

Palm Desert, California Municipal Code

Title 3 REVENUE FINANCE

**Chapter 3.30 PURCHASING SYSTEM AND PUBLIC WORKS CONTRACTS**

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**3.30.010 Purpose.**

The purpose of this chapter is to prescribe efficient policies and procedures for the procurement of public projects, contractual services, professional services, and ~~materials, supplies, and equipment~~supplies to better serve the city's residents. All purchasing will be done with absolute integrity and equal opportunity will be provided to all, free of discrimination.

### 3.30.020 Definitions.

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

"City manager" means the city manager of the city or their designee.

"Coachella Valley" means the area between the Salton Sea on the south, the San Jacinto and Santa Rosa Mountains on the west, and the Little San Bernardino Mountains on the east and north.

"Contract" means any type of legally recognized city agreement for the procurement of supplies, services, or for construction of public projects, including without limitation an award of a grant or a real property agreement.

"Contractor" means any person or business having a contract with the city. For the purpose of this chapter, the term "contractor" includes any person or business who is a party to a real property agreement.

"Contractual services" mean all services, other than professional services, including, but not limited to, repairs, maintenance work, software subscriptions, and rental equipment. The term does not include services rendered by city officers or employees.

"Department" or "agency" means a department, agency, or other unit of the city government whose affairs and funds are under the supervision and control of the city council.

"Designated position" means a city staff position authorized by the city manager to make purchases consistent with this chapter subject to dollar limits set by the city manager.

"Domestic partner" means any person who has a currently registered domestic partnership with a governmental body pursuant to State or local law authorizing such registration.

"Local business" means a vendor, contractor, or consultant who has a valid physical business address located within one of the nine incorporated cities of the Coachella Valley, or within an unincorporated area of Riverside County in the Coachella Valley within the boundaries of the Coachella Valley Association of Governments, at least six months prior to bid or proposal opening date, from which the vendor, contractor, or consultant operates or performs business on a day-to-day basis, and holds a valid business license by a jurisdiction located in the Coachella Valley. Post office boxes are not verifiable and shall not be used for the purpose of establishing such physical address.

~~"Materials, supplies, and equipment" means any and all articles, things, or property, other than real property, furnished to be used by any city agency.~~

"Paper products" include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling, or as otherwise defined in 14 CCR Section 18982(a)(51).

"Printing and writing papers" include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications, or as otherwise defined in 14 CCR Section 18982(a)(54).

**Commented [1]:** Since we have new definition of "supplies" that includes materials and equipment, suggest removing this definition and use "supplies" throughout.

"Professional services" means all services performed in a professional occupation including, but not limited to, accounting, auditing, appraising, computer hardware and software support, engineering, architectural, planning, environmental, redevelopment, financial, economic, social services, legal, construction project management, communications, land surveying and other similar professional functions which may be necessary for the operation of the city.

"Public project" means construction, reconstruction, erection, alteration, renovation, improvement, and demolition work involving any publicly-owned, leased, or operated facility.

"Purchasing" means the procurement of public projects, contractual services, professional services, and ~~materials, supplies, and equipments~~supplies as needed by the city.

"Real property agreement" means any agreement for the sale, lease, or use of real property owned by or in the lawful possession of the city, including without limitation concessions, franchises, and easements.

"Recycled-content paper" means paper products and printing and writing paper that consists of at least thirty percent, by fiber weight, postconsumer fiber, or as otherwise defined in 14 CCR Section 18982(a)(61).

"Subcontract" shall mean an agreement to: (i) provide supplies and/or services, including construction labor, materials or equipment, to a contractor, if such supplies or services are procured or used in the fulfillment of the contractor's obligations arising from a contract with the city; or (ii) to transfer the right to occupy or use all or a portion of a real property interest subject to a property contract to a subcontractor and pursuant to which the contractor remains obligated under the property contract.

"Subcontractor" means any person or business who enters into a subcontract with a contractor. Such term shall include any person or business who enters into an agreement with any subcontractor for the performance of 10 percent or more of any subcontract.

"Supplies" means any and all articles, things, goods, equipment, commodities, or property, other than real property, furnished to be used by the City."

### **3.30.030 Purchasing officer.**

The purchasing officer shall be the city manager or designee. The city manager may delegate some or all of the duties of that position to one or more subordinate employees. The purchasing officer shall supervise the purchasing functions of the city. The purchasing officer is authorized to establish methods and procedures for efficient and economical purchasing. (Ord. 1374 § 1, 2022; Ord. 1335 § 1, 2018)

### **3.30.040 Purchasing officer—Powers and duties.**

The purchasing officer, in accordance with this chapter and any written policies and/or procedures approved by the city manager consistent with this chapter, shall have the power to:

A Purchase and Contract. Purchase or contract for public projects, contractual services, professional services, and ~~materials, supplies, and equipments~~supplies required by the city.

B Purchasing Policies Procedures. Prepare and implement policies and procedures governing the bidding, contracting, and purchasing of public projects, contractual services, professional services, and ~~materials, supplies, and equipment~~supplies for the city.

C Forms. Prescribe and maintain such forms as may be reasonably necessary to the implementation of this chapter and any other policies and procedures approved by the city manager consistent with this chapter.

D Surplus ~~Materials, Supplies, and Equipment~~Supplies. Establish policies and procedures to sell, repurpose or dispose of any ~~materials, supplies, and equipment~~supplies not needed for public use or that are obsolete, damaged beyond repair, or may become unsuitable for their intended use including establishing value thresholds for surplus.

E Purchase for Resale. Authorize the purchase of ~~materials, supplies, and equipment~~supplies for resale from such enterprises as the golf course, or visitor's center to obtain the best possible price for the desired merchandise by adopting a procedure approved by the city manager. Such purchases shall not be subject to the award limits noted in this chapter, provided funding is available within the appropriated budget.

F Bidder, Contractor and Vendor Lists and Catalogs. Develop and maintain any bidder's list, contractor's list or vendor's list necessary to the operation of this chapter and any other policies and procedures approved by the city manager consistent with this chapter.

G Recycled Product Procurement Policy. Establish and maintain procedures and specifications for the purchase of recycled-content paper and recycled-content paper products as described in Section 3.30.190(A)(4).

### **3.30.050 General purchasing regulations, policies, and procedures.**

A Applicability of Chapter. The purchasing regulations contained in this chapter shall apply to the procurement of public projects, contractual services, professional services, and ~~materials, supplies, and equipment~~supplies by the city.

B Purchasing Limits, Authorizations and Awards. The city manager may establish dollar limits for authorizations and awards, consistent with this chapter, by designated positions, for the procurement of public projects, contractual services, professional services, and ~~materials, supplies, and equipment~~supplies.

C Subsequent Contract Awards, Amendments, Extensions or Renewals. Notwithstanding anything herein to the contrary, the city manager or designated position shall not award a subsequent contract to the same individual or entity for the same or similar services on the same project, or amend, extend or renew such a contract, without obtaining the next highest approval authority (e.g., the city council for the city manager), when the award, amendment, extension or renewal will result in the city paying an aggregate amount in excess of the approval authority of the city manager to the individual or entity in any given fiscal year. For purposes of this section, the phrase "same project" shall include an on-call or as-needed contract.

D Rejection of Bids and Proposals. At its discretion, the city council may reject any and all bids, proposals, quotations, or prices secured through procurement methods consistent with this chapter and take any other action deemed appropriate for the procurement of public projects, contractual services, professional services, and ~~materials, supplies, and~~

~~equipmentsupplies.~~

E Appropriations Requirement. No contract or purchase shall be made unless the director of finance shall have first confirmed that there is an unencumbered appropriation in the fund against which such expenditure is to be charged sufficient to cover the amount of purchase or contract, unless in cases of emergency.

F Performance Bonds. The city shall have authority to require a performance bond before entering a contract in such an amount as it shall find reasonably necessary to protect the best interests of the city.

G Confidentiality of Proposals. Contracts let pursuant to proposals permitting negotiations shall be opened and their contents secured to prevent disclosure during the process of negotiating with competing proposers. If proposals are opened publicly, only the names of the proposers shall be revealed, while prices and other information concerning the proposals shall not be disclosed until negotiations are complete and before award is made by the city council.

### **3.30.060 Public projects.**

A ~~Two-Ten~~ Thousand Dollars (\$102,000) or Less. Public projects of ~~Two-Ten~~ Thousand Dollars (\$210,000) or less may be awarded by ~~a city department head the city manager or designee~~ after selecting a qualified contractor and negotiating a contract in the best interest of the city.

B ~~More than Ten Thousand Dollars (\$10,000) to~~ Seventy-Five Thousand Dollars (\$75,000)~~-or Less~~. Public projects of ~~more than Ten Thousand Dollars (\$10,000) to~~ Seventy-Five Thousand Dollars (\$75,000)~~-or less~~ may be awarded by the city manager pursuant to the vendor price quotes procedure (Section 3.30.120) after selecting a qualified contractor or any exception consistent with this chapter. ~~Utilization of the vendor price quotes requires the receipt of a minimum of two quotes from responsible vendors.~~ Public projects of up to Twenty-Five Thousand Dollars (\$25,000) may be awarded by a designated position, subject to the limits and authorizations established under Section 3.30.050(B). The contract shall be awarded in the best interest of the city.

C More than Seventy-Five Thousand Dollars (\$75,000) to Two-Hundred Fifty Thousand Dollars (\$250,000). Public projects of more than Seventy-Five Thousand Dollars (\$75,000) to Two-Hundred Fifty Thousand Dollars (\$250,000) shall, ~~except as otherwise provided in this chapter,~~ be awarded by the city manager, to the extent the city council has budgeted funds for the project, pursuant to the informal bidding procedure (Section 3.30.095) ~~or any exception consistent with this chapter~~ and to the lowest responsible bidder.

D More than Two-Hundred Fifty Thousand Dollars (\$250,000). Public projects of more than Two-Hundred Fifty Thousand Dollars (\$250,000) shall, ~~except as otherwise provided in this chapter,~~ be awarded by the city council pursuant to the formal bidding procedure (Section 3.30.100) ~~or any exception consistent with this chapter~~ and to the lowest responsible bidder. The city council may reject any or all bids received, and may waive any irregularities in each bid received.

E Review and Approval of Plans and Specifications. The director of public works and city engineer, or their designees, are authorized to review and approve engineering plans for all public projects. This shall include the working details, drawings, plans and specifications prepared for every public project, including emergency and change order work, which may affect the design or operation of public improvements and which may bring into question the city's liability for dangerous conditions of public property.

F Municipal Projects. Except on locally funded public projects of twenty-five thousand dollars (\$25,000) or less when the project is for construction work, or fifteen thousand dollars (\$15,000) or less when the project is for alteration, demolition, repair or maintenance work, all contractors performing work on city public projects shall be subject to California Prevailing Wage Law, codified at California Labor Code Section 1720 et seq., as it may be amended from time to time, or otherwise proscribed by law. The only limitation on the provisions of this subsection shall be in the event federal funding requirements supersede state prevailing wage laws.

G Applicability of Public Contract Code.

1. Pursuant to Public Contract Code section 1100.7, the city is expressly exempt from the Public Contract Code except to the extent the city has expressly adopted one or more provisions of the Public Contract Code pursuant to the city charter, this code, city council resolution or other city council action, or express terms of a city contract.

### 3.30.070 Contractual services.

A ~~Ten~~ Ten Thousand Dollars (\$~~102~~,000) or Less. Contractual services of Ten Thousand Dollars (\$10,000) or less may be awarded by the city manager ~~or designee~~ after selecting a qualified vendor and negotiating a contract in the best interest of the city.

B ~~More than Ten Thousand Dollars (\$10,000) to~~ More than Ten Thousand Dollars (\$10,000) to Seventy-Five Thousand Dollars (\$75,000) ~~or Less~~. Contractual services of more than Ten Thousand Dollars (\$10,000) to Seventy-Five Thousand Dollars (\$75,000) ~~or less~~ may be awarded by the city manager pursuant to the vendor price quotes procedure (Section 3.30.120), best competitive value procedure (Section 3.30.140), or any exception consistent with this chapter. Contractual services of up to twenty-five thousand dollars (\$25,000) may be awarded by a designated position, subject to the limits and authorizations established under Section 3.30.050(B).

C More than Seventy-Five Thousand Dollars (\$75,000) to Two-Hundred Fifty Thousand Dollars (\$250,000). Contractual services of more than Seventy-Five Thousand Dollars (\$75,000) to Two-Hundred Fifty Thousand Dollars (\$250,000) ~~shall may~~ be awarded by the city manager pursuant to the informal bidding procedure (Section 3.30.095), best competitive value procedure (Section 3.30.140), or any exception consistent with this chapter.

D More than Two-Hundred Fifty Thousand Dollars (\$250,000). Contractual services of more than Two-Hundred Fifty Thousand Dollars (\$250,000) shall be awarded by the city council pursuant to the best competitive value procedure (Section 3.30.140) or any exception consistent with this chapter.

E Award. All contractual services shall be awarded in the best interest of the city, determined ~~in at~~ the sole discretion of the city council, city manager, or designated position authorized to award the contract.

### 3.30.080 Professional services.

A Ten Thousand Dollars (\$10,000) or Less. Professional services of Ten Thousand Dollars (\$10,000) or less may be awarded by the city manager ~~or designee~~ after selecting a qualified vendor and negotiating a contract in the best interest of the city.

B ~~More than Ten Thousand Dollars (\$10,000) to~~ More than Ten Thousand Dollars (\$10,000) to Seventy-Five Thousand Dollars (\$75,000) ~~or Less~~. Professional services more than Ten Thousand Dollars (\$10,000) to of

Seventy-Five Thousand Dollars (\$75,000) ~~or less~~ may be awarded by the city manager pursuant to the proposal procedure (Section 3.30.130), best competitive value procedure (Section 3.30.140), or any exception consistent with this chapter. Professional services of up to twenty-five thousand dollars (\$25,000) may be awarded by a designated position, subject to the limits and authorizations established under Section 3.30.050(B).

C Seventy-Five Thousand Dollars (\$75,000) to Two-Hundred Fifty Thousand Dollars (\$250,000). Professional services of Seventy-Five Thousand Dollars (\$75,000) to Two-Hundred Fifty Thousand Dollars (\$250,000) shall be awarded by the city manager pursuant to the ~~proposal procedure (Section 3.30.130)~~, best competitive value procedure (Section 3.30.140), or any exception consistent with this chapter.

D More than Two-Hundred Fifty Thousand Dollars (\$250,000). Professional services of more than Two-Hundred Fifty Thousand Dollars (\$250,000) shall be awarded by the city council pursuant to the best competitive value procedure (Section 3.30.140) or any exception consistent with this chapter.

E Award. Contracts for professional services shall be awarded to the consultant who will best serve the interests of the city, taking into account the demonstrated competence, professional qualifications and suitability for the project in general. The city may consider cost of professional services if determined to be a relevant factor under the circumstances, but cost shall not be the sole determining factor.

### **3.30.090 ~~Materials, supplies, and equipment~~Supplies.**

A ~~Two Thousand Dollars (\$2,000)~~ Ten Thousand Dollars (\$10,000) or Less. ~~Materials, supplies, and equipment~~Supplies of Ten Thousand Dollars (\$10,000) ~~Two Thousand Dollars (\$2,000)~~ or less may be awarded by ~~a the city manager or designee~~ department head after selecting a qualified vendor and negotiating a contract in the best interest of the city.

B ~~More than Ten Thousand Dollars (\$10,000) to~~ Seventy-Five Thousand Dollars (\$75,000) ~~or Less. Materials, supplies, and equipment~~Supplies of more than Ten Thousand Dollars (\$10,000) to Seventy-Five Thousand Dollars (\$75,000) ~~or less~~ may be awarded by the city manager pursuant to the vendor price quotes procedure (Section 3.30.120), best competitive value procedure (Section 3.30.140), or any exception consistent with this chapter. Priority for awarding is to be given to the lowest price quote. Justification for award on basis other than lowest price must be approved by the purchasing officer or designee. ~~Materials, supplies, and equipment~~Supplies of up to twenty-five thousand dollars (\$25,000) may be awarded by a designated position, subject to the limits and authorizations established under Section 3.30.050(B).

C More than Seventy-Five Thousand Dollars (\$75,000) to Two-Hundred Fifty Thousand Dollars (\$250,000). ~~Materials, supplies, and equipment~~Supplies of more than Seventy-Five Thousand Dollars (\$75,000) to Two-Hundred Fifty Thousand Dollars (\$250,000) or less may be awarded by the city manager pursuant to the informal bidding procedure (Section 3.30.095), best competitive value procedure (Section 3.30.140), or any exception consistent with this chapter. Priority for awarding is to be given to the lowest price quote. Justification for award on basis other than lowest price must be approved by the purchasing officer. ~~Materials, supplies, and equipment of up to twenty-five thousand dollars (\$25,000) may be awarded by a designated position, subject to the limits and authorizations established under Section 3.30.050(B). The contract shall be awarded in the best interest of the city.~~

D More than Two-Hundred Fifty Thousand Dollars (\$250,000). ~~Materials, supplies,~~

~~and equipment~~Supplies of more than Two-Hundred Fifty Thousand Dollars (\$250,000) shall, except as otherwise provided in this chapter, be awarded by the city council pursuant to formal bidding procedures and to the lowest responsible bidder or any exception consistent with this chapter. The city council may reject any or all bids received and may waive any irregularities in each bid received.

### **3.30.095 Informal bidding procedure.**

A The informal bidding procedure shall follow the formal bidding procedure except that the city shall maintain a list of prequalified vendors and contractors established by this chapter, the notice inviting informal bids shall be provided to all vendors and contractors on the bidder list and/or to a designated construction trade journals, or electronic bid platform not less than ~~ten-five~~ (105) calendar days before the date of opening bids, and award shall be by the city manager. The development and maintenance of the vendor and contractors lists will be established by the purchasing officer. Vendors and contractors must apply and be approved to be placed on a prequalified vendor list prior to the execution of any contract. Vendors may remain on the vendor list no more than 24 months.

### **3.30.100 Formal bidding procedure.**

A Uses of Formal Bidding Procedure. This formal bidding procedure shall be used whenever formal bidding is required.

B Notice Inviting Formal Bids. Notice inviting formal bids shall be issued and at a minimum: (1) describe the project; (2) state how to obtain more detailed information about the project; (3) state the date, time and place for the submission of bids; and (4) include any other information required by state or local law.

C Published Notice. The notice shall be published at least ten (10) calendar days before the date of opening the bids on the city's website and on an electronic bulletin board or an Internet site that is a generally recognized source of local public works contract information.

D Bidder's Security (Projects). All bids require one of the following forms of bidder's security: (1) cash; (2) cashier's check made payable to the city; or (3) a bidder's bond executed by an admitted surety insurer made payable to the city. Such security shall be an amount at least equal to ten percent of the amount bid. No bid shall be considered unless security in the form above set forth is provided with the bid.

E Forfeiture of Security (Projects). If the successful bidder fails to execute the contract and provide any required documentation, the bidder's security shall be forfeited to the city. The city council may, on refusal or failure of the successful bidder to execute such contract, award the contract to the next lowest responsible bidder submitting a responsive bid. If the city council awards the contract to the second lowest bidder, the amount of the lowest bidder's security shall be applied by the city to the difference between the low bid and the second low bid. The surplus, if any, shall be utilized to offset any and all costs of preparation and printing of plans, specifications, estimates of cost, publication of notices, and any surplus remaining shall be returned to the lowest bidder who fails to execute the contract.

F Review of Bids. The city shall review all bids received for completeness, accuracy, responsiveness to the notice inviting bids and bid documents, and the city's experience with or knowledge of the qualifications and reliability of each bidder and prepare a recommendation for award to the city council. The city council may waive any irregularities in each bid received.



G No Bids. If no bids are received, the city council may have the project done in any manner that the city council may direct without further complying with this chapter.

H Award of Contract. The contract shall be awarded in accordance with all applicable sections of this chapter. If two or more bids received are the same amount, the city council may decide which bid to accept and award.

I Rejection of Bids. The city council may, in its sole and absolute discretion, reject all bids presented. After all bids are rejected, the city council shall have the option of any of the following:

1. Abandon the project;
2. Readvertise for bids in the manner described in this chapter;
3. Perform the work by employees of the city; or
4. Have the project done by force account, or procure ~~materials, supplies, and equipment~~ supplies on the open market.

J Relief of Bidders. A bidder shall not be relieved of its bid unless by consent of the city council nor shall any change be made in the bid because of mistake. The requesting party should provide to the city council in written form the facts that establish to the satisfaction of the city council that: (1) a mistake was made; (2) written notice was given to the city of that mistake within five days, excluding Saturdays, Sundays, and state holidays, after the opening of the bids specifying how the mistake occurred; (3) the mistake made the bid materially different than it was intended to be; and (4) the mistake was made in filling out the bid and not due to error in judgment or to carelessness in inspecting the site of the work, or in reading the plans or specifications.

If the protest does not comply with each of these requirements, the city may reject the protest without further review. If the protest is timely and complies with the above requirements, the city shall review the protest, any response from the challenged bidder(s), and all other relevant information. The city will provide a written decision to the protestor in a reasonable amount of time.

### **3.30.110 Standard Bid and Proposal Protest Procedures.**

A Effect of Failure to Protest. The procedures set forth in this section are mandatory and are the sole and exclusive remedy of a bidder, proposer or other vendor to dispute the award of a contract that the city solicits through a competitive process. A protest that does not comply with these procedures may be summarily rejected and the person submitting the protest shall be deemed to have waived all rights to relief.

B Protests of Solicitation Method. By submitting a bid, proposal or other application for a contract award, the bidder, proposer or other vendor shall be deemed to have waived all rights to challenge the city's method for procuring the contract or any discrepancy in the solicitation process or documents. Bidders, proposers, or vendors may submit bids, proposals or other applications under protest. Protests under this section shall be submitted in writing to the official designated to receive the bid, proposal or other application and shall contain a full summary of the factual and legal basis for the protest.

C Protests of Award. A bidder, proposer or other vendor applying for a city contract

through a competitive process may submit a written protest of the award of the contract. The protest shall identify and explain the factual and legal grounds for the protest. Any grounds not raised in the written protest are deemed waived by the protesting bidder.

D Waiver. Any person that: (1) did not directly submit a bid or proposal, (2) is not responsible or qualified to receive the contract, (3) failed to submit a responsive bid or proposal, (4) is not in line to receive the contract or is otherwise ineligible to receive the contract, (5) is otherwise not beneficially interested in the award, or (6) fails to submit a timely protest shall be deemed to have waived the right to protest the award of the contract. Any protest deemed waived will be subject to summary rejection without further consideration and the person will have no right to any relief.

E Timing of Protest of Award. Protests shall be submitted in writing to the official designated to receive the bid, proposal or other application within the following times:

1. If of another bidder, within five (5) calendar days after the bid opening date.
2. If the city makes a recommendation to the city council to award a proposal or other application, then within five (5) calendar days following the issuance of the recommendation and prior to the date of the award.
3. If in response to a notice of intent to reject a bid, proposal or other application, then within five (5) calendar days following the issuance of the notice of intent.

F City Response. If the protest is timely and complies with the above requirements, the city shall review the protest, any response from the challenged bidder, proposer or other vendor, and all other relevant information. The city will provide a written decision to the protestor in a reasonable amount of time. If the protest is in response to a recommendation of award to the city council, then the protest will be considered concurrently with the award of the contract, and the approval authority's action is final.

G Conflicts. The protest procedures contained in this section shall not apply if a particular solicitation contains a different protest procedure. This section does not limit or eliminate a claimant's obligations under the Government Claims Act, Government Code Section 900 et seq.

### **3.30.120 Vendor price quotes procedure.**

City staff shall solicit from ~~an approved list of~~ vendors via posted notice, telephone request, mail, email, electronic bid platform or any other reasonable solicitation method, price quotes documented in writing. If unable to obtain a minimum of three (3) price quotes from ~~approved~~ qualified vendors, staff shall document that reasonable efforts were made to obtain price quotes including, that a notice was posted for not less than three (3) business days; that there were no other vendors to solicit price quotes from; or that they solicited to other vendors and one or more declined to provide a quote.~~staff shall procure by the best competitive value procedure (Section 3.30.140). The development and maintenance of the list of approved vendors will be established by the purchasing officer.~~

### **3.30.130 Proposal procedure.**

City staff shall solicit from ~~an approved list of~~ vendors via posted notice, telephone request, mail, email, electronic bid platform or any other reasonable solicitation method, proposals documented in writing. If unable to obtain a minimum of three (3) proposals from ~~approved~~ qualified professional service firms, staff shall document that reasonable efforts were made to

~~obtain proposals including, that a notice was posted for not less than three (3) business days; that there were no other vendors to solicit proposals from; or that they solicited to other vendors and one or more declined to provide a proposal.; staff shall procure by the best competitive value procedure (Section 3.30.140). The development and maintenance of the list of approved vendors will be established by the purchasing officer.~~

### **3.30.140 Best competitive value procedure.**

The best competitive value procedures utilizes request for qualifications ("RFQ") and/or request for proposals ("RFP") to engage services on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the city. The following minimum guidelines and procedures shall be implemented.

A Notice Inviting RFQs or RFPs. At a minimum, the notice inviting RFQs or RFPs shall: (1) describe the project; (2) state how to obtain more detailed information about the project; (3) state the date, time and place for the submission of qualifications or proposals; (4) describe general parameters for evaluation and selection; and (5) include any other information required by state or local law.

B Published Notice. City staff shall solicit RFQs or RFPs via published notice on the city's website or a website that electronically receives bids for not less than five (5) calendar days.

C Review of Qualifications or Proposals. City will review and evaluate qualifications or proposals based on the evaluation and selection criteria in the RFQs/RFPs and rank proposals based on factors listed in the RFQ/RFP.

D Negotiation. Once proposals are ranked, city may negotiate a contract with the highest ranked proposer only, may negotiate with multiple proposers, or may attempt to reach an agreement with the highest ranked proposer before negotiating with other proposers in order of ranking. City may also dispense with negotiations and recommend an award based on the proposals.

E Award. Award will be made in accordance with this chapter.

F Rejection of Proposals or Qualifications. The city council may, in its sole and absolute discretion, reject all qualifications or proposals presented and re-advertise.

### **3.30.150 Alternative project delivery.**

As an alternative to the formal bidding procedure set forth in this chapter, the city may, for public projects, cause to be prepared estimates and documents for the procurement of public projects through alternative project delivery. Upon approval by the city council, the city may use the following methods of project delivery: design-build, progressive design-build, and construction manager/general contractor method. The purchasing officer is authorized to establish the procurement procedures for these methods of project delivery. As used in this chapter:

A "Best value" means a value determined by evaluation of objective criteria that relate to price, features, functions, life-cycle costs, experience, and past performance. A best value determination may involve the selection of the lowest cost proposal meeting the interests of the city and meeting the objectives of the project.

B "Construction Manager/General Contractor method" means a project delivery

method in which a construction manager is procured to provide preconstruction services during the design phase of the project and construction services during the construction phase of the project. The contract for construction services may be entered into at the same time as the contract for preconstruction services or at a later time. The execution of the design and the construction of the project may be in sequential phases or concurrent phases. A Construction Manager/General Contractor method contract shall be awarded on a best value or qualifications basis.

C “Design-build” means a project delivery process in which both the design and construction of a project are procured from a single entity. Design-build shall be awarded on a best value basis.

D “Progressive design-build” means a project delivery process in which both the design and construction of a project are procured from a single design-build entity that is selected through a qualifications-based selection at the earliest feasible stage of the project. A progressive design-build contract shall be awarded on a best value or qualifications basis.

E

### **3.30.160 Exceptions to procurement methods.**

A Minimum Procurement Levels. When the city manager establishes a minimum dollar threshold where the procurement of public projects, contractual services, professional services, and ~~materials, supplies, and equipment~~supplies are not subject to any of the required procurement methods in this chapter. The city shall work to procure these items in the best interest of the city.

B Disaster Relief. When in the case of a disaster, as further explained in Chapter 2.48, the requirements of this chapter do not apply.

C Emergency. While the need for occasional emergency purchases is recognized, the practice must be curtailed as much as possible by anticipating needs so that normal purchasing procedures may be used.

1. “Emergency” means a sudden, unexpected occurrence that poses a clear, eminent danger requiring immediate action to protect the health and safety of the public, including to prevent or mitigate the loss or impairment of life, health, property or public services.

2. In the case of an emergency which requires the immediate procurement of public projects, contractual services, professional services or ~~materials, supplies, and equipment~~supplies, the city manager may authorize the purchasing officer to procure these items without regard to the provisions of this chapter; provided that a written public record shall be kept showing the nature of the emergency and the city manager’s authorization to proceed under the provisions of this section. The city manager shall terminate the emergency action at the earliest possible date that conditions warrant.

D No Competitive Market. When the city ~~council-manager~~ determines that a competitive market does not exist or that the city will not gain a competitive advantage by using the formal bidding procedure, the city may use any other procurement method.

E Competitive Bidding Already Completed. When the purchasing officer, with the

approval of the city manager, determines that: (1) a competitive bid procedure has been conducted by another public agency, including, but not limited to, another local agency, the state through the California Multiple Award Schedule (CMAS), the federal government through the General Services Administration (GSA), or a joint powers agency, authority or alliance that procures competitive contracts; and (2) the price to the city is equal to or better than the price to that public agency.

F State Purchase. When the purchase is made on behalf of the city by the State Department of General Services.

G Mandated Expenditures. When expenditures are mandated by law or regulation, such as county booking fees, utilities, postage (for delivery charges through the U.S. Postal Service), waste disposal fees or other non-negotiable permit, use or application fees.

H Shared Services. When the city council or city manager authorizes the award and execution of contracts for services, subject to the dollar limits consistent with this chapter, that are provided by another government, public entity, joint powers authority, quasi-governmental entity, special district or nonprofit entity that will maximize efficiency, increase cost effectiveness, increase range of services, minimize duplication, provide training or education encourage collaboration or standardize efforts, or leverage government resources.

I Best Interest of City. When the city council or city manager authorizes the award and execution of contracts, subject to the dollar limits consistent with this chapter, without competitive bidding provided that the city council or city manager finds that such award is in the best interest of the city, or of the public health, safety, and welfare.

J Sole Source. When the city manager determines that there is only one source that provides the needed public project, contractual service, professional service or ~~materials, supplies, and equipment~~supplies or a product to ensure compatibility with other city products and equipment, the city shall work to procure these items in the best interest of the city.

K Purchase of Recurring Charges~~;~~.

1. The ~~Purchasing-purchasing~~ Officer may create an ~~open-approved~~ vendor list for the purposes of providing specified services and goods for the fiscal year for ongoing cleanup, maintenance and different routine items that are of a continuing nature. ~~The development and maintenance of the vendor list and specified services list will be established by the purchasing officer.~~

2. Prior to each fiscal year, an invitation to provide pricing for certain goods or services should be posted and remain posted through the fiscal year to offer vendors to provide pricing throughout the year and provide equal bidding opportunities. Additions to the vendor list may be approved continuously by the purchasing officer. Prices from each vendor shall be obtained in a manner to ensure competitive pricing, in the best interest of the city. Vendors shall be required provide updated pricing annually.

3. The aggregate yearly threshold for each vendor ~~may be determined by the city council, at the recommendation of the city managers~~shall not exceed \$25,000. A vendor list may be approved by the city council as often as necessary but not less than once every twenty four (24) months.

4. Vendors may remain on the list without reapplying for three (3) years plus two one-year extensions at the request of city staff.

5. Utilization of vendors on the list is to be prioritized by pricing, then by other appropriate criteria including quality, capability, availability, or similar criteria. Exceptions to the prioritization of pricing is subject to approval by the finance director or designee.

L Technology Recurring Charges:

1. When renewing maintenance/support services, license(s), or addressing similar needs for existing technology systems (software and hardware) procurement is permissible directly from the original developer/manufacture or sole source provider if the city manager has determined that negotiations have yielded the best price, terms, and conditions.

2. When renewing maintenance/support services, license(s), or addressing similar needs for existing technology systems (software and hardware) procurement is permissible directly from a vendor/reseller previously selected following the City's procurement standards; provided, that (1) the vendor/reseller has been used continuously since such selection, (2) the renewal involves no substantive changes, and (3) the city manager determines that proceeding with the vendor/reseller serves the City's best interests.

M Otherwise Authorized. When otherwise authorized by this chapter or applicable law.

### **3.30.170 Change orders.**

B The city manager ~~or designee~~ shall have authority to approve change orders for public projects, contractual services, professional services, and ~~materials, supplies, and equipmentsupplies~~ previously awarded by the city manager, provided that change orders aggregated with the original contract do not exceed Two-Hundred Fifty Thousand Dollars (\$250,000)~~Seventy-Five Thousand Dollars (\$75,000)~~, subject to an unencumbered appropriation in the fund against which such expenditure is to be charged.

C During the award of a contract by the city council, the council may give the city manager the authority to approve change orders, specific to that contract, based on either a percentage of the contract or a specific dollar amount. If no specific authority is given by the city council, the city manager may approve change orders for a city council awarded contract subject to the dollar limits consistent with this chapter, provided such change orders are within the approved contingency.

D Change orders in excess of the city manager's authority may be approved by the city manager and submitted to city council for ratification under the following circumstances:

1. The failure to immediately issue a change order may result in significant project cost increases or an unacceptable project delay due to work stoppage or other inefficiencies;

2. A special meeting or a regularly scheduled meeting of the city council is not scheduled within a reasonable period of time to sufficiently remedy the problem; and

3. Funding for the change order is currently available within the appropriated budget.

### **3.30.180 Local business preference program.**

A Statement of Policy. It is the policy of the city to promote employment and business opportunities for local residents and firms on all contracts and give preference to local residents, workers, businesses, contractors, and consultants to the extent consistent with the law and

interests of the public.

B Local Preference in Purchasing. In the bidding of, or letting for procurement of, supplies, materials, and equipment, as provided in this chapter, the purchasing officer may give a preference to local businesses in making such purchase or awarding such contract in an amount not to exceed five percent of the local business' total bid price. Total bid price shall include not only the base bid price but also adjustments to that base bid price resulting from alternates requested in the solicitation. In order for a local business to be eligible to claim the preference, the business must request the preference in the solicitation response and provide a copy of its current business license from a jurisdiction in the Coachella Valley.

C Local Preference in Professional Services. In awarding contracts for professional services, including consultant services, preference to local business shall be given whenever practicable pursuant to this chapter consistent with the statement of policy in subsection A of this section. The contractor or consultant will also, to the extent legally possible, solicit applications for employment and proposals for subcontractors and sub-consultants for work associated with the proposed contract from local residents and firms as opportunities occur and hire qualified local residents and firms whenever feasible. In order for a local business to be eligible to claim the preference, the business must request the preference in the solicitation response and provide a copy of its current business license from a jurisdiction in the Coachella Valley.

D Exceptions to Local Business Preference Policy. The preference set forth in this section shall not apply to the following purchases or contracts:

1. Goods or services provided under a cooperative purchasing agreement;
2. Purchases or contracts which are funded in whole or in part by a governmental entity and the laws, regulations, or policies governing such funding prohibit application of that preference;
3. Purchases made or contracts let under emergency or noncompetitive situations;
4. Purchases with an estimated cost of twenty-five thousand dollars or more;
5. Application of the local business preference to a particular purchase, contract, or category of contracts for which the city council is the awarding authority may be waived at the city council's discretion;
6. Public projects;
7. Bids that are nonresponsive.

E Quality and Fitness. The preferences established in this section shall in no way be construed to inhibit, limit or restrict the right and obligation of the purchasing officer to compare quality and fitness for use of supplies, materials, equipment, and services proposed for purchase and compare the qualifications, character, responsibility, and fitness of all persons, firms, or corporations submitting bids or proposals. In addition, the preferences established in this section shall in no way be construed to prohibit the right of the city council or the purchasing officer from giving any other preference permitted by law or this chapter.

F Verification of Local Business Preference Eligibility. Any vendor or consultant claiming to be a local business, shall so certify in the bid. The purchasing officer shall not be required to verify the accuracy of any such certifications, and shall have sole discretion to

determine if a vendor or consultant meets the definition of "local business."

G Enforcement.

1. The information furnished by each bidder requesting a local business preference shall be under penalty of perjury.

2. No person or business shall knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a local business for the purpose of this section.

3. No person or business shall willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a city official or employee for the purpose of influencing the certification or denial of certification of any entity as a local business.

4. A business which has obtained city certification as a local business by reason of having furnished incorrect supporting information or by reason of having withheld information, and which knew or should have known the information furnished was incorrect or the information withheld was relevant to its request for certification, and which by reason of such certification has been awarded a contract to which it would not otherwise have been entitled, shall:

a. Pay to the city any difference between the contract amount and what the city's costs would have been if the contract had been properly awarded;

b. In addition to the amount described in subsection (G)(4)(a), be assessed a penalty in an amount of not more than ten percent of the amount of the contract involved; and

c. Be subject to debarment from future award of contracts from the city.

5. The penalties identified in subsection (G)(4) shall also apply to any business that has previously obtained proper certification and, as a result of a change in its status would no longer be eligible for certification, fails to notify the purchasing officer of this information prior to responding to a solicitation or accepting a contract award.

### **3.30.190 Preference for recycled content.**

A Environmentally Preferable Practices. The city will act to make resource conservation an integral part of its waste reduction and recycling programs. The practice of discarding materials used in the city facilities is wasteful of natural resources, energy, and money.

1. The city will integrate the concept of resource conservation, including waste reduction and recycling, into its environmental programs.

2. The city will decrease the amount of waste of consumable materials by:

a. Reducing the consumption of consumable material wherever possible.

b. Fully utilizing all material prior to disposal.

c. Minimizing the use of nonbiodegradable products wherever possible.

3. The city will cooperate with, and participate in, recycling efforts being made



by the city and county. As systems for recovering waste and recycling develop within the city limits, the city will participate by appropriately separating and allowing recovery of recyclable waste products.

4. All vendors providing paper products and printing and writing paper shall:

a. Provide recycled-content paper products and recycled-content printing and writing paper that consists of at least thirty percent, by fiber weight, postconsumer fiber, if fitness and quality are equal, and available at equal or lesser price.

b. Provide paper products and printing and writing paper that meet Federal Trade Commission recyclability standard as defined in 16 Code of Federal Regulations (CFR) Section 260.12.

c. Certify in writing, under penalty of perjury, the minimum percentage of postconsumer material in the paper products and printing and writing paper offered or sold to the city. This certification requirement may be waived if the percentage of postconsumer material in the paper products, printing and writing paper, or both can be verified by a product label, catalog, invoice, or a manufacturer or vendor internet website.

d. Certify in writing, on invoices or receipts provided, that the paper products and printing and writing paper offered or sold to the city is eligible to be labeled with an unqualified recyclable label as defined in 16 Code of Federal Regulations (CFR) Section 260.12.

B Representatives of the city will actively advocate, where appropriate, for resource conservation practices to be adopted at the local, regional, and national levels.

C City employees shall refer to the adopted recovered organic waste product procurement policy for proper purchasing and recordkeeping procedures related to recovered organic waste products and recycled-content paper products and recycled-content printing and writing paper.

### **3.30.200 Nondiscrimination in contracting.**

#### **A. Statement of Policy.**

1. It is the policy of the city to promote the principles of equal opportunity in its contracting activities by assuring that those seeking to do business with the city will treat contractors, subcontractors, and employees equally and will not engage in discrimination against their contractors, subcontractors, or employees because of their actual or perceived race, color, religion, ancestry, national origin, disability, medical condition, marital status, domestic partner status, sex, gender, gender identity, gender expression, or sexual orientation or as a member of any other protected class.

2. It is also the policy of the city to ensure that work performed on behalf of the city is done in a cost effective and high quality manner

B. Basic Contract Requirement Prohibiting Discrimination. The city shall not enter into any contract valued at more than \$10,000 with any contractor, unless such contractor agrees to be bound by contract to provisions prohibiting discrimination in employment and the provision of

employment benefits on the basis of actual or perceived race, color, religion, ancestry, national origin, disability, medical condition, marital status, domestic partner status, sex, gender, gender identity, gender expression, or sexual orientation as these terms are defined by California law, or association with members of classes protected under this Section or in retaliation for opposition to any practices forbidden under this Section, against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, operated by that contractor, and shall require such contractor to include a similar provision in all subcontracts.

C. Certification. Every contractor certify compliance with the City's nondiscrimination policy prior to contract award in a form acceptable to the city manager. No contract shall be awarded until the contractor has submitted to the city such certification. The certification shall contain the following:

1. Contractor certifies and represents that, during the performance of the contract, the contractor and any other parties with whom it may subcontract shall adhere to the city's nondiscrimination policy as provided in the Section.

2. Contractor shall, in all solicitations or advertisements for applicants for employment placed by or on behalf of this contract, state that it is an "equal opportunity employer" or that all qualified applicants will receive consideration for employment without regard to their actual or perceived race, color, religion, ancestry, national origin, disability, medical condition, marital status, domestic partner status, sex, gender, gender identity, gender expression, or sexual orientation.

3. If requested to do so by the purchasing officer, contractor shall provide the city with access to copies of relevant records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.

4. Nothing contained in this contract shall be construed in any manner so as to require or permit any act which is prohibited by law.

5. The contractor shall include the provisions set forth in paragraphs (1)–(4) of this Subsection (C) of this Section, inclusive, in each of its subcontracts.

D. Investigation and Monitoring. All contracts shall include appropriate provisions that will allow the purchasing officer to review, monitor, and investigate compliance with this Section and to require each contractor to allow and provide full access to all applicable records, rules, regulations, documents, and other pertinent data necessary for the qualitative and quantitative evaluation of each contractor's compliance with the provisions of this Section.

E. Enforcement.

1. In the event the purchasing officer determines the contractor is not in substantial compliance with the provisions of this Section, the purchasing officer may recommend to the city manager, the initiation of one or more of the following rights and remedies described in this subsection, in addition to any rights and remedies otherwise provided in the applicable contract or by law or equity:

a. Termination of the contract and bar the contractor from bidding on future contracts with the city for two (2) years from the effective date of the contract termination;

b. Assess liquidated damages in the amounts specified in the contract where it is found the contractor willfully violated the requirements of this Section; and

c. Seek recovery of reasonable attorneys' fees and costs incurred for enforcement of this Section.

2. The purchasing officer shall issue written findings and mail a copy of the findings to the contractor by first class mail and by any other means provided in the contract.

F. Appeals.

1. Within five (5) business days of the notice of the purchasing officer's findings, the contractor may file a written appeal of the purchasing officer's determinations to the city clerk.

2. The city clerk shall set the matter for hearing and shall cause a Notice of Hearing to be given to the contractor and to such other persons as may have identified themselves as interested in the decision.

3. The hearing shall be conducted as an independent reexamination of the matter before an independent hearing officer. The contractor shall have the burden of proof in all cases, and if the contractor fails to appear either in person or by counsel, or fails to present or offer any evidence, the hearing officer may adopt the decision of the purchasing officer or may decide the matter upon the record with or without taking any additional evidence. Any oral or documentary evidence may be received, but the hearing officer shall exclude irrelevant, immaterial or unduly repetitious evidence. The hearing officer's decision shall be made upon substantial evidence. In other words, if an essential finding is based upon hearsay or secondary evidence, such evidence must be of the type which would be admissible in a court of law as proof of such finding.

4. Upon the hearing of the appeal the hearing officer may refer the matter back to the purchasing officer with directions for further consideration, or the hearing officer may reverse, affirm, or modify the decision as may appear just and reasonable in light of the evidence presented. The decision of the hearing officer shall be supported by written findings and shall include the reasons for the ruling. Notice of the hearing officer's decision shall be served on the contractor, the purchasing officer, and the city clerk. The hearing officer's decision shall be final.

G. Exceptions and Waivers.

1. The city manager may waive the requirements of this Section under the following circumstances:

a. Whenever the city manager finds that there is only one prospective contractor willing to enter into a real property agreement with the city for use of city property on the terms and conditions established by the city, or that the needed goods, services, construction services for a public work or improvement, or interest in or right to use real property are available only from a sole source, and the prospective contractor is not currently disqualified from doing business with the city, or from doing business with any governmental agency based on any contract compliance requirements;

b. Where the city manager determines that the contract or real property agreement is necessary to respond to an emergency which endangers the public health or safety and no entity which complies with the requirements of this Section capable of responding to the emergency is immediately available; provided that such certification must be made prior to or within five (5) business days of execution of the contract or real property

agreement on behalf of the city;

c. Where the city attorney certifies in writing to the city council that the contract involves specialized litigation requirements such that it would be in the best interests of the city to waive the requirements of this Section; provided such certification is made prior to execution of the contract on behalf of the city.

2. This Section shall not apply where the prospective contractor is a public entity and the city manager finds that supplies, services, construction for a public project or improvement or interest in or right to use real property of comparable quality or accessibility as are available under the proposed contract or property contract are not available from another source, or that the proposed contract or property contract is necessary to serve a substantial public interest.

3. This Section shall not apply where the city manager finds that the requirements of this Section will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement, provided that the contracting officer has made a good faith attempt to change the terms or conditions of any such grant, subvention or agreement to authorize application of this Section.

4. Upon the request of a potential contractor or upon the purchasing officer's own initiative, after taking all reasonable measures to find an entity that complies with the law, the city manager may waive any or all of the requirements of this Section for any contract, real property agreement, or bid package advertised and made available to the public, or any competitive or sealed bids received by the city under the following circumstances:

a. Where the city manager determines that there are no qualified responsive bidders or prospective contractors who could be certified as being in compliance with the requirements of this Section and that the contract or real property agreement is for supplies, services, or a public project that is essential to the city or city residents; or

b. Where the city manager determines that transactions entered into pursuant to bulk purchasing arrangements through federal, State, or regional entities which actually reduce the city's purchasing costs would be in the best interests of the city; or

c. Where the city manager determines that the requirements of this Section would result in the city's entering into a contract with an entity that was set up, or is being used, for the purpose of evading the intent of this Section, which is to prohibit the city from entering into contracts with entities that discriminate based on the criteria set forth in this Section.

5. The waiver authority granted to the city manager in this Subsection shall be subject to the requirements that:

a. All proposed waivers must set forth the reasons the city manager is requesting the waiver, what steps were taken to find an entity that complies with this Subsection and why the waiver does not defeat the intent of this Section, which is to prohibit the city from entering into contracts with entities that discriminate based on the criteria set forth in this Chapter. Such waivers shall be filed with the city clerk and a notice of such waiver shall be presented to the city council on the next available city council agenda; and

b. For any contract or real property agreement subject to approval by the city council, the city manager shall include a statement in the approving resolution and related staff report whether any waiver under this Section is proposed for that contract."

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