

ORDINANCE 1049B

AN ORDINANCE AMENDMENT OF LINCOLN MUNICIPAL CODE SECTION 2.16.050(7) RELATED TO CITY MANAGER'S POWERS AND REPEAL AND RE-ENACT CHAPTER 3.24 – CONTRACTS AND PURCHASING AND CHAPTER 3.26 – PUBLIC PROJECTS SUBJECT TO THE PUBLIC CONTRACT CODE AND FINDING THE ORDINANCE IS EXEMPT FROM ENVIRONMENTAL REVIEW UNDER CEQA

WHEREAS, Lincoln Municipal Code Section 2.16.030(7) was last amended in 2020 and the proposed revision update the City Manager's expenditure authority to be in line with spending limits in the proposed revisions to Chapter 3.24; and

WHEREAS, Section 2.16.030(7) will be revised to read, "To purchase all supplies for all of the departments or divisions of the city, provided that any expenditure of more than \$100,000.00 shall require approval by the city council. Items specifically budgeted in the city's annual budget are excluded from this requirement"; and

WHEREAS, the City complies with Office of Management and Budget (OMB) 2 CFR 200 et seq. and Federal Acquisition Regulation (FAR) 48 CFR, Government Code sections 1090, 54202, 54203, 65402, 65401, Section 22000 et seq. of the Public Contract Code, 20101 of the California Public Contract Code; and

WHEREAS, significant revisions have been made to Chapter 3.24 – Purchasing and Contracts and Chapter 3.26 – Public Projects Subject to the Public Contract Code to bring authorization thresholds closer to those allowed by Federal Acquisition Regulation, to provide a cleaner and easier to understand version of these chapters, to remove internal processes from these chapters which are intended to provide policy direction, and to ensure the city remains compliant with new laws and regulations, including but not limited to those related to recycling, prohibited transactions, etc.; and

WHEREAS, due to the extensive revisions required staff has proposes Chapter 3.24 – Purchasing and Contracts and Chapter 3.26 – Public Projects Subject to the Public Contract Code be repealed and re-enacted; and

WHEREAS, Council conducted a public hearing on this matter on July 26, 2022.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LINCOLN does ordain as follows:

Section 1. The City Council hereby incorporates by reference the recitals set forth above and attached.

Section 2. This Ordinance is not subject to the California Environmental Quality Act ("CEQA"), as codified at Public Resources Code §§ 21000, *et seq.*, and as further

governed by 14 California Code of Regulations §§ 15000, *et seq.*, because it is not a project as contemplated by 14 C.C.R. § 15378. In addition, even if this Ordinance were subject to CEQA, the City Council finds this Ordinance would be exempt from the requirements of CEQA pursuant to 14 C.C.R. § 15061(b)(3), because there is no possibility it will have a significant effect on the environment.

Section 3. If any section, sub-section, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. City Council hereby declares that it would have adopted the Ordinance and each section, sub-section, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, sub-sections, sentences, clauses, phrases or portions to be declared invalid or unconstitutional.

Section 4. Within fifteen days of passage of this Ordinance, the City Clerk shall cause the full text of the Ordinance, with the names of those City Councilmembers voting for and against the Ordinance, to be published in the Lincoln News Messenger. In lieu of publishing the full text of the Ordinance, the City Clerk, if so directed by the City Attorney and within fifteen days, shall cause a summary of the Ordinance, prepared by the City Attorney and with the names of the City Councilmembers voting for and against the Ordinance, to be published in the Lincoln News Messenger, and shall post in the office of the City Clerk a certified copy of the City Councilmembers voting for and against the Ordinance. The publication of a summary of the Ordinance in lieu of the full text of the Ordinance is authorized only where the requirements of Government Code § 36933(c)(1) are met.

Section 5. Amendment. Lincoln Municipal Code section 2.16.030(7) is hereby amended as follows: To purchase all supplies for all of the departments or divisions of the city, provided that any expenditure of more than \$100,000.00 shall require approval by the city council. Items specifically budgeted in the city's annual budget are excluded from this requirement.

Section 6. Repeal and Re-enact. Lincoln Municipal Code Chapter 3.24 – Purchasing and Contracts and Chapter 3.26 – Public Projects Subject to the Public Contract Code be repealed and re-enacted.

Section 7. This ordinance shall take effect on the expiration of thirty (30) days from the date of final adoption.

INTRODUCED at a regular meeting of the City Council of the City of Lincoln held on July 26, 2022.

PASSED AND ADOPTED this 9th day of August, 2022.

AYES: COUNCILMEMBERS: Joiner, Silhi, Karleskint, Lauritsen, Andreatta

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:



Holly Andreatta, Mayor

ATTEST:



Gwen Scanlon, City Clerk

CHAPTER 3.24 CONTRACTS AND PURCHASING

Article I. General

3.24.010 Purpose and intent.

The ordinance codified in this chapter is enacted pursuant to the provisions of Government Code Sections 54202 and 54203 to establish policies and procedures governing purchases of goods and procurement of services.

It is the city's policy to establish efficient policies for the purchase of goods, procurement of services, and construction of public works at the lowest possible cost commensurate with the quality needed; to exercise effective and efficient financial control over such transactions; to clearly define authority for the purchasing and contracting function; and to assure the quality of purchases, services, and public works.

3.24.015 Applicability.

The provisions of this chapter, as well as any applicable state or federal laws, shall apply to (1) the purchase of equipment, supplies, products or materials ("goods"), (2) the procurement of services, (3) the procurement of professional services; and (4) public works projects, funded by the City of Lincoln.

3.24.020 Standards of conduct and general requirements.

The provisions of this chapter, as well as any applicable state or federal laws, shall apply to all purchases funded by the City of Lincoln.

- A. Fair Competition. City employees must discharge their duties impartially to assure fair and open competition for city business by responsible vendors. In addition, they shall conduct themselves in a manner that will create confidence in the integrity of the city's purchasing operations. City employees will treat all vendors equally and fairly.
- B. Conflicts of Interest. No city council member, employee, officer, or agent of the city may participate in the selection, award, or administration of a contract if he or she has a real or apparent conflict of interest. A conflict of interest includes any circumstances under which the city council member, employee, officer, or agent, or any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of those parties, has a financial interest in or a tangible personal benefit from a vendor considered for a contract. No officer, employee, or agent of the city may solicit or accept gratuities, favors, or anything of monetary value from vendors or parties to subcontracts. Disciplinary actions, up to and including termination for cause, will apply to any violation of these conflict of interest standards, in accordance with city policy, and/or, as applicable, a collective bargaining agreement, employment contract, or contract for services.
- C. Economical Approach. All procurements must be undertaken in a manner that will avoid acquisition of unnecessary or duplicative items, which may include consideration of consolidating or breaking out procurements, lease alternatives, and other appropriate analysis to determine the most economical approach, subject to the limits of applicable law, including prohibitions against bid-splitting.
- D. Oversight. Each department must maintain oversight over its procurements to ensure that vendors perform in accordance with the terms, conditions, and specifications of the contracts or purchase orders.

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- E. Dispute Resolution. Any and all protests, disputes, claims, and the like, arising from a procurement will be addressed promptly in accordance with good administrative practice and sound business judgment, and in compliance with all applicable legal or contractual requirements.
 - F. Specifications. All procurement solicitations should incorporate a clear and accurate description of the technical requirements or functions of the goods or services to be procured. However, such descriptions should not be drafted to unduly restrict competition among qualified vendors.
 - G. Business License. Pursuant to Municipal Code Chapter 5.04, Business Tax Certification, vendors are required to obtain a City of Lincoln business license if the vendor is conducting business in the city whether or not they are located in the city limits. This requirement may be waived by the city manager or designee when determined to not be applicable to the type of business being conducted by the vendor.
 - H. Legal Compliance and Interpretation. All city procurements subject to state and federal laws will be made in compliance with currently applicable state and federal laws and regulations. To the extent there is any conflict or inconsistency between state or federal law or regulation, the more restrictive requirements will apply.

3.24.025 Exempt contracts.

Except as set forth below, and notwithstanding any other provision of law, the following purchases or contracts shall not be subject to this chapter:

- A. Annual Membership Dues. Membership dues for professional and civic organizations to which the city is a member, including, without limitation, the League of California Cities, the Chamber of Commerce, and such similar professional and civic organizations that may charge an annual or other membership fee. Such contracts may be entered into and/or membership fees paid at the direction of the city manager, without prior city council approval, provided there is adequate funding allocated in the city budget.
- B. Public Works Contracts. Contracts for public projects (public works) governed by the California Public Contracts Code, except that the provisions in this Chapter 3.26 of the Lincoln Municipal Code shall apply to such contracts.
- C. Other Contracts. Such other contracts as the city council or the city manager, in their discretion, finds by resolution or documented by memorandum are not susceptible to the purchasing or contracting procedures set forth in this chapter, provided that nothing herein shall relieve the city from any contracting procedures required by state or federal law.
- D. Provided there is adequate funding allocated in the city budget the following purchase are specifically exempt from the purchasing and contracting procedures set forth in this chapter: advertisement and notice, courier/delivery/messenger, insurance claims and premiums, medical payments, court fees, payments to other governmental units, petty cash replenishment, property rentals, subscriptions, trade circulars or books, travel expense/advance.

3.24.030 Definitions.

The following terms, whenever used in this chapter, shall be construed as follows:

"Best value" means the best value to the city based on all factors, including: cost, contractor's ability, capacity or skill; ability to perform within the time required; character, integrity, reputation, judgment, experience and efficiency; quality of contractor's performance on previous purchases or contracts, if applicable; and the ability of the contractor to provide future maintenance, repair, parts and services, if necessary.

"Bid" means a written offer, more formal than a quote, to furnish supplies, equipment, material, services or the construction of public works, in conformity with the specifications, delivery terms, and conditions required, at a guaranteed maximum cost.

"Bid bond" means financial security provided to guarantee that a bidder will enter into a contract with the city if a bid is awarded. It may be in the form of cash, cashier's check, certified check, or surety bond, in an amount not less than ten percent of the aggregate amount of the bid.

"Goods" means supplies, equipment, and materials, including any and all articles, things or personal property furnished to or used by the city department or agency.

"Professional services" means work performed by architectural, landscape architectural, engineering, environmental, land surveying, construction project management, and specialized professional services such as financial, economic, accounting, legal, (or administrative matters) lobbying firms, and by other specially trained persons. The selection of persons or firms to provide such professional services shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. Price may be considered after making a determination based upon professional qualifications.

"Public works project" means any of the following: (1) construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility; or (2) painting or repainting of any publicly owned, leased, or operated facility. A "public works project" does not include maintenance work. For purposes of this policy, "maintenance work" includes all of the following: (1) routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes; (2) minor repainting; (3) resurfacing of streets and highways at less than one inch; (4) landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems; or (5) work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts and higher. (See Public Contract Code Section 22002).

"Purchase order (PO)" means a document memorializing a purchase or service transaction with a vendor and/or authorizing the payment of funds for a purchase or service.

"Quote" means a verbal or written promise from a vendor/contractor guaranteeing to provide certain goods, supplies, or services for a fixed price.

"Request for proposal" and "RFP" mean a solicitation for a competitive proposal that states the technical requirements for the services desired.

"Request for qualifications" and "RFQ" means a request seeking a written presentation of the professional qualifications and experience of a proposed contractor.

"Services" means the furnishing of labor, time or effort (sometimes parts are included) to perform or complete a designated task. Some examples of services include janitorial, landscaping, pest control, and refuse disposal. The emphasis is on physical, rather than professional/intellectual capabilities. Services do not include public works projects, utility services, insurance services, professional services, services rendered by city officers or employees, or another governmental agency, or contractual services which are in their nature unique or not subject to competition.

"Vendor" means a supplier of goods, services or professional services.

3.24.040 Purchasing officer.

The city manager, or designee shall be the city's purchasing officer, and generally supervises the purchasing and contracting functions described in this chapter. The Purchasing Officer shall provide a quarterly summary of

purchases and warrants to be posted on the City's website. The purchasing officer, or designee, is responsible for the overall administration of the policies codified in this chapter.

3.24.060 Authorization limits and competitive bid requirements.

The following authorization limits shall apply to All purchases except Public Works Projects, which are covered by the Public Contract Code section 20161, et seq.

- A. Micro-Purchases —\$10,000 or Less.
 - 1. Authority. A department manager or designee is authorized to purchase goods or services for an amount up to \$10,000 if adequate funds have been appropriated by the city council in the budget.
 - 2. Micro-purchases (as defined by 2 CFR § 200.67 & FAR 48 CFR Subpart 2.1) shall be completed using simplified acquisition procedures. Micro-purchases may be completed without soliciting competitive price or rate quotations, purchase card or Cal-cards may be used for micro-purchases. The current micro-purchase threshold is \$10,000 and may be periodically adjusted for inflation by Federal Acquisition Regulation (FAR). Should an adjustment by FAR occur, the micro-purchase shall automatically be adjusted by the City without consideration of amendments to this chapter.
- B. Open Market Purchases - \$10,000 and up to \$50,000.
 - 1. Authority. A department head or designee is authorized to purchase goods or services for an amount up to \$50,000 if adequate funds have been appropriated by the city council in the budget.
 - 2. Open Market Purchases may be completed using the informal solicitation process for purchases of \$10,000 and up to \$50,000. Informal Solicitation Processes includes acquiring oral or written competitive price or rate quotations. A minimum of three oral or written quotes is preferred however, in some situations, it may not be possible to obtain three quotes. The vendor offering the best value shall be selected. If the lowest price quote is not selected, the department shall document in the file the basis for the selection of the vendor. The purchase officer or designee may waive the requirement for bid solicitation, if waiving the requirement is in the best interest of the city. The reason for the waiver of any purchasing requirement must be documented and retained by the department.
- C. Purchases —\$50,000 and up to \$100,000.
 - 1. Authority. The city manager or designee is authorized to purchase goods or services for an amount up to \$100,000, if adequate funds have been appropriated by the city council in the budget.
 - 2. Formal Bids—Competitive Sealed Bids. For purchases of \$50,000 and up to \$100,000, the department must seek competitive sealed bids, in the manner set forth in this chapter, formal bids—competitive sealed bid process. A contract will be fully executed with signatures by the selected vendor and the contract administrator. The contract will be in a standardized format approved by the city attorney, unless an exception is made by the city attorney, and will be attested by the city clerk. City council may waive the formal bidding requirement if they find by resolution that it is in the best interest of the city to do so or in the case of an emergency purchase.
- D. Purchases exceeding \$100,000.

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1. Authority. Purchases exceeding \$100,000 must be approved by the city council. City council appropriation of funds is required prior to or concurrently with city council approval.
 2. Formal Bids—Competitive Sealed Bids. For purchases of more than \$100,000, the department must seek competitive sealed bids, in the manner set forth under in this chapter, formal bids—competitive sealed bid process. A contract for goods will be fully executed with signatures by the selected vendor and the manager or designee. The contract will be in a standardized format approved by the city attorney, unless an exception is made by the city attorney, and will be attested by the city clerk. City council may waive the formal bidding requirement if they find by resolution that it is in the best interest of the city to do so or in the case of an emergency purchase. ’
- E. Professional Services
1. The department using such a professional may award a contract for services in accordance with the purchasing authorizations and limitations of this policy.
 2. Authority. If adequate funds have been appropriated by the city council in the budget, department heads are authorized to procure professional services for an amount up to \$50,000, and the city manager or designee is authorized to procure professional services for an amount up to \$100,000. Professional services in excess of \$100,000 require city council approval. Amendments to contracts which result in the total contract amount to exceed the authority of the city manager or designee shall require city council approval.
 3. No Competitive Bid Process. For the procurement of professional services in an amount of \$50,000 or less, no competitive bid process or request for proposals is required, but the department shall endeavor to procure services at the lowest cost commensurate with the quality needed. The department shall retain evidence of the organizations that were considered and the reason for choosing the selected organization. The city’s terms and conditions shall be forwarded to selected vendor(s) for review and approval.
 4. Formal Bids or Request for proposals—Formal Bids or RFP. For procurement of professional services more than \$50,000, the department must seek competitive sealed bids or proposals, in the manner set forth in this chapter, formal bids—competitive sealed bid process or request for proposal set forth in this chapter. A contract for services will be fully executed with signatures by the selected vendor and the manager or designee. The contract for services will be in a standardized format approved by the city attorney, unless an exception is made by the city attorney, and will be attested by the city clerk. Any waiver of requirements included in this section shall be approved by the city council by resolution.
- F. Third Party Deposit Contracts.
1. Notwithstanding the above limits, the city manager, or designee, is authorized to execute a contract for professional services without city council approval if a third party, including but limited to a developer or utility company has deposited funds sufficient to cover the full amount of the contract with the city (as verified by the director of finance or designee and community development director or designee), and such funds are held in a deposit account that restricts the use of the funds to pay for city-managed professional services contracts. Any contract entered into pursuant to this paragraph shall be entered into in accordance with state law, city ordinances and adopted city policies, as applicable, including the same competitive process as would be required for a city-funded contract for professional services. The selection of a contractor to provide professional services shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. Selection based upon price alone is prohibited; however, price is a factor that may be considered.
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3.24.080 Formal bids—Competitive sealed bid process shall be used for purchases of more than \$50,000, the limit for public works projects has been set forth in Chapter 3.26 Public Projects Bidding Procedures.

The formal bid (competitive sealed bid) process, shall proceed as described below:

- A. Invitation and Notice. A bid invitation and the public notice inviting bids shall be issued and shall state the project to be done, including a general description of the work to be bid, where bidding forms and project documents, including final plans and specifications may be obtained, whether there will be a mandatory pre-bid conference, site visit, etc. Public notice of the invitation for bids shall be given at least fifteen (15) calendar days prior to the date set for the opening of bids. Such notice may include a publication in a newspaper of general circulation within ten (10) days prior to bid opening. The public notice and all invitations to bid shall state the place, date and time of bid opening and shall state the date and time by which the bids are due and that the bids should be submitted to the City Clerk or designee.
- B. Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the noticed place and not earlier than the time designated in the invitation for bids. The tabulation of all bids received shall be open to public inspection after the bid opening.
- C. Bid Evaluation and Acceptance. Bids received at or prior to the time set for bid opening shall be unconditionally accepted without alteration or correction, except as authorized in this policy. Bids shall be evaluated to determine the lowest responsive and responsible bidder. The process includes a determination of: (1) which bidder is the lowest monetary bidder; (2) whether the lowest monetary bidder submitted a responsive bid; and (3) whether or not the lowest monetary bidder is responsible.
 - 1. To be responsive, the bid must conform to the material terms of the bid package. The requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the invitation for bids. City may waive any informality, irregularity, immaterial defects or technicalities in any response.
- D. Correction or Withdrawal of Bids. Subject to any provisions of federal or state granting authorities to the contrary, correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, shall be in accordance with this section. Mistakes discovered before bid opening may be modified or withdrawn by written notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, no corrections to bid or provisions shall be permitted but, in lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if: (a) the mistake is clearly evident on the face of the bid document, or (b) the bidder submits evidence that clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids shall be supported by a written determination made by the city.
- E. In addition to price, the lowest bidder must be a responsible bidder, meaning that the bidder must demonstrate the attributes of trustworthiness, quality, fitness, capacity and experience to satisfactorily perform the contract. Factors to be considered may include performance history, reliable financial information, bonding and insurance capacity, public works experience, personnel, litigation history, the ability, capacity, and skill to perform the contract, experience to perform the contract, the bidder must have the facilities and financial resources necessary to perform the contract within the time specified,

without delay or interference; and, the bidder must have a record of satisfactory performance of prior contracts and a record of compliance with laws and ordinances applicable to the contract.

1. If a responsive bidder who otherwise would have been awarded a contract is found to not be responsible, a written determination of non-responsibility, setting forth the basis of the finding, shall be prepared by the city manager or his/her designee. The unreasonable failure of a bidder to supply promptly information in connection with an inquiry with respect to responsibility may be grounds for a determination of the bidder not being responsible. A copy of the determination shall be sent promptly to the non-responsible bidder and shall be made part of the contract file.
- F. Award. The contract shall be awarded to the lowest responsive and responsible bidder. The process of selecting the lowest bidder includes a determination of which bidder is the lowest monetary bidder, whether or not the lowest monetary bidder submitted a responsive bid, and whether or not the lowest monetary bidder is also a responsible bidder.
- G. Cancellation of Invitations. An invitation for bids may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation. Each solicitation issued by the city shall state that the solicitation may be cancelled and that any bid or proposal may be rejected in whole or in part at the city's discretion with or without a showing of good cause.
- H. Bonds.
1. The city may require a bid bond with any bid, or a performance bond before entering into a contract, in such amount as it finds reasonably necessary to protect the best interests of the city. The form and amount of any bond shall be described in the notice inviting bids.

3.24.090 Request for proposal—Competitive sealed proposal process shall be used for the procurement of general or professional services in an amount more than \$50,000, excepting legal services.

The request for proposal competitive sealed proposal process ("RFP" process) is as follows:

- A. Request for Proposals and Notice. A notice requesting proposals ("RFP") shall be issued and shall include a general description of the services to be procured, shall state where proposal forms and specifications may be obtained and the time and place for the delivery of proposals. Public notice of the RFP shall be given at least ten calendar days prior to the date set for the delivery of proposals.
- B. Evaluation Factors. The RFP shall identify all evaluation factors that will be used by the city, and the relative importance of the evaluation factors, including price.
- C. Interviews with Responsible Vendors and Revisions to Proposals. The city may conduct interviews and negotiations with vendors whose proposals are responsive to the RFP, for the purpose of gaining full understanding of the proposal contents. Vendors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of competing vendors, or any information derived from proposals submitted by competing vendors.
- D. Award. Award shall be made to the responsible vendor whose proposal is determined in writing to be the most advantageous to the city, taking into consideration the evaluation factors, including price, set forth in the RFP. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

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- E. Determination of Non-responsibility; Cancellation of Invitations; Bonds. The provisions set forth under Section 3.24.080.E., formal bids—competitive sealed bid process, relating to determination of non-responsibility, cancellation of invitations, and bonds (except labor and materials bonds), shall apply to the RFP process.
 - F. Requests for Qualifications. A request for qualifications ("RFQ") is a document used to gather information from multiple companies to generate a pool of prospects. This short-list identifies candidates which meet the desired qualifications. An RFQ shall include a general description of the qualifications desired and the services to be procured, shall state where forms and further information may be obtained, and the time and place for the delivery of responses. Public notice of the RFQ shall be given at least ten calendar days prior to the date set for the delivery of responses.

3.24.100 Exceptions to formal and informal competitive process.

The solicitation and competitive processes identified in this chapter shall not apply in the following circumstances.

- A. Sole or Limited Source (No Competitive Advantage by Soliciting Bids). A contract may be awarded without competition when the city determines in writing, after conducting a good faith review of available sources, that there is only one source for the required goods, service, or construction item. In addition, in limited and unique circumstances, competitive bidding and/or the RFP process is not required when it would be impossible, or not in the public interest. This exception may apply when the purchase is for: (1) a specialized technology product or service, (2) an addition to, or repair or maintenance of, existing equipment which can be more efficiently added to, repaired or maintained by a particular company or manufacturer, or (3) equipment which must be compatible with existing equipment, by reason of the training of the personnel or an inventory of existing replacement parts kept by the city. In the case of contracts of \$100,000 or less, this determination shall be made by the city manager and, in the case of contracts in the amount of more than \$100,000, this determination shall be made by the city council. The city manager or designee shall conduct negotiations, as appropriate, as to price, delivery, and terms. A statement of the basis for the sole source determination shall be provided to the city clerk along with the fully-executed contract.
- C. Cooperative Purchasing/Procurement. The city is authorized to enter into cooperative purchasing/procurement arrangements with other governmental entities (i.e., joint power authorities) without separate competitive bidding by the city if a governmental agency has solicited bids and awarded a contract for the goods or services which the city desires to obtain, and participation in such a purchase is agreeable to the bidder awarded the contract and the city manager finds that participation in such group purchasing agreement is for the benefit of the city.
- D. Piggyback Purchasing. Piggyback contracting occurs when one entity assigns the contractual rights it has in a contract to another. The city is authorized, without prior competitive bidding, to contract for the purchase of goods or procurement of services with vendors who have been awarded contracts by government agencies (such as other cities, counties, etc.), for the purchase of goods or services under the competitive processes applicable to the government agency, within the past three years. In the case of contracts of \$100,000 or less, this determination shall be made by the city manager and, in the case of contracts in the amount of more than \$100,000, this determination shall be made by the city council. A contract directly between the city and the vendor is required for the purchase of goods or the procurement of services rendered through a piggyback purchasing arrangement, unless otherwise approved by the city attorney.

3.24.110 Emergency Purchases.

Notwithstanding any other provisions of this chapter, the city may make emergency purchases of supplies, services, constructions items, etc. when there exists a threat to public health, welfare, or safety; provided that such emergency purchases shall be made with such competition as is practicable under the circumstances. A statement of the basis for the sole source determination shall be provided to the city clerk along with the fully executed contract. In the case of contracts or purchases less than \$100,000, this determination shall be made by the city manager, and in the case of contacts or purchases in the amount of \$100,000 or more, this determination shall be made retroactively by the city council.

3.24.115 Federal, State or Grant funded projects.

Any procurement made pursuant to a federal, state or grant award or subject to reimbursement, in whole or in part, must comply with the requirement stated in the funded award and the applicable federal procurement requirements, including 2 CFR § 200 and or 48 CFR § 31. In the event of any conflict between federal, state, or grant requirements, the most stringent requirement must be used.

3.24.120 Recycled Products.

Under existing state law enforced through CalRecycle, the city is required to purchase paper products and printing and writing papers that contain recycled content (at least 30 percent, by fiber weight, postconsumer fiber) when it is available at no greater cost than non-recycled products and if the fitness and quality are equal to non-recycled products. If possible and feasible, it is recommended to also select paper products that are recyclable. This practice applies to all paper products, including but not limited to printing paper, office paper, and janitorial paper products (toilet paper, paper towels, toilet seat covers, etc.). The city shall attempt to procure the highest postconsumer content practicable for other items including construction, landscaping, parks and recreation, transportation, vehicles, miscellaneous, and other non-paper office products.

3.24.125 General requirements.

The following general policies shall apply.

- A. Procurement of goods or services shall be made by written contract, purchase order or purchase request form unless purchased utilizing a city purchase card/Cal Card or unless otherwise directed by the purchasing officer. Contracts shall be in a form approved by the city attorney, unless an exception is made by the city attorney.
- B. Insurance. A vendor of services or professional services is required to provide insurance certificates and endorsements. Generally, the types of insurance, amount of coverage, and policy endorsements shall be consistent with the recommendations of NCCSIF third party insurance administrators. The city attorney may waive or reduce the insurance requirements.
- C. Structuring and Splitting. The structuring or splitting of the purchases or projects for the purpose of evading the provisions of this chapter is prohibited.
- D. City Attorney Contract Review. The city attorney shall approve all contracts in excess of \$10,000, including amendments to contracts, as to form and legality prior to the execution of the contract by the authorized city official. City attorney approval on change orders to public works projects is not required, but may be requested, at the discretion of the city manager or department head responsible for the public works project.

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- E. Multi-Year Contracts. Unless otherwise approved by the city council, a contract may be entered into for any period of time deemed to be in the best interest of the city; provided that the term of the contract and renewal provisions are included in the contract.
 - 1. Contracts may contain auto-renewal provisions, as approved by the city attorney. Funds must be appropriated prior to contract execution for the first fiscal year's obligation. The contract must allow the city to cancel the agreement without penalty if the city council does not appropriate funds after the first year of the contract.
 - 2. Notwithstanding contract extensions, prior to a contract renewal beyond the initial term, departments must conduct new bid, solicitation for quotes, or RFP process for the goods, services or professional services, excluding legal services and financial software. The city manager may authorize an exception to this re-bid requirement for good cause, which shall be documented and maintained by the department.
 - F. Encumbrance of Funds. Except in cases of emergency, or by order of the city council, purchase orders shall not be issued, unless there exists an unencumbered appropriation within the department's budget.
 - G. Recordkeeping. Each department is responsible for maintaining its own purchasing and contracting records, including RFP and bidding documentation, pursuant to the city's current record retention policy. Original wet signature or digitally signed contracts, along with a paper or electronic copy of RFP and bidding documentation, must be provided to the city clerk for safekeeping/recordkeeping purposes.

3.24.130 Disposition of surplus supplies, materials and equipment.

- A. All city departments shall submit to the purchasing officer or designee, at such times and in such form as prescribed, reports showing all supplies, materials and equipment which are no longer needed, or which have become obsolete or worn out. The purchasing officer or designee shall have authority to sell all supplies, materials and equipment which cannot be used, or which have become unsuitable for city use, or to exchange the same for, or trade in the same on, new supplies, materials and equipment. The purchasing officer or designee has the authority to declare item(s) with a market value of less than \$10,000 surplus. For items valued in excess of \$10,000 as such sales shall be made by solicitation of informal bids/written offers for purchase. If there are no bids, the property may be sold at private sale, donated to charity, or disposed of in the manner most economically beneficial to the city.
 - B. The amount received for any property sold pursuant to this chapter shall be deposited in the general fund or other fund so designated by the purchasing officer.
 - C. Except as provided by state code, the purchasing officer shall determine the disposition of unclaimed or abandoned property in the possession of the police department.
 - D. Notwithstanding the foregoing, the public safety chief may allow the sale of a police officer's duty handgun to said officer at the time of his or her honorable retirement from city service, at the full replacement price of the handgun. The public safety chief shall determine an officer's standing with the city at the time of the officer's separation and will not permit the sale upon circumstances other than honorable retirement. No portion of this section shall supersede the officer's need to meet all legal requirements to possess a firearm. All transfer documents pertaining to the sale will be completed through a dealer in possession of a Federal Firearms License and all sale and transfer costs shall be paid by the retiring officer.
 - E. Notwithstanding the foregoing, the library may sell or trade surplus and donated library materials. For this purpose, "Library Materials: shall include, but not be limited to, books, magazines, newspapers, maps, audiocassettes, audio discs (CDs), videocassettes, video discs (DVDs), and video games. Funds from the sale
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of library materials shall be deposited in the library's miscellaneous revenue account and be used to purchase new library materials.

- F. Prohibited Transactions - In accordance with Government Code section 1090, all members of the City Council, any other elected City officials, and the City Manager are prohibited from purchasing surplus City real or personal property. Staff members generally are eligible to buy surplus City real or personal property noticed for sale on the same terms and conditions as those offered to members of the public, except that any City employee who actively participated in determining an item's price, surplus status, or conditions of sale is prohibited from purchasing such items because the employee is deemed by law to have a prohibited interest in the sale. The City Manager, in consultation with legal counsel, will determine if an employee has a prohibited interest in an item of surplus property.

Article II. Acquisition and Disposition of Interests in Real Property

3.24.280 Leases of real property.

- A. City-Owned Real Property. The city council shall be the authorizing authority for all leases and licenses of city-owned property. If consideration for a lease or license is in excess of \$1,000 per year, the property shall be leased or licensed by means of competitive proposals unless the city council finds that an award without competitive proposals is in the best interests of the city. If competitive proposals are solicited for leases or licenses of city-owned property, the city shall have discretion to determine the proposal process and to determine the proposal which best meets the needs of the city, which may not necessarily be the highest priced proposal.
- B. City Lease of Private Property.
1. Leases of private property by the city with a total lease amount of \$100,000 or more shall be authorized by the council.
 2. Leases of private property by the city with a total lease amount less than \$100,000 may be authorized by the city manager.

3.24.290 Acquisition of real property.

The acquisition of real property, whether by negotiation, dedication, or eminent domain, shall be in accordance with state law.

3.24.300 Disposition of real property.

- A. Procedures for the disposition of real property shall be in accordance with state law. In accordance with Section 65402(a) of the California Government Code, the council hereby determines that the provisions of that section shall not apply to:
1. The disposition of the remainder of a larger parcel which was acquired and used in part for street purposes;
 2. Acquisitions, dispositions, or abandonments for street widening; or

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3. Alignment projects, provided such dispositions for street purposes, acquisitions, dispositions, or abandonments for street widening or alignment projects are of a minor nature.
 - B. The report of the planning commission regarding the conformance of a capital improvement project with the general plan made pursuant to Section 65401 of the California Government Code shall also constitute the report required by Section 65402(a) of the California Government Code regarding each acquisition or disposition of real estate, street abandonment or vacation, or public building or structure included in that capital improvement project.
 - C. The disposition of real property shall be by competitive proposals unless the city council determines that disposition without competitive proposals is in the best interests of the city. If competitive proposals are solicited for the disposition of city-owned property, the city shall have discretion to determine the proposal process and to determine the proposal which best meets the needs of the city, which may not necessarily be the highest priced proposal.

CHAPTER 3.26 PUBLIC PROJECTS SUBJECT TO THE PUBLIC CONTRACT CODE

3.26.010 Uniform Public Construction Cost Accounting Act.

The city elects to be subject to the Uniform Public Construction Cost Accounting Act as set forth in Section 22000 et seq. of the Public Contract Code ("Act"), and the uniform construction cost accounting procedures. "Public project" shall have the meaning provided in Section 22002(c) of the Act, as that section may be amended from time to time. A public project shall not include maintenance work as provided in Section 22002(d) of the Act.

3.26.020 Prequalification of bidders.

This section is enacted pursuant to Section 20101 of the California Public Contract Code, which enables the city to establish a system for prequalification of prospective bidders on public works construction and maintenance projects. In addition, pursuant to the city's general police powers under California Constitution Article 11, Section 7, the city desires to apply this process to the award of public works maintenance contracts in order to ensure that bidders are qualified to perform city public works maintenance.

A. Prequalification of Bidders.

1. The city hereby establishes a system for prequalification of prospective bidders for public works construction and maintenance projects. The city may use the prequalification system identified in this section for any public works project.
 2. The public works director is authorized to adopt and apply a uniform system of rating bidders for each project based on:
 - a. The requirements of Section 20101 of the California Public Contract Code; and
 - b. The model guidelines and standardized questionnaire created by the state of California Department of Industrial Relations, as modified at the city's discretion to address the needs of the particular project, or projects, to which they are to be applied.
 - b. Notwithstanding the provisions of this section, the city may require prequalification of prospective bidders on any public works project or to engage in a program of prequalification of prospective bidders, on public works projects on a recurring basis as provided in Section 20101 of the California Public Contract Code.
 3. If prequalification of prospective bidders is required for a particular project, the city shall determine which bidders are qualified to bid that project based upon the uniform system of rating bidders. If the
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city determines any bidder is not qualified to bid a project, a written or electronic notice will be provided that includes the basis for the determination and an identification of any supporting evidence therefor, and an opportunity for the bidder to appeal the determination. A copy of all prequalification determinations shall be filed with the city clerk at least ten days prior to the scheduled bid opening.

B. Appeals.

1. The appellant shall submit a written notice of appeal to the city clerk, along with a complete written description of all factual and legal bases for the appeal and accompanied by a fee in the amount established by resolution of the city council, no later than ten (10) days after the city has provided written notice of the determination. Should the appellant prevail in its appeal, the deposit shall be returned to the appellant and the city shall bear the costs of the appeal. If the appellant does not prevail, the deposit shall be used to pay all costs associated with the appeal. If the deposit is insufficient to pay the entirety of the costs of the appeal, the appellant shall pay the remaining costs within thirty 30 days after the decision. Any failure by the appellant to timely pay any outstanding appeal costs, as required herein, shall be considered by the city in future prequalification proceedings.
2. Upon receipt of the request from the appellant, required deposit, and request for hearing, the hearing shall be conducted so that it is concluded no later than five (5) business days prior to the last date for the receipt of bids on the project or twenty (20) days following the city's receipt of the notice of appeal, whichever is sooner. The hearing shall be an informal process conducted by an arbitrator, who shall be an attorney experienced in public works and construction matters. The arbitrator may be selected by the mutual consent of the appellant and the city. If an agreement cannot be reached regarding the selection of the arbitrator, the appellant and the city shall each exchange a list of three arbitrators they would be willing to accept. In turn, beginning with the appellant, each party shall strike one name from the other party's list until only one name remains and that remaining person shall be the arbitrator. If the arbitrator selected is unavailable, the parties shall repeat the process until they succeed in selecting an available arbitrator.
3. At the hearing, the appellant and the city shall each be provided an opportunity to be represented by legal counsel and to present or rebut any evidence bearing upon the issues presented in the appeal. Each party shall bear his, her, its, or their own attorneys' fees, regardless of the outcome of the appeal.
4. The arbitrator shall consider relevant evidence presented during the hearing and provide a written decision on the appeal to the city, with a copy to the city clerk, and the appellant within one business day after the close of the hearing. The time identified in this section for providing the arbitrator's decision may be extended only by consent of the city and the appellant and such an extension shall not affect or require a delay in a scheduled time for opening of bids for any public works project. Failure by the arbitrator to render a timely decision shall be deemed a denial of the appeal.
5. The arbitrator's decision shall be final.

3.26.030 Public projects of \$60,000 or less.

Public projects of \$60,000 or less, or in such sum as may be authorized by California Public Contracts Code § 22032(a), may be performed by the employees of the city by force account, by negotiated contract or by purchase order.

3.26.040 Public projects of \$200,000 or less.

Public projects of \$200,000 or less, or in such sum as may be authorized by California Public Contracts Code § 22032(b), may be let to contract by informal procedures as set forth in Section 22034(a) of the Act to a list of qualified contractors.

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1. The notice inviting informal bids shall describe the project in general terms, how to obtain more detailed information about the project, and state the time and place for the submission of bids.
 2. The city council may delegate the authority to award informal contracts to the public works director, purchasing officer or city manager.
 3. If all bids received are in excess of \$200,000, the city council by passage of a resolution by a four-fifths vote, award the contract, at \$212,500, or less, or in such sum as may be authorized by California Public Contracts Code § 22034(d), to the lowest responsible bidder, if it determines the cost estimate of the city was reasonable.

3.26.050 Public projects of more than \$200,000.

Public projects of more than \$200,000, or in such sum as may be authorized by California Public Contracts Code § 22032(c), shall, except as otherwise provided in the Act, be let to contract by formal bidding procedure.

3.26.060 In Cases of Emergency.

In cases of emergency when repair or replacements are necessary, the governing body may proceed at once to replace or repair any facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts. Notice for bids to let contracts will not be given § 22035(a).

3.26.070 Rejection of Bids.

In its discretion, the city may reject any bids present in accordance with Section 22038.