

Title 7 PROCUREMENT AND CONTRACTING

Chapter 7.01 GENERAL PROVISIONS

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7.01.010 Purpose.

The purpose of this Title is to:

- (1) Establish procedures for the procurement of Supplies, Services, and construction of Public Projects, including requirements and procedures for competitive bidding and identification of exceptions to competitive bidding requirements, such as sole source Contracts and Contracts undertaken in response to emergency situations, as recorded in Section 913 of the City Charter;
- (2) Set forth rules and regulations governing the contracting for, purchasing, storing, distribution, or disposal of all supplies, materials and equipment required by any office or department of the city government as provided in Section 403 of the City Charter;
- (3) Clearly define the authority for the procurement function including signatory authority for Purchase Orders and Contracts which bind the City for the acquisition of equipment, Supplies, labor or Services within the budget approved by the City Council and within the monetary limits established by the City Council; as provided in Section 318 the City Charter;
- (4) Establish standards or pre-qualifications for the screening of Contractors or providers of Supplies and Services by a pre-qualification process as provided in Section 913 of the City Charter;
- (5) Provide a method for the sale or exchange of personal property not needed in City service or not fit for the purpose for which intended and for the conveyance of title thereto, as authorized in Section 318 of the City Charter;
- (6) Simplify, clarify, centralize, and modernize the ordinance governing procurement and contracting by the City;
- (7) Streamline the procurement process by establishing electronic transfer of procurement information authorizing and identifying electronic methods of procurement as preferred when lawful and practicable;

- (8) Permit the continued development of procurement policies and practices;
 - (9) Ensure the fair and equitable treatment of all persons who deal with the procurement system of the City;
 - (10) Provide increased economy in city procurement activities and maximize to the fullest extent practicable the purchasing value of public monies of the City;
 - (11) Foster effective broad-based competition within the free enterprise system;
 - (12) Provide safeguards for the maintenance of a procurement system of quality and integrity;
 - (13) Obtain in a cost-effective and responsive manner the materials, services and construction required by City departments in order for those departments to better serve the City's businesses and residents.
- (Ord. 2049 § 1, 2021; Ord. 1605 § 1, 2002)

7.01.020 Application of this title.

- (1) General Application.

This Title applies only to Purchase Orders and Contracts solicited or entered into after the effective date of this ordinance.

- (2) Compliance with Federal Requirements.

Notwithstanding the provisions of this Title, federal and state law and any special conditions pertaining to state and federal grants received by the City that will fund a portion or all of a Procurement may supersede and/or supplement the provisions of this Title. In particular, the City shall ensure all Procurement funded in part or in whole with certain federal funding shall comply with those requirements contained in the Code of Federal Regulations, Title 2 "Grants and Agreements," Subtitle A, Chapter II, Part 200, Subpart D "Post Federal Award Requirements," or its successor regulation as may be amended from time to time.

- (3) Compliance with California Uniform Public Construction Cost Accounting.

Pursuant to and in accordance with Resolution No. 20249 adopted December 19, 2001, the City Council adopted the Uniform Public Construction Cost Accounting Act set forth in Public Contract Code section 22000 et seq. (the "Act") with respect to awarding Contracts or through Force Account to perform Public Projects, as amended in this Title. In accordance with the Act, the City may utilize the Act's procedures when contracting for Public Projects, or in its sole discretion, when contracting for Maintenance Work, or for any other work that is not otherwise considered a Public Project. The City reserves the right to use such other more restrictive procedures as required in this Title or may be adopted by the City from time to time.

- (4) Application to City Procurement and Contracting.

This Title shall apply to every expenditure of public funds irrespective of their source, including federal assistance monies, (except as otherwise specified in subsection (2) of this section) by this City, under any Contract, except that this Title shall not apply to those exemptions specified in Section 7.01.030. It shall also apply to disposal of City property. (Ord. 2049 § 1, 2021; Ord. 1605 § 1, 2002)

7.01.030 Exemptions to provisions of this title.

The provisions of this Title are not applicable to:

- (1) Contracts for professional witnesses if the purpose of such Contracts are to provide for Professional Services or testimony relating to an existing or probable judicial proceeding in which the City is or may become a party to contracts for special investigative services for law enforcement purposes;
- (2) Contracts for special investigative services for law enforcement purposes;
- (3) Agreements negotiated by the City Attorney or risk manager in settlement of a dispute, claim or litigation or threatened litigation;
- (4) Agreements negotiated by the City Attorney regarding worker's compensation payments for medical and related expenses;
- (5) Contracts for the purchase of works of fine art and performing art entertainment;
- (6) The award of financial participation agreements; owner participation agreements; disposition and development agreements; development agreements; real estate purchase or lease agreements; covenants; easements; encroachment agreements; memoranda of understanding; or other similar agreements. Such Contracts shall be awarded in accordance with applicable legal requirements and/or administrative directives of the City;
- (7) Procurement of miscellaneous books, magazines, newspapers, subscriptions, on-line library reference services, film, videos and assorted materials for library customer check-out purposes for which Contracts by competitive bid solicitation are not practicable, or which are exempted from competitive bidding pursuant to applicable laws;
- (8) Intergovernmental payments, purchases and agreements;
- (9) Public utility purchases of water, power and related services when no competition is available;
- (10) Specialized public employee recruitment services, seminar, training and educational classes;
- (11) Magazine and media advertisement;
- (12) Contracts for election services;
- (13) Contracts for Legal Services which shall be developed consistent with the Palm Springs City Charter, Section 407; or
- (14) Contracts for employment and public employee labor agreements.

(Ord. 2049 § 1, 2021; Ord. 1605 § 1, 2002)

7.01.040 Definitions of terms used in this title.

As used in this Title the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

“Awarding Authority” means the City Council, the City Manager or the City Manager’s designee who has been given Signature Authority to approve Procurements under this Title.

“Bid” means an offer or Proposal submitted by a Bidder setting forth the price for the City’s procurement of Supplies, Services, or for construction of Public Projects, on bid or price forms issued by the City. A Bid includes a Proposal received from a Bidder pursuant to a RFP.

“Bidder” means any person or Business submitting a Bid or Proposal to the City in response to an IFB, NIB, or RFP issued by the City.

“Business” means a corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

“Change Order” means any City-issued written document used to amend a Purchase Order or to amend an existing Contract authorizing changes within the scope of work, additions or deletions to the work, an adjustment to the price, or changes to any other terms and conditions of the Contract.

“City” means the City of Palm Springs.

“City Attorney” means the City Attorney of the City as appointed by the City Council.

“City Engineer” means the City Engineer of the City as appointed by the City Manager.

“City Manager” means the City Manager of the City as appointed by the City Council, or the designee of the City Manager who shall be an Assistant City Manager, Department Head, or an independent third-party hearing officer.

“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. For the purposes of this definition, “Coachella Valley” includes the cities of Beaumont and Banning and the unincorporated areas between Banning and the City of Palm Springs.

“Construction” means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property, but excluding the routine operation, routine repair, or routine maintenance of existing structures, buildings or real property.

“Contract” means any type of legally recognized City agreement, including executed Purchase Orders, 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. Any Contract shall include terms and conditions applicable to the Procurement as required by the City Attorney.

“Contract Administrator” means the Department Head or other City employee designated by the City Manager to administer a Contract between the City and a Contractor and oversee and monitor the Contractor’s performance under the terms of the Contract.

“Contractor” means any person or Business having a Contract or Purchase Order with the City. For the purpose of this Title, the term “Contractor” includes any person or Business who is a party to a Real Property Agreement as defined in this section.

“Data” means recorded information regardless of form or characteristic.

“Design-Build” means a project delivery method in which the City enters into a single Contract for both the design and construction of a Public Project pursuant to a competitive negotiation process. Design-Build includes Public Projects where in addition to design and construction, other functions may be incorporated, including, but not limited to, financing, operating and/or maintenance.

“Director” means the City Manager or the City Manager’s designee.

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

“Employee” means an individual drawing a salary or wages from the City, whether elected or not; any non-compensated individual performing personal services for the City or any department, commission, council, board, or any other entity established by the City; and any non-compensated individual serving as an elected official of the City.

“Facility” means any plant, building, structure, ground facility, utility system, real property, streets and highways, or other Public Project improvement.

“Field Order” means an administrative change to the scope of a Contract for a Public Project when a line item allowance for Field Orders has been included in the Bid.

“Force Account” means Services performed by, or Public Projects constructed by, Employees.

“General Services” means the furnishing of labor, time, or effort by a Contractor for non-Professional Services as the City may, from time to time, find necessary and proper for the functioning of the City.

“Invitation for Bids” (IFB) means all documents, whether attached or incorporated by reference, utilized for soliciting Bids for Services, including Maintenance Work, or for construction of Public Projects, and may also mean a Notice Inviting Bids (NIB).

“Legal Services” means professional expert and consultant services in connection with existing and anticipated litigation and/or claim defense or prosecution, and other such related matters, including, but not limited to, expert witnesses, arbitrators, mediators, court transcripts court reporters, process servers, private investigators, court filing and messenger services and other legal support services, all as may be required by and through the City Attorney at the direction of the City Council.

“Local Business” means a person or Business who has a valid physical business address located within the Coachella Valley, at least six months prior to bid or proposal opening date, from which the person or Business 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.

“Maintenance Work” has the same meaning as contained in Public Contract Code section 22002, as amended.

“National Origin” shall mean place of origin, immigration status, cultural or linguistic characteristics, or ethnicity.

“Procurement” means the buying, purchasing, renting, leasing, or otherwise acquiring of any Supplies, Services, or for construction of Public Projects. It also includes all functions that pertain to the obtaining of any Supplies, Services, or for construction of Public Projects, including description of requirements, selection, and solicitation of sources, preparation and award of Contract, and all phases of Contract administration.

“Professional Services” means services provided by a person or Business engaged in a profession based on a generally recognized special knowledge, skill, license, and/or certification to perform the work. This includes the services of architectural, landscape architectural, engineering, environmental, land surveying, appraisal, construction project management, financial or other professional services, including but not limited to those defined by Government Code sections 4525 and 4526 as professional services.

“Property” means real or personal property assets.

“Proposal” means either: (1) an offer submitted by a Bidder in response to a Request for Proposals (RFP), where selection for award is based on criteria specified in the RFP documents; or (2) a Bid submitted in response to an Invitation for Bids (IFB) or Notice Inviting Bids (NIB) pursuant to a RFQ/RFP Process. All elements of a Bidder’s proposal are subject to negotiations.

“Public Entity” means a governmental entity such as a country, state, city, district, county or any other organization created by the state as a separate legal public entity.

“Public Project” has the same meaning as contained in Public Contract Code section 22002, as amended, which defines a “Public Project” as:

- (a) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly-owned, leased, or operated facility;
- (b) Painting or repainting of any publicly owned, leased or operated facility;

(c) In the case of a publicly owned utility system, the construction erection, improvement or repair of dams, reservoirs, powerplants, and electrical transmission lines of two hundred thirty thousand volts and higher;

(d) Public Project does not include Maintenance Work.

“Purchase Order” means a City-issued document with any necessary terms and conditions, which authorizes the Procurement of Supplies or Services, or for construction of Public Projects, pursuant to a Contract at a stated price and encumbers City funds for the payment therefor.

“Purchase Requisition” means a written request prepared on the applicable City forms or via the City’s online Procurement management system and submitted by the Using Department to the Director identifying the specific Procurement, including the items, cost, funds budgeted for the Procurement, and associated documentation, including Awarding Authority’s approval, supporting the issuance of a Purchase Order for such Procurement.

“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.

“Request for Proposals” (RFP) means a document that solicits persons or Businesses to submit a Proposal to perform the scope of work associated with a proposed project. Cost is not the sole basis for selection in the RFP; other qualifications including experience, turnaround time and approach to work are important factors when evaluating Proposals.

“Request for Qualifications” (RFQ) means a document that solicits persons or Businesses to submit information about their qualifications and capabilities to perform the type of work associated with a proposed project, often called “Statements of Qualifications” or “SOQ”. The preparation of the RFQ generally does not require specific project knowledge or scope. The RFQ may be used as a pre-qualification step to receiving a RFP. If a RFQ is issued, only those persons or Businesses who successfully respond to the RFQ and meet the qualification criteria stated in the RFQ will be included in the subsequent RFP process.

“Responsible Bidder” means a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract.

“Responsive Bid” means a Bid or Proposal submitted to the City that conforms in all material respects to the IFB, NIB, or RFP, without material qualification or exceptions, as determined by the City.

“Services” means the furnishing of labor, time, or effort by a Contractor. Services includes Maintenance Work, General Services, and Professional Services, unless otherwise designated.

“Signature Authority” means the level of authorization by which the City Council has delegated to the City Manager, or such other designee, pursuant to this Title, to approve Contracts or Purchase Orders without the prior approval of the City Council.

“Solicitation” shall mean the City’s process to obtain Bids or Proposals as provided in this Title for the purchase of Supplies, Services, or for construction of Public Projects.

“Specifications” means any City-issued or referenced definite, detailed written description of the physical or functional characteristics or of the nature of the Supplies to be furnished, the Services to be performed, or the construction to be performed on a Public Project. Specifications may include a description of any requirement for inspection, testing or preparing a Supply, Service or for construction of a Public Project, including the work to be done and materials to be used under a Contract with the City, which specifies the composition, construction, dimension, durability, efficiency, form, nature, performance characteristics and standards, quality, shape, texture, type and utility of the Supplies, Services or Public Project desired by the City. Specifications shall promote overall economy for the purposes intended and encourage competition in satisfying the City’s needs.

“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.

“Surplus property” means personal property no longer needed by City departments for their operations, obsolete property, property in poor or non-working condition, or property that is a by-product (e.g., scrap metal, used tires, and oil, etc.).

“Surplus real property” means real property that the City Council has made a determination in accordance with applicable law is no longer needed for City use and has made a declaration of finding that it is surplus.

“Using Department” means any City department, division, commission, board, or public agency of the City requiring Supplies, Services, or construction of a Public Project procured pursuant to this Title.

“Written” or “in writing” means the product of any method of forming characters on paper, other materials, or viewable screen, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored. (Ord. 2049 § 1, 2021; Ord. 1920 § 4, 2017; Ord. 1896 § 1, 2006; Ord. 1756 § 1, 2009; Ord. 1668 § 1, 2005; Ord. 1605 § 1, 2002)

7.01.050 Public access and record retention for procurement information.

(1) Procurement information shall be a public record to the extent provided in the Public Records Act (Government Code section 6250 et seq.) and shall be available to the public as provided in the Public Records Act. The City may charge a reasonable fee for copying records.

(2) Retention of Procurement Records.

All procurement records shall be retained and disposed of by the City in accordance with records retention guidelines and schedules approved by the City Council and as required by the Public Records Act. Procurements may be conducted through electronic communication; however, records of the transaction shall be maintained in a retrievable manner. The city clerk's office shall retain the original copy of all Contracts.

(3) Request for Confidentiality.

Requests for confidentiality of proprietary information provided in response to a Solicitation may be honored after the City determines that the material so requested conforms to the exceptions recognized in the Public Records Act and the case law interpreting its provisions. (Ord. 2049 § 1, 2021; Ord. 1605 § 1, 2002)

Contact:

City Clerk: 760-323-8204

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Title 7 PROCUREMENT AND CONTRACTING

Chapter 7.02 PROCUREMENT ORGANIZATION AND ADMINISTRATION

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7.02.020 Director of procurement and contracting—Position created.

7.02.030 Authority and duties of director.

7.02.040 Delegation of authority by the director of procurement and contracting.

7.02.050 Contract administration.

7.02.060 Supplemental regulations.

7.02.010 Procurement and contracting department created.

There is created a centralized procurement and contracting department which shall have authority over the procurement of Supplies, Services and for construction of Public Projects for the public purposes of the City. At the discretion of the City Manager, the procurement and contracting department may be established as a division of the City incorporated into such other department as the City Manager determines. (Ord. 2049 § 1, 2021; Ord. 1605 § 1, 2002)

7.02.020 Director of procurement and contracting—Position created.

There is created the position of director of procurement and contracting who shall be the Director or designee. (Ord. 2049 § 1, 2021; Ord. 1605 § 1, 2002)

7.02.030 Authority and duties of director.

(1) Except as otherwise provided herein, the Director, or such other designated City employee, shall serve as the public procurement official for the City, and shall be responsible to:

(a) Procure or supervise the procurement process for all Supplies, Services, and Public Projects required by the City;

(b) Sell, trade, or otherwise dispose of surplus Supplies belonging to the City;

- (c) Establish and maintain programs for inspection, testing and acceptance of Supplies, Services, and Public Projects, in cooperation with the Using Department;
- (d) Exercise general supervision and control over all inventories of Supplies belonging to the City;
- (e) Adopt regulations, consistent with this Title, governing the Procurement, management, control and disposal of any and all Supplies, Services, and Public Projects procured by the City;
- (f) Ensure compliance with this Title and implementing regulations by reviewing and monitoring Procurement conducted by any designee, Using Department, or City employee having Signature Authority;
- (g) Retain records of written determinations pertaining to the solicitation, award, performance under a Contract or Purchase Order;
- (h) Cooperate with the director of finance and treasurer in the preparation of statistical data concerning the Procurement, usage, and disposition of all Supplies, Services, and Public Projects. All Using Departments shall furnish such reports as the Director may require concerning usage, needs and stocks on hand;
- (i) Prepare the Purchase Requisition and Purchase Order forms to be used by Using Departments in the Procurement of Supplies, Services and Public Projects;
- (j) Prepare guidelines governing the review and approval of Specifications for the Procurement of selected materials based on consideration of recycling, energy conservation, life cycle costing and other environmental considerations;
- (k) Ensure that the city clerk obtains the original copy of all Contracts;
- (l) Prepare and submit a monthly report to the City Manager of all Purchase Orders and Contracts exceeding five thousand dollars (\$5,000) approved by the City Manager, or such other delegated authority, pursuant to the Signature Authority.

(Ord. 2049 § 1, 2021; Ord. 1605 § 1, 2002)

7.02.040 Delegation of authority by the director of procurement and contracting.

The Director may authorize in writing any Using Department to purchase specified Supplies, Services, and to construct Public Projects independently of the procurement and contracting department, provided that: (1) such purchases shall comply with the procedures established by this Title; (2) it is deemed necessary for the effective procurement or disposal of those items; and (3) the Using Department shall be required to make periodic reports to the Director on all purchases made. (Ord. 2049 § 1, 2021; Ord. 1605 § 1, 2002)

7.02.050 Contract administration.

Unless other contract administration is designated by the Director, the following shall apply:

- (1) All Public Projects shall be administered by the City Engineer or designee;
- (2) All Maintenance Work shall be administered by the City Engineer or the director of facilities and maintenance, or such other director of the applicable Using Department;
- (3) All Contracts for Supplies and Services, including Professional Services, for the department of aviation shall be administered by the director of aviation or designee;
- (4) All master contracts for Supplies and Services which apply to multiple Using Departments will be administered by the Director;
- (5) All other Contracts shall be administered by the director of the applicable Using Department. (Ord. 2049 § 1, 2021; Ord. 1605 § 1, 2002)

7.02.060 Supplemental regulations.

- (1) The City Council may, from time to time, adopt one or more resolutions establishing rules and supplemental regulations to clarify the application of this Title's provisions. Such rules and regulations shall be in conformity with the intent and purpose of this Title. In the event of any conflict between such rules and regulations and the provisions of this Title, this Title shall prevail.
- (2) The Director shall have the power to render interpretations of this Title and to adopt and enforce written rules and supplemental regulations to clarify the application of this Title's provisions and any resolution(s) adopted pursuant to subdivision (1), above. Such interpretations, rules and regulations shall be in conformity with the intent and purpose of this Title and any such resolution(s). Without limiting the nature of the foregoing, such rules and supplemental regulations may include, without limitation, criteria upon which Contracts shall be bid and awarded. In the event of any conflict between such rules and regulations and the provisions of this Title or such resolution(s), this Title and any such resolution(s) shall prevail. (Ord. 2049 § 1, 2021)

Contact:

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Title 7 PROCUREMENT AND CONTRACTING

Chapter 7.03 PURCHASING PROCEDURES FOR SUPPLIES AND SERVICES

Note

7.03.010 General methods of award of contract or purchase order.

7.03.020 Purchasing authority.

7.03.030 Competitive bidding—Supplies and services.

7.03.040 Informal process.

7.03.050 Formal process.

7.03.060 Formal request for qualifications (RFQ) and request for proposals (RFP) process.

7.03.070 Contract or purchase order amendments.

Note

* Prior ordinance history: Ord. 1605.

7.03.010 General methods of award of contract or purchase order.

(1) Method Determined by Cost Estimate.

The procedure to be followed in awarding Contracts or Purchase Orders is determined initially by the estimated cost to the City of the Supplies or Services.

(2) No Division of Procurements.

The Procurement of Supplies or Services shall not be knowingly staged or separated into smaller units or segments solely for the purpose of evading the competitive bidding requirements of this Title.

(3) Cancellation of Solicitation.

A solicitation may be canceled up until the opening of Bids by the Director, when cancellation or rejection is in the best interests of the City. The reasons therefor shall be made part of the Contract file.

(4) Use of Electronic Means.

(a) Consistent with the stated policy of promoting efficient public Contract law, consistent with the best of modern practice and research, and pursuant to the authority granted by Public Contract Code sections 1600 and 1601, the Director shall be authorized to utilize electronic means in the Procurement of Supplies and Services, so long as the purpose and intent of applicable state law, this chapter, and any supplemental rules or regulations are met.

(b) Without limiting the nature of the foregoing, the City may utilize online bidding and selling methods, electronic signature in accordance with applicable state, local and federal law, and electronic mail for delivery of notices when “mailed” notice is required herein. For purposes of this Title, “supporting materials”, as defined in Public Contract Code section 1601, shall be deemed to also include security bonds, which the City may, in its sole and absolute discretion, allow to be submitted electronically, consistent with any supplemental regulations, adopted in accordance with this Title, implementing the submission of electronic security bonds. Whenever “sealed” Bids or Proposals are called for, any electronic means may be used so long as such electronic means provide for the secured submission of the required data. Whenever Bids are required to be “opened”, such Bids shall be deemed “opened” if and when they are made available to both the City and the public simultaneously, in a public setting, including, without limitation, by way of making such Bids available in an electronic format that is readable by the public. If provisions of this section are in conflict with any other resolution or ordinance of the City, this section shall prevail.

(5) Use of Purchase Requisitions and Purchase Orders.

The Director shall prepare administrative policies and procedures controlling the implementation of each Procurement approved pursuant to this Chapter through the use of a Purchase Requisition and Purchase Order. Each Procurement may only be approved after issuance of a Purchase Requisition and Purchase Order approved by the Director, unless otherwise exempt pursuant to applicable supplemental regulations. (Ord. 2049 § 1, 2021)

7.03.020 Purchasing authority.

The purchasing authority applicable for the Procurement of Supplies and Services shall be established as follows:

(1) Signature Authority of the City Manager.

The City Manager may approve Purchase Orders or enter into Contracts for Supplies and Services in an amount not to exceed seventy-five thousand dollars (\$75,000). The City Manager may further delegate Signature Authority to other City employees as the City Manager deems appropriate not to exceed the Signature Authority set forth by the City Council herein.

The City Manager may approve Purchase Orders or enter into Contracts for Legal Services required by the City Attorney where Legal Services will be performed under separate Contract directly with the City outside of and separate from the City’s agreement for Legal Services with its City Attorney, and where the cost for Legal Services is within the budget previously appropriated by the City Council. The City Attorney shall provide the City Council with regular updates on all matters requiring Legal Services and the costs associated therewith.

(2) Authority of the City Council.

The City Council shall approve Purchase Orders and Contracts for Supplies and Services that exceed seventy-five thousand dollars (\$75,000), unless such approval is otherwise delegated to the City Manager pursuant to separate action by the City Council. The City Council may also, from time to time, change the City Manager's Signature Authority established pursuant to Section 7.03.020(1) by adoption of a resolution setting forth the revised amount of the City Manager's Signature Authority as authorized by this section 7.03.020(2). (Ord. 2049 § 1, 2021)

7.03.030 Competitive bidding—Supplies and services.

The total estimated cost of Supplies or Services determines the Procurement process that must be followed, as described below:

(1) Supplies, Maintenance Work, and General Services.

(a) \$10,000 or less: by negotiated Contract.

(b) \$10,000.01 - \$75,000: by the Informal Process.

(c) Over \$75,000: by the Formal Process.

(d) The City Council may from time to time revise the amounts identified herein setting forth the Procurement process for Supplies, Maintenance Work, and General Services by adoption of a resolution identifying the revised amounts therefor.

(2) Professional Services.

(a) Up to \$75,000: may be procured by the Informal Quote Process.

(b) Over \$75,000: by the Formal Request for Qualifications (RFQ) and/or Request for Proposals (RFP) Process.

(Ord. 2049 § 1, 2021)

7.03.040 Informal process.

(1) Soliciting Informal Bids.

The Director shall cause to be prepared by the Using Department Specifications for each Procurement and solicit informal Bids via posted notice, telephone request, mail, email, fax or any other reasonable solicitation method. All Bids shall be documented in writing. If the Director is unable to obtain a minimum of three (3) Bids, the Director shall document that reasonable efforts were made to obtain the minimum number of required Bids. The Director may follow the Formal Process.

(2) Award – Supplies, Maintenance Work, or General Services.

Open market Procurement shall be based whenever possible on competitive Bids awarded to the lowest Responsible Bidder, or the most qualified Bidder, in the best interests of the City, and approved pursuant to the Signature Authority specified in Section 7.03.020(1).

(3) Award – Professional Services

Award of Professional Services Contracts shall be made to the most qualified Bidder who will best serve the City's interests taking into account the demonstrated competence and professional qualifications for the scope of services to be provided and at fair and reasonable price to the City. Contracts for Professional Services may be approved pursuant to the Signature Authority specified in Section 7.03.020(1). (Ord. 2049 § 1, 2021)

7.03.050 Formal process.

The formal process for Procurement of Supplies, Maintenance Work, and General Services shall comply with all aspects of state and local law governing formal competitive bidding, including, resolutions of the City Council as may be adopted from time to time, this Title, and applicable supplemental regulations.

(1) Bidder List.

The City shall maintain a list of qualified Bidders in accordance with policies and procedures established by the Director.

(2) Notice.

All qualified Bidders on the City's list for the category of work being bid shall be mailed, faxed, or emailed an Invitation for Bids (IFB) or Notice Inviting Bids (NIB). The City may elect to mail, fax, or email the IFB or NIB to construction trade journals or through the City's electronic purchasing system registry of Bidders. The IFB or NIB shall describe the scope of the Supplies, Maintenance Work or General Services to be provided in general terms and how to obtain more detailed information about the Procurement, and state the time and place for the submission of Bids. All mailing of IFB or NIB to qualified Bidders and/or construction trade journals or through the City's electronic purchasing system registry of Bidders shall be completed not less than ten (10) calendar days before Bids are due.

(3) Bidder's Security/Failure to Sign Contract.

Bidder's security may be required by the Director. If required, the security shall be prescribed in the IFB or NIB including provisions for its forfeiture for failure of the lowest Bidder to execute a Contract, or to furnish Supplies, Maintenance Work or General Services pursuant to a Purchase Order.

(4) Bid Opening Procedure.

Sealed Bids shall be submitted to the Director and shall be identified as to Bidder, project, and bid title/number on the envelope. Bids shall be opened by the City in public at the time and place stated in the IFB or NIB. Alternatively, sealed Bids may be received by the City via an electronic bid management system in accordance with this Chapter.

(5) Award.

If a Contract is to be awarded or a Purchase Order is to be issued, it shall be made with the lowest Responsible Bidder submitting a Responsive Bid. Bid irregularities may be waived upon recommendation by the City Attorney. Procurement pursuant to the Formal Process may be approved pursuant to Section 7.03.020.

(6) Tie Bids.

If two or more Bids received are determined to be the lowest and Responsive Bids, the City may accept either Bid. Should tie Bids be received the following priority list will apply to the award:

- (a) Business located within City boundaries with a valid business license;
- (b) Coachella Valley based business;
- (c) Riverside County based business; or
- (d) State of California based business.

(7) No Bids.

If no Bids are received, the Procurement may be performed by City employees by Force Account or by negotiated Contract without further complying with this Title.

(8) Rejection of Bids

The Director may reject all Bids presented, and shall have the following options:

- (a) Abandon the Procurement; or
- (b) Issue a new IFB or NIB in the manner described in this Chapter.

(Ord. 2049 § 1, 2021)

7.03.060 Formal request for qualifications (RFQ) and request for proposals (RFP) process.

The RFQ and/or RFP process shall be utilized for Procurement based on demonstrated competence and qualifications of the Bidder to be performed or provided and at fair and reasonable prices to the City. The City may use the RFQ process to establish a pre-qualified list of suppliers for a future Procurement of Supplies. The City may use the RFQ process to establish a pre-qualified list of persons or Businesses for a future Procurement of Services, including Professional Services through a separate RFP process. The City may utilize a two-step RFQ and RFP process for highly complex or technical Procurement. The Director shall establish policies and procedures for implementation of the Formal RFQ and/or RFP process meeting the following minimum guidelines:

- (1) 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 Statements of Qualifications or Proposals; (4) describe general parameters for evaluation and selection; and (5) include any other information required by state or local law.

(2) Published Notice.

City staff shall solicit RFQs or RFPs via published notice in a newspaper of general circulation and on the City's website for at least ten (10) calendar days before the date for receiving Statements of Qualifications or Proposals, unless urgent circumstances call for a shorter time.

(3) Review of Qualifications or Proposals.

The City will receive Statements of Qualifications or Proposals at the date, time and place of submission on the noticing inviting RFQs/RFPs. Any Statements of Qualifications or Proposals received after the deadline will be time/date stamped and returned unopened by the City. The City will review and evaluate Statements of Qualifications or Proposals based on the evaluation and selection criteria in the RFQs/RFPs and will identify qualifications that pass or fail based on factors listed in the RFQ, or will rank Proposals based on factors listed in the RFP.

(4) Negotiation.

Once Proposals are ranked, the City may negotiate a Contract with the highest ranked Bidder only, may negotiate with multiple Bidders, or may attempt to reach an agreement with the highest ranked Bidder before negotiating with other Bidders in order of ranking. The City may also dispense with negotiations and recommend an award based on the Proposals.

(5) Award.

Award for Professional Services Contracts shall be to the most qualified Bidder who will best serve the City's interests considering the demonstrated competence and professional qualifications for the scope of services to be provided and at fair and reasonable prices to the City. Award for all other Contracts shall be to the Bidder that is in the City's best interests, in the City's sole and absolute discretion.

Award for highly complex or technical Procurement not otherwise considered Professional Services shall be to the most qualified Bidder and at the most reasonable fee who will best serve the City's interests after considering the evaluation criteria in the RFP which may include a combination of both a qualifications component and a fee component as established by the City in the RFP.

(6) Rejection of Proposals.

The Director may reject all Bids presented, and shall have the following options:

- (a) Abandon the Procurement; or
- (b) Issue a new RFQ and/or RFP in the manner described in this Chapter.

(Ord. 2049 § 1, 2021)

7.03.070 Contract or purchase order amendments.

(1) Policy.

Modifications to a Contract or Purchase Order through a City issued written amendment documenting the changes to the Contract or Purchase Order may be utilized for purposes of: (1) adding and/or deleting quantity of items being purchased; (2) modifying unit prices; (3) modifying the scope of work or Services to be provided; (4) changing the funding sources; (5) changing the performance schedule; or (6) any other change required by the City.

(2) Specific Authority.

(a) The City Manager may approve Contract or Purchase Order amendments for Supplies and Services if the amendments aggregated with the original Contract or Purchase Order do not exceed the Signature Authority, subject to an unencumbered appropriation in the funds against which such expenditure is to be charged.

(b) The City Council shall approve Contract or Purchase Order amendments for Supplies and Services where the amendments aggregated with the original Contract or Purchase Order exceeds the Signature Authority. During the approval of a Contract or Purchase Order by the City Council, the City Council may delegate specific Signature Authority to approve Contract or Purchase Order amendments, specific to that Contract or Purchase Order, based on either a percentage of the original Contract or Purchase Order amount or a specific dollar amount. If no specific Signature Authority is given by the City Council, the City Manager may approve Contract or Purchase Order amendments for a City Council awarded Contract or Purchase Order up to the Signature Authority otherwise allowed pursuant to this Chapter.

(Ord. 2049 § 1, 2021)

Contact:

City Clerk: 760-323-8204

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Title 7 PROCUREMENT AND CONTRACTING

Chapter 7.04 PURCHASING PROCEDURES FOR PUBLIC PROJECTS

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7.04.080 Acceptance of public projects; notices of completion.

Note

* Prior ordinance history: Ord. 1605.

7.04.010 General procurement methods for public projects.

(1) Method Determined by Cost Estimate.

The procedure to be followed in awarding Contracts for Public Projects is determined initially by the estimated cost as determined by the City Engineer.

(2) No Division of Procurements.

Public Projects shall not be knowingly staged or separated into smaller Public Projects solely for the purpose of evading the competitive bidding requirements of this Title.

(3) Cancellation of Solicitation.

A solicitation for a Public Project may be canceled up until the opening of Bids by the Director, when cancellation or rejection is in the best interests of the City. The reasons therefor shall be made part of the Public Project file.

(4) Use of Electronic Means.

(a) Consistent with the stated policy of promoting efficient public contract law, consistent with the best of modern practice and research, and pursuant to the authority granted by Public Contract Code sections 1600 and 1601, the Director shall be authorized to utilize electronic means in the Procurement of Public Projects, so long as the purpose and intent of applicable state law, this chapter, and any supplemental rules or regulations are met.

(b) Without limiting the nature of the foregoing, the City may utilize online bidding and selling methods, electronic signature in accordance with applicable state, local and federal law, and electronic mail for delivery of notices when "mailed" notice is required herein. For purposes of this Title, "supporting materials," as that term is used in Public Contract Code section 1601, shall be deemed to include security bonds, which the City may, in its sole and absolute discretion, allow to be submitted electronically, consistent with any supplemental regulations, adopted in accordance with this Title, implementing the submission of electronic security bonds. Whenever "sealed" Bids are called for, any electronic means may be used so long as such electronic means provide for the secured submission of the required data. Whenever Bids are required to be "opened", such Bids shall be deemed "opened" if and when they are made available to both the City and the public simultaneously, in a public setting, including, without limitation, by way of making such Bids available in an electronic format that is readable by the public. If provisions of this section are in conflict with any other resolution or ordinance of the City, this section shall prevail.

(Ord. 2049 § 1, 2021)

7.04.020 Purchasing process.

(1) Bidding Thresholds.

The process applicable for the Procurement of Public Projects shall be established in accordance with the following Bidding Thresholds dependent upon the City Engineer's estimated cost of the Public Project:

(a) As established pursuant to Public Contract Code section 22032(a), \$60,000 or less: by Force Account, negotiated Contract, or Purchase Order.

(b) As established pursuant to Public Contract Code section 22032(b), \$200,000 or less: by Informal Public Project Bidding Procedures.

(c) As established pursuant to Public Contract Code section 22032(c), over \$200,000: by Formal Public Project Bidding Procedures.

(2) Automatic Amendment of Bidding Thresholds.

If, as, and when the amounts set forth in Public Contract Code section 22032 are later amended, this section and the amounts reflected herein shall be deemed to have been amended to reflect such changes, without the need for further action on the part of the City, and such changes reflected in Public Contract Code section 22032 shall be deemed to be incorporated by reference herein. (Ord. 2049 § 1, 2021)

7.04.030 Informal public project bidding procedure.

The informal bidding procedures for Public Projects shall comply with all aspects of state and local law governing informal competitive bidding, including, but not limited to the Public Contract Code, Government Code, Labor Code, resolutions of the City Council as may be adopted from time to time, this Title, and applicable supplemental regulations.

(1) Adoption of Plans and Specifications; Authorization to Bid.

The City Engineer, or designee, is authorized to review and approve engineering plans for purposes of design immunity pursuant to Government Code section 830.6 for all Public Projects with an estimated cost less than the amount identified by Public Contract Code section 22032(b). This shall include review and approval of the working details, drawings, plans and Specifications prepared for the 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.

(2) Bidder List.

The City shall maintain a list of qualified Contractors in accordance with Public Contract Code section 22034.

(3) Notice.

All qualified Contractors on the City's list for the category of work being bid shall be mailed, faxed, or emailed an Invitation for Bids (IFB) or Notice Inviting Bids (NIB). The City may elect to mail, fax, or email the IFB or NIB to construction trade journals in accordance with Public Contract Code section 22036. The IFB or NIB shall describe the scope of the Public Project in general terms and how to obtain more detailed information about the Public Project, and state the time and place for the submission of Bids. All mailing of an IFB or NIB to qualified Contractors and/or construction trade journals shall be completed not less than ten (10) calendar days before Bids are due.

(4) Bidder's Security/Failure to Sign Contract.

Bidder's security shall be prescribed in the IFB or NIB in an amount equal to ten percent of the bid amount. Bidder's security shall be a cash deposit with the City, a cashier's certified check payable to the City, or a bidder's bond. The lowest Responsible Bidder shall forfeit the bid security upon the Bidder's refusal or failure to execute the Contract within ten (10) calendar days after the date of the award of the Contract, or such other period of time as may be specified by the City. On the refusal or failure of the lowest Responsible Bidder to execute the Contract, the City Manager may award the Contract to the next lowest Responsible Bidder submitting a Responsive Bid.

(5) Bid Opening Procedure.

Sealed Bids shall be submitted to the Director and shall be identified as to Bidder, project, and bid title/number on the envelope. Bids shall be opened by the Director in public at the time and place stated in the IFB or NIB. Alternatively, sealed Bids may be received by the City via an electronic bid management system in accordance with this Chapter.

(6) Award.

If a Contract is awarded, it shall be awarded to the lowest Responsible Bidder submitting a Responsive Bid. The City Manager, in consultation with the City Attorney, may waive irregularities in a Bid, and is authorized to award Contracts in an amount up to and not exceeding the amount established pursuant to Public Contract Code section 22032(b).

(7) Tie Bids.

If two or more Bids received are determined to be the lowest and Responsive Bids submitted by Responsible Bidders, the City Manager may accept either Bid. Should tie Bids be received the following priority list will apply to the award:

- (a) Business located within City boundaries with a valid business license;
- (b) Coachella Valley based Business;
- (c) Riverside County based Business; or
- (d) State of California based Business.

(8) No Bids.

If no Bids are received, the Public Project may be performed by City employees by Force Account or by negotiated Contract without further complying with this Title.

(9) Rejection of Bids

The City Manager may reject all Bids presented and shall have the following options:

- (a) Abandon the Public Project;
- (b) Issue a new notice inviting informal bids in the manner described in this Chapter; or
- (c) Submit to the City Council, subject to passage by a four-fifths vote, a recommendation to declare that the Public Project can be constructed more economically by the employees of the City, and have the Public Project completed by Force Account.

(10) Bids in Excess of Statutory Amount.

If all Bids received are in excess of the amount identified by Public Contract Code section 22032(b), the City Council may award the Contract to the lowest Responsible Bidder submitting a Responsive Bid in accordance with Public Contract Code section 22034(d). (Ord. 2049 § 1, 2021)

7.04.040 Formal public project bidding procedure.

The formal bidding procedures for Public Projects shall comply with all aspects of state and local law governing formal competitive bidding, including, but not limited to the Public Contract Code, Government Code, Labor Code, resolutions of the City Council as may be adopted from time to time, this Title, and applicable supplemental regulations.

(1) Adoption of Plans and Specifications; Authorization to Bid.

The City Council shall approve and adopt the plans, Specifications and working details for purposes of design immunity pursuant to Government Code section 830.6, and authorize formal bidding of Public Projects. Notwithstanding anything in this Chapter, the City Council may, in its action to authorize formal bidding, delegate Signature Authority to the City Manager to approve and award a Contract therefor to the lowest Responsible Bidder submitting a Responsive Bid provided the amount of the Bid is within the amount previously budgeted for the Public Project, waive irregularities in a Bid, and reject Bids.

(2) Invitation for Bids.

A NIB shall be issued and shall include a general description of the Public Project and all contractual terms and conditions applicable to the Procurement.

(3) Public Notice.

The NIB shall be published at least once fourteen (14) calendar days before the date of opening the Bids in a newspaper of general circulation, printed and published in the jurisdiction of the City, and by posting the NIB on the City's website. The NIB shall also be posted electronically with all construction trade journals in accordance with Public Contract Code section 22036. The NIB shall state the time and place for the receiving and opening of sealed Bids and describe the scope of the Public Project. In addition to notice required by this section, the City may give such other notice as the Director may recommend.

(4) Bidder's Security/Failure to Sign Contract.

Bidder's security shall be prescribed in the NIB in an amount equal to ten percent of the bid amount. Bidder's security shall be a cash deposit with the City, a cashier's or certified check, payable to the City, or a bidder's bond. The lowest Responsible Bidder shall forfeit all the Bidder's security upon the Bidder's refusal or failure to execute the Contract within ten (10) calendar days after the date of the award of the Contract, or such other period of time as may be specified by the City. On the refusal or failure of the lowest Responsible Bidder to execute the Contract, the City Council may award the Contract to the next lowest Responsible Bidder submitting a Responsive Bid.

(5) Bid Opening Procedure.

Sealed Bids shall be submitted to the Director and shall be identified as to Bidder, project, and bid title/number on the envelope. Bids shall be opened by the Director in public at the time and place stated in the NIB. Alternatively, sealed Bids may be received by the City via an electronic bid management system in accordance with this Chapter.

(6) Award.

If a Contract is awarded, the Contract shall be awarded by the City Council to the lowest Responsible Bidder submitting a Responsive Bid. In the event the lowest Responsive Bid submitted by a Responsible Bidder exceeds budgeted funds, the City Manager is authorized, when time or economic considerations preclude issuance of a new NIB with a reduced scope, to negotiate an adjustment of the Bid with the lowest Responsible Bidder, in order to bring the Bid within the amount of budgeted funds available. If negotiations to reduce the scope and reduce the Bid with the lowest Responsible Bidder are successful, the City Manager shall submit a report of the Bids to the City Council with a recommendation concerning acceptance or rejection of the reduced scope and reduced Bid, and the City Council shall thereupon approve or disapprove the recommendation. The City Council may waive irregularities in a Bid.

(7) Tie Bids.

If two or more Bids received are determined to be the lowest and Responsive Bids submitted by Responsible Bidders, the City Council may accept either Bid. Should tie bids be received the following priority list will apply to the award:

- (a) Business located within City boundaries with a valid business license;
- (b) Coachella Valley based Business;
- (c) Riverside County based Business; or
- (d) State of California based Business.

(8) No Bids.

If no Bids are received, the Public Project may be performed by City employees by Force Account, or by negotiated Contract without further complying with this Title.

(9) Rejection of Bids.

The City Council may reject all Bids presented and shall have the option of any of the following:

- (a) Abandon the Public Project;
- (b) Issue a new NIB in the manner described in this Chapter; or
- (c) By passage of a four-fifths vote of the City Council declare that the Public Project can be constructed more economically by City employees, and have the Public Project completed by Force Account without further complying with this Chapter.

(Ord. 2049 § 1, 2021)

7.04.050 Pre-qualification of contractors for public projects.

(1) When it is considered in the best interest of the City to pre-qualify Contractors for Public Projects, the Director may approve the use of a pre-qualification process.

(2) The City has elected to adopt the pre-qualification procedures of Public Contract Code section 20101 for individual Public Projects, which includes without limitation the following requirements:

(a) Utilization of a standardized questionnaire and financial statement in a form specified by the City (Section 20101 (a));

(b) Application of a uniform system of rating contractors on objective criteria, and on the basis of the completed questionnaire and financial statement (Section 20101(b));

(c) An appeal procedure by which a contractor that is denied pre-qualification may seek a reversal of that determination (Section 20101(d)).

(3) The Director shall make a recommendation to City Council based on the findings of the evaluation process. Only those Contractors successfully completing the pre-qualification process and approved by the City Council shall be allowed to submit Bids for that Public Project.

(4) If a prospective Contractor is denied pre-qualification and the Contractor disputes its pre-qualification rating, the following appeal process shall be followed:

(a) Upon written request by the Contractor received by the City within two (2) business days after receiving notification of its pre-qualification rating, the Contractor will be provided the basis for the Contractor's disqualification and any supporting evidence obtained by the City as a result of its investigation of the Contractor;

(b) The Contractor shall, within five (5) business days of receipt of the City's basis for the Contractor's disqualification, provide a written rebuttal to the City's disqualification determination with all supporting evidence;

(c) The Director will consider the Contractor's written rebuttal, and may uphold or reverse the Director's original disqualification determination based on the evidence submitted, and a written final determination of the Contractor's qualification status will be provided to the Contractor within five (5) business days of the City's receipt of its written rebuttal;

(d) The Director's final written determination is conclusive and will be forwarded to the City Council as part of its action to approve the list of pre-qualified Contractors;

(e) A Contractor's appeal rights are limited to the process identified herein, and no other appeal process shall apply. (Ord. 2049 § 1, 2021)

7.04.060 Change orders.

(1) Policy.

Modifications to a Contract for a Public Project through a City issued Change Order documenting the amendments to the Contract may be utilized for purposes of: (1) adding and/or deleting quantity of items being constructed; (2) modifying unit prices; (3) modifying the scope of work of the Public Project; (4) changing the funding sources; (5) changing the performance schedule; or (6) any other change required by the City.

(2) Specific Authority.

(a) The City Manager may approve Change Orders for Public Projects if the amount of the Change Orders aggregated with the original Contract does not exceed the amount identified by Public Contract Code section 22032(b), subject to an unencumbered appropriation in the funds against which such expenditure is to be charged.

(b) The City Council shall approve Change Orders for Public Projects where the amount of the Change Orders aggregated with the original Contract exceeds the amount identified by Public Contract Code section 22032(b). During the approval of a Contract for a Public Project by the City Council, the City Council may delegate specific Signature Authority to approve Change Orders, specific to that Public Project, based on either a percentage of the original Contract amount or a specific dollar amount. If no specific Signature Authority is given by the City Council, the City Manager may approve Change Orders for a City Council awarded Contract up to the amount identified by Public Contract Code section 22032(b), subject to an unencumbered appropriation in the funds against which such expenditure is to be charged.

(3) Exception.

Change Orders in excess of the City Manager's Signature Authority or the amount identified by Public Contract Code section 22032(b) may be approved by the City Manager and submitted to the City Council for ratification at its next available regular meeting under the following circumstances:

(a) The failure to immediately issue a Change Order may result in significant cost increases or an unacceptable delay due to work stoppage or other inefficiencies;

(b) A regularly scheduled meeting of the City Council is not available within a reasonable period of time to sufficiently remedy the issue presented with the proposed Change Order; and

(c) Funding for the Change Order is currently available within the appropriated budget for the Public Project.

(Ord. 2049 § 1, 2021)

7.04.070 Field orders.

(1) Policy.

- (a) Modifications to a Public Project through a City issued written Field Order documenting minor changes to the scope of work may be utilized for administrative efficiencies where the use of Field Orders are specifically provided for in the Specifications issued for a Public Project. Field Orders shall not be used in place of Change Orders where amendments to the Contract for the Public Project are otherwise required.
- (b) Field Orders shall be limited to minor adjustments to the scope of work directly related to the Public Project, and shall identify the description of the scope of work and the cost therefor, with such documentation justifying the price as deemed necessary by the City Engineer.
- (c) The City Engineer shall maintain an accounting of all Field Orders approved and the balance remaining in the allowance specified therefor in the Bid. Approval of Field Orders shall not increase the maximum price of the Bid for the Public Project, and a reduction of the Bid shall be made through a Change Order when the total cumulative price of Field Orders approved by the City Engineer is less than the total allowance therefor specified in the Bid.
- (d) The Specifications issued for the Public Project may contain further regulations regarding the use of Field Orders as may be deemed necessary by the City Engineer.

(2) Approval Authority.

The City Engineer shall have authority to approve Field Orders related to Contracts for construction of Public Projects previously awarded by the City Manager or City Council, as the case may be, provided the Specifications for the Public Project and the Bid therefor incorporate an allowance for Field Orders that is included in the maximum price of the Bid for the Public Project so awarded. (Ord. 2049 § 1, 2021)

7.04.080 Acceptance of public projects; notices of completion.

The City Manager, or designee, upon a recommendation of the City Engineer, is authorized to accept the work completed by Contractors associated with a Public Project on behalf of the City Council, and is authorized to execute and cause to be recorded notices of completion where required or authorized by law. Upon acceptance of the work by the City Manager or designee, the City Clerk is authorized to release bonds and security instruments filed with the City associated with the Public Project as otherwise required in the Specifications issued by the City for the Public Project. (Ord. 2049 § 1, 2021)

Contact:

City Clerk: 760-323-8204

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Title 7 PROCUREMENT AND CONTRACTING

Chapter 7.05 SPECIAL PROCUREMENT METHODS

Note

7.05.010 In general.

7.05.020 Sole source procurement by the City.

7.05.030 Special expertise procurement.

7.05.040 Emergency procurement.

7.05.050 Acquisition of design-build services.

7.05.060 Other exceptions to procurement methods.

Note

* Prior ordinance history: Ord. 1605.

7.05.010 In general.

For Procurements under this Title all decisions to utilize a special purchasing method in the approval of the Procurement shall be made a part of the public record. The Director shall provide a written report for the public record that specifies: (1) the reason the special purchasing method was used; (2) the results of the solicitation; (3) the results of the negotiations; and (4) the recommendation for the award. Any award shall be supported by findings identified in the written report. (Ord. 2049 § 1, 2021)

7.05.020 Sole source procurement by the City.

A Contract may be awarded without competition when the Procurement is made after conducting a good faith review of available sources and the Director has determined that there is only one source for the Procurement. The Director shall conduct negotiations, as appropriate, as to price, delivery, and terms. A written record of sole source Procurement shall be maintained as a public record and shall list each Contractor's name, the amount and type of each Contract, a listing of the item(s) procured under each Contract, the identification number of each Contract file, and the documentation of why sole source procurement was required. (Ord. 2049 § 1, 2021)

7.05.030 Special expertise procurement.

A Contract may be awarded without competition when it is determined by the Director that an unusual or unique situation exists, in that due to experience and expertise demonstrated in prior Contracts with the City, or experience or expertise with similarly described Contracts with other public agencies, a particular Contractor is uniquely qualified for a particular Procurement, that makes the application of this Title contrary to the public interest. Any special expertise Procurement shall be made with such competition as is practicable under the circumstances. (Ord. 2049 § 1, 2021)

7.05.040 Emergency procurement.

(1) During an emergency, as further defined in Chapter 2.20, and as defined by Public Contract Code section 1102, all Procurement required by the City Manager may occur without applying the provisions of this Title. All such Procurement shall be obtained at the lowest reasonable price available in the best interests of the City, and for Public Projects in compliance with the applicable provisions of Public Contract Code section 22050.

(2) When determined by the City Manager that repair or replacement of a public facility requires immediate Procurement, at the recommendation of the City Manager and in accordance with Public Contract Code section 22050, the City Council may by a four-fifths vote authorize the Procurement directly related to the repair or replacement of the public facility without applying the provisions of this Title. All such Procurement shall be obtained at the lowest reasonable price available in the best interests of the City. In the case of an extreme emergency involving public property, the City Manager may proceed with immediate Procurement pursuant hereto subject to ratification by a four-fifths vote of the City Council at its next regular meeting.

(3) In accordance with Public Contract Code section 22050, for emergency Procurement associated with a Public Project where the provisions of Informal or Formal Bidding would otherwise apply, the Director shall provide a written report to the City Council at its next regular meeting, and subsequently at each regular meeting thereafter. During the emergency Procurement involving a Public Project otherwise requiring application of the Informal or Formal Bidding procedures, the City Council shall determine by a four-fifths vote the continuing need for the emergency Procurement without the benefit of competitive bidding. The City Council shall terminate the emergency Procurement of a Public Project at the earliest possible date that conditions warrant, allowing for application of this Title to the remainder of the actions that may be completed with regard to the Public Project. (Ord. 2049 § 1, 2021)

7.05.050 Acquisition of design-build services.

(1) Policy.

In accordance with Section 913 of the City Charter, acquisition of Design-Build may be procured for the construction of a Public Project. The Director is authorized to establish policies and procedures for implementation of Design-Build Procurement within the guidelines in this Section.

(2) Procurement.

Construction of Public Projects may be implemented in accordance with the Design-Build project delivery method by undertaking an RFP process. Notwithstanding the foregoing, the City may prequalify Bidders through an RFQ process prior to the RFP process. The RFP must contain, at a minimum, the following elements:

- (a) The procedures to be followed for submitting Proposals, the criteria for evaluation of the Proposals and their relative weight, the procedure for selection of a Contractor and the timing for making awards.
 - (b) The proposed terms and conditions for the Design-Build Contract.
 - (c) The project requirements, including as appropriate, capacity, durability, production standards, ingress and egress requirements, or other criteria for the intended use of the project, expressed in conceptual documents, performance-oriented preliminary drawings, outline specifications and other documents provided to the Contractor by the City establishing the project's basic elements and scale, and their relationship to the work site suitable to allow the Contractor to submit a Proposal.
 - (d) A description of the project approach, work plan or other submittals to be submitted with the Proposal, with guidance as to the form and level of completeness required.
 - (e) A schedule for planned commencement and completion of the project.
 - (f) Any other information that the City, in its discretion chooses to supply, including without limitation, surveys, soils reports, drawings or models of existing structures, environmental studies, photographs, or references to public records.
- (3) Evaluation and Selection.

Once received, Proposals shall be submitted for review by a selection committee. Clarifications may be required to ensure Proposals are responsive to the RFP. Clarifications may require revised cost and/or technical proposals. The following criteria may be utilized in selecting a Contractor for award of a Design-Build Contract:

- (a) An evaluation of references provided with respect to responsiveness, quality of work, timeliness and overall performance.
- (b) An evaluation of overall quality, capability, resource availability and financial stability of the Contractor.
- (c) An evaluation of the Contractor's experience, training and qualifications.
- (d) Consideration of items such as proposed design approach, initial and/or life cycle costs, project features, quality, capacity, schedule, and operational and functional performance of the facility.
- (e) The extent to which the Contractor's proposal meets the requirements set forth in the RFP.
- (f) Analysis of the cost relative to the Contractor's ability to meet the requirements set forth in the RFP.

Depending on the number of Proposals received, the selection committee may develop a “short list” of top ranked Contractors. The selection committee may require “short listed” Contractors to submit to an interview and/or make a presentation to establish a final ranking. The selection committee will then begin negotiations with the top ranked Contractor. The negotiations may include but not be limited to project costs, scope, and schedule. If negotiations are unsuccessful, negotiations will cease with the top ranked Contractor and may begin with the next highest ranked Contractor. The City reserves the right to reject all Proposals, select by Proposal review only or interview as needed. The City’s selection committee shall select and recommend to the City Council for contract award a Contractor providing the best value to the City. (Ord. 2049 § 1, 2021)

7.05.060 Other exceptions to procurement methods.

(1) No Competitive Market.

When the City Council 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.

(2) State Purchase.

When the purchase is made on behalf of the City by the State Department of General Services.

(3) Mandated Expenditures.

When expenditures are mandated by law or regulation, such as county booking fees, utilities, postage, waste disposal fees or other non-negotiable permit, use or application fees.

(4) Shared Services.

When the City Council or City Manager authorizes the award and execution of Contracts for Services, subject to the Signature Authority consistent with this Title, that are provided by another Public Entity or non-profit 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.

(5) Best Interest of City.

Except where otherwise prohibited by law, when the City Council or City Manager authorizes the award and execution of Purchase Orders or Contracts for Supplies and Services and for construction of Public Projects subject to the Signature Authority consistent with this Title, without following the required procurement methods, 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.

(6) Purchase of Recurring Charges.

The City may create an open vendor list for the purposes of providing Supplies and Services for the fiscal year for ongoing cleanup, maintenance and different routine items that are of a continuing nature. Prices from each vendor shall be obtained in a manner to ensure competitive pricing, in the best interest of the City. The threshold for each vendor may be determined by the City Council, at the recommendation of the City Manager. A vendor list may be approved by the City Council as often as necessary but not less than once every twenty-four (24) months.

(7) Task or Job Orders.

Unless prohibited by law, task or job orders that the City places through a duly approved master agreement shall not be subject to further procurement requirements.

(8) Otherwise Authorized.

When otherwise authorized by this Title or applicable law. (Ord. 2049 § 1, 2021)

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Title 7 PROCUREMENT AND CONTRACTING

Chapter 7.06 CONTRACT PROVISIONS

7.06.010 Contract provisions.

7.06.020 Prevailing wages and benefits.

7.06.030 Multi-year contracts.

7.06.040 Authorization to execute documents.

7.06.050 Authorization for the use of electronic transmissions and payments.

7.06.010 Contract provisions.

The Director shall use Contracts in standard form prepared by the City Attorney that incorporate all required standard terms and conditions for use in City Contracts. Purchase Order forms shall include standard terms and conditions as may be required by the City Attorney. Any variation of standard terms and conditions shall require review and approval by the City Attorney prior to their use in any Procurement. All Contracts shall incorporate provisions ensuring the City's ability to audit and inspect a Contractor's accounting system and records, including at a Contractor's place of business, and extending to any subcontractor records. (Ord. 2049 § 1, 2021; Ord. 1605 § 1, 2002)

7.06.020 Prevailing wages and benefits.

Except on locally funded Public Projects of twenty-five thousand dollars (\$25,000) or less when the Public Project is for construction work, or fifteen thousand dollars (\$15,000) or less when the Public 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 required by law. The only limitation on the provisions of this subsection shall be in the event federal funding requirements supersede state prevailing wage laws, the higher wage rates shall apply. Any Notice Inviting Bids for Public Projects subject to the California Prevailing Wage Law shall include notification of this subsection. (Ord. 2049 § 1, 2021; Ord. 1863 § 1, 2014; Ord. 1605 § 1, 2002)

7.06.030 Multi-year contracts.

(1) Specified Period.

Unless otherwise provided by law and in accordance with this section, a Contract for Supplies or Services may be entered into for any period of time deemed to be in the best interest of the City provided the term of the Contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal year period at the time of award of Contract. Payment and performance obligations for succeeding fiscal year periods shall be subject to the availability and appropriation of funds therefor. Any multi-year Contract exceeding a potential term of five (5) years, including any options to renew or extend, shall be approved by the City Council.

(2) Use.

A multi-year Contract is authorized where:

- (a) Estimated requirements cover the period of the Contract and are reasonably firm and continuing;
- (b) The term of the Contract and conditions of renewal or extension, if any, are included in the solicitation; and
- (c) Such a Contract will serve the best interests of the City by encouraging effective competition or otherwise promoting economies in City Procurement.

(Ord. 2049 § 1, 2021; Ord. 1605 § 1, 2002)

7.06.040 Authorization to execute documents.

All documents may be executed by the City Manager whenever such authorization is granted in a resolution, motion, or minute order adopted by the City Council. All Contracts shall be “approved as to form” by the City Attorney and attested by the city clerk. Contracts which do not require City Council approval shall be executed by City Manager, or designee pursuant to the Signature Authority. (Ord. 2049 § 1, 2021; Ord. 1605 § 1, 2002)

7.06.050 Authorization for the use of electronic transmissions and payments.

Notwithstanding any other provision of law, the use of electronic media, including acceptance of electronic signatures and participation in the state of California “Cal-Card” procurement card program, is authorized consistent with federal and state of California applicable statutory, regulatory or other guidance for such media, so long as such guidance provides: (1) appropriate security to prevent unauthorized access to the bidding, approval, and award processes; (2) appropriate protection is provided to protect the City from unauthorized charges; and (3) accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying. Records may be kept in electronic form. (Ord. 2049 § 1, 2021; Ord. 1605 § 1, 2002)

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Title 7 PROCUREMENT AND CONTRACTING

Chapter 7.07 DISPOSITION OF SURPLUS PROPERTY

7.07.010 Surplus property disposition regulations.

7.07.020 Disposition of surplus property.

7.07.010 Surplus property disposition regulations.

- (1) The Director shall establish additional regulations governing:
 - (a) The transfer of surplus property and operation of the surplus property program;
 - (b) The sale or disposal of surplus, unclaimed and seized property by public auction, competitive formal and informal bid, or other appropriate method designated by regulation including electronic auction;
 - (c) The trade-in of surplus property for purchase of new equipment.
- (2) The disposal of surplus real property is not regulated under this Title and is subject to applicable state law. (Ord. 2049 § 1, 2021; Ord. 1605 § 1, 2002)

7.07.020 Disposition of surplus property.

- (1) Each Using Department shall submit reporting to the Director, at such times and in such form as the Director requires, describing all property held by the Using Department, which the Using Department has determined to be surplus property. At such time that a periodic physical inventory of the property held by any Using Department is required by the Director, the Using Department shall segregate all of its surplus property and a report thereof shall be furnished to the Director for the transfer of disposition of such surplus property.
- (2) The Director, upon notification by Using Departments of excess City-owned surplus property, is authorized to determine whether any such City-owned property is surplus to the present or future needs of the City and will coordinate the disposition of such property. This Chapter is not applicable to personal property or money, to the extent the disposition of such is governed by other applicable law, including, without limitation, escheat pursuant to Government Code section 50050 et seq., personal property or goods pursuant to Health and Safety Code section 11000 et seq., or unclaimed property pursuant to Code of Civil Procedure section 1500 et seq.
- (3) Using Departments shall use forms required by the Director to request a determination as to whether property may be declared surplus by the Director.

(4) Each Using Department shall retain custody of its surplus property in such manner and at such place as the Director shall require, until their transfer or final disposition has been determined. No Using Department shall, in any event, permit any surplus property held by it to be loaned or donated without prior City Council approval, or destroyed or otherwise removed from the City's custody without the prior written approval of the Director.

(5) Before disposing of surplus property, including unclaimed property delivered to the Director by the Police Department, the Director shall canvas all other Using Departments to determine whether the surplus property has beneficial use to another Using Department. If another Using Department requests such surplus property it may be transferred in accordance with policies and procedures established by the Director.

(6) The Director is hereby authorized to dispose of surplus property which are not used or needed by any Using Department or which has become unsuitable for City use. Such surplus property may be disposed by any of the following procedures:

(a) Exchanged or traded in for new property;

(b) Sold utilizing the competitive procedures similar to those prescribed in this Title;

(c) Sold at public auction conducted by a professional auctioneer which the Director is hereby authorized to retain on the basis of a negotiated flat fee, hourly fee, or percentage of the amount of the sale, whichever is determined by the Director to be in the best interests of the City;

(d) Sold utilizing a negotiation process when the Director determines in writing that such a process is in the best interests of the City;

(e) Disposed of as scrap material or destroyed if no resale value exists;

(f) Disposed of in accordance with state or local law;

(g) Donated to a non-profit organization or other public entity following determination by the City Council that such donation would serve a public purpose.

(7) Unless otherwise provided, all proceeds from sale or auction of surplus property will be deposited into the City's general fund. Proceeds from sale of enterprise, federal, grant or other special designation property will be reimbursed, less prorated selling expenses to the appropriate fund, after completion of each sale. (Ord. 2049 § 1, 2021; Ord. 1605 § 1, 2002)

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Chapter 7.08 BID PROTEST PROCEDURES

7.08.010 Correction or withdrawal of bids for supplies, services, and public projects.

7.08.020 Bid protests—Public projects.

7.08.030 Reporting of anti-competitive practices.

7.08.010 Correction or withdrawal of bids for supplies, services, and public projects.

- (1) Before Bid opening, correction or withdrawal of mistaken Bids for Supplies, Services, and Public Projects may be permitted in accordance with applicable provisions identified in the Invitation for Bids (IFB) or Notice Inviting Bids (NIB), or Specifications otherwise issued for the Procurement. If a mistake is discovered before bid opening, the Bid may be withdrawn by written, telegraphic, or electronic notice to the Director prior to the date and time set for bid opening. Bids may then be resubmitted prior to the date and time set for bid opening.
- (2) After Bid opening, any request for withdrawal of a Bid for a Public Project, or for Supplies or Services where bid security is required, shall be made within five (5) working days after bid opening and in accordance with Public Contract Code section 5100 et seq., as amended from time to time.
- (3) After Bid opening for Supplies and Services where bid security is not required and a Bidder withdraws its Bid or fails to execute the Contract, the Bidder shall be prohibited from participating in further bidding on the project unless the Bidder demonstrates good cause for withdrawal of its Bid. (Ord. 2049 § 1, 2021; Ord. 1605 § 1, 2002)

7.08.020 Bid protests—Public projects.

- (1) The purpose of the bid protest procedures in this section is to protect the public interest. The bid protest procedures are not intended to give losing Bidders an opportunity to evaluate the Bid of the lowest Responsible Bidder submitting a Responsive Bid and have the award of Contract overturned to secure the award of Contract for itself.

- (2) Any Bidder submitting a Bid may file a written bid protest with the Director no more than three (3) business days following the posting of bid results on the City's website, other distribution generally used by the City in advising Bidders of the bid results, or from receiving such other City notice regarding the City's determination of the apparent low Bidder for the subject Public Project. The written bid protest must include the name, address, telephone number and email address of the protesting Bidder and/or the person representing the protesting Bidder. Bid protests will not be accepted from any subcontractors. The written bid protest must set forth, in detail, all grounds for the bid protest, including, without limitation, all facts, supporting documentation, legal authorities and arguments in support of the grounds for the protest. All factual contentions must be supported by evidence. Any matters not set forth in the written bid protest shall be deemed waived. Any bid protest not conforming to the requirements of this section shall be rejected as invalid.
- (3) A copy of the written bid protest and all supporting documents will be transmitted by fax, personal delivery or by e-mail, by the City to the protested Bidder(s) for their review and response.
- (4) A protested Bidder may submit to the City a written response to the bid protest within three (3) business days of the protested Bidder's receipt of the bid protest from the City. The written response must include the name, address, telephone number and email address of the responding party for the protested Bidder, with all supporting documentation used to refute any claims made by the protesting Bidder. The written response will be transmitted by the City to the protesting Bidder. The City may, in its sole discretion, use the written response in its determination of the merits of the bid protest.
- (5) The City Manager, or designee, shall review the merits and timeliness of the written bid protest and issue a written decision to the protesting Bidder within twenty (20) business days of receipt of the written bid protest. The City Attorney shall review and approve all written decisions prior to issuance to the protesting Bidder. A copy of the final written decision shall be provided to the protested Bidder(s).
- (6) The City Manager's decision shall constitute the City's formal and final determination on the bid protest, and the City Manager may proceed to award a Contract for the Public Project pursuant to the Signature Authority. For Bids awarded by the City Manager, the City Manager's decision may not be reconsidered or appealed.
- (7) Once a valid and timely written bid protest has been filed with the Director, no Contract shall be awarded until the City Manager has issued a written decision on the bid protest.
- (8) For Bids awarded by the City Council, the City Manager shall, at the time the Bid is presented to the City Council for award, submit to the City Council a written report on the bid protest, including the City Manager's decision. The City Council may, in its sole and absolute discretion, reconsider the bid protest at the time the Bid is scheduled for award by the City Council, and reject all Bids, and direct solicitation of new Bids for the Public Project. Alternatively, the City Council may proceed to award a contract in the best interests of the City without consideration of the bid protest. (Ord. 2049 § 1, 2021; Ord. 1870 § 1, 2015; Ord. 1605 § 1, 2002)

7.08.030 Reporting of anti-competitive practices.

When for any reason collusion or other anti-competitive practices are suspected among any Bidders, a notice of the relevant facts shall be transmitted to the State Attorney General and the County of Riverside District Attorney. (Ord. 2049 § 1, 2021; Ord. 1605 § 1, 2002)

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Title 7 PROCUREMENT AND CONTRACTING

Chapter 7.09 SPECIAL PROGRAMS

7.09.010 Cooperative purchasing programs.

7.09.020 Assistance to disadvantaged business enterprises (DBE).

7.09.030 Local Business Preference Program.

7.09.040 Non-discrimination in contracting.

7.09.010 Cooperative purchasing programs.

The City Council may authorize the acquisition of Supplies or Services through a joint powers or other cooperative purchasing program with a Public Entity or association of public agencies or officials, provided that the Bidder selected has been selected through a competitive process and the Director finds: (a) that the competitive process is similar to that contained in this Title or adequate to protect the public interest; and (b) that due to economies of scale, the nature of the product, or market conditions, the price of the Supplies or Services is likely to be less through the cooperative purchase than through the City's independent purchasing pursuant to this Title. (Ord. 2049 § 1, 2021; Ord. 1605 § 1, 2002)

7.09.020 Assistance to disadvantaged business enterprises (DBE).

(1) Source Lists.

The Director shall compile and maintain source lists of disadvantaged business enterprises for the purpose of encouraging Procurement from disadvantaged business enterprises when a Procurement involves the expenditure of federal funds in compliance with federal law. Such source lists are subject to the certification requirements mandated by state or federal laws.

(2) Solicitation Mailing Lists.

To the extent deemed acceptable by the Director or as may be required by state or federal law or regulation, the Director shall include disadvantaged business enterprises on solicitation lists.

(3) Solicitation of Disadvantaged Business Enterprises.

The Director shall assure that disadvantaged business enterprises are solicited for Procurements for which such businesses may be suited.

(4) Training Programs.

The Director shall develop special training programs to be conducted by the City to assist disadvantaged business enterprises in learning how to do business with the City. (Ord. 2049 § 1, 2021; Ord. 1605 § 1, 2002)

7.09.030 Local Business Preference Program.

(1) Findings.

(a) The City annually spends significant amounts on purchasing Supplies and Services. The dollars used in making these purchases are derived in large measure from taxes and fees derived from Local Businesses and the City Council has determined that funds generated in the community should, to the extent possible, be placed back in the local economy. Therefore, the City Council has determined that it is in the best interest of the City to give a preference to Local Businesses in making such purchases whenever the application of such a preference is reasonable in light of the dollar-value received in relation to such expenditure.

(b) The City Council further finds that the Coachella Valley is in a state of economic depression and many Local Businesses have been forced to close their doors due to severe financial losses. Many of these Local Businesses have been doing business in the Coachella Valley for many years. The City Council finds that the City should promote and stimulate Local Businesses by requiring that purchases of Supplies and Services be acquired from Local Businesses.

(c) The City Council further finds that this action is necessary to grow the local economy and preserve the Local Businesses that have diligently served the Coachella Valley for many years.

(d) Strategies that encourage people to buy locally are an important component of economic sustainability. Retaining local dollars within a community reduces economic export and increases the financial productivity of taxpayer dollars and increases the consumption of Supplies and Services while fostering a sustainable community. In working towards a sustainable economy, the City Council recognizes that sustainable procurement policies are an important early step on the Palm Springs Path to a Sustainable Community. By leveraging the purchasing power of the City to buy local Supplies and Services, instead of Supplies and Services from outside the Coachella Valley, it strengthens the local economic activity and employment as well as sets an example that helps foster and maintain a vital economic community for future generations.

(2) Statement of Policy.

It is the policy of the City to promote employment and business opportunities for local residents and Local Businesses 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.

(3) Local Preference in Purchasing.

In the Procurement of Supplies, as provided in this Title, the City Council or the Director may give a preference to Local Businesses in making such purchase or awarding such Contract in an amount not to exceed five percent (5%) of the Local Business' total bid price, or \$15,000.00, whichever amount is lower. Total bid price shall include 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 person or 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.

(4) Local Preference in Services.

In awarding Contracts for Services, including Professional Services, preference to Local Business shall be given whenever practicable pursuant to this Title consistent with the Statement of Policy in subsection (2) above. The person or Business will also, to the extent legally possible, solicit applications for employment and proposals from subcontractors for Services associated with the proposed Contract from local residents and Local Businesses as opportunities occur and hire qualified local residents and Local Businesses whenever feasible. In order for a Local Business to be eligible to claim the preference, the person or 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.

(5) Local Preference in Public Works Contracts (Sub-Contracting).

The Contractor shall use good faith efforts to sub-contract Supplies to Local Businesses and to sub-contract Services to Local Businesses whose work force resides within the Coachella Valley. The Contractor shall submit evidence of such good faith efforts at the time of submission of Bids. Good faith efforts may be evaluated by placing advertisements inviting proposals in local newspapers, sending request for proposals to local sub-contractors, or by demonstrating that no local sub-contractors are qualified to perform the Services or provide the Supplies. Any notice inviting bids which may require the use of sub-contractors shall include notification of this subsection. The City Council or Director may reject as non-responsive the Bid of any Contractor proposing to use sub-contractors that fail to comply with the requirements of this subsection.

(6) Exceptions to Local Business Preference Policy. The preference set forth in this Section shall not apply to the following purchases or contracts:

- (a) Supplies or Services provided under a cooperative purchasing agreement.
- (b) 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 a local preference.
- (c) Purchases made or Contracts let under emergency or noncompetitive situations.
- (d) Purchases with an estimated cost of \$10,000 or less.
- (e) 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.

(7) 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 City Council and the Director 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 Director from giving any other preference permitted by law or this Title.

(8) Application.

This Section shall be implemented in a manner consistent with otherwise applicable provisions of this Title.

(9) Verification of Local Business Preference Eligibility.

Any person or Business claiming to be a Local Business, shall so certify in the Bid, in writing to the Director. The Director shall not be required to verify the accuracy or any such certifications, and shall have sole discretion to determine if a person or Business meets the definition of "Local Business." The decision of the Director declaring that any person or Business is not a Local Business shall be subject to appeal pursuant to the provisions of Chapter 2.50 of this Code.

(10) Enforcement.

(a) The information furnished by each Bidder requesting a Local Business Preference shall be under penalty of perjury.

(b) 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.

(c) 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.

(d) 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:

(i) 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;

(ii) In addition to the amount described in subsection (i) above, be assessed a penalty in an amount of not more than ten percent (10%) of the amount of the Contract involved; and

(iii) Be subject to debarment from future award of Contracts from the City.

(e) The penalties identified in subsection (d) above 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 Director of this information prior to responding to a Solicitation or accepting a Contract award.

(11) Promulgation of Administrative Rules.

The Director is authorized to adopt administrative rules supplemental to the provisions of this Title as necessary or appropriate to implement the provisions of this Section. The provisions of this Section and the rules adopted by the Director shall be provided to potential Bidders to the widest extent practicable. (Ord. 2049 § 1, 2021; Ord. 1576 § 3, 2009; Ord. 1605 § 1, 2002)

7.09.040 Non-discrimination in contracting.

(1) Statement of Policy.

(a) 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.

(b) 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 level manner. Employees who are treated fairly are more productive in their jobs and less likely to change jobs, thus helping to ensure that government contracts are both cost effective and completed in a professional manner.

(2) Basic Contract Requirement Prohibiting Non-Discrimination. The City shall not enter into any contract with any Contractor, unless such Contractor agrees to be bound by contract to provisions prohibiting discrimination 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.

(3) Requirement Prohibiting Discrimination in the Provision of Benefits.

(a) No Contractor of the City with a Contract in the amount of ten thousand dollars (\$10,000.00) or more shall discriminate in the provision of health benefits, bereavement leave, family medical leave, moving expenses, pensions or retirement benefits, travel benefits, or membership or membership discounts between:

(i) employees on the basis of an employee's, employee's spouse's, employee's domestic partner's, or dependent's 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;

(ii) employees on the basis of an employee's or dependent's actual or perceived gender identity, including, but not limited to, the employee's or dependent's identification as transgender; or

(iii) employees with spouses and employees with domestic partners, or discrimination between employees with spouses or domestic partners of a different sex and employees with spouses or domestic partners of the same sex, or discrimination between same-sex and different-sex domestic partners of employees or between same-sex and different-sex spouses of employees.

(b) For purposes of this Section, an employee health plan is discriminatory if the plan is not consistent with California Law including, but not limited to, Section 1365.5 of the Health and Safety Code and Section 10140 of the Insurance Code.

(4) Certification. Every Contractor shall submit a nondiscrimination certificate in a form acceptable to the City Manager. No Contract shall be awarded until the Contractor has submitted to the City such certificate. The certificate shall contain the following:

(a) 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 non-discrimination and equal benefits as provided in the Section to assure that applicants and employees are treated equally and are not discriminated against 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, national origin, ancestry, or sexual orientation. Contractor further certifies that it will not maintain any segregated facilities.

(b) 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.

(c) Contractor shall, if requested to so do by the Contract Administrator, certify that it has not, in the performance of this contract, discriminated against applicants 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.

(d) If requested to do so by the Contract Administrator, Contractor shall provide the City with access to copies of all of its 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.

(e) Contractor agrees to recruit Coachella Valley residents initially and to give them preference, if all other factors are equal, for any new positions which result from the performance of this Contract and which are performed within the City. The Contract Administrator may agree to modify requirement where it is in conflict with federal or state laws or regulations.

(f) Nothing contained in this Contract shall be construed in any manner so as to require or permit any act which is prohibited by law.

(g) The Contractor shall include the provisions set forth in paragraphs (a)—(f) of this Subsection (4) of this Section, inclusive, in each of its subcontracts.

(5) Investigation and Monitoring. All Contracts shall include appropriate provisions that will allow the Contract Administrator 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.

(6) Enforcement and Appeals.

(a) In the event the Contract Administrator determines the Contractor is not in substantial compliance with the provisions of this Section, the Contract Administrator 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:

(i) 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;

(ii) Assess liquidated damages in the amounts specified in the Contract where it is found the Contractor willfully violated the requirements of this Section; and

(iii) Seek recovery of reasonable attorneys' fees and costs incurred for enforcement of this Section.

(b) The Contract Administrator 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.

(7) Appeals.

(a) Within five (5) business days of the notice of the Contract Administrator's findings, the Contractor may file a written appeal of the Contract Administrator's determinations to the City Manager.

(b) The City Manager 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 and as otherwise required by the California Ralph M. Brown Act.

(c) The hearing shall be conducted as an independent reexamination of the matter. 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 City Manager may adopt the decision of the Contractor Administrator 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 City Manager shall exclude irrelevant, immaterial or unduly repetitious evidence. The City Manager'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.

(d) Upon the hearing of the appeal the City Manager may refer the matter back to the Contract Administrator with directions for further consideration, or the City Manager may reverse, affirm, or modify the decision as may appear just and reasonable in light of the evidence presented. The decision of the City Manager shall be supported by written findings and shall include the reasons for the ruling. Notice of the City Manager's decision shall be served on the Contractor, the Contract Administrator, and the City Clerk. The decision shall be final unless City Council agrees to review the matter pursuant to Section 2.06.030 of this Code.

(8) Exceptions and Waivers.

(a) The City Manager, with the consent of the City Council, may waive the requirements of this Subsection under the following circumstances:

(i) 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;

(ii) Where the City Manager certifies in writing to the City Council 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 twenty-four (24) hours of execution of the Contract or Real Property Agreement on behalf of the City;

(iii) 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.

(b) 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.

(c) 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.

(d) Upon the request of a potential contractor or upon the contracting 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:

- (i) 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, a service, or a Public Project that is essential to the City or City residents; or
- (ii) 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
- (iii) 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.

(e) The waiver authority granted to City Manager in this Subsection shall be subject to the requirements that:

- (i) 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 in the Office of the City Clerk and a notice of such waiver shall be presented to the City Council on the next available City Council agenda; and
- (ii) 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.

(9) Annual Reports. The City Manager shall conduct an annual comprehensive review of the administrative implementation of the provisions of this Section, including without limitation, the use of the waiver authority under Subsection (8) and the disposition of complaints of contractor non-compliance with any provision of this Section, and shall submit a report to the City Council. (Ord. 2049 § 1, 2021; Ord. 1896 § 2, 2016)

Contact:

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Title 7 PROCUREMENT AND CONTRACTING

Chapter 7.10 ETHICS IN PUBLIC CONTRACTING

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7.10.020 Gratuities and kickbacks.

7.10.030 Prohibition against contingent fees.

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7.10.050 Waivers from contemporaneous employment prohibition and other conflicts of interest.

7.10.060 Use of confidential information.

7.10.010 Employee conflict of interest.

(1) It shall be unethical for any City Employee or City official to participate directly or indirectly in a procurement Contract when the City Employee or official knows that:

(a) The City Employee or official, or any member of the City Employee's or official's immediate family has a financial interest pertaining to the procurement Contract; or

(b) Any other person, business, or organization with whom the City Employee or official, or any member of the City Employee's or official's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement Contract.

(2) A City Employee or City official, or any member of the City Employee's or official's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

(3) No City Employee nor official shall purchase any goods, supplies, equipment, etc., from the City unless the goods, supplies, equipment and materials are offered to the general public on the same terms and conditions as those applicable to the Employee or official, or as the result of a competitive bid process open to the public.

(4) City Employees or City officials who approve the designation of City Property as surplus or recommend an item be surplus are ineligible to purchase said items under any process, including competitive bid. (Ord. 2049 § 1, 2021; Ord. 1605 § 1, 2002)

7.10.020 Gratuities and kickbacks.

(1) Gratuities.

It shall be unethical for any person to offer, give, or agree to give any City Employee or former City Employee, or any City Employee or former City Employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal.

(2) Kickbacks.

It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a Contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(3) Contract Clause.

The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every Contract and Solicitation. (Ord. 2049 § 1, 2021; Ord. 1605 § 1, 2002)

7.10.030 Prohibition against contingent fees.

It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a City Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. (Ord. 2049 § 1, 2021; Ord. 1605 § 1, 2002)

7.10.040 Contemporaneous employment prohibited.

It shall be unethical for any City Employee who is participating directly or indirectly in the procurement process to become or to be, while such City Employee, the Employee of any person contracting with the City. (Ord. 2049 § 1, 2021; Ord. 1605 § 1, 2002)

7.10.050 Waivers from contemporaneous employment prohibition and other conflicts of interest.

The City Council may grant waiver from the employee conflict of interest provision (Section 7.10.010, Employee conflict of interest) or the contemporaneous employment provision (Section 7.10.040, Contemporaneous employment prohibited) upon making a written determination that:

- (a) The contemporaneous employment or financial interest of the City Employee has been publicly disclosed;
- (b) The City Employee will be able to perform its procurement functions without actual or apparent bias or favoritism; and

(c) The award will be in the best interests of the City. (Ord. 2049 § 1, 2021; Ord. 1605 § 1, 2002)

7.10.060 Use of confidential information.

It shall be unethical for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person. (Ord. 2049 § 1, 2021; Ord. 1605 § 1, 2002)

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