



# City of San Bernardino

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## City of San Bernardino Administrative Policy Purchasing Policy and Procedures Guide

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**Subject:** Purchasing Policy and Procedures Guide

**Purpose:** To set forth the policies governing procurement and contracting and to establish certain procedures concerning authorization, documentation, and expenditure for Agencies, Departments, and the City Manager of the City of San Bernardino. The City of San Bernardino has a goal of ethical and fair procurement, and open competition. This Purchasing Policy and Procedures Guide outlines procedures in compliance with Chapter 3.04 of the San Bernardino Municipal Code.

**Authority:** Resolution No. 2022-246

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**Scope:** Unless otherwise stipulated herein, this policy applies to all City Employees and Elected Officials making purchases on behalf of the City of San Bernardino. All such employees and officials shall comply with the provisions outlined in this policy. The purpose of any required documentation is to ensure transparency and provide sufficient evidence to anyone who reviews bids, proposals, and/or other purchasing materials that public funds were expended in compliance with this Purchasing Policy and Procedures Guide, San Bernardino Municipal Code, and applicable State and Federal law.

### ***Exemption from Scope***

None

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## **I. INTRODUCTION**

### **(a) Purpose**

Chapter 3.04 of the San Bernardino Municipal Code provides for the administration of the City's procurement processes, including the establishment of Purchasing Policy and Procedures Guide ("Policy"). The purposes and objectives of this Policy are:

1. To ensure compliance with all current laws and regulations
2. To promote transparency of the City's procurement activities
3. To establish standardized, cost-effective, and efficient purchasing methods
4. To ensure continuity of City operations
5. To promote fair competitive processes
6. To maintain integrity and fairness
7. To support the City's mission and serve the best interest of the public

This Policy shall not apply to the procurement of Public Works Projects. Procurement procedures for Public Works Projects are defined in Chapters 12.20, 12.21 and 12.24 of the San Bernardino Municipal Code.

### **(b) Definitions**

In construing the provisions of this Policy, the following definitions shall apply:

Cooperative Purchasing – Cooperative purchasing is an arrangement in which multiple entities combine their buying requirements onto a single contract and aggregate volume to enhance their purchasing power.

Emergency – A sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services as defined by California Public Contract Code Section 1102.

Emergency Purchase – A purchase or procurement of supplies, equipment or services made during an emergency as defined under Section VI(A) and MC 3.04.070.

General Services - 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. Examples include, but are not limited to, janitorial, uniform cleaning, maintenance and other services which do not require any unique skill, special background or training.

Goods - any and all supplies, materials, articles, equipment, apparatus, vehicles, things, or property, other than real property, furnished to be used by the City.

Local Business – The vendor (i) has fixed facilities with employees located at a business address within the City of San Bernardino city limits (a PO box or residence is insufficient); and (ii) has an appropriate City business license/permit, pursuant to MC 3.04.100.

Lowest Responsive, Responsible Bid – A bid from a responsible bidder, defined as a

bidder qualified to do the solicited work, that conforms in all materials respects to the solicitation, and is the lowest price among qualified, responsive bids.

Maintenance Services - the furnishing of labor, time or effort by a contractor, including but not limited to:

- Routine, recurring, and usual work for the preservation or protection of a publicly owned, or publicly operated facility for intended purposes;
- Minor repainting;
- Resurfacing streets and highways at less than one inch;
- Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems; and
- Other similar services that are generally classified as maintenance and not public projects.

Piggyback – (See Cooperative Purchasing).

Professional Services - services provided by a person, company, corporation, or firm engaged in a profession based on a generally recognized special knowledge, skill, license, and/or certification to perform the work including, but not limited to, the professions of accountant, attorney, artist, architect, landscape architect, construction manager, engineer, environmental consultant, dentist, physician, training or educational consultant, or land surveyor, and whose services are considered distinct and unique.

Protest – A protest is a challenge to the award or proposed award of a contract for the procurement of goods and/or services, or a challenge to the terms of a solicitation for such a contract.

Purchase Order (PO) – A purchase order, or PO, is an official document issued by the City committing to pay a vendor for the sale of specific products or services to be delivered in the future.

Purchasing Agent – An employee who purchases materials and supplies and solicits bids on behalf of the City.

Request for proposal (RFP) – A request for proposal (RFP) is a document that solicits firms to submit a proposal to perform the scope of work associated with a proposed project. Cost is not the sole basis for selection in an RFP; other qualifications including experience, turnaround time and approach to work are important factors when evaluating proposals. RFPs are project specific, and preparation requires general knowledge of the project. It is expected that interested parties would do a limited amount of work to develop a quality proposal.

Request for Qualification (RFQual) – A request for qualifications (RFQual) is a document that solicits firms to submit information about their qualification and capabilities to perform the type of work associated with a proposed project. The preparation of an RFQual generally does not require specific project knowledge or scope. An RFQual may be used as a pre-qualification step to engaging a service provider. If an RFQual is required, only those candidates who successfully respond to it and meet the qualification criteria will be included in the subsequent RFP process. An RFQual will contain specific reference to selection criteria.

Request for Quote (RFQ) – A formal or informal solicitation of price quotes.

Services - either general services, maintenance services, or professional services.

Sole Source – A sole source purchase means that only one supplier, to the best of the requester's knowledge and belief, based upon thorough research, can provide the required product or service.

Surplus Supplies and/or Equipment – City owned materials, supplies and/or equipment deemed to be no longer useful or otherwise obsolete. See MC Section 3.04.080.

**(c) Organization**

The Purchasing Division is part of the Finance Department, which is responsible for carrying out written administrative procedures adopted by the City Council related to procurement (M.C. § 3.04.020).

**(i) Purchasing Division.**

The Purchasing Division is responsible for the oversight and internal control related to procurement and purchasing including, but not limited to:

- i. Ensuring compliance with Chapter 3.04 of the San Bernardino Municipal Code and this Policy.
- ii. Developing technical review matrices for proposals
- iii. Carrying out the initial review of Bids/Proposals
- iv. Verifying that all legal and other required internal reviews are completed
- v. Ensuring that departments are using the correct contract templates
- vi. Opening sealed bids
- vii. Certification of Sole Source Procurements
- viii. Managing the City's Disadvantaged Business Enterprise (DBE) and Small Business Enterprise (SBE) Program and reporting results to City Management and the Mayor and City Council.

**(ii) Purchasing Division Manager ("Purchasing Manager").**

The Purchasing Manager is a critical internal control position. While not empowered to make purchases directly, the Purchasing Manager ensures that the City complies with applicable procurement law, grant funding requirements, the San Bernardino Municipal Code and this Policy. The Purchasing Manager is responsible for internal control and compliance related items including, but not limited to:

- i. Reviewing selection of vendors for compliance with open and fair competition
- ii. Responding to any bid protests

- iii. Reviewing the DBE and SBE program including verifying affirmative steps and auditing results
- iv. Reviewing contracts before they are submitted for final signatures
- v. Periodic audits for compliance with applicable law, the San Bernardino Municipal Code and the Policy

## **II. PURCHASING EXPENDITURE AND APPROVAL THRESHOLDS**

### **(a) Purchasing Requirements by Expenditure Threshold**

#### **(i) Purchases up to \$10,000 (Micro-Purchases):**

- 1. Purchases up to \$10,000 may be purchased using a Procurement -Card ("P-Card") or through a check request.
- 2. No formal bids or quotes are required.
- 3. Purchases of \$10,001 and over shall not be divided into multiple smaller purchases or invoices to circumvent required procedures. This is "split purchasing" and is unlawful and a violation of the Policy and the San Bernardino Municipal Code. (M.C. § 3.04.090).

#### **(ii) Purchases Between \$10,001 and \$40,000 (Small Purchases):**

- 1. Purchases in this category are processed informally through the simplified process outlined in Section III of this Policy and may be processed directly by the department making the purchase.
- 2. Competitive Bidding may be used for purchases under \$40,000 at the discretion of the Agency or Department Director.

#### **(iii) Purchases Above \$40,000:**

- 1. Purchases in this category are subject to competitive bidding or competitive selection outlined in Section IV of this Policy, depending on the type of purchase (formal procurement procedures).

### **(b) Purchasing Authority by Expenditure Threshold**

#### **(i) Purchases up to \$50,000:**

- 1. Purchases in this category may be authorized and signed by Agency/Department Directors and/or the City Manager or their designee.

#### **(ii) Purchases between \$50,001 and \$100,000:**

- 1. Purchases in this category may only be authorized and signed by the City Manager or their designee.

#### **(iii) Purchases over \$100,000:**

- 1. Purchases in this category may only be authorized by the Mayor and City Council.

### **III. INFORMAL (SIMPLIFIED) PROCUREMENT PROCESS**

Purchases for goods, services, and materials that are subject to the informal procurement process may be processed through vendor quotations as follows:

- (a) Three (3) written quotes should be obtained.
- (b) Departments shall strive to obtain written price quotes from three or more potential contractors or suppliers and accept the quote which is determined to be in the best interests of the City. Written price quotes shall be retained and provided as backup for the purchase requisition. If unable to obtain a minimum of three (3) price quotes, staff shall document that reasonable efforts were made to obtain price quotes or proposals including, that there were no other vendors to solicit price quotes or proposals from or that they solicited to other vendors and one or more declined to provide a quote or proposal.
- (c) Award shall be made to the best qualified vendor presenting a quote or proposal that is in the City's best interests. For purchases subject to the informal procurement process, criteria other than price may be used. For example, delivery time, quality, and vendor experience may impact the selection of quotes. If using criteria other than price, the criteria should be stated somewhere on the quote documentation for audit purposes.
- (d) Contracts for the purchase of professional services shall be awarded to the best qualified vendor on the basis of demonstrated competence and professional qualifications. While a reasonable price is always a consideration in selecting a vendor, it cannot be the sole factor in selecting a vendor for professional services.

### **IV. FORMAL PROCUREMENT PROCESS**

- (a) Purchases for goods, services, and materials that are subject to the formal procurement process shall be processed utilizing an RFP, RFQual or RFQ process as described in this Section. The RFP, RFQual or RFQ process shall be utilized to engage services on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the City. The following minimum guidelines and procedures shall be implemented.
  - (i) Notice Inviting RFQs or RFPs. At a minimum, the notice inviting RFQs, RFQuals or RFPs shall: (1) describe the project; (2) state how to obtain more detailed information about the project; (3) state the date, time and place for the submission of qualifications or proposals; (4) describe general parameters for evaluation and selection; and (5) include any other information required by state or local law.
  - (ii) Published Notice. City staff shall solicit RFQs, RFQuals or RFPs via published notice in a newspaper of general circulation and/or the City's website at least ten (10) calendar days before the date for receiving qualifications or proposals, unless exigent circumstances call for a shorter time.

- (iii) Review of Qualifications or Proposals. The City will receive qualifications or proposals at the date, time and place of submission on the notice inviting RFQs/RFQuals/RFPs. Any proposals received after the proposal opening time will be time/date stamped and returned unopened to the proposer. The City will review and evaluate qualifications or proposals based on the evaluation and selection criteria in the RFQs/RFQuals/RFPs and rank proposals based on factors listed in the RFQ/RFQual/RFP.
- (iv) Negotiation. Once proposals are ranked, the City may negotiate a contract with the highest ranked proposer only, may negotiate with multiple proposers, or may attempt to reach an agreement with the highest ranked proposer before negotiating with other proposers in order of ranking. The City may also dispense with negotiations and recommend an award based on the proposals.
- (v) Award. Award for professional services contracts shall be to the best qualified vendor who will best serve the City's interests taking into account the demonstrated competence, professional qualifications and suitability for the project. Award for other contracts shall to the vendor offering the best value to the City, in the City's sole and absolute discretion.
- (vi) Rejection of Bids. The City Council may, in its sole and absolute discretion, reject all proposals presented and re-advertise.

## **V. EXEMPTIONS**

Exemptions from the procurement process may be requested under the following circumstances:

- (a) **Emergency Purchases.** An exemption may be granted in case of an emergency, which is so urgent as to preclude advance action by the Mayor and Common Council and which requires purchase of supplies, materials, equipment, and contractual service.
  - (i) In such a case, the City Manager shall have the authority to authorize the Purchasing Division to secure in the open market such supplies, materials, equipment, or contractual services as deemed necessary.
  - (ii) This emergency authority shall extend to all purchases; irrespective of the fact that amount might exceed the City Manager's authorization threshold. In such instances a full explanation of the emergency circumstances shall be filed with the Mayor and City Council (MC § 3.04.070).
  - (iii) If emergency work is performed, the Purchasing Division should be notified by the next business day, or as soon as practical. This will allow the Purchasing Division to properly ratify purchase orders.
  - (iv) An emergency includes the following: (1) a public calamity; (2) an immediate need to prepare for national or local defense; (3) the breakdown of machinery or equipment causing a service impediment requiring immediate resolution; (4) a hazard to public health or welfare; and (5) situation in which the City will be unable to perform services for



the public.

- (b) **Cooperative Purchases.** The City may engage in cooperative purchasing for goods or services as a third-party agency "piggybacking" on another agency's competitively bid agreement. Cooperative purchasing reduces administrative expenses and secure prices and other benefits of a large volume purchase. Caution must be exercised to ensure that the City is in compliance with all applicable federal, state, and local laws as well as the Policy. The Purchasing Division must be consulted prior to any department engaging in cooperative purchasing.
- (c) **Sole Source.** When a department determines that the goods, services or public project can only be obtained from a sole source. For example, only one manufactured makes an item that meets the required specifications or only one item is compatible with existing equipment. Price cannot be used in a determination of sole source. This is an indication of competition in the marketplace.

A sole source purchase is a method of acquisition; it shall not be used to avoid competition. A sole source justification memo is required for any sole source purchase over \$10,000. The sole source justification memo must be approved by the Purchasing Manager before the purchase is completed.
- (d) **Public Works Projects.** This Policy shall not apply to the procurement of Public Works Projects. Procurement procedures for Public Works Projects are defined in Chapters 12.20, 12.21 and 12.24 of the San Bernadino Municipal Code.
- (e) **Purchases Approved by Mayor and City Council.** A purchase that is otherwise approved by the action of the Mayor and City Council in a public meeting is exempt from this Policy.
- (f) **Federal/Grant-Funded Procurement.** Federal/grant-funded procurements shall be exempt from this Policy if such funding requires compliance with an alternative set of procurement rules not in compliance with this Policy. This is more particularly described in Section VII(c) of this Policy.
- (g) **Exemptions Authorized by San Bernardino Municipal Code Section 3.04.010(D)(1).** Items listed in San Bernardino Municipal Code section 3.04.010(D)(1) shall be exempt from this Policy. This includes, but is not limited to, purchases/sales from other governmental agencies.
- (h) **Inadequate Competition.** Inadequate competitive is defined as when, after solicitation from a number of sources (which must be documented for audit purposes), competition is determined to be inadequate. Inadequate competition includes the lack of receipt of responsive bids.

## **VI. PROTEST PROCEDURES**

- (a) **Right to Protest.** Prior to making the award, any responsible bidder in connection with the award of a contract may protest the award. A subcontractor of a bidder or proposer may not submit a protest. This Section shall apply to all contracts awarded by the City Council through a formal competitive process, including but not limited to a formal bid or formal request for proposal process.

The protest procedure does not apply to contracts that are awarded at the staff level or through a non-competitive process (e.g., by sole source). The protest procedure is solely to serve the public interest and obtain finality of City contract awards.

- (b) **Procedure.** The protest must:
  - (i) Be filed in writing within five (5) calendar days after the bid opening date relating to any Bid. Any protest relating to a City determination or recommendation regarding the bidder's bid must be submitted within five (5) calendar days after the City makes the determination or recommendation
  - (ii) Clearly identify the specific irregularity or accusation;
  - (iii) Clearly identify the specific City staff determination or recommendation being protested, if applicable;
  - (iv) Specify in detail the legal grounds for protest and the facts supporting the protest; and
  - (v) Include all relevant, supporting documentation with the protest at time of filing.
- (c) **City Response.** Any grounds not raised in the written protest are deemed waived by the protesting bidder. If the protest does not comply with each of these requirements, the City may reject the protest without further review. If the protest is timely and complies with the above requirements, the City shall review the protest, any response from the challenged bidder(s), and all other relevant information. The City will provide a written decision to the protestor in a reasonable amount of time.
- (d) **Effect of Failure to Comply with Protest Procedures.** The procedure and time limits set forth are mandatory and are the sole and exclusive remedy in the event of a bid protest. Failure to comply with these procedures shall constitute a failure to exhaust administrative remedies and a waiver of any right to further pursue the bid protest, including filing a Government Code Claim or legal proceeding.
- (e) **Conflicts.** The protest procedure contained in this Section shall not apply if a particular procurement solicitation contains a different protest procedure.

## **VII. FEDERAL EMERGENCY AND GRANT PROCUREMENT PROCEDURES**

- (a) **Purpose.** The purpose of these Federal Emergency and Grant Procurement Procedures is to define the practices and policies governing the procurement of services, and goods (i) in preparation of, during, and after an emergency that may be subject to federal funding or reimbursement; (ii) when using federal grant funds subject to the regulations set forth in the following sentence. These Federal Emergency and Grant Procurement Procedures are compliant with Title 2 of the Code of Federal Regulations Part 200, Uniform Administrative Requirements,

Cost Principles, and Audit Requirements for Federal Awards ("Uniform Guidance").

**(b) Federally Declared Emergencies and Federal Grants; Procurement and Contracting Requirements**

- (i) In the event of an emergency declared by the President of the United States, the City must comply with Federal procurement standards as a condition of receiving public assistance funding from the Federal Emergency Management Agency (FEMA) for contract costs for eligible work. FEMA funding is governed by the Uniform Guidance.
- (ii) In addition, most federal grant funding is also subject to the Uniform Guidance. Federal grant compliance requires the grantee to conduct procurements in accordance with written procurement policies and procedures that comply with the requirements set forth in the Uniform Guidance. These procurement procedures shall be complied with in connection with utilization of federal grant funding by the City, in addition to any other specific grant requirements.
- (iii) These procedures are in addition to and are not intended to replace or supersede the City's other procurement requirements in this Policy or state law. In the case of a conflict between these procedures, the more stringent requirement shall govern, provided that the more stringent requirement would not violate a federal procurement requirement. In such case, for federally funded contracts, the federal requirement shall govern.

**(c) Conflicts of Interest**

- (i) Standards of Conduct for Conflicts of Interest. No employee, officer or agent of the City shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: The employee, officer or agent; any member of his immediate family; his or her partner; or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The City's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. Such a conflict will not arise where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. Employees must follow applicable laws, rules, and regulations in regard to conflicts of interest including, but not limited to, the Political Reform Act, the prohibition against contractual conflicts of interest, and guidelines in the California Code of Regulations regarding acceptance of gifts.
- (ii) Violations. Disciplinary actions to be applied for violations of the above standards are as follows.

- (1) The violation of these Standards of Conduct by City employees will subject the violator to any disciplinary proceedings or action deemed appropriate by the City Manager. Employees may correct a violation in any manner provided for under the Political Reform Act, and its implementing regulations.
- (2) The violation of any of these Standards of Conduct by City officers will require correction of the violation in any manner provided for under the Political Reform Act, and its implementing regulations.
- (3) Contractors or subcontractors that violate these Standards of Conduct as relates to an active federally funded procurement may be prohibited from bidding on the procurement, or may be subject to other action as deemed appropriate by the City Manager.
- (4) Agents of the City that violate these Standards of Conduct as relates to federally funded procurements may be prohibited from participation on behalf of the City on federally funded projects, or subject to other action as deemed appropriate by the City Manager.

(d) **Procurement Standards**

- (i) Oversight. The City shall maintain administrative oversight of contractors to ensure that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders.
- (ii) Economical Approach. The City must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. The City will enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. If feasible and it reduces project costs, the City will explore using federal excess and surplus property in lieu of purchasing new equipment and property. When appropriate, the City will investigate using value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.
- (iii) Detailed Records. The City shall maintain records sufficient to detail the history of each procurement. These records will include but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- (iv) Procurement Issues. The City alone shall be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes and claims. Protest procedures or

information on obtaining the procedures shall be included in the procurement documents.

**(e) Competition**

- (i) Full and Open Competition. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:
  - (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
  - (2) Requiring unnecessary experience and excessive bonding;
  - (3) Noncompetitive pricing practices between firms or between affiliated companies;
  - (4) Noncompetitive contracts to consultants that are on retainer contracts;
  - (5) Organizational conflicts of interest, as further detailed herein;
  - (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
  - (7) Any arbitrary action in the procurement process.
- (ii) Organizational Conflicts of Interest. An unfair competitive advantage could result if a contractor were allowed to submit a bid or proposal for work described in a specification or statement of work that the contractor itself developed. For the purpose of eliminating a potential unfair competitive advantage, and in compliance with applicable state and federal laws and regulations, a contractor that develops or assists in developing specifications, requirements, statements of work, invitation for bids, and/or request for proposals for City procurement is excluded from competing for the resultant procurement, unless an appropriate waiver is issued by the City. All waivers will be assessed by the City on a case-by-case basis.
- (iii) Geographical Preference. The City shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

- (iv) Procurement Transactions. The City shall require the following information for procurement transactions:
  - (1) A clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equal description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and
  - (2) All requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- (v) Prequalification Lists. The City shall ensure that all prequalified lists, if used, of persons, firms or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. The City shall not preclude potential bidders from qualifying during the solicitation period.

(f) **Procurement Procedures**

The thresholds below are federal thresholds. If City thresholds are lower, the more restrictive requirement shall govern, notwithstanding the provisions herein.

- (i) Micro-Purchases. Purchases within the micro-purchase threshold (e.g., currently set at purchases of \$10,000 or less but periodically adjusted for inflation) may be awarded without soliciting competitive quotations if the City considers the price to be reasonable. To the extent practicable, the City must distribute micro-purchases equitably among qualified suppliers.
- (ii) Small Purchases. Purchases within the simplified acquisition threshold (e.g., currently set at purchases of \$40,000 or less) shall not be required to be formally bid. Price quotations must be received from no less than three (3) sources.
- (iii) Formal, Sealed Bidding.
  - (1) Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. Formal, sealed bidding is required for purchases greater than the simplified acquisition threshold,

which is currently set at \$40,000, or as may be adjusted by the Federal Acquisition Regulation, pursuant to 48 CFR § 2.101.

- (2) This is the preferred method for procuring construction, if a complete, adequate, and realistic specification or purchase description is available; two or more responsible bidders are willing and able to compete effectively and for the business; and the procurement lends itself to a firm-fixed-price contract and the selection of the successful bidder can be made principally on the basis of price.
- (3) The City must publicly advertise the Invitation for Bids and publicly open all bids at the time and place prescribed in the invitation.
- (4) Any contracts awarded pursuant to this procedure shall be to the lowest responsible bidder submitting a responsive bid and shall be for a firm fixed price. Any or all bids may be rejected if there is a sound documented reason.

(iv) Competitive Proposals.

- (1) When the nature of a procurement does not lend itself to formal, sealed bidding, the City may solicit competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded.
- (2) A request for proposals (RFP) must be publicly advertised, and the City must solicit proposals from an adequate number of sources. The RFP must identify all evaluation factors and their relative importance; however, the numerical or percentage ratings or weights need not be disclosed.
- (3) Evaluation factors that will be considered in evaluating proposals shall be tailored to each procurement and shall include only those factors that will have an impact on the selection decision.
  - a. The City's procurement officer shall establish a formal evaluation committee, of at least two persons. The size of an evaluation committee should be based on the size and complexity of the goods or services being procured and well balanced and represented by individuals involved with the procurement and/or affected by the goods or services being procured.
  - b. The evaluation committee will be charged with responsibility for evaluating proposals in accordance with the evaluation criteria in the solicitation, short listing firms, establishing a competitive range, and/or recommending a firm or firms for contract award.

- (4) Any contract awarded based on the competitive proposal procurement process cannot be based exclusively on price or price-related factors.
- (5) If a contract is awarded, it shall be to the responsible firm whose proposal is most advantageous to the City ("best value"), with price and other factors considered.
- (v) Competitive Proposals for A&E Services. The competitive proposal procedures above may be used for procurement of architect and engineering (A&E) services, provided that proposers must be evaluated based on competence and qualifications, without regard to price. For A&E procurements, price will not be used as a selection factor. The City will rank proposers based on qualifications only, and attempt to negotiate fair and reasonable compensation with the highest ranked proposer. If negotiations with the highest ranked proposer are unsuccessful, such negotiations will be terminated and the City will commence negotiations with the next highest ranked proposer. This process shall be continued with successive qualified proposers until agreement is reached that is determined to be fair and reasonable.
- (vi) Noncompetitive Procurements.
  - (1) Contracts may be procured through a noncompetitive proposal only when:
    - a. The item is only available from a single source;
    - b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
    - c. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the City; or
    - d. Competition is deemed inadequate after the solicitation of a number of sources.
- (vii) Public Projects. Public projects shall be procured by the City's formal contract bid procedures, if any, and the formal, sealed bidding in this section. If there is conflict between the foregoing, the more restrictive requirements shall apply.
- (viii) Award.
  - (1) Responsible Contractor. The City shall award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.



- (2) Debarment and Suspension. In accordance with 2 CFR 200.213, in connection with the responsibility determination, a check of debarment and suspension using the System for Award Management (SAM), [www.sam.gov](http://www.sam.gov), must be performed and documented in the procurement records prior to award.
- (g) **Contracting with Small and Minority Firms, Women's Business Enterprises, and Labor Area Surplus Firms**
  - (i) The City must take all necessary affirmative steps to ensure the use of minority businesses, women's business enterprises, and labor surplus area firms when possible, as set forth at 2 CFR § 200.321 and detailed below. The City shall:
    - (1) Place qualified small and minority businesses and women's business enterprises on solicitation lists;
    - (2) Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
    - (3) Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
    - (4) Establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
    - (5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
    - (6) Require the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.
  - (ii) The City shall document the steps above, and any relevant findings applicable to any of the steps above in its procurement file.
- (h) **Cost and Price**
  - (i) Cost or Price Analysis. The City shall perform a cost or price analysis in connection with every procurement action, including contract modifications, in excess of the simplified acquisition threshold. While the method and degree of analysis depend on the facts surrounding the particular procurement situation, the City must, at a minimum, make independent estimates before receiving bids or proposals.

- (ii) Profit. The City shall negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where a cost analysis is performed as required by 2 CFR § 200.323(b).
- (iii) Estimated Costs. Costs or prices based on estimated costs for contracts are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the City under 2 CFR 200.400 et seq.

(i) **Payment Procedures**

- (i) Method of Contracting. Contracts entered into pursuant to these procedures shall utilize only fixed-price, cost-reimbursement, or, to a limited extent, time and materials payment methods.
- (ii) Prohibited Methods of Contracting. The City shall not use the cost plus a percentage of cost or percentage of construction cost methods of contracting for any work for which federal reimbursement will be sought.
- (iii) Time and Materials ("T&M") Contracts
  - (1) T&M contracts should be used rarely, and the use of T&M contracts should be limited to a reasonable time period (e.g., no more than 70 hours) based on circumstances during which the City cannot define a clear scope of work.
  - (2) The City shall only enter into a time and materials contract if all of the following apply:
    - a. The City has determined and documented in the project file that no other contract is suitable;
    - b. The contract has a guaranteed maximum price that the contractor exceeds at its own risk; and
    - c. The City provides a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
  - (3) The City must define the scope of work as soon as possible to enable procurement of a more acceptable type of contract (i.e., non-T&M).
- (iv) Separate Invoicing. All purchases made during a proclaimed emergency shall require separate invoicing from routine (i.e., non-emergency related) purchases. All invoices shall state the goods, services, or equipment provided and shall specify where the goods or services were delivered. All invoices shall specify the location(s) where the goods or services were used, if possible. Any invoice which fails to properly identify the emergency nature of the purchase and provide details as to the date(s) and location(s),

as appropriate, shall not be paid until such errors are corrected by the vendor and re-submitted in correct form.

- (v) Auditing of Invoices for Debris Removal. All invoices for debris clearance and removal shall be audited prior to payment to the contractor. Contractors shall be notified of this requirement prior to the award of any contract for debris clearance and/or removal. Audits shall be in accordance with procedures for debris removal monitoring specified in FEMA's Publication 325, Debris Management Guide.

(j) **Bonding Requirements**

- (i) Bonding. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold (See 2 CFR 200.88), the City shall require at a minimum:
  - (1) A bid guarantee from each bidder equivalent to five percent of the bid price.
  - (2) A performance bond on the part of the contractor for 100 percent of the contract price.
  - (3) A payment bond on the part of the contractor for 100 percent of the contract price.

(k) **Procurement of Recovered Materials**

- (i) For procurements covered under these procedures, the City and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. In accordance with these requirements, the City shall only procure items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- (ii) This requirement applies to purchases of items when the purchase price of the item exceeds \$10,000, or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.

- (l) **Contract Provisions.** The City's contracts shall contain the applicable provisions described in Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.

## **VIII. CONTRACTING**

- (a) Standard Contract Templates. The City utilizes written contracts to document each party's obligation and to minimize the City's risks during the performance of

services or supply of goods. Contracts include standard terms and conditions that serve as the framework and a statement of work that serves as the substance, of the contract. During the course of the relationship between the parties, the contract serves as a point of reference which may quickly resolve any misunderstanding.

- (i) The contract templates include forms for: professional and consulting services, maintenance services, software licensing, and the purchase of goods. The type of contract used for a particular procurement is determined by the nature of the transaction. The City has a set of contract templates that can be found on the City's Intranet.
  - (ii) The Purchasing Division can aid departments in determining which type of contract is needed. Exhibit B provides a brief explanation when certain contract templates should be used.
  - (iii) Questions regarding contract terms should be directed to the City Attorney's Office. Under no circumstances should contract terms and conditions be adjusted, changed, or deleted by anyone other than a representative of the City Attorney's Office.
- (b) Non-Standard Contracts. In some cases, vendor services or products are specialized, and a department may wish to use the vendor contract. However, doing so requires specialized legal review. It is important to note that this can add anywhere from two (2) to four (4) weeks to the contracting process. This additional time must be allowed for to ensure that the City's interests are protected.
- (c) Contracts NOT Required. Neither a contract, nor a purchase order is required for the following: payroll-related expenses such as insurance or retirement payments as approved by City Council through the budget, other insurance premiums, petty cash, travel advances or reimbursements, utility payments, membership dues, subscriptions, debt service, various "pass-through" payments, or other mandated expenditures. Claim forms should be used to pay these items.

## **IX. SURPLUS SUPPLIES AND EQUIPMENT**

- (a) Submitting Reports. The applicable Department Head or their designee(s) will notify the Purchasing Division in writing of surplus supplies and/or equipment and request disposal. This notification shall list each item, acquisition date or estimated age, acquisition price (if known), condition, and any known defect not readily apparent through visual inspection.
- (b) Review. The Purchasing Division shall review the surplus items and determine if any other City department has a use for the property.
- (c) Disposing of Surplus. If the Purchasing Division determines that the surplus items are not functionally or economically suitable for further City use, they shall dispose of the items by using a public auction, sealed bids or through negotiated sale for items valued at more than \$10,000. For recyclable items equal to or less than \$10,000, Purchasing may dispose of those items through a scrap metal or a recycling vendor if the cost to do so does not outweigh the value received in return.

- (d) Donation. Surplus items valued less than \$10,000, for which the City no longer has an identified use, may be donated to 501(c)3 organizations operating within the city limits of the City of San Bernardino.
- (e) Prohibitions. City employees and/or elected official of the City and their immediate families shall not be eligible to purchase such surplus materials, supplies, and equipment.

## **X. ETHICAL STANDARDS AND FAIR PROCESSES**

- (a) **Ethical Standards for Purchasing.** When placing City business with the business community, it is every employee's responsibility to follow good business and ethical practices and to adhere to the City's applicable law, policies, and procedures. This is a responsibility that should not be taken lightly as it is a duty under the law. All vendors shall be treated equally and fairly at all times by City personnel, with equal information given to each vendor who participates in a competitive situation. City employees must discharge their duties under this Policy in an impartial manner to foster the integrity of the City's purchasing function and to assure fair and open competition for City business and the selection of competent, responsible vendors.
- (b) **Conflicts of Interest.**
  - (i) No employee, officer, or agent of the City may participate in the selection, award, or administration of a contract pursuant to this Policy he or she has a real or apparent conflict of interest. A conflict of interest would arise when the City employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a material benefit from a vendor considered for a contract. The officers, employees, and agents of the City may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts, subject to any applicable standards for determining whether a financial interest is not substantial, or a gift is an unsolicited item of nominal value.
  - (ii) California Government Code § 1090 prohibits City officers and employees from having a financial interest in any contract "made" by them or by any board or body of which they are members. Virtually all City Council members, officers, employees, and consultants of a public entity are considered public officials under Government Code §1090. In a case where a consultant is developing a scope of work for a future project, creation of that scope of work is considered part of the "making" of the contract and defined by Section 1090. As such the consultant would be prohibited from submitting a proposal and/or being awarded a contract for the work.
- (c) **Communications Related to Solicitations.**
  - (i) Bidders, proposers, and other potential vendors shall not contact City officials outside of the solicitation process and shall not make any efforts to unduly influence City decision-making or otherwise gain an unfair advantage outside of the solicitation process. Improper contacts or

attempts to influence the selection process shall be grounds for automatic rejection.

- (ii) To the maximum extent feasible, City representatives shall provide each vendor with the same information related to the solicitation. For formal bids, RFP's and RFQ's, such information shall be provided in the form of an addendum to the solicitation.

**(d) Confidentiality and Transparency.**

- (i) Negotiations related to any solicitation shall be maintained with strict confidentiality. No City official or employee with knowledge of the City's bargaining position, or of the non-public position of other bidders or proposers, shall disclose such information for purposes of aiding a particular vendor, giving an advantage to a particular vendor over other bidders or proposers, or otherwise corrupting or frustrating the City's procurement efforts. This Section does not prevent the City's designated representative from engaging in negotiating tactics to obtain the best value to the City.
- (ii) All bids, proposals, quotes, and any related documents, including communications such as e-mails related to solicitations, are public records and shall be made available to the public upon request. However, public records may be withheld from disclosure while negotiations are pending, in accordance with applicable law.
- (iii) To the extent a solicitation involves proprietary information or trade secrets, vendors should mark the proprietary information as confidential. Information that is not proprietary or a trade secret shall not be marked confidential. Unless a law specifically and expressly allows price information to be confidential, all price proposals and other financial terms shall be public.
- (iv) City Council decisions on all contract awards shall strictly comply with the Ralph M. Brown Act (Government Code sections 54950, et seq.). City Council members and staff should not engage in any series of communications that result in a majority of the City Council deliberating on a proposed contract award outside of a properly noticed City Council meeting.

**(e) Disclosures.**

- (i) Solicitations should require that bidders, proposers and other potential vendors disclose: (1) any ex parte contacts made by the vendors or made by City officials to the vendors outside of the official procurement process, (2) any gifts, loans or other benefits (other than campaign contributions) made to City officials within the 12 months preceding the solicitations, (3) whether the vendor has knowledge that a City official will be financially interested in the contract. Vendors shall promptly notify the City if any City official requests any payment, contribution or any other quid pro quo in exchange for award of a contract.
- (ii) Vendors may be required by the Political Reform Act, and/or the Fair Political Practices Commission to disclose financial interests on the Form 700. Such vendors shall comply with all disclosure requirements.

- (f) **Discipline/Censure.** Violations of the ethical and fair process requirements contained in this Section may be grounds for discipline (if by an employee) or censure (if by an elected official). Criminal violations, such as willful violations of Government Code section 1090, may be reported to the San Bernardino County District Attorney.

## **EXHIBIT A**

### **EXPENDITURE AND AUTHORIZATION THRESHOLDS REFERENCE**

#### **Purchasing Requirements by Expenditure Threshold**

##### Purchases up to \$10,000 (Micro-Purchases):

- Purchases up to \$10,000 may be purchased using a Procurement Card ("P Card") or through a check request.
- No formal bids or quotes are required.
- Purchases of \$10,001 and over shall not be divided into multiple smaller purchases or invoices to circumvent required procedures. This is "split purchasing" and is unlawful and a violation of the Policy and the San Bernardino Municipal Code. (M.C. § 3.04.090).

##### Purchases Between \$10,001 and \$40,000 (Small Purchases):

- Purchases in this category are processed informally through the simplified process outlined in Section III of this Policy and may be processed directly by the department making the purchase.
- Competitive Bidding may be used for purchases under \$40,000 at the discretion of the Agency or Department Director.

##### Purchases Above \$40,000:

- Purchases in this category are subject to competitive bidding or competitive selection outlined in Section IV of this Policy, depending on the type of purchase (formal procurement procedures).

#### **Purchasing Authority**

##### Purchases up to \$50,000:

- Purchases in this category may be authorized and signed by Agency/Department Directors and/or the City Manager and/or their designee.

##### Purchases between \$50,001 and \$100,000:

- Purchases in this category may only be authorized by the City Manager or their designee.

##### Purchases over \$100,000:

- Purchases in this category may only be authorized by the Mayor and City Council.



## **EXHIBIT B**

### **CONTRACTING GUIDE**

Under this Policy, certain contract types are likely to arise for the purchase of goods and services. Here is a brief description of an appropriate situation to use each template.

**Goods Purchase Agreement** – To be used when the City desires to purchase goods totaling above \$5,000.

**Maintenance Services Agreement** - To be used for routine maintenance/repair work of a non-professional nature, such as: landscape, traffic signals, electrical, street sweeping, HVAC, and plumbing.

**Nuisance Abatement Services Agreement** – To be used when the City desires to engage a third party to take action to remove a public nuisance.

**On-Call Professional Services Agreement** - To be used when the City desires to engage a professional to engage in certain services on an as-needed basis.

**Professional Services Agreement** – To be used for professional consultant work, such as non-design engineering, economic, accounting, legal, financial, and administrative work.

**Professional Services Agreement (Federal)** – To be used for professional consultant work that also involves the use of Federal funds.

**Professional Software Services Agreement** – To be used for the purchase of software services.

**Request for Proposals** – To be used when the City desires to solicit services or purchase goods which either require bidding or for which bidding is appropriate. Please note that requests for proposals that relate to state or federal funded projects may require additional terms in accordance with grant agreements.

**Request for Qualification (RFQual)** – To be used when the City desires to solicit firms to submit information about their qualification and capabilities to perform the type of work associated with a proposed project. An RFQual may be used as a pre-qualification step to engaging a service provider. If an RFQual is required, only those candidates who successfully respond to it and meet the qualification criteria will be included in the subsequent procurement process. An RFQual will contain specific reference to selection criteria.

**Request for Quote (RFQ)** – To be used when the City desires to solicit firms to submit pricing for products or services where the requirements are standardized or produced in repetitive quantities.

**Short Form Services Agreement** – To be used for low risk or uncomplicated services that do not require formal bidding. Should not be used for public works projects.

**Vendor Services Agreement** – To be used when the City desires to solicit services other than Professional, Design, or Construction Services.