COUNCIL COMMITTEE OF THE WHOLE
AGENDA

OCTOBER 9, 2018 - 6:00 P.M.

CITY HALL COUNCIL CHAMBERS
15 LOOCKERMAN PLAZA, DOVER, DELAWARE

PUBLIC COMMENTS ARE WELCOMED ON ANY ITEM AND WILL BE PERMITTED AT APPROPRIATE TIMES. WHEN POSSIBLE, PLEASE NOTIFY THE CITY CLERK (736-7008 OR E-MAIL AT CITYCLERK@DOVER.DE.US) SHOULD YOU WISH TO BE RECOGNIZED.

UTILITY COMMITTEE

AGENDA ADDITIONS/DELETIONS

1. **EVALUATION OF BIDS - LAKEWOOD PLACE WATER MAIN REPLACEMENT**
   (STAFF RECOMMENDS AWARDING THE CONTRACT TO TEAL CONSTRUCTION, INC., FOR THE CITY OF DOVER, LAKEWOOD PLACE WATER MAIN REPLACEMENT PROJECT, BID #19-0005PW, FOR THE AMOUNT OF $164,094.00)

2. **ADJOURNMENT OF UTILITY COMMITTEE MEETING**

LEGISLATIVE, FINANCE, AND ADMINISTRATION COMMITTEE

AGENDA ADDITIONS/DELETIONS

1. **PROPOSED AMENDMENTS TO THE PURCHASING POLICY AND PROCEDURES**

2. **REVIEW OF PENSION BENEFITS - COST OF LIVING ADJUSTMENT (COLA) (2018 BUDGET HEARING)**
   (DURING THEIR REGULAR MEETING OF AUGUST 27, 2018, CITY COUNCIL ACCEPTED THE COMMITTEE'S ACTION TO TABLE THIS MATTER FOR CONSIDERATION AT A FUTURE DATE WHEN MRS. DONNA MITCHELL, CITY MANAGER, HAS GATHERED THE APPROPRIATE DATA, AND THAT IT BE COMMUNICATED TO MR. LESTER BLAKEMAN AND THE RETIREES IN ADVANCE SO THEY CAN BE A PART OF THE DISCUSSION)
   (STAFF RECOMMENDS THAT FUTURE AD HOC COST OF LIVING INCREASES FOR THE PARTICIPANTS OF THE DEFINED BENEFIT PLAN BE TAKEN UNDER CONSIDERATION IN YEARS WHERE THE PENSION PLAN IS FULLY FUNDED OR EVERY FIVE (5) YEARS)

3. **ADJOURNMENT OF LEGISLATIVE, FINANCE, AND ADMINISTRATION COMMITTEE MEETING**

ADJOURNMENT OF COUNCIL COMMITTEE OF THE WHOLE MEETING

/TM
S:\AGENDAS-MINUTES-PACKETS-PRESENTATIONS-ATT&EXH\COMMITTEE-AGENDAS\2018\10-09-2018 CCW AGENDA.WPD

THE AGENDA ITEMS AS LISTED MAY NOT BE CONSIDERED IN SEQUENCE. PURSUANT TO 29 DEL. C. §10004(E)(2), THIS AGENDA IS SUBJECT TO CHANGE TO INCLUDE THE ADDITION OR THE DELETION OF ITEMS, INCLUDING EXECUTIVE SESSIONS, WHICH ARISE AT THE TIME OF THE MEETING.

ACTION FORM

PROCEEDING: Council Committee of the Whole (Utility) **AGENDA ITEM NO.:**
DEPARTMENT OF ORIGIN: Public Works **DATE SUBMITTED**: 9/28/18
PREPARED BY: Jason A. Lyon, P.E., Water / Wastewater Manager
SUBJECT: Evaluation of Bids – Lakewood Place Water Main Replacement
REFERENCE: CIP- Water Quality Improvement
RELATED PROJECT: N/A
APPROVALS: City Manager, Controller
EXHIBITS: Exhibit A – Aerial Map
EXPENDITURE REQUIRED: $164,094 **BUDGET**: $294,900
FUNDING SOURCE (Dept./Page in CIP & Budget): Department of Public Works - Water Management, CIP Projects #WQ1901 Lakewood Place Water Main Replacement, CIP Project Name: Water Quality Improvements Account No.: 417-6800-568.40-31.
TIME TABLE: Notice to proceed to be issued within thirty (30) days of Council approval. Project anticipated to be completed in thirty (30) calendar days.
RECOMMENDED ACTION: Award the contract to Teal Construction, Inc., for the City of Dover, Lakewood Place Water Main Replacement Project, Bid #19-0005PW, for the amount of $164,094.00.

BACKGROUND AND ANALYSIS

The Fiscal Year 2019 Capital Improvement Plan includes a project called Water Quality Improvements. Staff identified the need for upgrading the existing four-inch (4") water main from Columbia Avenue to William Street located in: (1) Lakeview Place from Columbia Avenue to Alley 349; (2) Alley 349 from Lakeview Place to Fairview Avenue and (3) Fairview Avenue from Alley 349 to William Street. The existing undersized mains were installed prior to 1960. This project will replace these mains with new eight-inch (8") cement lined ductile iron pipe water mains. The new water mains will provide City of Dover customers with improved water quality, increased system reliability and improved fire protection.

The bid was advertised to the public as an Invitation to Bid in accordance with the City's purchasing policy by the City's Purchasing Agent under ITB #19-0005PW. Bids were opened on September 19, 2018. The City of Dover received four (4) bids shown in the table below:

CONTRACTOR	LOCATION	BASE BID	EVALUATED PRICE
TEAL CONSTRUCTION CO.	**DOVER, DE**	**$164,094.00**	**$159,171.18***
GATEWAY CONSTRUCTION, INC.	CLAYTON, DE	$243,190.00	$243,190.00
REYBOLD CONSTRUCTION GROUP, LLC	BEAR, DE	$249,815.00	$249,815.00
DIXON CONTRACTING, INC.	DOVER, DE	$263,860.00	$263,860.00

**- Teal Construction Co., was awarded a 3% reduction, due to local vendor preference, Rule 1.*

City staff reviewed the submissions and found that Teal Construction, Inc. bid met all requirements for the qualifications of the project. The staff recommends awarding the contract to Teal Construction, Inc. in the amount of $164,094.00 for the Lakewood Place Water Main Replacement Project.

Exhibit A

Lakewood Place
Water Main Replacement



0 50 100 Feet

N

Date Printed: October 11, 2017
File: m:\gis_data\projects\tech_mxds
\jason_lyon_maps\caf_maps
\caf_s_bradford_st_water_replacement
Department: Public Works GIS
City of Dover, Delaware

Legend

- Dover Parcels
- Dead End
- Reducer

Fire Hydrants

- 1500 GPM
- 1000 - 1499 GPM
- 500 - 999 GPM
- Below 500 GPM
- Service Line

Valve

- Service Connection
- Meter Pit
- Hydrant Valve
- Division Valve

- Curb Stop/Meter Pit
- Curb Stop/House
- Curb Stop
- Blow Off

Main

- 1" 2" 3" 4" 6"
- 8" 10" 12" 14" 16" 20"

CITY OF DOVER

PURCHASING POLICY & PROCEDURES

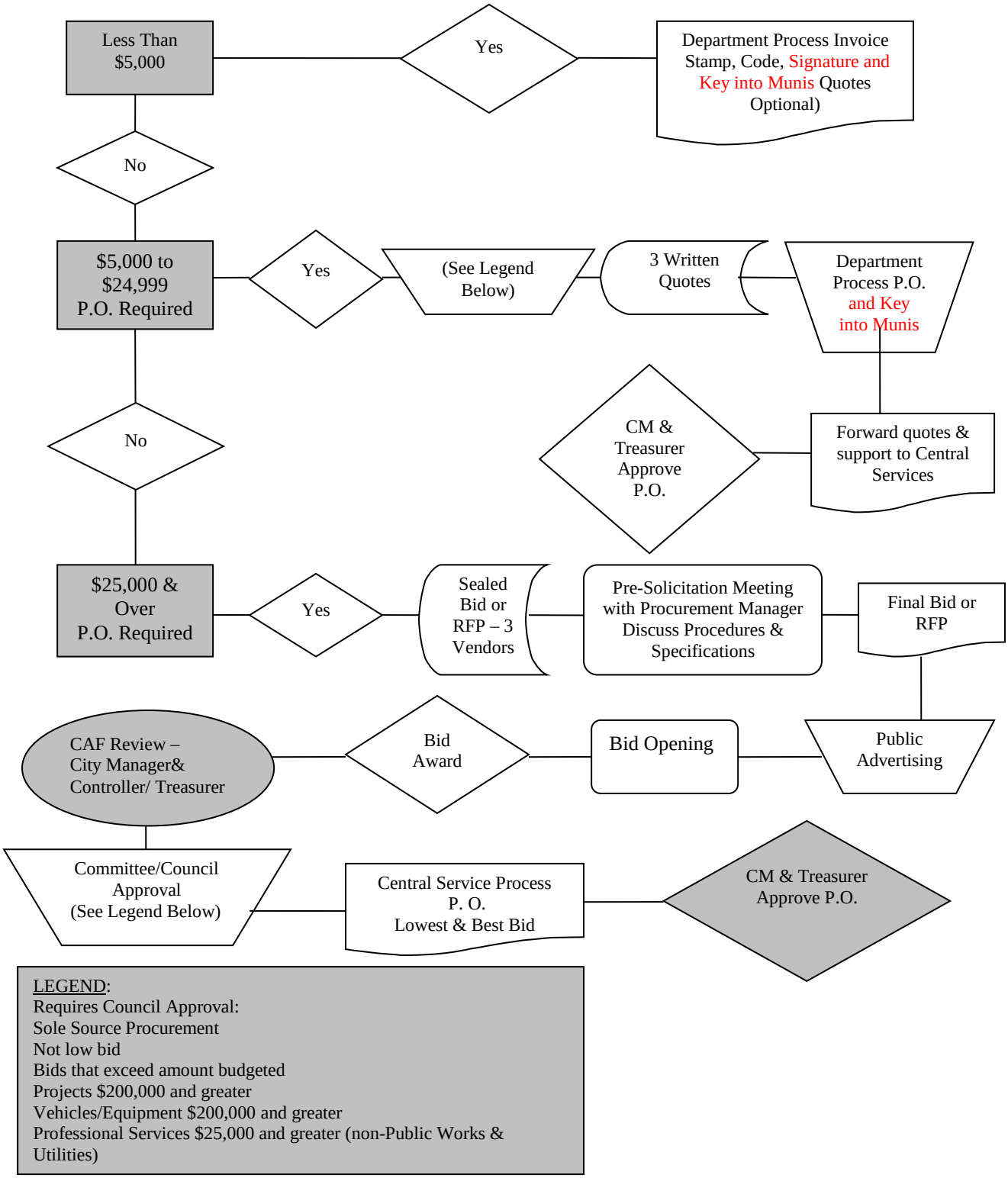
ISSUED BY: FINANCE & CENTRAL SERVICES

~~**EFFECTIVE DATE DECEMBER 8, 2008**~~
~~**AMENDED FEBRUARY 28, 2011**~~

Purchasing Policy & Procedures
Table of Contents

Section	Title	Page #
	Purchasing Flow Chart	3
1	The Purpose	4
2	Ethics in Purchasing	4
3	Purchasing Limits & Authority	5
3.1	Subdividing Purchases	5
3.2	Fleet Vehicles & Associated Equipment	5
3.3	Equipment Purchases $25,000 - $199,999	5
3.4	Purchasing Threshold Table	6
3.5	Cooperative Purchasing	7
3.6	Standard Forms	7
3.7	Inspection and Full Payment	7
3.8	Warranties	7
3.9	Authorized Personnel	7
3.10	Change Orders	7
4	Professional Services Guidelines	8
4.1	Request for Proposals	8
4.2	Total Cost Up to $7,500	9
4.3	Total Cost Over $7,500 to $25,000	9
4.4	Total Cost More Than $25,000	9
4.5	Subdividing the Purchases of Services	9
4.6	Documentation	9
4.7	Change Orders	9
5	Public Works Contracts & Certain Professional Services	10
6	Exceptions	11
6.1	Sole Source Procurement	11
6.2	Warehouse Stock Contracts	11
6.3	Negotiations	11
6.4	Used Materials & Equipment	11
6.5	Continuity of Service	12
6.6	Emergency	12
6.7	Minority Owned Vendor Preference	12
6.8	Local Vendor Preference	12
7	Receiving	13
8	Credit Card Purchases	13
9	Invoices and Payments	13
10	Green Procurement	14
11	Debarment of Vendors for Consideration of Awards	15
12	Committees & Commissions	15
Appendix A	Standards of Ethical Conduct and Ethics Commission	
Appendix ~~A~~ B	Invitation to Bid and Request for Proposal Procedures	16
Appendix ~~B~~ C	Sample Bid Bond	19
Appendix ~~C~~ D	Sample Performance Bond	20
Appendix ~~D~~ E	Glossary	22
Appendix F	Quotation Form for purchases under $25,000	

Purchasing Flow Chart



CITY OF DOVER
PURCHASING POLICY

SECTION 1 - THE PURPOSE

The purpose of the adoption of a purchasing policy is to establish the authority, limits and procedures relating to the purchasing of materials, supplies, equipment, construction, Public Works type contracts, and professional services.

SECTION 2 - ETHICS IN PURCHASING

Public employees and elected officials must discharge their duties impartially to assure competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of City procurement. Dover Code Article II Section 30 (Appendix A), establishes standards of ethical conduct among public officials and employees. Vendors participating in the City procurement will be disqualified from the procurement if the employee, official or vendor is found to be in violation of the City's ethical standards and a referral of the matter will be presented to the Ethics Commission. Failure to familiarize oneself with the provisions of this policy and appendices will not be accepted.

~~2.1 Public employees must discharge their duties impartially so as to assure competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of City procurement.~~

~~2.2 Acceptance of any gift items or any free services for personal use is PROHIBITED.~~

~~2.3 While purchasing goods and services for the City, the procedures and guidelines which are described in this purchasing policy are to be strictly followed. All purchasing related records must be kept in the Central Services Department for the period prescribed in the State Bureau of Archives Retention Schedule. These records may include, but are not limited to, request for proposals, vendor proposals, analysis of proposals, change orders and a copy of the purchase order(s).~~

~~2.4 The Information Technology Department is to provide a technical review of all specifications for computer software and hardware purchases regardless of cost. The applicable Information Technology personnel should be consulted on all bid evaluations for computer hardware, software, or other related equipment.~~

~~2.5 No agreement or contract shall be entered into, nor expense incurred by any division, which will result in an obligation in excess of the appropriation made to the division. It is the division's responsibility to see that funds are in the proper accounts before obligating or expending funds. If the funds are not in the proper account, the transaction will not be processed. The department must request a transfer of funds through the Finance~~

~~Department. Override of funds availability must be approved by either the Treasurer or the City Manager.~~

2.6 ~~Pursuant to Dover Code, Chapter 30, Section 30-33, No city employee or official may participate on behalf of the city in the review or disposition of any matter pending before the city in which he has a personal or private interest. No city employee or official shall benefit from any contract with the city, nor solicit any contract, and shall not enter into any contract with the city (other than an employment contract). No person who has served as a city employee or official shall represent or otherwise assist any private enterprise on any matter involving the city, for a period of two years after termination of his employment or elected or appointed status with the city, if he gave an opinion, conducted an investigation or otherwise was directly and materially responsible for such matter in the course of his official duties as a city employee or official. All parties hereto declare and affirm that no officer, member, or employee of the City, and no member of its governing body, and no other public official of the City who exercises any functions or responsibilities in the review or approval of the undertaking described in this contract, or the performing of services pursuant to this contract, shall participate in any decision relating to this contract which affects his or her personal interest, or any corporation, partnership, or association in which he or she is directly or indirectly interested; nor shall any employee of the City, nor any member of its governing body, have any interest, direct or indirect, in this contract or the proceeds thereof.~~

SECTION 3 - PURCHASING LIMITS & AUTHORITY

3.1 GENERAL GUIDELINES

This section outlines the purchasing limits and guidelines for materials and supplies based on the purchase amount. No department or employee shall commit the expenditure of City funds until the procedures of this section have been complied. No employee or official shall have purchases shipped directly to their home.

For this policy, the purchase amount is considered the purchase order total. Warehouse stock must be reduced to the item's reorder level prior to using open market purchases as authorized by this policy.

While purchasing goods and services for the City, the procedures and guidelines which are described in this purchasing policy are to be strictly followed. All purchasing related records must be kept in the Central Services Department for the period prescribed in the State Bureau of Archives Retention Schedule. These records may include, but are not limited to, request for proposals, vendor proposals, analysis of proposals, change orders and a copy of the purchase order(s).

The Information Technology Department is to provide a technical review of all specifications for computer software and hardware purchases regardless of cost. The applicable Information Technology personnel should be consulted on all bid evaluations for computer hardware, software, or other related equipment.

No agreement or contract shall be entered into, nor expense incurred by any division, which will result in an obligation more than the appropriation made to the division. It is the division's responsibility to see that funds are in the proper accounts before obligating or expending funds. If the funds are not in the proper account, the transaction will not be processed. The department must request a transfer of funds through the City Manager's Office and Finance Department. Override of funds availability must be approved by ~~either~~ the Controller/Treasurer ~~or~~ and the City Manager.

3.1 SUBDIVIDING PURCHASES:

Multiple purchase orders issued by a department for the same items during the same time frame in an attempt to negate the purchasing policy restrictions will be considered a clear violation of the purchasing policy; also considered subdividing purchases.

3.2 FLEET VEHICLES & ASSOCIATED EQUIPMENT:

Purchases of fleet vehicles and associated equipment shall not require Council approval when the purchases have been approved in the budget for the then current fiscal year. However, no vehicle designated as a replacement for any vehicle then currently owned by the City of Dover shall be purchased or ordered for purchase unless and until the then currently City-owned vehicle has been mechanically evaluated and determined by Fleet Maintenance to be no longer reliable for use in its then current capacity. All items within the amount budgeted must have a vehicle/equipment replacement request completed and forwarded to the City Manager for approval. Council approval is always required when the purchase is from sole source procurement, when the vendor is not the low bidder, or when the purchase price is higher than the budgeted amount for that vehicle and the overage cannot be made up through savings on other vehicles and equipment. To qualify as low bidder, the bid must meet the bid specifications. The City Purchasing Agent is authorized to purchase vehicles through the State of Delaware contract when in the best interest of the City.

3.3 EQUIPMENT PURCHASES $25,000 - $199,999:

Budgeted equipment specifically identified in the Capital Improvement Plan does not need Council approval unless the purchase is sole vendor, sole source procurement, or not low bid. The purchase does not require construction or ancillary services. Equipment purchases $200,000 or greater requires Council approval.

3.4 PURCHASING THRESHOLD TABLE

PURCHASING THRESHOLDS		
Less than $5,000	**$5,000 to $24,999**	**$25,000 & Over**
Open market; Department Head discretion to obtain quotes;	Department Head solicit no less than three (3) written quotations; If fewer than three (3) quotations, justification must be included;	Formal Invitation to Bid (ITB) or Request for Proposal (RFP/RFQ); No less than three (3) potential vendors supplied to Central Services;
Purchases will be made by designated personnel;	Quotations and support documentation to be maintained in Central Services files as public record; Use the quotation worksheet in Appendix E.	Pre-Solicitation Meeting required of the respective Department & Procurement Manager to discuss appropriate procedures and specifications;
Approved invoices sent to Accounts Payable for payment.	Requires requisition and purchase order through the financial system;	Public sealed bid or sealed proposal procedures as outlined in Appendix A;
Purchases under existing City contracts shall be made in accordance with the terms of such contract.	All purchases will be made by Central Services or the Police Department Purchase Coordinator by Purchase Order or Contract,	Public Advertising at least once a week for two (2) consecutive weeks in publication with circulation in each county of the State; Additional advertising discretionary;
Supplies available from City stock should not be procured from third party vendors.	Award shall be made to the lowest and the best quotation; Vendor references may be checked;	Lowest and/or most responsive bid will be accepted; Vendor references may be checked to verify ability to meet contract requirements;
Item numbers, quantities, unit cost, and extension must be completed on every purchase order for materials or paying for contracted labor at hourly rates;	Item numbers, quantities, unit cost, and extension must be completed on every purchase order for materials or paying for contracted labor at hourly rates;	Public Bid/Proposal Opening; Time and date of public bid opening shall be stated in the notice for bids; Delivered to Central Services, 710 William Street, Dover, DE 19904
Approval assigned at Department Head Level	Fax and email quotations are acceptable;	Bid Bond or certified check in the amount equivalent to ten percent (10%) of the bid amount for items/contracts over $25,000; Can be waived by Purchasing Agent and Department Head;
	Departmental approval assigned by Department Head; Electronic Approval – Asst. City Manager, City Manager & Controller/Treasurer	Performance Bond required for construction work;
	Purchase Order to include: Unit Cost $; Account number; project number if applicable; Brief description of item or service when not identifiable; Quotes from each vendor in comments;	Faxed bid is not acceptable for this category; Sealed bids may be emailed to bids@dover.de.us or as agreed to with the Department Head;
	NOTE – Changes to Purchase Orders are to be completed through the financial systems. Purchase Orders received with manual changes to amounts/unit cost will not be processed by the Finance Department.	Purchases exceeding $25,000 shall require Council approval for sole source procurement, greater than budget and not low bidder; Committee/Council Action Forms to include: Budget $, P. O. $ or Unit Cost $; Account number; project number; page number in budget; Bid/RFP number if applicable. If unit cost bid includes cost comparison. If blanket bid or proposal is for recurring services, provide average annual cost for past three years for the service. Description and recommended action.

3.5 COOPERATIVE PURCHASING:

The City of Dover is permitted to use state, county, municipal, and other government contracts to purchase material once it has been determined that the procedures outlined within this policy will not be violated. To use cooperative purchasing the quantities and timing of the materials must be coordinated with the partnering entity to insure cost savings through economies of scale. Any deviation from this policy for cooperative purchasing must be approved by the City Manger and Treasurer prior to entering into any purchase agreement. Cooperative Purchasing will not be permitted for any vehicles or equipment valued over $200,000. Sealed bids will be required.

3.6 STANDARD FORMS:

All purchasing related forms and bid documents are developed and standardized for the City of Dover by Central Services. No substitutions of the City of Dover purchase order form or other standardized forms will be permitted. Where applicable, unit(s) of measure and unit cost must be included in the purchase order. Purchase orders with the quantity of one (1) will not be accepted unless the quantity is truly one (1).

3.7 INSPECTION AND FULL PAYMENT:

Upon receiving materials and equipment and upon completion of construction, the City of Dover shall cause a detailed inspection. Full payments for the purchases will be made only upon the department head's complete satisfaction as to the fulfillment of all the conditions of the contract. The department will notify Central Services that the purchase order may be released for payment.

3.8 WARRANTIES:

The department requesting the material or service shall monitor and maintain all warranties.

3.9 AUTHORIZED PERSONNEL:

Only authorized personnel can purchase goods for the City of Dover. The authorized signature must appear on the purchase order and invoices. The original Authorized Signature Form must be ~~on record~~ kept in the Finance Office – Accounts Payable. This form must be updated if a new employee will be signing invoices and purchase orders. The Form can be found in Public Docs.

3.10 CHANGE ORDERS:

If, after a purchase contract is awarded, it becomes necessary to add items/work because of unforeseen findings or a scheduled change, a change order can be issued without Council approval as follows:

A) For purchases at $5,000 - $24,999 the Procurement Manager is authorized to sign purchase order changes up to and including 15% of the original purchase amount when the total dollar value of the purchase does not exceed $25,000 and the amount of the item is still

within the amount budgeted for that item.

B) For purchases at $25,000 or greater, the City Manager and Controller/Treasurer are authorized to approve change orders as follows:

~~i. 25% of the original purchase amount when the purchase is made on a unit cost basis, the purchase is within the approved (project) budget and/or the approved Council Action Form, and the purchase does not exceed $500,000.~~

ii. 15% of the original purchase amount when the purchase is made on a unit cost basis, the purchase is within the approved (project) budget and/or the approved Council Action Form~~, and the purchase is greater than $500,000 but less than $1,000,000~~.

~~iii. 10% of the original purchase amount when the purchase is made on a unit cost basis, the purchase is within the approved (project) budget and/or the approved Council Action Form, and the purchase is greater than $1,000,000.~~

SECTION 4 - PROFESSIONAL SERVICES GUIDELINES

Professional Services are normally solicited by use of a Request for Proposal. This section provides the guidelines and procedures for the procurement of professional services that are not covered by Section 5 – Public Works & Utility Type Contracts and Certain Professional Services.

Examples of the professional services covered under this section are consulting for rate studies; audit services, financial services, and computer related consulting. These are only examples, and the scope of the provisions of this section is not limited to these examples.

4.1 REQUEST FOR PROPOSALS

Evaluation of proposals must adhere to the following guidelines:

1. Determine what proposals are acceptable and unacceptable
2. A determination that a proposal is unacceptable shall be in writing, state the basis for the determination and be retained in the procurement file
3. The offeror shall not be afforded an opportunity to modify its offer

Negotiation with individual offerors

1. The department can negotiate with individual offerors after their proposals are opened.
2. The department shall develop formalized procedures to be consistently applied to each offer
3. Disclosure of one offerors price to another is prohibited
4. The department must send a written request for best and final offers setting forth the date, time, and place for submission of best and final offers
5. The department must inform the offerors that if they do not submit a notice of withdrawal or a best and final offer, their immediate previous offer will be construed as their best and final

Final Award

1. The contract shall be awarded within 90 days of the closing date.

2. The department shall award a contract to the offeror whose proposal is determined in writing to be most advantageous to the City
3. The determination shall explain the basis of the award
4. Central Services shall notify each unsuccessful offeror in writing of the award

4.2 TOTAL COST UP TO $7,500:

Professional services covered under this section may be obtained using open market prices. It is the Department Head's discretion to require written proposals from the service providers. The decision to award the contract for professional service shall be based on performance track records, fees, time schedule and known quality of work. Fax and email proposals are acceptable for this category.

4.3 TOTAL COST OVER $7,500 TO $25,000:

For procuring professional services covered under this section, the department shall use the "Request for Proposal" method and in conjunction with the Central Services Manager or authorized purchaser send requests for proposals to available service providers. The request for proposal will clearly include the following:

1. scope of work
2. schedule for work
3. request to provide fees, expenses and payment schedules;
4. last date for submitting the proposal
5. evaluation method
6. address, contact person and phone number.

The services procured under this provision must have the approval of the department head. A purchase order must be issued to include, but not limited to the above, for the total amount, providing details and a reference of the professional services agreement number, if any, and the location. Fax and email proposals are acceptable for this category.

4.4 TOTAL COST GREATER THAN $25,000:

For professional services with fees and expenses totaling more than $25,000, the City Council's approval is required. The requirements of 4.3 shall be applicable as a solicitation basis. Email ~~Fax~~ proposals are ~~NOT~~ acceptable for this category.

4.5 SUBDIVIDING THE PURCHASES OF SERVICES:

The City of Dover departments shall NOT subdivide the purchase or the contract for professional services to avoid the requirements of this purchasing policy.

4.6 DOCUMENTATION:

If a firm/consultant under contract to the City of Dover issues a bid/proposal as part of their contract, the original documents must be provided to the City. The final determination for all awards shall rest with the City.

4.7 CHANGE ORDERS:

The same procedures as outlined in paragraph 3.10 will apply to professional services regarding change orders.

SECTION 5 - PUBLIC WORKS & UTILITY TYPE CONTRACTS AND CERTAIN PROFESSIONAL SERVICES

"Public Works Contract" means any contract for the construction, reconstruction, alteration or repair of any public building, road, street, highway, water utility, wastewater utility, electric utility or other public improvement, the cost of which will be paid with public funds. Any project materials and supplies purchased by the City, and not a Contractor or Service Provider, are to be procured under Section 3 of this policy.

"Certain Professional Services" means those services within the scope of the practice of architecture, professional engineering, professional land surveying, landscape architecture and geology.

All Public Works and Utility contracts entered for less than $200,000 that are specifically identified in the Capital Improvement Plan does not need Council approval unless the purchase is sole vendor, sole source procurement, or not low bid. Procurement $200,000 or greater requires Council approval.

Public Works & Utilities		
Less than $25,000	**$25,000 - $199,999**	**$200,000 & Over**
Open market	Solicit three (3) written quotations – MANDATORY	Formal Bidding – Purchaser
$0 - $10,000 quotations optional	Letters Bids/Contract Admin. discretionary	Public Advertising
$10,001 - $25,000; Solicit three (3) phone quotes (attach to purchase order)	Specifications and/or plans discretionary	Specifications and/or plans
Specifications and/or plans discretionary	Bid bond discretionary	Bid Bond discretionary
Record quotations on quotation summary form (attach to purchase order)	Public Opening discretionary	Public Opening
	Formal Contract discretionary	Formal Contract
	Performance Bond discretionary	Performance Bond
Purchase Order to include: Unit Cost $; Account number; project number if applicable; Brief description of item or service when not identifiable; Quotes from each vendor in comments		
Committee/Council Action Forms to include: Budget $, P. O. $ or Unit Cost $; Account number; project number; page number in budget; Bid/RFP number if applicable. If unit cost bid includes cost comparison. If blanket bid or proposal is for recurring services, provide average annual cost for past three years for the service. Description and recommended action.		
Footnote – When a project is partially or wholly funded by the State of Delaware: prevailing wage rates apply to projects over $15,000 for repairs, alterations, rehabs, demolition, or reconstruction or $100,000 for new construction.		

Public Works & Utilities – Certain Professional Services		
Less than $50,000		**$50,000 & Over**
Open Market		Formal RFP Process

Use same procedure as Section 4.2		Public Advertising; use same procedure as Section 4.4
Professional Services for Public Works & Utilities includes services within the scope of practice of architectural, professional engineering, professional land surveying, landscape architectural services and geology.		

PRE-QUALIFICATION OF BIDDERS

Prequalification of Bidders is permitted to screen potential vendors in which such factors as financial capability, reputation and management are considered to develop a list of qualified vendors. The vendors should provide background information on their company, implementation methods, and references. Once the list of qualified vendors is established a Request for Proposal will be developed to include clear specifications, expectations and clearly outlined evaluation criteria. A price range may be requested but is not necessary. Detailed information will be provided during the RFP process.

SECTION 6 - EXCEPTIONS

6.1 Sole Source Procurement:

Sole source procurement is not permissible unless a requirement is available from only a single supplier/manufacturer. A requirement for a propriety item does not justify sole source procurement if there is more than one potential bidder or offeror for that item. The following are examples of circumstances which could necessitate sole source procurement:

- Where the compatibility of equipment, accessories, or replacement parts is the paramount consideration; items of comparable quality and equal function are not to be considered under sole source procurement.
- Where the sole supplier's item is needed for trial use or testing;

If the purchase is over $25,000 however, it must be presented to Council for approval. Sole suppliers/manufacturers must be justified in writing by the Department Director and the justification must accompany the procurement request to Central Services and approved by the City Manager.

6.2 Warehouse Stock:

Items placed on annual or multi-year contracts for warehouse stock shall not be subject to Council approval as these items are purchased as individual units and not in blocks. Procurement of items specifically procured for projects through non-stock contracts shall be approved by the City Manager and Treasurer. Increases in unit prices greater than 15% shall be communicated to the respective Department Heads, the City Manager and Controller/Treasurer.

6.3 Negotiations:

Negotiations are authorized during the Request for Proposal evaluation process, when sole source has been pre-approved or when a material specification or scope of work change occurs after the award of a competitively bid contract.

6.4 Used Materials and Equipment:

For the purchase of used or surplus materials or equipment, the provisions of this policy may not apply. Purchases of $25,000 or greater must be presented to Council for their approval.

6.5 Continuity of Service:

When there is an abrupt discontinuation of service due to breakdown, accident, or other similar event and it is necessary to obtain materials or equipment to continue service to the citizens, the provisions of this policy may be waived by the City Manager. For no other reason should a purchase order be issued for this exception.

6.6 Emergency:

An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise. The existence of such condition creates an immediate and serious need for supplies, services, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten:

1. The functioning of the City government.
2. The preservation or protection of property; or
3. The health or safety of any person.

Emergency procurement shall be limited to those supplies, services, or construction items necessary to meet the emergency. The Mayor or City Manager will be responsible for deciding as to the existence of the emergency.

6.7 Minority Owned Vendor Preference:

~~Minority owned vendor preference shall be three percent (3%) of the value of the award. The vendor must identify qualification and claim to the preference on the submitted bid documents. The vendor must provide authoritative proof of minority ownership such as identification in the certification directory maintained by the State of Delaware, Department of Administrative Services, Office of Minority and Women Business Enterprises to qualify for this preference. This preference is to be considered as a stand alone and cannot be added to any other preference that may be allowed. This preference shall not apply to sub-contractors.~~

6.8 Local Vendor Preference:

~~Local vendor preference shall be considered for materials, equipment, construction contracts, and utility contracts. Local vendor preference shall be three percent (3%) of the value of the award. A local vendor is a vendor with a "remit to" address or physical store location in the local area as identified below. The term local vendor is defined as a gradually increasing range with preference assigned as follows:~~

~~Rule 1: Vendor located within the city limits of the City of Dover.~~
~~Rule 2: Vendor located within Kent County (if no vendor qualifies under Rule 1)~~
~~Rule 3: Vendor located within the State of Delaware (if no vendor qualifies under Rules 1 & 2)~~

~~If no vendor qualifies under rules 1, 2, or 3 no local vendor preference shall be awarded. The vendor must identify qualification and claim to the preference on the submitted bid documents. This preference shall not apply to sub-contractors.~~

SECTION 7 - RECEIVING

7.1 No employee shall pick up or receive goods without his or her supervisor's authorization. In the case of a special project, deliveries may be made to the job site, but should be coordinated through Central Services. Central Services will take charge of the delivery ticket for file and paying of the invoice.

Packing slips (proof of receipt) when appropriate are to be attached to the invoice or payment will not be disbursed until these conditions are met. If only an invoice is provided by the vendor, then the employee receiving the item shall sign the invoice as proof of receipt. Proof of receipt must have who receive item and the date item was received.

7.2 While taking delivery of items the individual accepting the item will sign any one of these documents: Receiving/payment copy of the purchase order, vendor's invoice, delivery slip or packing ticket. The person receiving the goods and signing the receipt document must verify the quantity and item description/part number with the purchase order or any other document and must check the condition of the items/packages to make reasonably sure that there are no problems with the delivery. If the problems are observed, the notes must be made on the receiving documents or the delivery must be returned. Partial delivery is acceptable. The original receipt of all documents must be forwarded to Central Services.

7.3 No City employee will sign for any item or service, which is not received.

7.4 Payment for the goods will be made only to the extent the goods are received by the City.

SECTION 8 - CREDIT CARD PURCHASES

8.1 The City does not encourage credit card purchases.

8.2 The City has a very limited number of credit cards for stores where the purchases are more easily made with a credit card or where vendors do not bill the City and credit cards are necessary.

8.3 The employee ~~person~~ using a ~~the~~ store credit card must make sure of the purchase price, quantity, quality and the necessity of the item. The person must sign as required and turn in the purchaser's copy of the credit card receipt ~~slip~~ to their department ~~immediately~~ for processing and ~~information.~~ send to Accounts Payable immediately.

8.4 The credit card must be used only by authorized personnel and cannot be used for personal business.

8.5 All credit cards shall be handled through the Finance Department as outlined in Procedure F346.

8.6 The City does not encourage use of personal credit cards for business purchases. Where use of a personal credit card is necessary to complete City of Dover business in a timely and/or efficient manner, the employee is not authorized to approve their own reimbursement request. The reimbursement request must be approved by other authorized personnel.

SECTION 9 - INVOICES AND PAYMENTS

9.1 For payment purposes, the original invoices must carry the following: approval stamp, authorized signature, G/L# and date. All employee travel expenditures are to be processed with a purchase order including other ~~mileage~~ reimbursements. Purchases over $5,000 must also include a purchase order. Each department will be entering their own Invoices and Purchase Orders into Tyler-Hub (Munis). Batches will be released and/or approve by departments before Accounts Payable can review and process payments to vendors. When processing invoices/requisitions/purchase orders; do not entered at the last minute as this will delay payment to vendors. Invoices/Purchase Orders and other documentation related to payments must be upload to Munis in Invoice/Purchase Order Entry. Do forward vendors to the Finance office to look for payment or pickup checks. Departments are responsible for corresponding with vendors when there are discrepancies in past due invoices and payment status. ~~are to be sent directly to Accounts Payable after the department head has coded and signed them (signature stamps are not permitted).~~

9.2 Invoices for vendors not loaded in Munis (Tyler) must be accompanied by the City of Dover new vendor form and a completed IRS form W-9, both of which are in public documents. Department and Vendors must use the Munis Self Service - Vendor Self Service Portal to upload W-9 or other vendor related documents. One-time vendor payment must be less than $600.00 for the calendar year and does not require a W9.

9.3 The purchaser/authorized personnel must note that it is the City's policy to take all discounts and therefore the payment documents must be submitted to Accounts Payable immediately.

In other cases, it is the City's policy to pay the invoices on time and, therefore, the payment documents must be submitted to Accounts Payable as soon as possible.

SECTION 10 – GREEN PROCUREMENT

10.1 The City of Dover is committed to using and purchasing energy efficient/environmentally preferable products in the most cost effective and environmentally responsible manner possible. Purchasing energy efficient products reduces energy costs without compromising quality. Purchases should be based on:

1. Consideration on the impact to the environment, economy, and human health and well-being.
2. Consideration of specification compliance, delivery time and price.
3. Preference given to environmentally preferable materials when they perform satisfactorily and can be obtained at a reasonable price.

10.2 The US Government in Executive Order 12873 defined environmentally preferable products as "products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose." This should include items that are energy efficient, conserve water, reduces toxins, conserves natural resources, has recycled content and minimizes waste.

10.3 The Procurement Manager shall establish a price preference of up to ten percent (10%) for recycled and other environmentally preferable products. This price preference must be established in advance of any bid and must be included in the bid specifications, cover letter or evaluation criteria. This percentage may be modified from time to time at the discretion of the Procurement Manager with the objective of maximizing the City's purchase of environmentally preferable products.

10.4 LIFE CYCLE COST ANALYSIS

The requesting department shall perform lifecycle costing analysis on equipment that has the potential to reduce operating, maintenance or energy costs over the useful life of the equipment. Based on said analysis, the contracting agency shall incorporate specifications in the contract for equipment that has the lowest total cost of ownership and operation over the useful life of the equipment. The use of lifecycle costing analysis may be waived by the department head, in writing, if the equipment is not appropriate for lifecycle costing analysis. Appendix E contains a sample form for life cycle cost analysis.

10.5 ENERGY EFFICIENT PRODUCTS

A) The City shall purchase Energy Star products, as designated by the federal Environmental Protection Agency, when such products are available. The department may include non-Energy Star rated equipment as an alternate in the bid documents to enable lifecycle costing analysis to be performed as part of the analysis of responsive bids. The department shall be required to award a contract that includes the procurement of Energy Star rated equipment unless they can demonstrate, in writing, to the satisfaction of the City Manager, that the interests of the city would be better served by procuring non-Energy Star rated equipment.

B) Prior to initiating a request for procurement of any product, the department shall review the specifications for such product to determine whether an Energy Star product is available. If an Energy Star product is available, the department is required to include in its bid specifications the requirement that the product be an Energy Star product unless it can be demonstrated, in writing, to the satisfaction of the department head, that a product with an Energy Star rating meets at least 1 of the following criteria:

1. The product is not available competitively,
2. The product is not available within a reasonable time frame, or
3. The product does not meet appropriate performance standards.

SECTION 11 – DEBARMENT OF VENDORS FOR CONSIDERATION OF AWARDS

11.1 Any vendor who fails to perform a contract or complete a project within the time established within the contract or invitation to bid may be subject for suspension or debarment. Once a problem with a vendor/contractor is discovered, the Department responsible for the contract will document the problem and all attempts at resolution. The vendor/contractor will be held in breach of contract. The responsible Department must submit a recommendation of debarment to the City Manager and the Procurement Manager. If enough cause is determined, the City Manager (with advice from the City Solicitor, if necessary) and/or the Procurement Manager will provide reasonable notice to the Vendor and allow a reasonable time for that vendor to be heard. The City Manager shall have the authority to debar a vendor/contractor for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years.

11.2 The causes for debarment include:

A) Conviction of or civil judgment for:
   i. Commission of a fraud or a criminal offense in connection with obtaining or attempting to obtain or performing a public or private contract or subcontract;

B) 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:

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

D) Violation of contract provisions, as set forth below, of a character which is regarded by the City Manger to be so serious as to justify debarment action:
   i. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
   ii. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one (1) or more contracts; if failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be a basis for debarment;

E) Any other cause the City Manager determines to be as serious and compelling as to affect responsibility as a City contractor, including debarment by another governmental entity for any cause listed in this article; and

F) For violation of the ethical standards set forth in Section 2 of this policy or Dover Code, Chapter 30.

11.3 The City Manager is authorized to suspend a person from consideration for award of contracts pending his decision if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall continue until the debarment decision has been made. The City Manager shall notify the person to be debarred in writing and set forth the basis for the action. A copy of the notification shall be sent to the Mayor and Council. The written notification shall be delivered to the

person to be suspended either in person or by certified mail. The decision shall state the basis for the action taken.

11.4 Before the award of any contracts utilizing federal funds, the user must exclude any vendors listed on the Federal Government's Excluded Parties Listing located at www.epls.gov.

SECTION 12 - COMMITTEES/COMMISSIONS

12.1 All City of Dover appointed Committees and Commissions are required to follow the City of Dover purchasing policy, unless otherwise directed by City Council.

12.2 The Committee Chair or designated City staff member is authorized to purchase materials.

12.3 A list of the names of the individuals authorized to make purchases along with each authorized individuals' signature are to be submitted to the Finance Department.

12.4 A proposed work plan or budget will be required prior to disbursement of funds.

12.5 The Central Services and Finance Departments will give each Committee Chairperson a purchasing orientation. A copy of the Purchasing Policy will be provided.

EFFECTIVE DATE

Adopted by City Council December 8, 2008

Amended by City Council February 28, 2011

APPENDIX A

Sec. 30-20. - Established.

High ethical standards among public officials and employees are essential to gain and maintain the confidence of the people, because such confidence is essential to the conduct of free government. Public officials and employees are agents of the people and hold office for the benefit of the public. They are bound to observe in their official acts the highest standards of morality and to discharge faithfully and impartially the duties of their offices, regardless of personal considerations, recognizing that the public interest must be their primary concern. Their conduct in both their official and private affairs should be above reproach. These standards of ethical conduct are adopted in order to secure this desired high level of public trust, ensure the impartiality of public officials and employees, and impose standards of accountability.

(a) *General responsibilities of officials and employees.*

(1) Officials and employees have the common obligation of serving the public. In performing their duties, they shall treat the public and each other with respect, concern, and responsiveness, recognizing that their common goal of exceptional public service can only be achieved by working together. Disputes that arise among public servants shall be resolved at the lowest possible level; keeping in mind that public money spent on resolving these disputes is money not spent on important public needs.

(2) Officials and employees shall treat their position as a public trust, with a fiduciary duty to use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.

(3) Officials and employees shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.

(4) Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.

(5) No official or employee may request or receive, and no person may offer any money, thing of value or promise thereof, other than any city pay received, that is conditioned upon or given in exchange for promised performance of an official act.

(b) *Appearance of violation.* Each city employee and official shall endeavor to pursue a course of conduct which will not raise suspicion among the public that he is engaging in acts which are in violation of his public trust and which will not reflect unfavorably upon the city and its government.

(c) *Private interest; gifts.* No city employee or official shall have any interest in any private enterprise, nor shall he incur any obligation of any nature which is in substantial conflict with the proper performance of his duties in the public interest. No city employee or official shall accept other employment, any compensation, gift, payment of expenses or any other thing of monetary value under circumstances in which such acceptance may result in any of the following:

(1) Impairment of independence of judgment in the exercise of official duties;

(2) An undertaking to give preferential treatment to any person;

(3) The making of a governmental decision outside official channels; or

(4) Any adverse effect on the confidence of the public in the integrity of the government of the city.

(d) *Interest in private enterprise.* No city employee or official shall acquire a financial interest in any private enterprise which he has reason to believe may be directly involved in decisions to be made by him in an official capacity on behalf of the city.

(e) *Prohibitions relating to conflicts of interest*. No councilman or other official or employee, whether paid or unpaid, shall engage in any business or transaction or shall have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of his official duties in the public interest or would tend to impair his independence of judgment or action in the performance of his official duties. Personal as distinguished from financial interest includes an interest arising from blood or marriage relationships or close business or political association provided, that upon request from any person with official responsibility with respect to the matter, any such person who has such a personal or private interest may nevertheless respond to questions concerning any such matter.

(1) *Restrictions on exercise of official authority.*

a. *Prohibited participation.* No city employee or official may participate on behalf of the city in the review or disposition of any matter pending before the city in which he has a personal or private interest, provided that, upon request from any person with official responsibility with respect to the matter, any such person who has such a personal or private interest may nevertheless respond to questions concerning any such matter. A personal or private interest in a matter is an interest which tends to impair a person's independence of judgment in the performance of his duties with respect to that matter.

b. *Impairment of judgment.* A person has an interest which tends to impair his independence of judgment in the performance of his duties with respect to any matter when:

i. Any action or inaction with respect to the matter would result in a financial benefit or detriment to accrue to the person or a close relative to a greater extent than such benefit or detriment would accrue to others who are members of the same class or group of persons; or

ii. The person or a close relative has a financial interest in a private enterprise which enterprise or interest would be affected by any action or inaction on a matter to a lesser or greater extent than like enterprises or other interests in the same enterprise.

c. *Statutory responsibility.* In any case where a person has a statutory responsibility with respect to action or inaction on any matter where he has a personal or private interest and there is no provision for the delegation of such responsibility to another person, the person may exercise responsibility with respect to such matter, provided that, promptly after becoming aware of such

conflict of interest, he files a written statement with the ethics commission, fully disclosing the personal or private interest and explaining why it is not possible to delegate responsibility for the matter to another person.

(2) *Restrictions on representing another's interest before the city.*

a. *Prohibited.* No city employee or official may represent or otherwise assist any private enterprise with respect to any matter before the city.

b. *Exception.* This subsection shall not preclude any city employee or official from appearing before the city or otherwise assisting any private enterprise with respect to any matter in the exercise of his official duties.

(3) *Restriction on contracting with the city.*

a. *Prohibited.* No city employee or official shall benefit from any contract with the city, nor solicit any contract, and shall not enter into any contract with the city (other than an employment contract).

b. *Ownership of enterprise.* No private enterprise in which a city employee or official has a legal or equitable ownership of more than ten percent (more than one percent in the case of a corporation the stock of which is regularly traded on an established securities market) shall enter into any contract with the city (other than an employment contract) unless such contract was made or let after public notice and competitive bidding.

(f) *Postemployment restrictions.* No person who has served as a city employee or official shall represent or otherwise assist any private enterprise on any matter involving the city, for a period of two years after termination of his employment or elected or appointed status with the city, if he gave an opinion, conducted an investigation or otherwise was directly and materially responsible for such matter in the course of his official duties as a city employee or official, nor shall any former city employee or official disclose confidential information gained by reason of his public position, nor shall he otherwise use such information for personal gain or benefit.

(g) *Unauthorized disclosure of confidential information.* No person shall disclose any information required to be maintained confidential by the ethics commission under section 30-3(b), 30-73 or 30-74.

(h) *Abuse of office.*

(1) *Political contributions.* No elected city official shall agree to sponsor legislation, or to influence in any manner the formulation or passage of legislation, in exchange for political contributions or promises thereof.

(2) *Substantial interest.* No elected city official shall vote for, or promote in any manner whatsoever, legislation affecting any subject matter in which he has a substantial interest. Any such interest shall be disclosed by said elected official prior to a vote on any such legislation, and said elected official shall vote "abstain" when called upon to vote.

(3) *Use of city property.* No city official or employee shall request or permit the use of city-owned vehicles, equipment, materials, or property for personal convenience

or profit, except when such services are available to the public generally or are provided for the use of such official or employee in the conduct of official business as a matter of municipal policy.

(4) *Personal gain.* No city official or employee shall utilize the influence of his office or position for personal pecuniary gain, or to avoid the legal consequences of his personal conduct.

(i) *Criminal sanctions.*

(1) *Penalties.* Any person who knowingly or willfully violates any provision of this section shall be guilty of a misdemeanor, punishable for each such violation by imprisonment of not more than one year and by a fine as provided for in Appendix F—Fees and Fines.

(2) *Time limitations.* A prosecution for a violation of this section shall be subject to the time limitations of 11 Del. C. § 205.

(j) *Contracts voidable by court action.* In addition to any other penalty provided by law, any contract entered into by any city agency in violation of this chapter shall be voidable by the city agency; provided that in determining whether any court action should be taken to void such a contract pursuant to this subsection, the city agency shall consider the interests of innocent third parties who may be damaged thereby. Any court action to void any transaction must be initiated within 30 days after the city agency involved has, or should have, knowledge of such violation.

(k) *Private gain.* No city employee or official shall use his public office to secure unwarranted privileges, private advancement or gain.

(l) *Confidential information; prohibited activity.* No city employee or official shall engage in any activity beyond the scope of his public position which might reasonably be expected to require or induce him to disclose confidential information acquired by him by reason of his public position.

(m) *Disclosure of information.* No city employee or official shall, beyond the scope of his public position, disclose confidential information gained by reason of his public position, nor shall he otherwise use such information for personal gain or benefit

(n) *Ex parte communications* . No official or employee shall encourage, make or accept any ex parte or other unilateral application or communication that excludes the interests of other parties in a matter under consideration when such application or communication is designed to influence official decision or conduct of the official or other officials, employees or agencies in order to obtain a more favored treatment or special consideration to advance the personal or private interests of himself or herself or others. The purpose of this provision is to guarantee that all interested parties to any matter shall have equal opportunity to express and represent their interests.

Any written ex parte communication received by an official or employee in matters where all interested parties should have equal opportunity for a hearing shall be made part of the record by the recipient.

Any oral ex parte communication received under such conditions should be written down in substance by the recipient and also made a part of the record.

A communication concerning only the status of a pending matter is not regarded as an ex parte communication.

(o) *Sexual favors.* No city employee or official, in the course of his public responsibilities, shall use the granting of sexual favors as a condition, either explicit or implicit, for an individual's favorable treatment by that person or a city agency.

ARTICLE III. - ETHICS COMMISSION

Sec. 30-71. - Established; composition; removal; terms of office; vacancies; chairperson; quorum; compensation; legal counsel.

(a) *Established; composition; removal.* The city ethics commission is hereby established to administer and implement this chapter. The ethics commission shall consist of five members appointed by the mayor and confirmed by the city council. No member of the commission shall hold any elected or appointed office under the government of the United States or the state, county, or city. Members of the ethics commission may be removed by the mayor, with the concurrence of the city council, for substantial neglect of duty, gross misconduct in office or a violation of this chapter.

(b) *Terms of office; vacancies.* A member of the ethics commission shall be appointed for a term of office of five years and until his successor has been appointed and has qualified. The members shall be appointed for staggered terms of office, and until their successors have been appointed. When a vacancy occurs in the membership of the ethics commission, it shall be filled by appointment for the unexpired portion of the term in the same manner as the original appointment.

(c) *Chairperson; quorum.* The ethics commission shall elect a chairperson from among its membership. Three members of the ethics commission shall constitute a quorum and, if a quorum is present, a vacancy on the ethics commission shall not impair the right of the remaining members to exercise all the powers of the ethics commission. Disciplinary hearings may be conducted and sanctions may be imposed only by the affirmative action of at least three members; otherwise, the ethics commission may delegate authority to the chairperson to act for the ethics commission between meetings.

(d) *Compensation.* Members of the ethics commission shall receive no compensation.

(e) *Legal counsel.* The city solicitor shall provide legal counsel to the ethics commission and shall be the legal representative of the ethics commission in connection with its duties hereunder, on a case-by-case basis, or determine that outside counsel is needed and obtain such outside counsel for a particular matter.

Sec. 30-72. - Powers and duties.

(a) The powers and duties of the ethics commission shall be:

(1) *Standards of ethical conduct.* To recommend to the mayor and council, from time to time, such rules of conduct for public employees and officials as it shall deem appropriate.

(2) *Advisory opinions.* To issue written advisory opinions, upon the request of any city employee or official, as to the applicability of this chapter to any particular factual situation.

(3) *Referrals to solicitor.* To refer to the city solicitor for investigation any alleged violation of this chapter and, after notice and hearing, to recommend such disciplinary action as it may deem appropriate to such appropriate official or agency as the ethics commission shall determine, or to take such other disciplinary action as authorized by section 30-73(o) or other provisions of the city Charter or this Code. The ethics commission may dismiss, without reference to the city solicitor, any complaint which the ethics commission determines is frivolous or fails to state a violation.

(4) *Report of crimes.* To report to the appropriate federal, state or city authorities any substantial evidence of a violation of any criminal law which may come to its attention in connection with any proceeding, whether advisory or disciplinary.

(5) *Records.* To maintain a file of its proceedings, waiver decisions and advisory opinions with a view toward achieving consistency of opinions and recommendations subject to the confidentiality requirements of sections 30-74 and 30-73(s).

(6) *Procedures.* To follow the procedural rules specified in section 30-73 and to establish such other procedural rules as shall be consistent with the rules prescribed therein.

(7) *Witnesses, evidence.* To subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require, by subpoena, the production of books, papers, records or other evidence needed for the performance of the ethics commission's duties or exercise of its powers.

(8) *Assistance to city personnel.* To provide assistance to any city employee, official or agency in administering the provisions of this chapter.

(9) *Provide information.* To prepare any necessary reports and studies to advance the purpose of this chapter, to provide any necessary materials explaining the duties of individuals covered by this chapter, and to supply instructions and public information materials to facilitate compliance with, and enforcement of, this chapter.

(10) *Request city agencies for assistance.* To request appropriate city agencies to provide such professional assistance as it may require in the discharge of its duties.

Sec. 30-73. - Rules of procedure; complaints; hearings; dispositions.

(a) Any person, either personally or on behalf of an organization or governmental body, may file a sworn complaint for the ethics commission with the city clerk. The complaint must be in writing, be signed, and show the address of the person who submitted it. The complaint must state that, to the best of the person's knowledge, information, and belief formed after reasonable reflection, the information in the complaint is true. The complaint must describe the facts that constitute the violation of the standards of ethical conduct in sufficient detail so

that the ethics commission and the person who is the subject of the complaint can reasonably be expected to understand the nature of any offense that is being alleged. The commission may request any additional information deemed necessary to screen the complaint or to render a decision. No complaints shall be accepted or considered which relate to actions that took place more than one year prior to the date of filing. The individual filing the sworn complaint has 60 days from the date that the issue is brought to his or her attention to file a complaint.

(b) After the sworn complaint has been filed, none of the parties or their representatives may communicate on an ex parte basis with any commission members pertaining to the complaint. All communications pertaining to the complaint shall be submitted to the city clerk.

(c) Within seven days of receiving a sworn complaint the city clerk shall send copies of the complaint to each member of the ethics commission, the city solicitor, and the official or officials against whom such complaint has been filed. Hereinafter, the complaining party shall be referred to as the "complainant" and the official against whom a complaint has been lodged shall be referred to as the "respondent."

(d) The commission recognizes that distribution to the public of a sworn complaint prior to screening by the commission as required below could harm the reputation of an innocent person and is contrary to the public interest; therefore, the public release of the complaint is prohibited until the screening process has been completed. The commission shall consult in confidence to screen the complaint within 14 days of receiving the complaint. The commission may immediately dismiss a complaint if:

(1) It has no jurisdiction; or

(2) The alleged violation, if true, would not constitute a violation of the standards of ethical conduct; or

(3) The alleged violation is a minor or de minimis violation; or

(4) The complaint is, on its face, frivolous, groundless, or brought for purposes of harassment; or

(5) The matter has become moot because the person who is the subject of the complaint is no longer an officer, official or employee; or

(6) The respondent had obtained an advisory opinion under section 30-74(c) permitting the conduct; or

(7) The appointing authority of the respondent has already taken action as a result of finding a violation and the commission believes the action was appropriate.

(e) In issues regarding standards of ethical conduct violations, the enforcement process is intended to be corrective rather than remedial unless the violation is a repeated offense. In the event the ethics commission determines a standards of ethical conduct violation has occurred, and it is minor in nature, with the concurrence of the complainant and the subject of the sworn complaint, the commission may dispense with the hearing process and conduct a more informal mediation process in lieu of a hearing.

(f) If the sworn complaint is not dismissed or otherwise resolved pursuant to subsection 30-73(d), the city clerk shall promptly contact the members of the ethics commission, the city solicitor, the complainant, and the respondent in order to ascertain a date and time when a

hearing can be convened on such complaint. As soon as a date and time have been agreed upon for a hearing before the ethics commission, the city clerk shall send written notice of such scheduling and a copy of the rules of procedure to the complainant and to the respondent. No copies of the complaint shall be provided to any other parties before the respondent receives the complaint. The city solicitor shall be the prosecuting attorney in all disciplinary proceedings before the ethics commission. In any such investigation or proceeding, a defendant shall be given an opportunity to be heard after notice, to be advised and assisted by legal counsel, to produce witnesses and offer evidence, and to cross examine witnesses. A transcript of any such proceeding shall be made and retained, subject to the confidentiality requirements of this chapter.

(g) The commission may dismiss a complaint if the complainant does not appear at the hearing and if, in the opinion of the commission, it would be unfair to the respondent not to have the opportunity to examine the complainant.

(h) As promptly as possible after the close of the hearing, the commission shall deliberate to determine if the allegations have been proven by clear and convincing evidence. Only ethics commission members who have been present for the hearing may participate in the deliberations, and any findings and recommendations must be adopted by a majority of the commission. The commission may consider, when making findings and recommendations, the severity of the offense, the presence or absence of any intention to conceal, deceive, or mislead, whether the violation was deliberate, negligent or inadvertent, and whether the incident was isolated or part of a pattern.

(i) Within seven days of the conclusion of deliberations, the commission shall issue an order setting forth its findings and recommendations. In the alternative, the commission where it deems it appropriate, may issue an advisory opinion in lieu of making findings and recommendations.

(j) If the respondent is an employee, the commission may, if it determines corrective action is necessary, notify the city manager or the council president and recommend that action be taken, including discipline.

(k) If the respondent is a city official, the commission may propose actions to the city council that are appropriate to the finding as specified in section 30-73(o).

(l) The commission shall send a written copy of its findings and recommendations to the respondent and the complainant.

(m) *Proceeding relating to member.* A member of the ethics commission shall be ineligible to participate, as a member of the ethics commission, in any ethics commission proceeding relating to his conduct. A member of the ethics commission who has been found by the ethics commission to have violated this chapter shall be ineligible to serve again as a member of the ethics commission.

(n) *Self-disqualification.* A member of the ethics commission may disqualify himself from participating in any investigation of the conduct of any person upon submission, in writing and under oath, of an affidavit or disqualification stating that he cannot render an impartial and unbiased decision in the case in which he seeks to disqualify himself.

(o) *Actions by ethics commission.* With respect to any violation with which a person has been charged and which the ethics commission has determined as proved, the ethics commission may take any one or more of the following actions:

(1) *Reprimand.* Issue a written reprimand or censure of that person's conduct.

(2) *Discipline.* With respect to a city employee, remove, suspend, demote or take other appropriate disciplinary action with respect to that person, without regard to any limits imposed by this chapter, but within the limits of the constitution, the laws of the state, the Charter of the city, and ordinances and existing collective bargaining agreements.

(3) *Recommend removal.* With respect to an appointed official, recommend that appropriate action be taken to remove the official from the appointed position.

(4) *Recommend fine.* With respect to an elected city official, recommend that such official be fined in an amount recommended by the ethics commission.

(p) *Rights of person charged.* In any proceeding before the ethics commission, upon the request of any person charged with a violation of this chapter, such person shall be permitted to inspect, copy or photograph books, papers, documents, photographs or other tangible objects which will be used as evidence against that person in a disciplinary hearing and which are material to the preparation of his defense.

(q) *Exculpatory information.* In any proceeding before the ethics commission, if the city solicitor or ethics commission at any time receives any exculpatory information concerning an alleged violation against any person, it shall forthwith make such information available to such person.

(r) *Subpoenas.* Any person charged with a violation of this chapter may apply to the ethics commission for the issuance of subpoenas for the appearance of witnesses and for the production of documents on his behalf. The application shall be granted upon a concise showing by such person that the proposed testimony or evidence is relevant (or is reasonably calculated to lead to the discovery of relevant evidence) and is not otherwise available. The application shall be denied if not made at a reasonable time or if the testimony or evidence would be merely cumulative.

(s) *Confidentiality of proceedings.*

(1) *City employee.* All proceedings before the ethics commission relating to a violation of this chapter by a city employee shall be maintained confidential by the ethics commission, unless:

a. Public disclosure is requested, in writing, by the person charged; or

b. The ethics commission determines after a hearing that a violation has occurred.

(2) *City official.* All proceedings before the ethics commission relating to a violation of this chapter by a city official, appointed or elected, shall be maintained confidential by the ethics commission, unless:

a. Public disclosure is requested, in writing, by the person charged; or

b. The ethics commission determines after a hearing that a violation has occurred.

(t) *Appeals; public inspection.* Notwithstanding the confidentiality requirements of subsections (s)(1) and (2) of this section, the ethics commission shall make available for public inspection the record of all proceedings relating to any decision of the ethics commission which is appealed to the superior court and the ethics commission shall report to appropriate federal, state and/or city authorities any substantial evidence of a violation of any criminal law which comes to its attention in connection with any proceeding under this chapter.

(u) *Confidentiality procedures.* The chairperson of the ethics commission shall, with the approval of the ethics commission, establish such procedures as, in the chairperson's judgment, may be necessary to prevent the disclosure of any record of any proceedings or other information received by the ethics commission, except as permitted by this chapter.

Sec. 30-74. - Waivers of restrictions and advisory opinions.

(a) *Authority of ethics commission.* Notwithstanding the provisions of section 30-20, upon the written request of any city agency or of any individual who is or was a city employee or city official, the ethics commission may grant a waiver to the specific prohibitions contained therein if the ethics commission determines that the literal application of such prohibition in a particular case is not necessary to achieve the public purposes of this chapter or would result in an undue hardship on any employee or official. Any such waiver may be granted only by written decision of the ethics commission. Any person who acts in good faith reliance upon any such waiver decision shall not be subject to discipline or other sanction hereunder with respect to the matters covered by the waiver decision, provided there was a full disclosure to the ethics commission of all material facts necessary for the waiver decision.

(b) *Waiver information confidential; exceptions.* Any application for a waiver, any proceeding and any decision with respect thereto shall be maintained confidential by the ethics commission, provided that:

(1) *Applicant's request.* Public disclosure shall be made by the ethics commission upon the written request of the applicant;

(2) *Violations.* The ethics commission may make such public disclosure as it determines is required in connection with the prosecution of any violation of this chapter;

(3) *Evidence of crime*. The ethics commission shall report to appropriate federal, state and/or city authorities substantial evidence of any criminal violation which may come to its attention; and

(4) *Public record.* In the event that a waiver is granted, the waiver decision and the record of all proceedings relating thereto shall be open to public inspection.

(c) *Advisory opinion authorized.* Upon the written request of any city employee or official, the ethics commission may issue an advisory opinion as to the applicability of this chapter to any particular fact or situation. Any person who acts in good faith reliance upon any such advisory opinion shall not be subject to discipline or other sanction hereunder with respect to the matters covered by the advisory opinion, provided there was a full disclosure to the ethics commission of all material facts necessary for the advisory opinion.

(d) *Advisory opinion confidential; exceptions.* Any application for an advisory opinion, any proceeding and any decision with respect thereto shall be maintained confidential by the ethics commission, provided that:

(1) *Applicant's request.* Public disclosure shall be made by the ethics commission upon the written request of the applicant;

(2) *Violations.* The ethics commission may make such public disclosure as it determines is required in connection with the prosecution of any violation of this article; and

(3) *Evidence of crime*. The ethics commission shall report to appropriate federal, state and/or city authorities substantial evidence of any criminal violation which may come to its attention.

Sec. 30-75. - Judicial review.

In the event that the ethics commission finds that any person has violated any provision of this chapter, said person shall have a right of appeal to the superior court of any such finding, and of any sanctions imposed with respect thereto, by filing a notice of appeal with the superior court within 30 days of the final action by the ethics commission in a particular case. The appeal shall be on the record without a trial de novo. If the court determines that the record is insufficient for its review, it shall remand the case to the ethics commission for further proceedings on the record. The court's review, in the absence of actual fraud, shall be limited to a determination of whether the ethics commission's decision was supported by substantial evidence on the record. The burden of proof in any such appeal shall be on the appellant.

(Ord. No. 2017-14 , 12-11-2017)

APPENDIX B ~~A~~
INVITATION TO BID AND REQUEST FOR PROPOSAL PROCEDURES

Departments will use the chart below to determine the appropriate sealed bid method. Advance coordination with the Purchaser is required.

Competitive Sealed Bids VS Competitive Sealed Proposals

Activity Description	Competitive Sealed Bids	Competitive Sealed Proposals
Specifications	Specific as to performance/design	End results oriented by Scope of Work. Proposer must develop and provide solution.
Opening	Public – all data available to other bidders and the public	Public – only names of proposers are read; no pricing or other data made available
Evaluation	Based strictly on Technical Specifications – *NO* material changes allowed	Based on *quality* with multi-member Criteria Evaluation Committee assigning weighted values to various parts of each proposal
Discussion	None	Individual discussions with each proposer to determine understanding of proposal requirements
Changes	None	Each proposer can re-submit a Best and Final Offer that might change the solution and the price
Award	Lowest Responsive and Responsible Bidder	*Best Value* Proposal – not necessarily the *lowest price*

I. COMPETITIVE SEALED BIDS

A. Preparing Specifications

- The department requesting the purchases through Central Services will prepare the complete specifications, with the assistance of the Purchaser (if requested) and submit them to Central Services.
- All specifications shall be written in such a manner as to describe the requirements to be met, without having the effect of exclusively requiring a proprietary supply, service, or construction item, or procurement from a sole source, unless no other manner of description will suffice.
- Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.
- It is the general policy of the City to procure standard commercial products whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided, to the extent practicable.

B. If only one responsive bid is received in response to an invitation to bid or request for proposal, an award may be made to the single bidder if the Department Director having operational authority over the funds to be expended determines that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for resolicitiation. Otherwise the bid/proposal may be rejected and new bids or offers may be solicited or the proposed procurement may be cancelled.

C. Bids are to be delivered to the Central Services, 710 William Street, Dover, Delaware 19904. They will be opened in the presence of the Purchaser or her/his designee. All bids shall become public record and shall be available for public inspection after it has been determined that there is no proprietary information within the bids. Copies of bids will not be provided to competing vendors. The documents related to the bids and award of the contracts shall be retained for a minimum of three years for unaccepted bids and five years for accepted bids by the Central Service Department. After this period, they may be destroyed by the Central Services Department following the internal guidelines in place by the City Clerk's Office and the State Bureau of Archives Retention Schedule.

D. For materials, supplies, equipment, and construction work, the department requesting the quotations will supply Central Services with clear bid specifications. Such specifications should rigorously meet the need of the City of Dover, but not be so all inclusive as to effectively eliminate all but one vendor.

F. The City reserves the right to pre-qualify bidders. This pre-qualification does not prohibit the City from determining, in its sole opinion, the most suitable bid for the product or projects.

G. For purchases $25,000 and greater, vendor references may be checked. This will be done to verify the bidder's ability to perform the contract requirements, the quality of work and the ability to meet obligations in case of non-fulfillment of the contract.

H. The bid notice prepared by Central Services shall provide the specifications or details of how vendors can obtain specifications. The bid notice shall also specify the closing date, time and place for receiving the bids, opening of the bids, where potential bidders may obtain contract documents, and the fee for each contract. A fee in an amount capable of recovering the cost of preparation of the specifications may be charged when specifications are picked up by the vendor.

I. A bid bond or certified check in the amount equivalent to ten percent (10%) of the bid amount should be required with each bid for construction work, materials, supplies, or equipment over $25,000. The requirement for a bid bond may be waived by the Central Services Purchaser and Department Head when the bid is for items being purchased for stock. A bid bond may be required by the requesting department regardless of the dollar value of the bid. Acceptable bid security shall be limited to a bid bond in a form satisfactory to the City underwritten by a company licensed to issue bid bonds in this state or a bank certified check. If a bid does not comply with security requirements, it shall be rejected as being non-responsive. The required bid bond shall be in substantially the format as identified in APPENDIX C~~B~~.

The check or bid bond of the bidder to whom the contract is awarded will be forfeited to the City of Dover as liquidated damages in case the contract and performance bond are not executed within fifteen days after receiving official notification of award.

J. A performance bond shall be required from the successful bidder for a construction contract. Such a bond shall be for the full amount of the contract. If the contractor fails to provide such a bond or a binder within fifteen days of the award of the contract, the award of the contract or the contract shall be void. The required performance bond shall be in substantially the format as identified in APPENDIX D~~C~~.

Other insurance or bonds as required by State and/or Federal laws shall be furnished by the contractor. The amounts and the types of the bonds and insurance required shall be disclosed in the bid specifications. The bond shall be released by the City of Dover upon successful completion of the contract and upon a detailed inspection of the contracted work.

K. The City of Dover shall have the right to reject any or all bids if deemed to be in the best interest of the City.

L. All bids submitted to the City of Dover shall be such as to comply with the applicable local, state and federal requirements.

II. COMPETITIVE SEALED PROPOSALS

Evaluation of proposals must adhere to the following guidelines:

a. Determine what proposals are acceptable and unacceptable
b. A determination that a proposal is unacceptable shall be in writing, state the basis for the determination and be retained in the procurement file
c. The offeror shall not be afforded an opportunity to modify its offer

Negotiation with individual offerors

a. The department can negotiate with individual offerors after their proposals are opened.
b. Formalized procedures should be established and consistently applied to each offer
c. Disclosure of one offerors price to another is prohibited
d. The department must send a written request for best and final offers setting forth the date, time, and place for submission of best and final offers
e. The department must inform the offerors that if they do not submit a notice of withdrawal or a best and final offer, their immediate previous offer will be construed as their best and final

Final Award

a. The contract shall be awarded within 90 days of the closing date
b. The department shall award a contract to the offeror whose proposal is determined in writing to be most advantageous to the City
c. The determination shall explain the basis of the award
d. Central Services shall notify each unsuccessful offeror in writing of the award

APPENDIX C~~B~~

SAMPLE BID BOND

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS, that we, _____

as Principal, hereinafter called the Principal and *[Bonding Company]* (hereinafter called the "Surety"), a corporation duly authorized to transact business in _____ and having its principal office at _____, are held and firmly bound unto the City of Dover, for the sum of _____Dollars ($_____), for payment of which sum well and truly to be made, the said Principal and said Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for *[Identify project by number and brief description]*.

NOW, THEREFORE, if the City of Dover shall accept the bid of the Principal and the Principal shall enter into a Contract with the City of Dover in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the City of Dover the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the City of Dover may in good faith contract with another party to perform work covered by said bid or an appropriate liquidated amount as specified in the Invitation for Bids then this obligation shall be null and void, otherwise to remain in full force and effect

Signed and sealed this _____ day of _____, 20 _____.

Witness of Attest: _____(Witness)

By: _____(Principal)

By: _____(Surety)

IMPORTANT: Surety Companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

APPENDIX D~~C~~

SAMPLE PERFORMANCE BOND

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS, that *[Here insert the full name and address or legal title of the contractor]* as Principal, hereinafter called Contractor, and *[Bonding Company]* (hereinafter called the "Surety"), a corporation duly authorized to transact business in _____ and having its principal office at _____, are held and firmly bound unto the City of Dover, as Obligee, in the amount of *[Here insert a sum equal to the total amount of the contract price]* Dollars ($_), for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated _____, 20 _____, entered into a contract with the City of Dover for *[Describe project and insert project number]* in accordance with drawings and specifications prepared by *[Here insert full name and address or legal title of Architect]* which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Contractor shall promptly and faithfully perform said Contract then this obligation shall be null and void; otherwise it shall remain in full force and effect. The Surety hereby waives notice of any alteration or extension of time made by the City of Dover and its obligation is not affected by any such alteration or extension provided the same is within the scope of the contract. Whenever the Contractor shall be, and is declared by the City of Dover to be in default under the Contract, the City of Dover having performed the City of Dover's obligations thereunder, the Surety may promptly remedy the default or shall promptly:

1) Complete the Contract in accordance with its terms and conditions; or
2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the City of Dover and the Surety jointly of the lowest responsive, responsible bidder, arrange for a contract between such bidder and the City of Dover, and make available as work progresses sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by the City of

Dover to the Contractor under the Contract and any amendments thereto, less the amount properly paid by the City of Dover to the Contractor. No right of action shall accrue on this bond to or for the use of any person or corporation other than the City of Dover or successors of the City of Dover.

Signed and sealed this _____ day of _____, 20 _____.

Witness of Attest: _____(Witness)

By:_____(Principal)

By: __ _____(Surety)

IMPORTANT: Surety Companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

APPENDIX E~~D~~

GLOSSARY

"Addendum" An addition or supplement to a document, for example, items or information added to a procurement document.

"Award" The presentation, after careful consideration, of a purchase agreement or contract to the selected bidder or offeror.

“Best and Final Offer” In competitive negotiation, the final proposal submitted after negotiations are completed that contains the vendor’s most favorable terms for price and services or products to be delivered.

“Best Value” An assessment of the return that can be achieved based on the total Life Cycle Cost of the item; can include an assessment of the functionality of the item; can use cost/benefit analysis to define the best combinations of quality, services, time, and cost considerations over the useful life of the acquired item.

"Bid" An offer submitted by a prospective vendor in response to an invitation to bid issued by a purchasing authority; becomes a contract upon acceptance by the buyer.

"Bid Bond" An insurance agreement, accompanied by a monetary commitment, by which a third party (the Surety) accepts liability and guarantees that the bidder will not withdraw the bid, the bidder will furnish bonds as required, and if the contract is awarded to the bonded (insured) bidder, the bidder will accept the contract as bid, or else the surety will pay a specific amount.

"Bid Protest" A formal complaint made against the methods employed or decisions made by a procurement authority in the process leading to the award of a contract.

"Brand Name or Equal Specification" A specification using one or more manufacturers’ brand names, with identifying model numbers, to describe the standards of quality, performance or other characteristics needed to meet the requirements of a solicitation, and which invites bids for equivalent products from any manufacturer.

"Brand Name Specification" A specification using one or more manufacturers’ brand names, with identifying model numbers, to describe the acceptable items; all other items will be excluded.

"Buyer" 1: A purchaser can refer to the buying agency or government. 2: A worker in a procurement office who is appointed to purchase a specific range of goods or services on a routine basis, usually under the supervision of a section head or purchasing manager.

"Capital Asset" An asset with a life of more than one year, either tangible or intangible, with a value above a certain minimum amount set by the jurisdiction. For the City, this amount is $4,999.

"Certain Professional Services" means those services within the scope of the practice of architecture, professional engineering, professional land surveying, landscape architecture and geology.

"Change Order" A written alteration to a contract or purchase order, signed by the purchasing authority.

"Clarification" A communication with an offeror for the sole purpose of eliminating minor irregularities or apparent clerical mistakes in a proposal; may be initiated by either offeror or purchaser; does not give the offeror an opportunity to revise or modify its proposal, except to the extent the correction of apparent clerical mistakes results in revision.

"Combination Specification" Has the features of both design specifications and performance specifications.\

"Commodity" Any moveable, tangible article of trade or commerce.

"Commodity Code" A system of words or numbers designed to identify and list commodities or services by classes or sub-classes. For the City, the commodity code is the first three numbers of stock code and the sub-commodity is the second three numbers of the stock code. A list can be printed from HTE.

"Competitive Sealed Bidding" Preferred method of acquiring goods, services, and construction for public use in which the award is made to the lowest responsive and responsible bidder, based solely on the response to the criteria set forth in the invitation to bid; does not include discussions or negotiations with bidders. Also called formal bid and formal advertised bid.

"Contract" 1: A legally binding promise, enforceable by law. 2: An agreement between parties, with binding legal and moral force, usually exchanging goods or services for money or other consideration. 3: All types of agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, or construction.

"Contract Modification" Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provision of any contract, accomplished by mutual action of parties to the contract.

"Depreciation" 1: A decrease in value because of use, time, deterioration, inadequacy or obsolescence. 2: An accounting recognition of loss of value of a fixed asset.

"Designee" A duly authorized representative.
"Design Specification" A specification establishing the characteristics an item must possess, including enough detail to show how it is to be manufactured.

"Economic Order Quantity (EOQ)" A quantity providing the lowest acquisition, inventory costs at a minimum cost per unit.

"Emergency Purchase" A purchase made to alleviate a situation in which there is a threat to health, welfare, or safety under certain conditions defined as an emergency by the jurisdiction, that does not allow time for normal, competitive purchasing procedures.

"F.O.B. Destination" Title changes hands from vendor to purchaser at the destination of the shipment; Vendor owns goods in transit and files any claims. Payment of freight charges is determined by contract terms.

"Functional Specification" A specification setting forth the results required from the supply or service.

"Indemnify" 1: To protect against hurt or loss, to exempt from incurred penalties or liabilities. 2: To compensate or pay for damage.

"Informal Bid" A competitive bid or price quotation for supplies or services that is conveyed by letter, telephone, or other means and does not require a sealed bid, public opening, or public reading of the bids. See request for quotation.

"Invitation to Bid" A formal request to prospective vendors soliciting price quotations or bids; contains, or incorporates by reference, the specifications or scope of work and all contractual terms and conditions.

"May" Denotes the permissive in a contract clause or specification.

"Non-responsible Bid" A bid from a vendor who does not have the capability to perform fully the contract requirements, or who does not have the integrity and reliability to assure performance.

"Non-responsive Bid" A bid that does not conform to the mandatory or essential requirements of the invitation to bid.

"Open Market Purchase" A purchase, usually of a limited monetary amount, from any available source.

"Performance Bond" A bond executed after award by a successful bidder, to protect the buyer from loss due to the bidder's inability to complete the contract as agreed; Secures the fulfillment of all contract requirements.

"Performance Specification" A specification setting forth the capabilities and performance characteristics the article must satisfy.

"Pre-bid Conference" A meeting held with prospective bidders prior to solicitation of bids, to clarify any ambiguities, answer bidder questions, and ensure all bidders have a common basis of understanding regarding the supplies or services required.

“Pre-proposal Conference” Same as a pre-bid conference, but for competitive proposals.

“Prequalification of Bidders” The screening of potential vendors in which such factors as financial capability, reputation, and management are considered to develop a list of qualified vendors.

"Procurement" 1: Purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction; includes all functions that pertain to the acquisition, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration. 2: The combined functions of purchasing, inventory control, traffic and transportation, receiving, receiving inspection, storekeeping, and salvage and disposal operations.

"Professional Services” Services rendered by members of a recognized profession or possessing a special skill. Such services are generally acquired to obtain information, advice, training, or direct assistance (i.e. architectural & engineering services).

"Public Works and Utilities Contract" means any contract for the construction, reconstruction, alteration or repair of any public building, road, street, highway, utility system or other public improvement, the cost of which will be paid with public funds.

"Reasonable Cost" A cost that by its nature or amount does not exceed what would normally be incurred by an ordinarily prudent person in the conduct of competitive business.

"Request for Proposal" All documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals.

“Request for Quotation” An informal solicitation or request for information, where oral or written quotes are obtained from vendors, without formal advertising or receipt of sealed bids. Used only where statutes do not require formal sealed bids, such as small or emergency purchases, but price competition is desired.

"Responsible Bidder or Offeror" A bidder or offeror who has the capability in all respects to perform fully the contract requirements, and the experience, integrity, perseverance, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

"Responsive Bidder or Offeror" A bidder or offeror who has submitted a bid which conforms in all material respects to the requirements stated in the Invitation to Bid.

“Restrictive Specification” Specification that unnecessarily limits competition by eliminating items capable of satisfactorily meeting actual needs, often by requiring features which exceed the minimum acceptable characteristics required for satisfactory performance.

"Shall" Denotes an imperative in contract clauses or specifications.

“Small Purchase” Any procurement not exceeding a given upper monetary limit, as established by law or regulation.

"Single Source Procurement" A contract for the purchase of goods and services entered after soliciting and negotiating only with one source, usually because of the technology required or uniqueness of the service provided.

"Sole Source Procurement" Only one vendor/manufacturer possesses the unique and singularly available capability to meet the requirement of the solicitation, such as technical qualifications, ability to deliver at a time, or services from a public utility.

"Specification" A description of the physical or functional characteristics, or the nature of a supply, service, or construction item; the requirements to be satisfied by a product, material, or process indicating, if appropriate, the procedures to determine whether the requirements are satisfied. See Brand Name Specification, Brand Name or Equal Specification, Combination Specification, Design Specification, Performance Specification, Restrictive Specification, Standard Specification.

"Standard Specification" A specification that is to be used for all or most purchases of an item; describes all required physical and functional characteristics of a good, service or construction.

"Statement of Work" A detailed description of the work which the purchasing jurisdiction wants the contractor to perform.

"Term Contract" A contract in which a source of supply is established for a specified period for specified services or supplies; Usually characterized by an estimated or definite minimum quantity, with the possibility of additional requirements beyond the minimum, all at a predetermined unit price.

Source of Definitions: Dictionary of Purchasing Terms published by the National Institute of Governmental Purchasing.

APPENDIX F~~E~~

CITY OF DOVER QUOTATION WORKSHEET

(To be used for purchases between $5,000.00 and $24,999.99)

Department: _____ Division: _____

Department Contact (Name & number): _____

Item/Service: _____

Estimated Dollar Value: _____

Account Code: _____ Project Code: _____

Vendors (At least three vendors must be used. Include at least one minority or women owned vendor, if available. Use of more than one minority or women owned vendor is encouraged):

1. Go to http://gss.omb.delaware.gov/omwbe/index.shtml.
2. Select **Minority and/or Women Business Enterprise Directory**
3. Search by keyword i.e. Electrician, Construction, Furniture
   List keyword(s) used: _____
4. Each company displayed will have its assigned NAICS code listed.
   List NAICS Code(s) used: _____
5. Refine search by NAICS Code if necessary.
6. Were Vendors Found: YES, NO If so, how many: _____

Vendor 1: _____Minority ☐

Vendor 2: _____Minority ☐

Vendor 3: _____Minority ☐

If more than three vendors are used, list them on the reverse of this form.

Date sent out for quotes: _____

Date due back: _____

Date of award: _____

Vendor receiving the award: _____

Was the 3% minority vendor preference applied in the evaluation? YES NO
Was this a minority vendor? YES NO

Total dollar amount of purchase or estimated total contract value: $_____

Purchase Order produced: YES, NO PO Number: _____

PAGE NUMBERS WILL BE ADJUSTED UPON APPROVAL OF THE REVISED POLICY

Additional vendors used for this purchase

Vendor 4: _____Minority ☐

Vendor 5: _____Minority ☐

Vendor 6: _____Minority ☐

Vendor 7: _____Minority ☐

Vendor 8: _____Minority ☐

Vendor 9: _____Minority ☐

Vendor 10: _____Minority ☐

Send completed form to the Procurement Office in Central Services.

City of Dover
City Manager's Office
PO Box 475
Dover DE 19903-0475
Phone: (302)736-7005
E-Mail: dmitchell @dover.de.us

MEMORANDUM

To: CCW – Legislative, Finance & Administrative Committee

From: Donna Mitchell, City Manager

Copy: Mayor, City Council & City Clerk

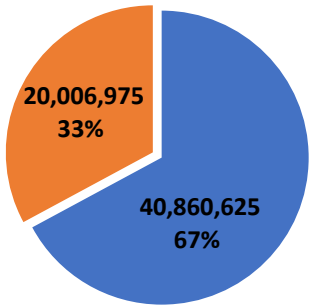
Date: October 9, 2018

Subject: Review of Pension Benefits – Cost of Living Adjustment (COLA)

Please find attached discussion materials regarding the matter of Pension COLA's as was tabled during the Committee Meeting on July 24, 2018.

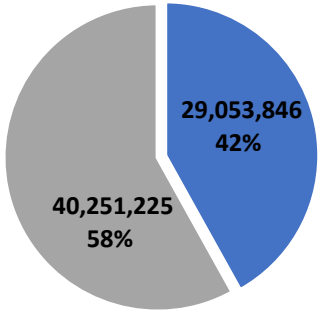
Thank you.

FY17 General Pension Funding Liability



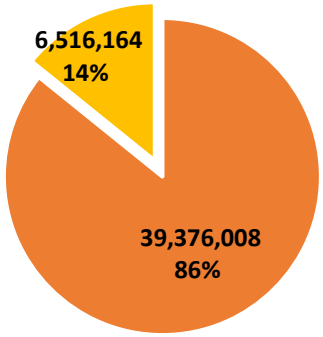
Actuarial Value of Assets Unfunded Liability

FY17 Other Post Employment Benefits Funding Liability



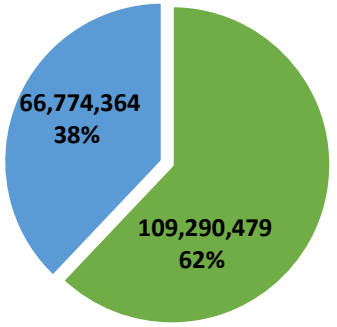
Actuarial Value of Assets Unfunded Liability

FY17 Police Pension Funding Liability (City & State Portion)

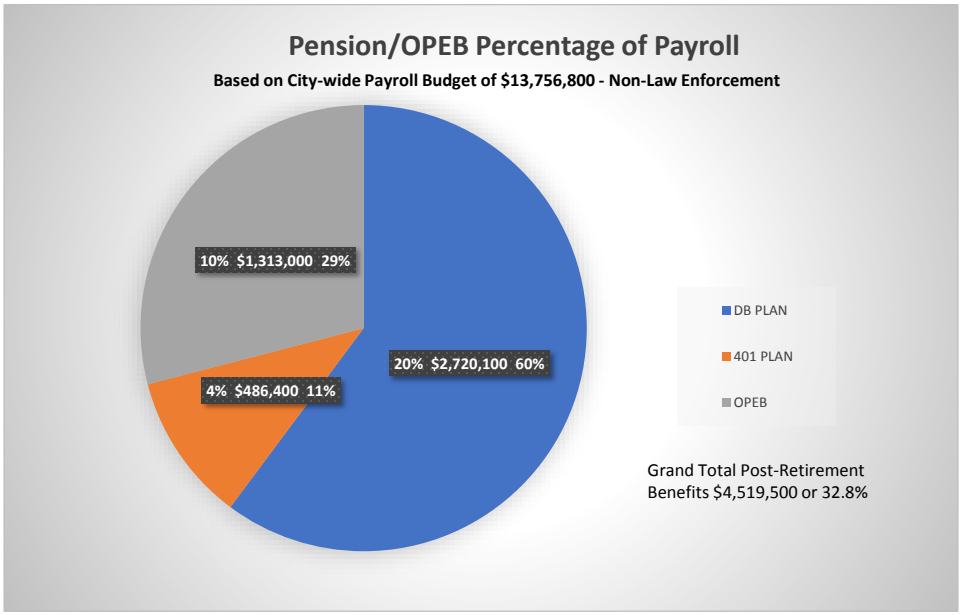


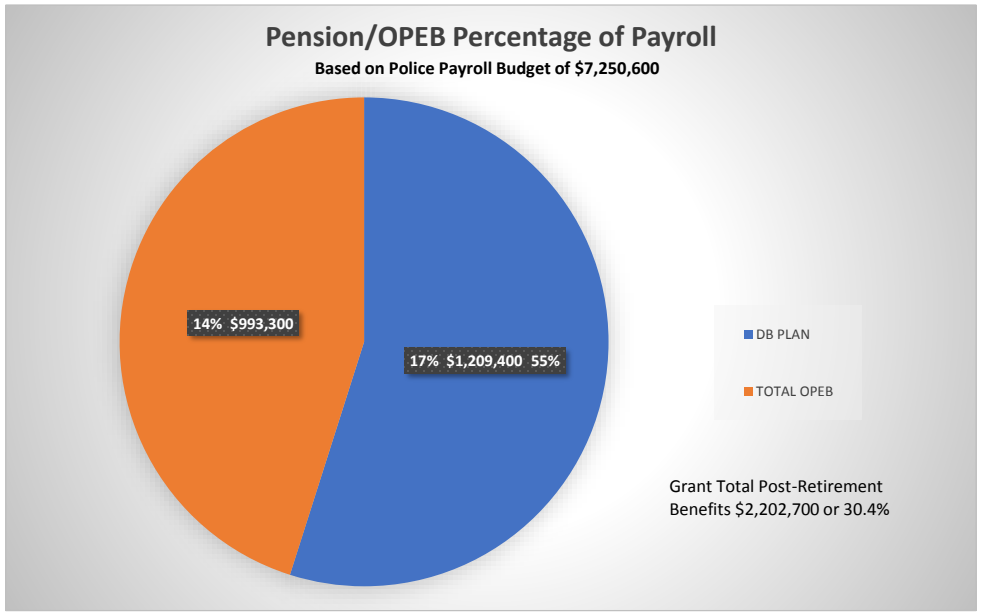
Actuarial Value of Assets Unfunded Liability

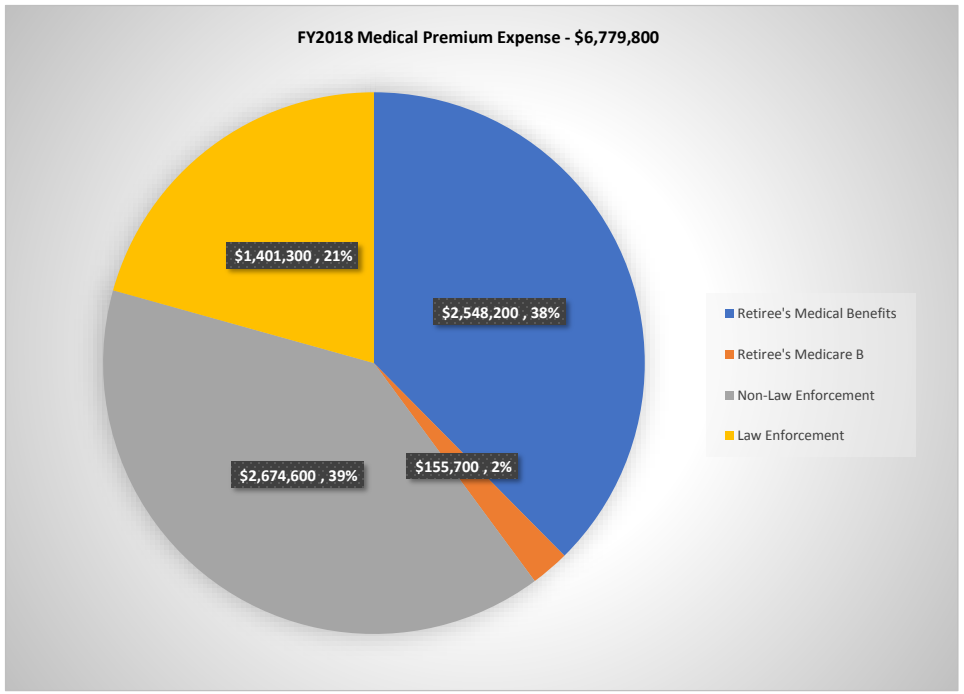
FY17 Total Police & General Pension + OPEB Funding Liability



Total Actuarial Value of Assets Total Unfunded Liability







Total Cost of Current & Post-Retirement Pension & Medical Benefits $13,502,000 or 17.8% of Bugdet

Total Operating Budget without Interfund Transfers & Power Supply $75,841,600

Pre-2009 Retiree's Average $1,500 per year for Medicare B reimbursements; Past three year premiums FY18 $134/month; FY17 $110/month; FY16 $104.90/month.

Government Finance Officers Association

ADVISORY

Responsible Management and Design Practices for Defined Benefit Pension Plans

Advisory:

GFOA Advisories identify specific policies and procedures necessary to minimize a governments exposure to potential loss in connection with its financial management activities. It is not to be interpreted as GFOA sanctioning the underlying activity that gives rise to the exposure.

BACKGROUND:

State and local governmental defined benefit pension plans are the cornerstone of public employee retirement and require systematic, sound management of their benefits structure, their funding, and their investments. However, certain inappropriate practices can jeopardize the sound management of these plans, undermine their funded positions and ultimately impose burdens on future taxpayers and stakeholders. (For more information, see the GFOA's Best Practice on Developing a Policy for Retirement Plan Design Options.)

RECOMMENDATION:

GFOA recommends that under no circumstance should state and local government plan sponsors engage in pension contribution holidays or make insufficient contributions. When employers skip an actuarially required contribution or make a smaller payment than required, they defer that cost to the future and jeopardize the long-term funding of the plan. When governing bodies arbitrarily reduce contributions to a plan, the resulting systemic underfunding ensures future financial shortfalls and places the burden for that shortfall on future taxpayers. These types of funding decisions compound future funding problems and are, in many instances, a leading cause of funding shortfalls.[1]

GFOA further recommends that state and local government plan sponsors use great caution if engaging in the following practices:

1. **Spiking of final pensionable compensation**. A pension formula that allows extraordinary income to be included in the base salary on which pensions are based may result in inequitable distribution of benefits and hidden costs, and potentially cause a public perception of impropriety.[2]
2. **Sustainable full-retirement ages**. With increased life expectancy, plan sponsors must reevaluate their normal retirement ages and the availability of early, unreduced retirement options, and make appropriate adjustments to ensure the sustainability of the plan. For example, the normal eligibility age for federal Social Security benefits has already been increased from 65 to 67 and may increase even more to reflect increased longevity. Public

employers have begun to adjust their plans retirement ages upward to reflect known demographic changes. More plan sponsors need to assess the public policy and cost management reasons for making retirement age changes.

3. **Retroactive benefits increases**. When pension plan sponsors provide retroactive benefits to active employees, the result is an immediate increase in the existing liabilities of the plan. These benefits, related to past service, have not been funded by prior employer or employee contributions. The presumption that a short-term, marketdriven asset surplus makes such benefit enhancements affordable is almost always a critical error that can result in significant underfunding.
4. **Deferred Retirement Option Plans (DROPs)**. Many retirement plans implemented DROPs under the assumption that they were cost-neutral. However, experience has shown that costs associated with DROP plans have been consistently higher than anticipated in many jurisdictions. These unexpected costs can be attributed to factors such as poor plan design and unrealistic investment return crediting rates. (See Deferred Retirement Option Plans, a GFOA Advisory recommending extreme caution in considering DROP plans.)
5. **Ad hoc cost-of-living allowances (COLA) for existing retirees**. An ad hoc COLA creates an immediate unfunded liability. COLA increases, like retroactive increases for active employees, should not be paid for with temporary surpluses or extraordinary earnings. Additionally, gainsharing and similar arrangements that allocate short-term returns above the assumed rate to retiree benefits will ultimately impair the plans funding.
6. **Realistic investment assumptions**. The assumed investment rate of return should be the rate that is realistically expected to be achieved over the long term. This rate should be evaluated regularly to ensure it remains realistic. Unrealistically high investment return assumptions are likely to result in a chronically declining funded ratio and higher contributions in the future. Caution should be exercised to ensure the investment return assumption reflects the reasonably expected returns of the plans asset allocation over a reasonable period of time. (For additional information, see the GFOA's Public Employee Retirement System Investments Best Practice.)
7. **Non-contributory plans**. Plan designs that include employee contributions ensure that participants appreciate the value of their benefit and bear a proportionate share of the cost of any benefit enhancements.
8. **Prior service credits**. Some pension plans allow employees to purchase service credits. When such credits are calculated at full actuarial cost and reviewed regularly, this practice may be viable, but caution is necessary in the pricing of such options.

Notes:

[1] Pension funding is premised on time value of money concepts, including the compounding of investment earnings over defined periods of time that begin on the date of the actuarial valuation. Actuarially required contributions are calculated with the expectation that they will be made in the same year that benefits are earned (i.e., in the current year of service). For the plan to meet its obligations without increasing employer contributions, it has to earn compound investment returns over the remaining working lives of employees. For example, if a contribution of $1million is not made in a plan with remaining average service lives of 20 years and an assumed earnings rate of 8 percent, then $4.66 million will not be available to pay benefits in 20 years. Future taxpayers will be burdened by this extraordinary and avoidable cost.

[2] Spiking is defined as an unusual increase in income during the employees final years of service that increases the employees pension benefits. Examples include increases in income through unused vacation, sick leave, and overtime.

ACTION FORM

PROCEEDING: CCW - Legislative, Finance & Administration Committee
DEPARTMENT OF ORIGIN: City Manager **DATE SUBMITTED**: 7/16/18
PREPARED BY: Donna Mitchell, City Manager
SUBJECT: Review of Pension Benefits – Cost of Living Adjustments
APPROVALS: City Council
EXPENDITURE REQUIRED: $88,000 plus annually, estimated based on 2017 data **AMOUNT BUDGETED**: $0 **FUNDING SOURCE (Dept./Page in CIP & Budget)**: None identified
RECOMMENDED ACTION: Staff recommends future ad hoc cost of living increases for the participants of the Defined Benefit Plan be taken under consideration in years where the Pension Plan is fully funded.

Included in the Fiscal Year 2018 Budget, City Council approved an ad hoc 2% cost of living adjustment for the General Pension Plan retirees'. The annual cost was $87,982 as calculated by the City's actuary. At that time a cost of living adjustment had not been granted since 2006. During the 2019 Budget Hearing, the question was raised by a retiree regarding a reoccurring agenda item for a cost of living adjustment for General Pension Plan Retirees'.

The General Pension Plan - Defined Benefit (DB) Plan does not have a provision for cost of living adjustments, therefore in the past ad hoc COLA's have been considered and approved when presented to City Council. The DB Plan was closed to new hires in 2009 as was the Medicare B reimbursement. These actions were a result of new accounting standards that require the City to recognize any unfunded liabilities for future commitments.

The City currently has 210 non-police DB Plan retirees/spouses of which 110 also receive Medicare B reimbursements. The Defined Contribution Plan "DC Plan" currently has 27 retired employees. The City currently has 95 non-police DB Plan active employees and 141 DC Plan active employees.

It is staff's recommendation to discontinue considering and approving ad hoc COLA's until such time the Defined Benefit Plan is fully funded. The reasons of which are as follows –

- Equitable treatment among all employee classes in accordance with plan documents under City control. DC Plan retirees are not eligible for COLA's.
- Continuation of ad hoc increases adds to the unfunded liability and the annual required contribution thus reducing funds available for ongoing operations.
- City Council has made good faith efforts to reduce the unfunded liability by appropriating favorable personnel variances from prior year's budgets to accelerate the funding level.
- The accounting standards have changed whereas, ad hoc increases must be recognized as if they are annual increases. This would have a significant impact to the unfunded liability.

While we can understand the retiree's rational, retirement plans have been moving away from this provision. The State of Delaware Pension Plans with COLA provisions are now closed to new hires.