

Chapter 3.12 CONTRACTS AND PURCHASING

PART 1 - GENERAL

3.12.010 Purpose.

This chapter defines the contract procurement policies, procedures and requirements for public works projects, general services, professional services, equipment, materials supplies and other tangible items (“goods”), and any other similar contracts involving the expenditure of public funds in exchange for items or services of value to the City. This chapter establishes the contracting authority of the City Council, City Manager, and the purchasing agent. The purpose of this chapter is: to foster and encourage the use of best management practices in contracting; to ensure quality and efficiency in the procurement of goods and services at the lowest cost commensurate with the quality needed; to provide for a fair and equitable procurement process utilizing standardized solicitation procedures; and to maintain honesty and integrity in the procurement process.

3.12.020 Scope.

- A. Contracts for public works projects, general services, and professional services, and contracts or purchase orders for goods, shall be solicited and awarded pursuant to the procedures contained in this chapter.
- B. The solicitation or award policies, procedures and requirements contained in this chapter shall not apply to the following:
 - 1. Subdivision agreements, improvement agreements, development agreements and other land use contracts entered between the City and property owners or developers pursuant to other parts of this municipal code;
 - 2. Franchises and franchise agreements;
 - 3. Contracts between the City and other public entities and public utilities for the City’s provision of services to the other entities and utilities;
 - 4. Transactions involving the acquisition, assignment and disposal of interests in real property; and
 - 5. Agreements to provide funds pursuant to the human services resource allocation process or community development block grant program.

3.12.030 Council contract policies adopted by resolution.

City Council may from time to time adopt by resolution policies related to contract solicitation and award procedures and requirements. The policies may include, without limitation, policies addressing local boycotts, protest procedures, and price preferences for use of recycled or sustainable goods and for local businesses. The policies shall not conflict with, but may be in addition to, any provisions of this chapter. City Council policies shall be considered and implemented in the solicitation and award of contracts made under this chapter.

3.12.040 Centralized purchasing.

Centralized purchasing shall provide for efficient procedures for the purchase of goods and services; to acquire goods and services at the lowest possible cost commensurate with quality needed; to exercise positive financial control over purchases as provided by the City Charter; and to ensure the quality of such purchases. Centralized purchasing shall operate as a component of the finance department.

3.12.050 Purchasing agent.

The position of purchasing agent, who may also be known as the “purchasing officer,” shall be designated by the Finance Director. The duties of the purchasing agent may be combined with those of any other office or position. The purchasing agent shall have the following duties and authority:

- A. Purchase or contract for goods and services required by any using department in accordance with purchasing procedures prescribed by this chapter, such administrative regulations as the purchasing agent shall adopt for the internal management and operation of the purchasing function and such other rules and regulations as prescribed by the City Council or the City Manager;
- B. Negotiate and recommend execution of contracts for the purchase of goods and services;
- C. Act to procure for the City the needed quality in goods and services at the least expense to the City;
- D. Discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases;
- E. Prepare and recommend to the City Council rules governing the purchase of goods and services for the City;
- F. Prepare and recommend revisions and amendments to the purchasing rules;
- G. Keep informed of current developments in the field of purchasing, prices, market conditions and new products;
- H. Prescribe and maintain such forms as are reasonably necessary for the operation of this chapter and other rules and regulations;
- I. Supervise the receipt and inspection of goods purchased to ensure conformance with specifications;
- J. Supervise the transfer of surplus or unused goods between departments as needed and the sale of all goods that cannot be used by any department or have become unsuitable for city use;

- K. Maintain an approved vendors list, vendors' catalogue file and records needed for the efficient operation of the purchasing function.
- L. Encourage the standardization of similar goods used by the various city departments.
- M. Determine the regulations and procedures in this chapter are followed and implemented.

3.12.060 Exemptions from centralized purchasing.

The City Manager may authorize, in writing, any department to purchase specified goods independently of the centralized purchasing division of the finance department; however, such purchases shall be made in conformity with the procedures established by this chapter.

3.12.070 Purchase orders.

Purchases of goods and every contract for the performance of services and public works projects shall be made only by purchase orders, unless otherwise authorized by the City Manager or any rules and regulations adopted by the City Council pursuant to this chapter. Except as otherwise provided in this chapter, no contract shall be deemed to be an authorization to proceed with work unless accompanied by a properly authorized and executed purchase order nor shall any vendor or contracting party be authorized to perform any service, perform any public works project, or provide any goods without first receiving a properly authorized and executed purchase order issued by the purchasing agent or other authorized person upon verification of sufficient unencumbered appropriation balance. The Finance Director shall have the authority to set a minimum dollar threshold for which a purchase order is required; however, said threshold shall not exceed the minimum bid limit as provided in this chapter.

3.12.080 Open (standing) purchase orders.

Notwithstanding any other provisions herein, the purchasing agent may issue open (standing) purchase orders for goods or services as needed to support ongoing city operations and support various city departmental functions. The open (standing) purchase order must establish a maximum dollar amount of expenditure for the contract or budget line item.

3.12.090 Contract Types.

- A. Public works contract: A public works contract includes a contract paid for in whole or in part from public funds for the construction, alteration, repair, improvement, reconstruction or demolition of any public building, facility, street, sidewalk, park or open space improvement, or other public improvement.
- B. Contract for goods: A contract for goods includes a contract or purchase order for the purchase of supplies, materials or equipment, including, without limitation, office supplies, janitorial supplies, furnishings, equipment, machinery, tools, vehicles, computer hardware and software and other personal property, materials or goods. A contract for goods may

include labor incidental to the purchase of goods, including any set-up, installation and testing services.

- C. General services contract: A general services contract includes a contract providing for work, labor or services not requiring specialized experience, knowledge or training with or without the furnishing of goods incidental to the provision of services, including, without limitation, contracts for:
 - 1. Maintenance of public buildings, streets, parks and other public improvements;
 - 2. Repair, modification and maintenance of equipment or other goods;
 - 3. Licensing, installation and maintenance of or relating to information technology property, goods and services, including, without limitation, computer hardware and software, and including the provision of data storage services, unless the information technology services would require specialized certification, expertise, knowledge, or training;
 - 4. Janitorial services, uniform cleaning, tree trimming, street sweeping, power washing and landscape maintenance; and
 - 5. Leasing or licensing of goods and other personal property for use by the city.
- D. Professional services contract: A professional services contract includes a contract for services involving the exercise of professional discretion and independent judgment based on specialized certification, knowledge, expertise or training. These services may include, without limitation, those provided by accountants, actuaries, auditors, appraisers, architects, attorneys, engineers, financial advisors, information technology experts, instructors, and environmental and land use planners.
- E. Emergency contract: A contract for goods and services necessary to protect the public health, safety, and welfare in the event of an emergency. An emergency means and includes an urgent unforeseen event threatening life, property, or the general public health, safety and welfare, included, without limitation, an emergency declared by the Federal Emergency Management Agency. The City Manager is authorized to determine an emergency exists without further declaration by City Council.

PART 2 – PURCHASING OF GOODS AND SERVICES

3.12.100 Bidding.

Purchases of goods and services shall be by bid procedures. Bidding may be dispensed with under conditions stated in this chapter.

3.12.110 Local vendor preference.

- A. Local Preference Option. The purchasing agent may, when seeking bids for goods, notify bidders the bids will be evaluated in a manner that gives preference to local vendors as

provided for in this section. The local preference option shall not be exercised unless notice of such option was given in the solicitation.

- B. **Preference to Local Vendors.** A solicitation for goods may include notice that, if the bid of a local vendor, is no more than five percent higher than the otherwise lowest bid, the purchasing agent may accept the local vendor's bid on finding it is in the best interest of the city. A local vendor is defined as a vendor that pays sales taxes from a Cathedral City address so that one percent of the net sales price will be remitted by the state of California to the City.
- C. **Preference to Coachella Valley Vendors.** The solicitation may also include notice that, if the bid of a Coachella Valley vendor is no more than three percent higher than the otherwise lowest bid and a local vendor's bid has not been accepted under paragraph B, the purchasing agent may accept that Coachella Valley vendor's bid on a finding it is in the best interests of the city. A Coachella Valley vendor is defined as a vendor that has a valid physical business address, excluding post office boxes, located within one of the nine incorporated cities of the Coachella Valley or an unincorporated area of Riverside County within the boundaries of the Coachella Valley Association of Governments. Furthermore, the business has operated or performed business on a day-to-day basis for at least six months prior to the bid opening date, and holds a valid business license by a jurisdiction located in the Coachella Valley.

3.12.120 Formal (sealed) bid procedure.

Except as otherwise provided in this chapter, purchases of goods and services of an estimated value greater than seventy-five thousand dollars (\$75,000) shall be by formal sealed written competitive bids. Awards for such expenditures shall be made by the City Council to the lowest responsive and responsible bidder pursuant to the formal bid procedure prescribed in this section. The determination of "lowest responsive and responsible bidder" shall be at the discretion of the City Council pursuant to findings and recommendations presented by the purchasing agent at the time of award of contract, and should account for the local vendor preference.

- A. *Budget verification.* Prior to bid solicitation, the purchasing agent shall confirm the requested purchase is identified in the currently adopted biennial budget. For items not identified in the currently adopted biennial budget, the requesting department shall be required to receive City Council approval prior to bid selection.
- B. *Bid specifications.* Bid specifications shall be prepared and include the criteria that must be met to be considered the lowest responsive and responsible bidder.
- C. *Notice inviting bids.* Notices inviting formal bids shall be published at least ten days prior to the date of opening of the bids. Notices shall be published at least once in a newspaper of general circulation in the city. In addition, the purchasing agent shall also solicit formal sealed bids from responsible suppliers whose names are on the approved vendors list, or who have made written request their names be added thereto. The purchasing agent shall advertise the pending formal purchases by posting a notice on the public bulletin board at the city offices. Notice inviting formal bids shall include a general description of the article

or service desired, state where bid documents and specifications may be secured, and the time and place for opening bids.

- D. *Bond requirements.* The City Council shall have authority to require a faithful performance bond or other bonds before entering into a contract for goods or services. If bonds are required, the form and amount thereof shall be designated in the notice inviting bids.
- E. *Formal bid opening procedure.* Sealed bids shall be submitted to the purchasing agent and be identified as “bids” on the envelope. The purchasing agent, or designee, shall publicly open all bids at the time and place stated in the public notices. All bids received shall be available for public inspection at the time and place of opening, and thereafter, in the City Clerk’s office during regular business hours. Bids must be received prior to the bid opening to be considered.
- F. *Rejection of formal bids.* In its discretion, the City may reject any and all bids presented and cause re-advertising for bids pursuant to the procedure prescribed in this chapter. However, when all bids exceed the authorized budgeted amount, the City Manager may authorize rejection of all bids and authorize rebidding based upon the original specifications or as they may be modified, in accordance with procedures prescribed in this chapter.

3.12.130 Tie formal bids.

If two or more formal bids received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay of re-advertising for bids, the City Council may choose whichever of the following options it deems to serve the best interest of the City:

- A. Select one bid, giving preference to a business located within Cathedral City; or
- B. Reject all bids and re-solicit for bids; or
- C. Reject all bids and authorize negotiation of an agreement between the City and one of the equivalent bidders.

3.12.140 No formal bids.

When no formal bids or no responsive bids are received, the purchasing officer is authorized to negotiate for written proposals, and a recommendation shall be presented to the City Manager and award, if any, shall be made in accordance with applicable provisions prescribed in this chapter.

3.12.150 Open market or informal bid procedure.

- A. Purchases of goods and services of an estimated value in the amount of seventy-five thousand dollars (\$75,000) (or less may be made by the purchasing agent in the open market and without observing the formal competitive bid procedures prescribed in this chapter.

Such purchases shall be based on at least three competitive quotations, whenever practical, to the lowest responsive and responsible bidder.

- B. The purchasing agent shall solicit informal bids by written requests to prospective vendors, or by telephone, or by public notice posted on a public bulletin board at the City offices.
- C. The purchasing agent shall keep a written record of all open market purchases and informal bids for a period of one year after placing the order. This record, while so kept, shall be open to public inspection.

3.12.160 Exceptions to competitive bidding requirement.

Notwithstanding any provision of this chapter to the contrary, the formal and informal bidding procedures and requirements of this part may be dispensed with in any of the following instances:

- A. When the commodity can be obtained from only one vendor;
- B. The City Manager may authorize the purchase of goods and services where an emergency is deemed to exist and it is determined the public health, safety or welfare would be threatened if the normal procedure were followed. Emergency purchases of seventy-five thousand dollars (\$75,000) or more shall be submitted to the City Council for ratification at the next regular council meeting after the purchase is authorized;
- C. Unless otherwise provided by state or federal law, the city council may authorize the execution of contracts for general services, professional and consultant services without observing the bidding requirements provided in this chapter.
- D. Unless otherwise provided by state or federal law and provided there exists an unencumbered appropriation in the fund account against which the expense is to be charged, the city manager may enter into a contract for goods, general services or professional and consulting services without observing the bidding procedure in this chapter where the amount of the contract or purchase does not exceed the amount of seventy-five thousand dollars (\$75,000).
- E. Any agreement involving acquisition of goods and services entered into with another governmental entity, or through any advantageous governmental contract approved by the City Council, or to the purchase of election supplies; or to purchases from a vendor or manufacturer which, through the city's bidding procedure, or through the competitive bidding procedures of another governmental entity in the state of California, has established a price at which such a vendor or manufacturer is willing to sell to the City. To avail the city of the benefit of the rate established by other entities' bidding procedures, that other entity's bidding procedure must have received more than one responsive bid, and the bid award must have occurred within one year prior to the City's issuance of a purchase order.

- F. Secondhand, previously-owned or used merchandise may be purchased without competitive bidding under procedures established by the City Manager, which assure a variety of sources are considered, when feasible. For any proposed purchase, the cost of which will be exceeding seventy-five thousand dollars (\$75,000), approval of the utilization of such process by the City Council shall be required in advance.

3.12.170 Regulations regarding selection of contract services.

The City Council shall by resolution prescribe any additional procedures, rules and regulations governing the solicitation, selection and award of proposals or bids for the furnishing of personal services or professional or consulting services or for other contractual services. Such procedures, rules and regulations shall have the dual purpose of obtaining both the highest quality and most cost-effective contractual services. Local preference may be given in accordance with this chapter, as allowed for by state and federal law.

PART 3 – FEDERAL REQUIREMENTS

3.12.180 Regulations for the procurement of property or services stemming from federal aid.

- A. This section shall apply to the awarding of sub-grants and contracts by the City stemming from federal grants to the City. This section shall have the same application on the awarding of sub-grants and contracts by the City stemming from state, county or other non-federal government entity grants originating as federal grants.
- B. Procurement Standards.
 - 1. The City shall maintain a contract administration system which ensures contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders.
 - 2. The City shall maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer or agent of the City shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
 - a. The employee, officer or agent;
 - b. Any member of his or her immediate family;
 - c. His or her partner; or
 - d. An organization which employs, or is about to employ, any of the above, has a financial or other interest in or a tangible personal benefit from a firm considered for award.
 - 3. The City's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. Such a conflict will not arise where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. The City's standards of

conduct provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the City.

4. The City shall not enter into a contract with a non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government or Indian tribe, unless the non-Federal entity maintains written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest mean due to relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
5. The City shall avoid acquisition of unnecessary or duplicative items. Consideration will be given to consolidating or breaking out procurements to obtain a more economic purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
6. The City shall consider entering into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
7. The City shall consider using Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
8. The City shall consider using value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure its essential function is provided at the overall lower cost.
9. The City shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources.
10. The City shall maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection and the basis for the contract price.
11. The City shall use time and material type contracts only:
 - a. After a determination is made that no other contract is suitable; and
 - b. If the contract includes a ceiling price the contractor exceeds at their own risk.
12. The City alone shall be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes and claims. These standards do not relieve the City of any contractual responsibilities under its contracts.

C. Competition.

1. The City will conduct procurement transactions in a manner providing full and open competition. To ensure objective contractor performance and eliminate unfair competitive advantage, contractors developing or drafting specifications, requirements,

statements of work, or invitations for bids or requests for proposals shall be excluded from competing for such procurements.

2. The City shall conduct procurements in a manner prohibiting the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
3. The City shall have written procedures for procurement transactions. These procedures will ensure that all solicitations:
 - a. Incorporate a clear and accurate description of the technical requirements for the material, product or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equal description may be used to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and
 - b. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
4. The City shall ensure prequalified lists of persons, firms or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. The City shall not preclude potential bidders from qualifying during the solicitation period.

D. Methods of Procurement to be Followed. The City shall use one of the following methods of procurement:

1. Procurement by Micro-Purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold as set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and adjusted periodically for inflation. As of the date of this ordinance, the micro-purchase threshold is \$3,500.
2. Procurement by Small Purchase Procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies or other property that do not cost more than the simplified acquisition threshold as set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908 and periodically adjusted for inflation. If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources. As of the date of this ordinance, the simplified acquisition threshold is \$150,000. For purchases exceeding seventy-five thousand dollars (\$75,000), City Council approval is required.

3. Procurement by Sealed Bids (Formal Advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.
 - a. For sealed bidding to be feasible, the following conditions should be present:
 - (1) A complete, adequate, and realistic specification or purchase description is available;
 - (2) Two or more responsible bidders are willing and able to compete effectively for the business; and
 - (3) The procurement lends itself to a firm-fixed-price contract and the selection of the successful bidder can be made principally based on price.
 - b. If sealed bids are used, the following requirements apply:
 - (1) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;
 - (2) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services for the bidder to properly respond;
 - (3) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
 - (4) A firm-fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
 - (5) If there is a sound documented reason, any or all bids may be rejected.
4. Procurement by Competitive Proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:
 - a. Requests for proposals shall be publicized and identify all evaluation factors including relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
 - b. Proposals will be solicited from an adequate number of qualified sources;
 - c. The City shall conduct technical evaluations of the proposal received and for selecting awardees;
 - d. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
 - e. The City may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is

selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

5. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances applies:
 - a. The item is available only from a single source;
 - b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - c. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in a written request from the City; or
 - d. After solicitation of multiple sources, competition is determined inadequate.
6. Contracting with Small and Minority Businesses, Women's Business Enterprises and Labor Surplus Area Firms.
 - a. The City shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises and labor surplus area firms are used when possible.
 - b. Affirmative steps include:
 - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (2) Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
 - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
 - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises;
 - (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in subsections 6.b.(1) through (6) of this section.
7. Contracts Cost and Price.
 - a. The City shall perform a cost or price analysis in every procurement action exceeding the simplified acquisition threshold including contract modifications. The method and degree of analysis will be dependent on the facts surrounding each procurement situation. As a starting point, the City shall make independent estimates before receiving bids or proposals.

- b. Costs or prices based on estimated costs for contracts under the Federal award will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the City under Subpart E – Cost Principles of Title 2, Subtitle A, Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).
- c. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

8. Federal Awarding Agency or Pass-Through Entity Review.

- a. The City shall make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for purchase.
- b. The City shall make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposal or invitations for bids, or independent cost estimates when:
 - (1) The City's procurement procedures or operation fails to comply with the procurement standards of Title 2, Subtitle A, Part 200, Subsection 200.324;
 - (2) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
 - (3) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product;
 - (4) The proposed contract is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
 - (5) A proposed modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.
- c. The City may be exempted from the pre-procurement review in subsection 8.b. above if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards set forth in Title 2, Subtitle A, Part 200, or the City self-certifies compliance with such standards if self-certification is permitted by the Federal awarding agency or pass-through entity.

9. Bonding Requirements. For public projects, the City shall require bid guarantees, performance bonds, and payment bonds consistent with Title 2, Part 200, Section 200.325 of the Code of Federal Regulations.

10. Contract Provisions. The City's contracts shall contain the provisions in Appendix II to Title 2, Subtitle A, Part 200 – Contract Provisions for non-Federal Entity Contracts Under Federal Awards, as applicable.

PART 4 – PUBLIC WORKS CONTRACTS

3.12.190 Public works contracts.

The following procedures shall govern the award of contracts for public works:

- A. *Public works contracts of \$250,000 or less.* Public works contracts, of two hundred fifty thousand dollars (\$250,000) or less may be let to contract by informal bidding procedures as set forth in part 2 of this chapter.
- B. *Public works contracts more than \$ 250,000.* The bidding of public works contracts involving an expenditure of more than two hundred fifty thousand dollars (\$250,000) shall comply with the formal bid procedures as set forth in part 2 of this chapter. Prior to bid solicitations, the project plans and specifications for public works projects in this category shall be approved by City Council.
- C. *Award of contract.* The award of a contract for a public works project involving the expenditure of more than two hundred fifty thousand dollars (\$250,000) shall be made by the City Council to the lowest responsive and responsible bidder. The award of a contract for a public works project involving the expenditure of two hundred fifty thousand dollars (\$250,000) or less may be made by the City Manager to the lowest responsive and responsible bidder.
- D. Public projects of seventy-five thousand dollars (\$75,000) or less may be performed by the employees of the City by force account, by negotiated contract or by purchase order.

PART 5 – DESIGN-BUILD CONTRACT PROCUREMENT

3.12.200 Design-build contract procurement procedures.

- A. *Purpose and intent.* The purpose of this section is to provide definitions and guidelines for the award, use and evaluation of design-build contracts. The City may elect to utilize the design-build procurement procedures in this part in lieu of any other applicable procedures in this chapter.
- B. *Definitions.* All defined terms in this section appear in italics. For the purposes of this section, the following definitions apply:
 - 1. *Design-build* means a public works contract procurement method in which both the design and construction of a project are procured from a single entity. Design-build also includes projects where in addition to design and construction, other functions may be added including, but not limited to, construction management, inspection, soils/materials testing financing, operating and/or maintenance.
 - 2. *Design-build entity* means a partnership, corporation, or other legal entity able to provide appropriately licensed contracting, architectural and engineering services as needed.

3. *Design-build entity member* includes any person who provides licensed contracting, architectural, or engineering services on behalf of the design-build entity.
- C. *Design-build procurement.* For purposes of this section only, prior to procuring a design-build public works contract, the City shall prepare a request for a proposal, bid information and performance specifications setting forth the scope of the project that may include, but is not limited to, size, type and desired design character of the project and site, and performance specifications. The performance specifications shall describe the quality of construction materials, assemblies and other information deemed necessary to adequately describe the City's needs. The performance specifications shall be prepared by a design professional designated by the City.
 - D. *Notice of availability.* The notice of availability shall set a date for the opening of proposals and distinctly state the nature and scope of the project to be constructed. At least ten days before the date of opening the proposals, the notice of availability shall be posted on the City's website and in at least one public place in the city that has been designated for the posting of public notices.
 - E. Any architectural firm, engineering firm, specialty consultant or individual retained by the City to assist in the development of criteria or preparation of the request for proposals shall not be eligible to participate in the competition with any design-build entity, nor take part in the ranking of proposals during the selection committee process.
 - F. *Selection committee.* The City Manager shall appoint a selection committee to review and to rank the proposals of the design-build entities. The selection committee shall use the evaluation criteria set forth in subsection (G) or (H) of this section and in the request for proposal. The selection committee shall be comprised of one representative from the finance department, three employees from the department responsible for the project, and one representative from a department other than finance or the responsible department.
 - G. *Selection method for design-build projects with an estimated value up to \$1,000,000.* A design-build competition based on performance, specifications and criteria set forth by the City in the request for proposals.
 1. Criteria used may include, but not be limited to:
 - a. An evaluation of overall quality, capability, resource availability and financial stability of the firm.
 - b. An evaluation of references provided with respect to responsiveness, quality of work, timeliness and overall performance.
 - c. An evaluation of the firm and/or project manager's ability and experience in providing the service offered, including: experience with local government, scope of services covered, length of time involved, level of client satisfaction, cost/benefits relationship and relative success.
 - d. An evaluation of the experience, training and qualifications of the personnel the firm will be committing for assignments on the proposed project.
 - e. Consideration of items such as proposed design approach, initial and/or life-cycle costs, project features, financing, quality, capacity, schedule, and operational and functional performance of the facility. However, any criteria and methods used to

evaluate proposals shall be limited to those contained in the request for design-build proposals.

- f. The extent to which the firm's proposal meets the technical criteria and methodology requested.
 - g. Analysis of the cost relative to the firm's ability to meet the specifications and criteria set forth in this subsection and in the request for proposal.
 - h. Whether the cost as provided in the bid is guaranteed firm, evidenced in writing and signature by an authorized representative of the firm.
2. Depending on the number of proposals received by the City, the selection committee may develop a "short-list" of the top ranked design-build proposals.
 3. Depending on the number of proposals and/or complexity of the project, the selection committee may require the "short-listed" design-build entities to complete an interview/presentation to the selection committee to establish a final ranking.
 4. The selection committee will then begin negotiations with the top ranked design-build entity. The negotiations may include but are not limited to project cost, scope, and schedule. If negotiations are not successful, negotiations will cease with the top ranked design-build entity, and negotiations may begin with the second ranked design-build entity.
 5. Award shall be made by the City Council to the design-build entity whose proposal is judged as one that best serves the interests of the City by meeting the criteria set forth in this subsection and in meeting the requirements established in the request for proposal.
- H. *Selection method for design-build projects with an estimated value over \$1,000,000.* The selection committee may choose to establish a competitive prequalification process that specifies the manner and means used to submit a statement of qualifications as well as recommends the manner a shortlist will be established, and an award made.
1. Statements of qualifications evaluation criteria may include, but are not limited to, submission of the following documents:
 - a. That the design-build entity is a licensed contractor, and holds an architect and engineering license or subcontracts that license.
 - b. That the design-build entity members have completed projects of similar size, scope, building type, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the project.
 - c. A proposed project management plan establishing that the design-build entity has the experience, competence, and capacity needed to effectively complete the project.
 - d. That the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance, as well as financial statements.

- e. That the design-build entity will comply with all other provisions of law applicable to the project.
 - f. That the design-build entity or its members have not had a surety company finish work on any project within the past five years.
 - g. That the design-build entity provides information for the past five years for the following:
 - (1) Civil or criminal violations of the contractors' state license law against any member of the design-build entity member.
 - (2) Any conviction of any member of the design-build entity of submitting a false or fraudulent claim to a public agency.
 - (3) Civil or criminal violations of federal or state law governing the payment of wages, benefits, or personal income tax withholding, or of Federal Insurance Contributions Act (FICA) withholding requirements, state disability insurance withholding, or unemployment insurance payment requirements against any member of the design-build entity.
 - (4) Civil or criminal violations of federal or state law against any design-build entity member governing equal opportunity employment, contracting or subcontracting.
 - (5) Technical approach and team expertise.
 - (6) Design and construction experience.
 - h. The overall technical qualifications of the design build entity and the individual expertise of key personnel proposed for the project.
 - i. Previous design and construction experience on projects of similar size and scope, as well as the experience of their key personnel assigned to this project.
- 2. Those design-build entities recommended to be placed on the shortlist, shall receive the request for proposals.
 - 3. Award shall be made by the City Council to the lowest qualified design-build entity.
 - 4. If the selection committee chooses not to utilize the prequalification process, the design-build entity shall be selected and awarded pursuant to the process set forth in this chapter.
- I. *Rejecting Bids.* Right to reject any and all bids. Nothing in this chapter requires the City to accept any bid and the City hereby reserves the right to reject any and all bids.
 - J. *Subcontractor listing.* The City recognizes that the design-build entity is charged with performing both design and construction. Because a design-build contract may be awarded prior to the completion of the design, it is often impractical for the design-build entity to list all subcontractors at the time of the award.

1. It is the intent of the City to establish a clear process for the selection and award of subcontracts entered into pursuant to this section in a manner that affords protection for subcontractors while enabling design-build projects to be administered in an efficient fashion.
2. The following requirements apply to subcontractors, licensed by the state, that are employed on design-build projects undertaken pursuant to this section.
 - a. The design-build entity in each design-build proposal shall specify the construction trades or types of subcontractors that may be named as members of the design-build entity at the time of the award. In selecting the trades that may be identified as members of the design-build entity, the design-build entity shall identify the trades deemed essential in the consideration of the project.
 - b. Subcontracts not listed at time of award shall be performed or awarded by the design-build entity in accordance with a bidding process set forth in the respective request for proposals or bid invitation. The design-build entity shall furnish to the City documentation to verify that all subcontracts not listed at the time of award were subsequently awarded in accordance with the respective request for proposal or bid invitation. All subcontractors that are listed at the time of award, or subsequently in accordance with the respective request for proposal or bid invitation shall be afforded the protection of Section 4107 of the California Public Contract Code.

PART 6 – DISPOSITION OF SURPLUS PROPERTY

3.12.210 Surplus supplies and equipment.

All using departments shall submit to the purchasing agent, at such times and in such forms as prescribed, reports showing supplies and equipment which are no longer used or which have become obsolete and worn out.

3.12.220 Surplus supplies — Trade-ins.

The purchasing agent shall have authority to exchange for or trade in any supplies and equipment which cannot be used by any department or which have become unsuitable for city use for any new supplies and equipment.

3.12.230 Surplus supplies — Sale.

The purchasing agent shall have authority, subject to approval of the City Manager or designee, to dispose of surplus supplies or equipment by auction or by sale or otherwise after receiving bids or proposals which, in his or her judgment, provide the maximum return to the City.