Year of a multi-year transaction, including an estimate of capital funds in subsequent years; and

(2) the special terms and conditions required by federal and state government funding sources and the identity of the personnel of the Using Agency responsible for the administration of the transaction covered by the Contract; and

(3) The Corporation Counsel shall review the vendor submitted insurance and bonds in order to ascertain compliance with the standards set by the Director of Finance or his designee.

(C) Approval by the Board of Aldermen.

The following shall be subject to Board of Aldermen approval:

(1) All Contracts (with the exception of contracts for services which are the subject of an exemptions under §38.20 (A), (D) or (E)) in excess of \$50,000.00;

(2) Any multi-year contract, accompanied by appropriate explanatory information prepared by the Director of Purchasing,

(3) Contract Amendments as provided in §38.64 of this Chapter;

(4) With respect to the disposition of the real property of the City, the provisions of §38.59 of this Chapter shall apply with regard to required Board of Aldermen approval.

(5) "Hold harmless" or indemnification provisions, when the City chooses to grant the same. Notwithstanding the foregoing, the Mayor is authorized to execute Contracts pertaining to grants with the state or federal governments which contain "hold harmless" or indemnification provisions that have been reviewed by the Corporation Counsel.

(D) Artificial Division of Expenditures Prohibited. It shall be a violation of this Chapter to artificially divide expenditures to circumvent the requirements of §38.62(C).

§38.63 Reserved for future use.

§38.64 Amendments to Contracts.

(A) Generally. Amendments to existing Contracts shall require the submission of a request to amend to the Board of Aldermen in the following circumstances:

- (1) When (a) the cost of the original Contract was greater than \$50,000 and the amendment is in the amount of \$25,000 or more or b) the amendment would increase the contract amount to \$50,000 or greater or (c) any amendment sought

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

Adopted 6/20/2005

(Scrivner's error, Sec 38.03, corrected 6/30/05)

after such contract has been amended two or more times, no matter what the dollar amount, if any, involved ; or,

- (2) When the amendment extends the term of the Contract beyond one year or for a period longer than a permitted multi-year agreement.

(B) Standards Regarding the Waiver of Competitive Procurement for Amendments. The Board of Aldermen may approve amendments without the need to proceed with the provisions of §38.12, §38.13 or §38.14, in the event the Director of Purchasing makes a written determination, supported by documentation, that:

- and,
 - (1) the amendment is consistent with the Scope of Services of the original Procurement;
 - (2) soliciting qualifications, proposals, or competitive bids for such purchase would
 - (a) cause a hardship for the City; or,
 - (b) such solicitation would result in a major increase in the cost of such Equipment, Materials, Supplies or Contractual Services; or,
 - (c) the Contractor is the sole source for such Commodities or Services.

(C) Due Diligence. In reaching the determination in §38.64(B), above, the Director of Purchasing shall state, in writing, the reasons for his decision. The determination regarding sole source shall be made in conformity with §38.17.

Legal Clauses and Fiscal Responsibility

§38.65 Legal Clauses for Contracts or Purchase Orders and Their Administration.

(A) Generally. Regulations or policies may be promulgated requiring the inclusion in City Contracts (or Purchase Orders, where deemed necessary by the City) of clauses providing for time of performance, or other legal provisions, as appropriate.

(B) Additional Clauses. In addition to the requirement to contain a non-appropriation clause as set forth in §38.66 of this Chapter and clauses pertaining to Ethics and Conflicts of Interest as set forth in §40.32 and §40.37, the City shall address the following issues in all Contracts or Purchase Orders and prepare clauses, as appropriate, pertinent to the underlying transactions:

- (1) Liquidated damages;
- (2) Specified excuses for delay or non-performance;
- (3) Termination of the Contract or Purchase Order for default; and,
- (4) Termination of the Contract or Purchase Order, in whole or in part, for the convenience of the City.

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

Adopted 6/20/2005

(Scrivner's error, Sec 38.03, corrected 6/30/05)

(C) Modification of Required Clauses. The Director of Purchasing or the Corporation Counsel may vary clauses promulgated by the Department of Purchases under subsections (A) and (B) of this section for inclusion in any particular Contract or Purchase Order, provided that any variations are supported by a written determination that states the circumstances justifying such variances, and provided that notice of any such material variation be stated in the Invitation for Bids or Requests for Proposals. However, the Director of Purchasing does not have the discretion to vary the specifically enumerated legal requirements of the Code of Ordinances.

§38.66 Cancellation Due to Unavailability of Funds in Succeeding Fiscal Years: Non-Appropriation.

(A) Cancellation Due to Unavailability of Funds. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the Contract or Purchase Order shall be cancelled and the Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Commodities or Services delivered under the Contract or Purchase Order. The cost of cancellation may be paid from any appropriations available for such purposes.

All Contracts and the terms and conditions of Purchase Orders should include language to effectuate the purposes of this provision; however, in the event language is not included in the Contract or Purchase Order, every person who deals with the City is bound to know the extent of its authority and the limitations of its powers, as set forth in the Charter of the City, this Code of Ordinances and any Regulations or Policies pertaining thereto.

(B) Non-Appropriation Clauses. A provision pertaining to the non-appropriation of Contracts and Purchases Orders shall be conspicuously set forth in every Contract or Purchase Order and any solicitation therefore.

(C) Waiver of Non-Appropriation Clause. The Corporation Counsel may waive the clause pertaining to non-appropriation setting forth the reasons for such waiver, in writing, in accordance with Regulations, if any.

§§38.67-71 Reserved for Future Use.

Bonds, Insurance and Guarantees

§38.72 Bid or Proposal Security.

(A) Requirement for Bid or Proposal Security. Bid or proposal security shall be considered for all Procurements when the price is estimated by the Director of Purchasing to exceed \$50,000.00. In all cases Bid or Proposal Security shall be a bond provided by a surety company authorized to do business in the State of Connecticut, or certified check or otherwise supplied in a form satisfactory to the City. Nothing herein prevents the requirement of such bonds or on such Contracts under \$50,000.00 when the circumstances warrant.

(B) Amount of Security. Bid or proposal security shall be in an amount equal to, at least, ten (10%) percent of the amount of the bid or proposal.

(C) Rejection of Bids or Proposals for Non-Compliance with Bid or Proposal Security Requirements. When the Invitation for Bids or other solicitation requires security, non-compliance therewith requires that the Bid or Proposal be rejected.

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

Adopted 6/20/2005

(Scrivner's error, Sec 38.03, corrected 6/30/05)

(D) *Withdrawal of Bids or Proposals.* After Bids or Proposals are opened, they shall be irrevocable for the period specified in the Invitation for Bids, although Proposals may be subject to competitive negotiation, as set forth in this Chapter. However, if the bidder is permitted, pursuant to §38.12(F) or §38.13(F), to withdraw its bid (or proposal) before work, or is excluded from the competition before work, no action shall be had against the bidder or respondent for the bid or proposal security.

§38.73 Contract Performance and Payment Bonds.

(A) *When Required - Amounts.* When a Construction, Maintenance, Operations and Maintenance, Design-Build-Finance-Operate-Maintain Contract (or a variation thereof) is awarded in excess of \$50,000, the following bonds or securities shall be delivered to the City and shall become binding upon the parties upon the execution of Contract:

(1) *a performance bond* satisfactory to the City, executed by a surety company authorized to do business in the City or otherwise secured in a manner satisfactory to the City, in an amount equal to One Hundred (100%) Percent of the Contract price.; and

(2) *a payment bond* satisfactory to the City, executed by a surety company authorized to do business in the State of Connecticut or otherwise secured in a manner satisfactory to the City, for the protection of all persons supplying labor and material to the Contractor or its subcontractors for the performance of the work provided for in the Contract. The bond shall be in an amount equal to One Hundred (100%) Percent of the portion of the Contract price that does not include the cost of operation, maintenance and finance.

§38.74 Authority to Require Additional Security.

Nothing in §38.73 shall be construed to limit the authority of the City to require additional security.

§38.75-38.79 Reserved for Future Use.

**AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE
CITY OF WATERBURY**

Adopted 6/20/2005
(Scrivner's error, Sec 38.03, corrected 6/30/05)

Part D-- Legal and Contractual Remedies

Pre-Litigation Resolution of Controversies

§38.80 Authority to Resolve Protested Solicitations and Awards.

The Director of Purchasing may, in his discretion, establish, by Regulation or Policy, a procedure for resolving protested solicitations or awards.

§38.81 Authority to Debar or Suspend.

(A) Authority.

(1) Debarment. After reasonable notice to the Person involved and reasonable opportunity for that Person to be heard, the Director of Purchasing after consultation with the Using Agency and the Corporation Counsel, shall have the authority to debar a Person for cause from consideration for award of Contracts or Purchase Orders.

(a) A debarment shall not be for a period of more than two (2) years.

(2) Suspension. After reasonable notice to the Person involved and reasonable opportunity for that Person to be heard, the Director of Purchasing, after consultation with the Using Agency and the Corporation Counsel, shall have the authority to suspend a Person from consideration for the awarding of Contracts or Purchase Orders if there is probable cause for such suspension.

(a) A suspension shall not be for a period exceeding three months.

(B) Causes for Debarment or Suspension. The causes for debarment or suspension include the following:

(1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private Contract, subcontract or Purchase Order, or in the performance of such Contract, subcontract or Purchase Order;

(2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly effects responsibility as a City Contractor;

(3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(4) Violation of Contract provisions or the terms and conditions of a Purchase Order, as set forth below of a character which is regarded by the Director of Purchasing to be so serious as to justify debarment action or suspension:

(a) deliberate failure without good cause to perform in accordance with the Specifications or within the time limit provided in the Contract or Purchase Order; or

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

**Adopted 6/20/2005
(Scrivner's error, Sec 38.03, corrected 6/30/05)**

(b) a recent record of failure to perform or unsatisfactory performance in accordance with the terms of one or more Contracts or Purchase Orders; provided that the failure to perform or unsatisfactory performance caused by acts beyond the control of the Contractor shall not be considered to be the basis for debarment;

(5) Any other cause the Director of Purchasing determines to be so serious and compelling as to effect the responsibility of a City Contractor, including debarment by another governmental entity; and

(6) For violation of the ethical standards set forth in Chapter 40 of the Code of Ordinances (Ethics in Public Contracting).

(C) Decision. The Director of Purchasing shall issue a written decision to debar or suspend. The decision shall:

(1) State the reasons for the action taken; and

(2) Inform the debarred or suspended Person involved of any rights to judicial review as may be allowed under state law.

(D) Notice of Decision. A copy of the decision under subsection (C) of this section shall be mailed or otherwise furnished immediately to the debarred or suspended Person and any other party intervening.

(E) Finality of Decision. A decision under subsection (C) of this section shall be final and conclusive, unless fraudulent.

§38.82 Authority to Resolve Contract or Purchase Order and Breach of Term Controversies.

(A) Applicability. This section applies to controversies between the City and the Contractor, which arise under, or by virtue of the Contract or Purchase Order between them. This includes, without limitation, controversies based upon breach of the terms of the Contract or Purchase Order, mistake, misrepresentation, or other cause for modification or rescission.

(B) Authority. Subject to the provisions of Chapter 36 of the Code of Ordinances of the City of Waterbury, the Director of Purchasing, or his Designee, is authorized, prior to commencement of an action in a court or administrative proceeding concerning the controversy, to settle and resolve a controversy described in subsection (A) of this section, following consultation with the Corporation Counsel. Any such settlement or resolution shall be subject to approval in accordance with any applicable state statutory requirements and in accordance with said Chapter 36. This authority shall be exercised in accordance with the provisions of the Charter, the Code of Ordinances, including, but not limited to Chapter 38, any applicable Regulations and the availability of unexpended appropriated funds for the underlying transaction during the fiscal year.

(C) Decision Period. If such a controversy is not resolved by mutual agreement, the Director of Purchasing, or his Designee, shall promptly issue a decision in writing. The decision shall:

(1) state the reasons for the action taken; and

**AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE
CITY OF WATERBURY**

Adopted 6/20/2005

(Scrivner's error, Sec 38.03, corrected 6/30/05)

(2) inform the Contractor of its right to review as permitted by law or agreement.

(D) Notice of Decision Period. A copy of the decision under subsection (C) of this section shall be mailed or otherwise furnished immediately to the Contractor.

(E) Finality of Decision. The decision under subsection (C) of this section shall be final and conclusive unless fraudulent.

(F) Failure to Render Timely Decision. If the Director of Purchasing, or his Designee, does not issue the written decision required under subsection (C) of this section within 120 calendar days after written request for final decision or within such longer period as may be agreed upon by the parties, then the Contractor may proceed as if an adverse decision has been received.

§38.83-38.89 Reserved for Future Use.

**AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE
CITY OF WATERBURY**

**Adopted 6/20/2005
(Scrivner's error, Sec 38.03, corrected 6/30/05)**

Part E– Intergovernmental Relations

§38.90 Cooperative Purchasing Authorized.

Nothing in this Chapter shall prevent the City or any of its Agencies or departments from participating in any joint purchasing program administered by the State of Connecticut, the Council of Governments for the Central Naugatuck Valley, the Connecticut Conference of Municipalities, the Connecticut Association of Boards of Education or any other public agency, including another municipality or municipalities, or other nonprofit organization the members of which are public bodies.

§38.91-§38.94 Reserved for Future Use.

**AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE
CITY OF WATERBURY**

**Adopted 6/20/2005
(Scrivner's error, Sec 38.03, corrected 6/30/05)**

Part F - Vendor Payment

Administration by the Department of Finance

§38.95 Payment Processing Requirements.

The City shall honor all payment requests for Commodities or Services received by, and for, the City provided there is on record either in hard copy or in electronic form:

- (A) a valid Purchase Order number;
- (B) a bona-fide vendor invoice which identifies the corresponding Commodities or Services provided to the City; and
- (C) a Receiving Report, or partial goods received report, signed or issued electronically by the Department Head or Designees of the Agency entitled to receive Commodities or Services on behalf of the City. Said signatures shall be made under penalty of law, as provided elsewhere in this Chapter, for falsely reporting such receipt of Commodities or Services.

Nothing in §38.95 shall prohibit the honoring of payment requests for those items provided in §38.60 (Exceptions).

§38.96 Payment.

(A) ***Except as provided in §38.96(B) (1) and (2) below***, a vendor claim (invoice), which satisfies the provisions of §38.95, may be paid on behalf of the City, under the delegated authority of the Director of Finance, by an accounts payable unit of the Department of Finance as such unit may be established.

(B) ***No payment shall be tendered:***

(1) under a Purchase Order if it has been determined that the vendor or any affiliated entity, either directly or through a Lease, owes back taxes to the City. No payment shall be made until a certificate is provided by the Collector of Revenue or his or her designee indicating that the vendor or known affiliated entities does not owe the City back taxes.

(2) under either a Contract or Purchase Order, in the event it is determined that the vendor or affiliated entity has not filed a current list of taxable personal property as required by the general statutes; unless it has been otherwise certified that such person is not required to file such list.

§38.97 Payment by Credit Card.

The Director of Finance is authorized to establish, by Regulation or Policy, a system whereby the obligations of the City may be paid by credit card. The Regulations or Policies shall require the designation of specific Public Officials or Employees authorized to use credit cards and the uses or purposes for which said cards may be utilized. The Regulations or Policies shall also authorize a means of determining which vendors may be paid in such manner as well as standards to assure against abuse of the system.

§38.98 - §38.99 Reserved for Future Use.

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

Adopted 6/20/2005

(Scrivner's error, Sec 38.03, corrected 6/30/05)

Part G – General Provisions

Purposes, Construction and Application

§38.100 Supplementary General Principles of Law Applicable.

(A) **Generally.** Unless displaced by the particular provisions of the laws of the State of Connecticut, the principles of law and equity, including the Uniform Commercial Code of the State of Connecticut and laws relative to the capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the operations and understanding of the provisions in this Chapter.

(B) **Knowledge of Authority and Limitations of the City's Powers.** Every Person who conducts business with, contracts with or provides Commodities or Services to the City is charged with notice of the extent of the powers and authority, and the limitations thereon, of the Public Officials and Employees of the City, as set forth in the Charter of the City, the Code of Ordinances and any Regulations or Policies pertaining thereto. In particular, this applies to all persons who participate in the procedures pertaining to the Centralized Procurement System as set forth in this Chapter and the Ethics and Conflict of Interest Provisions set forth in Chapter 40 of the Code of Ordinances.

(C) **Singular-Plural and Gender Rules.** In this Chapter, unless the context requires otherwise: (1) words in the singular number include the plural, and those in the plural include the singular; and, (2) words of a particular gender include any gender and the neuter, and when the meaning so indicates, words of the neuter gender may refer to any gender.

§38.101 Requirement of Good Faith.

This Chapter requires all parties involved in the negotiation, performance or administration of City Contracts and Purchase Orders to act in good faith.

§38.102 Application of this Chapter.

(A) **General Application.** This Chapter applies only to Contracts and Purchase Orders solicited or entered into after the effective date of this Chapter unless the parties agree to its application to a Contract solicited or entered into prior to the effective date.

(B) **Application to City Procurement.** Subject to those provisions of the Charter of the City of Waterbury that may be applicable to transfers of items of value or property in which the City may have an interest, this Chapter shall apply to the transfer of items of value or property, in which the City may have an interest, and every expenditure of public funds irrespective of their source, including federal and state assistance monies, except as otherwise specified in order to comply with specific state or federal requirements, by this City acting through a Using Agency, as defined herein, under any Contract.

(1) **Intergovernmental Relations Exemption.** §38.72 to §38.74 shall not apply to either grants or Contracts between the City and State or other governments, which shall be governed by Part E of this Chapter pertaining to Intergovernmental Relations.

(2) **Disposal of City Supplies.** This Chapter shall apply to the disposal of City Supplies, as set forth in §38.128(C)(2).

Nothing in this Chapter or in the Regulations or rules promulgated hereunder shall prevent any Agency from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement, to the extent such compliance is otherwise lawful and not contrary to public policy.

**AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE
CITY OF WATERBURY**

Adopted 6/20/2005
(Scrivner's error, Sec 38.03, corrected 6/30/05)

§38.103 Severability.

If any provision of this Chapter or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared to be severable.

§38.104 Construction Against Implicit Repealer.

Since this Chapter is a general action, no part of it shall be deemed to be impliedly repealed by subsequent amendments of the Code if such construction of the subsequent legislation can be reasonably avoided.

§38.105 Effective Date.

This Chapter shall become effective in accordance with the requirements of the Charter of the City.

Determinations

§38.106 Determinations.

Written determinations required by this Chapter shall be retained in the appropriate official Contract file of the Office of the Corporation Counsel.

§38.107 Reserved for Future Use.

Public Access

§38.108 Public Access to Procurement Information.

Procurement information shall be a public record to the extent provided by the laws of the State of Connecticut and shall be available to the public as provided in such laws.

§38.109 Authorization for the Use of Electronic Transmissions.

The use of Electronic media, including acceptance of electronic signatures, is authorized consistent with the applicable statutory, regulatory or other guidance for the use of such media, as set forth in the Connecticut General Statutes, so long as such guidance provides for:

(A) appropriate security to prevent unauthorized access to the bidding, approval, and award processes; and

(B) accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.

§38.110 - §38.119 Reserved for Future Use.

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

Adopted 6/20/2005
(Scrivner's error, Sec 38.03, corrected 6/30/05)

Part H – Procurement Organization and Leadership

Department of Purchases

§38.120 Charter Authority for the Department of Purchases.

There shall be a Department of Purchases as set forth in §7C-4 of the Charter of the City.

§38.121 Authority and Duties of the Department of Purchases.

Except as otherwise provided in this Chapter, the Department of Purchases shall have the authority and responsibility to administer the Centralized Procurement System, as required by §7C-4(a) of the Charter of the City, and to promulgate Regulations or issue Policies or guidelines, consistent with the Charter of the City and this Chapter, governing the Procurement, management, control, and disposal of any and all Commodities, Services and Construction to be procured by the City.

§38.122-38.124 Reserved for Future Use.

Director of Purchasing (Purchasing Agent)

§38.125 Charter Authority for the Director of Purchasing.

(A) **Head of the Department of Purchases.** The head of the Department of Purchases shall be the Director of Purchasing, who shall be the Purchasing Agent of the City, as set forth in §7C-4(b) of the Charter of the City.

(B) **Scope of the Purchasing Authority.** The Director of Purchasing shall administer the processes pertaining to the purchase or contract for all Commodities and Services needed by any and all departments, offices, boards, commissions, institutions and other Agencies which derive their support wholly or in part from the funds of the City and which are Using Agencies.

§38.126 Appointment and Qualifications.

The Director of Purchasing shall be appointed by the Mayor, as set forth in §§4-2(b) and 7A-2(b) of the Charter of the City. Said Director of Purchasing shall have relevant recent experience in public Procurement or in the large-scale Procurement of Commodities, Services, or Construction, and shall be a person with demonstrated executive and organizational ability.

§38.127 Tenure, Removal, and Compensation.

(A) **Term and Removal.** The Director of Purchasing shall be a full time Employee of the City and may be removed from office as set forth in §7A-4 of the Charter of the City.

(B) **Compensation.** The Director of Purchasing shall be compensated as provided by law.

§38.128 Authority of the Director of Purchasing.

(A) **Principal Contracting Officer of the City.** The Director of Purchasing shall serve as the procurement officer of the City.

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

Adopted 6/20/2005

(Scrivner's error, Sec 38.03, corrected 6/30/05)

(B) Power to Adopt Operational Procedures. Consistent with the provisions of this Chapter, the Director of Purchasing may adopt operational procedures governing the internal functions of the Department of Purchases. Said Regulations and/or Policies shall be a matter of public record.

(C) Duties. Except as otherwise specifically provided in this Chapter, the Director of Purchasing shall, in accordance with this Chapter and any Regulations and/or Policies established:

- (1) procure or supervise the Procurement of all Commodities, Services, and Construction needed by the City taking into account the highest quality and competitive cost;
- (2) sell, by public auction or competitive bid, if possible, exchange, trade, or otherwise dispose of Surplus Supplies belonging to the City, including, but not limited to Supplies which have become obsolete, overage or unsuitable for use;
- (3) work with the appropriate Department Heads to establish and maintain programs for the inspection, testing, and acceptance of Commodities, Services, and Construction;
- (4) ensure compliance with this Chapter by reviewing and monitoring Procurements conducted by any Agency Designee delegated authority under §38.136, below;
- (5) establish and maintain a Bidder's List, in cooperation with using agencies and as needed, comprised of responsible prospective bidders or offerors who have requested their name to be added to said list, from which list the Department may provide notification of prospective purchases or sales for the Commodities or Services in the request of the bidder or offeror; however, said notification is a courtesy and shall not be construed as the legal notice required by this Chapter;
- (6) track, by Electronic means, all Contracts and Purchase Orders in a uniform numerical system on a Fiscal Year basis (effective on July 1, 2004); and,
- (7) prescribe and maintain forms for the use of the Purchasing Department and the Using Agencies as deemed necessary to the operation of the Purchasing Department.

(D) Regulations or Policies. The Director of Purchasing is authorized to propose Regulations and/or Policies, consistent with the Charter and this Chapter, governing the Procurement, management, control, and disposal of any and all Commodities, Services, Leases and Construction procured by the City, unless exempted. Among the subject matters authorized to be addressed in the Regulations or Policies are the following:

- (1) to prescribe the manner in which Equipment, Materials and Supplies shall be purchased, delivered, stored and distributed;
- (2) to prescribe the manner of making requisitions and estimates, the future periods which they are to cover, the form in which they shall be submitted and the manner of their authentication;
- (3) to prescribe the manner of inspecting all deliveries of Equipment, Materials and Supplies and of making chemical and physical tests of samples submitted with bids and samples of deliveries to determine whether or not the Specifications are being complied with;
- (4) to provide for the transfer to or between such City agencies of Equipment, Materials and Supplies which are surplus with one such Agency but which may be needed by another or

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

Adopted 6/20/2005

(Scrivner's error, Sec 38.03, corrected 6/30/05)

others, and for the disposal by sale of Equipment, Materials and Supplies which are obsolete or unusable;

(5) to indicate the types of objective criteria that may be used by the Director of Purchasing in determining "lowest responsible qualified bidder" for the purposes of this Chapter;

(6) to define the term "minor irregularities" for the purposes of this Chapter, provided such term shall not include (A) variations in the quality, unit price or date of delivery or completion of Equipment, Materials, Supplies or Contractual Services or (B) exceptions to programs required under the General Statutes;

(7) to establish policies and procedures for use by agencies in preparing Specifications which will ensure that such Specifications shall not be unreasonably restrictive and shall encourage competition; and,

(8) to provide for any other matters necessary to effect the provisions of this Chapter and any Regulations or Policies promulgated in pursuance thereof.

In preparing and proposing all Regulations the Director of Purchasing shall consult with Department Heads and appropriate consultants regarding the specific applicable standards to ensure compliance with applicable federal or state laws, regulations or requirements, to be included in said Regulations or Policies.

(E) Discouragement of Uniform Bidding: Government Franchises. The Director of Purchasing shall discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases and sales.

(1) Purchase Orders Pertaining to Government Franchises or Contracts with Other Governmental Units. Purchase Orders issued to companies having a government franchise for the purpose of providing public utility services, such as telephone, gas, electric light and power, need not be founded on competitive bids. Similarly, Contracts entered into with other government units shall not be subject to competitive bidding.

(2) Repairs of Equipment. Repairs of Equipment may be contracted for directly with the company or authorized agency of the company manufacturing the Equipment without competitive bidding if the competition is unobtainable. The determination of whether competition is unobtainable shall be made by the Director of Purchasing following review of the responses, if any, to a Request for Information to companies that may be capable of manufacturing or repairing the Equipment in question.

(F) Proceeds from the Sale or Disposal of City Property. Unless otherwise provided by federal or state law, regulation or agreement or the Charter of the City, the proceeds from the sale, Lease, or disposal of surplus properties shall be returned to the General Fund.

(G) Inventory Control and Classification Plan. The Director of Purchasing shall develop a plan pertaining to the exercise of general supervision and control over all inventories of Supplies belonging to the City. Said Plan shall include the (1) classification of all Commodities used by the Agencies of the City; and (2) preparation of written Specifications regarding said Commodities. In the preparation and revision of the standard Specifications, the Director of Purchasing shall seek the advice, assistance and cooperation of the Using Agencies in order to determine their requirements and endeavor to prescribe those standards which best meet the needs of the majority of said Agencies. Inventory control shall include:

(1) The management of Supplies during their entire life cycle;

**AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE
CITY OF WATERBURY**

**Adopted 6/20/2005
(Scrivner's error, Sec 38.03, corrected 6/30/05)**

(2) The sale, lease or disposal of Surplus Supplies by public auction, competitive sealed bidding, or other appropriate method determined by Director of Purchasing, provided that no Employee of the owning or disposing Agency shall be entitled to purchase such supplies, unless it is determined by the Director of Purchasing that there is no appearance of impropriety; and,

(3) Transfer of Excess Supplies.

§38.129-38.134 Reserved for Future Use.

Organizational Issues Pertaining to Public Procurement and Management

§38.135 Centralization of Procurement Authority.

Except as otherwise provided for in this Chapter, all rights, powers, duties and authority relating to the Procurement of Commodities, Services, and Construction, and the management, control, warehousing, sale and disposal of Commodities, Services, and Construction is vested in the Director of Purchasing as required by the Charter of the City.

§38.136 Delegation of Authority by the Director of Purchasing.

Notwithstanding the provisions of §38.135, above, and subject to any Regulations and/or Policy and as further set forth in this Chapter, the Director of Purchasing may delegate authority to the Department Head, Employees or representatives of any Using Agency, including consultants of the City.

Role of the Corporation Counsel

§38.137 Authority to Contract for Legal Services.

No Contract for the Services of legal counsel may be awarded without the approval of the Corporation Counsel, as set forth in the Charter of the City.

§38.138 Contracts to be Approved by the Corporation Counsel.

As required by §§7B-1(d)(7) and 7C-4(a)(4) of the Charter of the City, each Contract shall be approved by the Corporation Counsel as to form and as to compliance with all legal requirements of said Charter and Ordinances.

§38.139 Duties of the Corporation Counsel.

The Corporation Counsel or such officer as the Corporation Counsel shall designate shall serve as legal counsel and provide necessary legal Services to the Director of Purchasing.

Role of the Using Agencies and Department Heads

§38.140 Estimate of Needs.

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

Adopted 6/20/2005

(Scrivner's error, Sec 38.03, corrected 6/30/05)

(A) **Generally.** All Using Agencies of the City shall file with the Director of Purchasing detailed estimates of their requirements in Commodities and Contractual Services in the manner, at such times, and for future periods as the Director of Purchasing shall prescribe.

(B) **Purchases for the Board of Education.** The Director of Purchasing shall enforce the provisions of §7C-4 of the Charter of the City with regard to purchases for the Board of Education. For purposes of enforcing said provisions "reasonable notice" shall require written notice to the Director of Purchasing on or before March 1 for the school year commencing in the following Fiscal Year. In all cases where the Commodities to be purchased are peculiar to the field of education, the school board's determination as to the Specifications of such Commodities to be purchased shall be conclusive upon the Purchasing Department without competitive bidding if the competition is unobtainable, and therefore need not be advertised.

§38.141 The Roles and Responsibilities of Using Agencies, Department Heads and Others Pertaining to the Procurement System.

(A) **Affirmative Obligations.** The roles and responsibilities of Using Agencies, Department Heads and Employees or consultants delegated responsibilities in accordance with the provisions of Chapter 38 are set forth herein. In general, Using Agencies, their Department Heads, Designees of the Purchasing Director or other Employees participating in the operation of the Procurement System are responsible for the management and administration of Contracts and Purchase Orders and for the supplies and inventories in their Agencies and will, thus, be held strictly accountable for the operation and integrity of the Procurement System.

The roles and responsibilities include, but are not limited to, the following:

- (1) Filing of a Requisition for a Commodity or Service pursuant to §38.02;
- (2) Obtaining a §38.03(A) Encumbrance as set forth in that section and a §38.03(C) Encumbrance for multi-year agreement or options to extend;
- (3) Supplying any special notice provisions required by federal or state grants, loans or reimbursement agreements, as set forth in §§38.12(C) and 38.13(C);
- (4) Preparing Specifications for attachment to the Invitation for Bid, Request for Proposal or other solicitation, as set forth in §38.04;
- (5) Participating in the evaluation of bids and proposal responses, as set forth in §§38.12(E) and 38.13(G);
- (6) Submitting Recurring Commodities or Services, as required by §38.15;
- (7) Participating, as designee of the Director of Purchasing, in the solicitation of price alternatives in Small Purchase transactions, as set forth in §38.16(A);
- (8) Participating as the Director of Health, Fire Chief or Superintendent of Police in rendering a decision, in concert with the Mayor, regarding a public emergency, as set forth in §38.18(A);
- (9) Participating in the selection and negotiation of contract terms with architectural or engineering firms, as set forth in §38.14;

**AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE
CITY OF WATERBURY**

Adopted 6/20/2005

(Scrivner's error, Sec 38.03, corrected 6/30/05)

(10) Participating in the determination of nonresponsibility of bidders or offerors, as set forth in §38.35;

(11) Complying with the ethics and conflict of interest provisions of Chapter 40, as set forth in §38.65(B);

(12) Cooperating in proceedings pertaining to the resolution of protested solicitations and awards as well as Contract controversies and debarment proceedings, as set forth in §38.80, §38.81 and §38.82; and,

(13) Filing an Estimate of Needs as set forth in §38.140

(14) Supplying a copy of all insurance and bond requirements for the procurement, as set forth in §38.02(A)(5);

(15) Preparing a recitation of the amount of funds (annual and multi-year) to be expended under a Contract or Purchase Order, as set forth in §38.51(B)(2) and §38.53(B)(3); and

(16) Identification of personnel responsible for the administration of the Contract or Purchase Order, as set forth in §38.51(B)(3) or §38.53(B).

(B) Prohibited Activities. Using Agencies, Departments Heads and Employees shall not, among other things:

(1) incur any liability or expense in excess of the amount of (1) the general or capital appropriations of the City; or, (2) any federal or state grant, loan or reimbursement program, as set forth in §38.03(D);

(2) knowingly authorize or make payments in violation of Chapter 38, as set forth in §38.03(E);

(3) artificially divide procurement requirements in order to qualify as a Small Purchases, as set forth in §38.16(D), or to avoid Board of Aldermen approval required in Section 38.62;

(4) circumvent the procurement methods set forth in this Chapter in order to establish the conditions for a waiver of the bid requirements, as set forth in §38.19; or,

(5) amend a Contract or Purchase Order unless so authorized by the Board of Aldermen, as set forth in §38.64(A).

AN ORDINANCE REGARDING THE CENTRALIZED PROCUREMENT SYSTEM FOR THE CITY OF WATERBURY

Adopted 6/20/2005

(Scrivner's error, Sec 38.03, corrected 6/30/05)

(3) **Cause for Removal or Termination of Employment.** If any Public Official or Employee of the City shall knowingly incur any obligation or shall authorize or make any expenditure in violation of this provision such action may be cause for removal from office or termination of employment.

§38.142-38.144 Reserved for Future Use.

City Procurement Regulations and Policies

§38.145 Regulations.

Regulations shall be promulgated in accordance with the applicable provisions of the Administrative Procedures Ordinance upon its enactment or, if prior thereto, in accordance with any procedures which may, in the opinion of the Corporation Counsel, then be applicable.

§38.146 Prohibition Against the Delegation of the Power to Promulgate Regulations and Establish Policy.

The Director of Purchasing shall not delegate his power to promulgate Regulations and Policies.

§38.147 Regulations and Policies Shall Not Change Existing Contract Rights.

No Regulation or Policy shall change any commitment, right, or obligation of the City or of a Contractor under a Contract or Purchase Order in existence on the effective date of such Regulation or Policy.