



REPORT TO COUNCIL

City of Sacramento

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STAFF
February 16, 2010

Honorable Mayor and
Members of the City Council

Title: Administrative Policies Regulating the Procurement of Supplies, Non-Professional Services, and Contracts for Public Projects

Location/Council District: Citywide

Recommendation: Adopt a **Resolution** approving the attached administrative policies for regulating the procurement of: 1) supplies (Policy No. 10-4001); 2) non-professional services (Policy No. 10-4101); and 3) public project contracts (Policy No. 10-4002).

Contact: Christopher Stewart, Procurement Manager, 808-6202

Presenter: Christopher Stewart, Procurement Manager, 808-6202

Department: General Services

Divisions: Procurement Services

Organization No: 13001311

Description/Analysis

Issue: In an April 2006 internal audit report, the City's Auditor cited internal control weaknesses relative to City Administrative Policy Instructions for the procurement of supplies, non-professional services, and contract services for public projects. More specifically, the audit report recommendation was to revise existing policies to incorporate consistent standards and language that will facilitate the effective communication of City procurement policies for all who are responsible for its interpretation and application.

Policy Considerations: In accordance with City Code Sections 3.56.040 and 3.60.040, City Council must approve administrative procedures regulating the procurement of supplies, non-professional services and public project contracts. The proposed administrative policies will replace and supercede the City's prior Administrative Policy Instructions governing such procurements.

Committee/Commission Action: Not applicable

Environmental Considerations:

California Environmental Quality Act (CEQA): CEQA does not apply because adoption of the proposed policies pertains to administrative activities that will not have a significant effect on the environment (CEQA Guidelines Section 15061(b)(3)), and that do not constitute a "project" for purposes of CEQA (CEQA Guidelines Section 15378(b)(2)).

Sustainability Considerations: Staff has also developed a Sustainable Procurement Policy in accordance with the City's sustainability plan that will be implemented along with policies represented herein.

Rationale for Recommendation: The proposed policies have been revised to address the specific objectives outlined in the 2006 internal audit report. These recommended policies are a result of a multi-department collaborative effort, including department directors, legal counsel, and key procurement and contracting staff. The ideas and concepts represented in the attached policies meet the City's desire to effectively regulate the procurement and contracting activities required to support city operations and are aligned with today's best procurement practices. In addition, these policies comply with the City's new standard format and numbering sequence for citywide policies.

Financial Considerations: There are no financial impacts as a result of the recommended approval of the administrative policies represented in this report.

Emerging Small Business Development (ESBD): There are no goods or services being procured as a direct result of this action. The recommended policies comply with the existing ESBD program.

Respectfully Submitted by: 
Chris Stewart
Procurement Services Manager

Approved by: 
Reina J. Schwartz
Director, Department of General Services

Recommendation Approved:

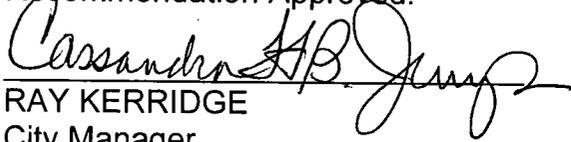

RAY KERRIDGE
City Manager

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Attachment 1

BACKGROUND

In an April 2006 internal audit report, the City's Auditor cited internal control weaknesses relative to City Administrative Policy Instructions for the procurement of supplies, non-professional services, and contract services for public projects. A multi-department collaborative effort, including department directors, legal counsel, and key procurement and contracting staff converged to revise and develop procurement policies to comply with existing City Code, best practices, strategies for leveraging economic quantity discounts, organizational efficiencies and recommendations made in response to the City's 2006 internal audit.

As a result of a collaborative effort, city staff developed policies that are separate and distinct based on commodity group; each commodity type now has its own policy (supplies, non-professional services, public projects and professional services). The objective was to develop policies that incorporate a standard language that is less ambiguous and to clarify roles and responsibilities of those who are responsible for performing procurement tasks.

The changes represented in the attached policies, and the two that are not included in this approval process, Procurement of Professional Services and the Sustainability Procurement Policy, are too numerous to mention. However, the following is a summary of the most significant changes:

- * New Format for Policy Documents
- * List of Definitions are more comprehensive
- * Language pertaining to detailed process requirements was removed (to be included in instructional/procedures manual that are being developed)
- * Roles and responsibilities are defined more clearly for Department Director, Buyer and Project Manager
- * Definition of aggregated purchases added for clarity
- * Includes policies governing the use of alternative procurement methods (sole-source, request for proposals (RFP) and competitive negotiation), late bids, bid protests, and supplemental agreements
- * Sustainable Purchasing Policy – a new policy aligned with the City's sustainable plan, defines specific products that currently meet City's conservation objectives, authorizes the use of a bid evaluation and the utilization of life cycle costing methods when evaluating bids for the procurement of sustainable products, and requires the use of citywide contracts that offer products and services that meet policy objectives.

In accordance with City Code Sections 3.56.040 and 3.60.040, City Council must approve administrative procedures regulating the procurement of supplies, non-professional services and services for the contract of public projects. The Procurement of Professional Services Policy and the Sustainability Procurement Policy are not subject to Council approval and are not included as attachments in

this report. However, it should be noted that for these policies the same collaborative efforts were employed to engage each department or subject matter expert to assure that all who desired to comment and participate in the process had the opportunity.

Once approved, details of these new policies will be distributed to all departments and integrated department teams with subject matter responsibility.



Procurement of Supplies

FULL POLICY CONTENTS

Policy Statement
Reason for Policy
Procedures
Forms/Instructions
Contacts

Document Type: *Policy*

Policy Number: *AP-4001*

Version: *1.1*

ADDITIONAL DETAILS

Definitions
Appendices
FAQ
Related Information
History

Effective: *February 2010*

Last Updated: *February 2010*

Responsible Department/Division:
Department of General Services

Policy Statement

This Administrative Policy sets forth City policies that apply to the procurement of supplies.

This policy supplements requirements set forth in the Sacramento City Charter and City Code, including City Code Chapter 3.56.

Special Situations

Not Applicable

Exclusions

Not Applicable

Purpose

To ensure that all procurement functions are performed in compliance with applicable federal, state and City laws, regulations, ordinances and policies, to ensure the uniform and consistent application of the procurement process, and to ensure fairness, open competition, and competitive pricing.

Forms/Instructions

Procedures

Contacts

Department of General Services

Reina Schwartz, Department Director (916) 808-7195
Christopher Stewart, Procurement Division Manager (916) 808-6202
Craig Lymus, Program Specialist (916) 808-5524

Office of the City Clerk

Shirley Concolino, City Clerk, (916) 808-5442
Dawn Bullwinkel, Assistant City Clerk (916) 808-7267

Office of the City Attorney

Eileen Teichert, City Attorney, (916) 808-5346
Joe Robinson, Senior Deputy City Attorney (916) 808-5346

Related Information

- City Charter-Article XIV Public Contracts and Supplies
 - City Code Chapter 3.56, 3.58, 3.60 & 3.80
 - Administrative Policy Regarding Delegation of Signature Authority
 - Procurement Guidelines
 - Procurement Ethics and Standards of Conduct
-

Document History

Amended: NA
Supersedes: API # 1 – Procurement of Supplies and Non-Professional Services
Effective: February 2010

Definitions

Addendum

An amendment to an invitation for bid (IFB) or request for proposals (RFP).

Best Value

Best value means the expected outcome of a procurement that, in the City's estimation, provides the greatest overall benefit in response to the requirement.

Buyer

Either (1) A position or employee in the Procurement Services Division authorized by the City Manager or Director of General Services to administer the procurement of supplies on behalf of one or more City Departments, or (2) a position or employee outside of the Procurement Services Division authorized by the applicable Department Director to administer the procurement of supplies on behalf of the Department. A Buyer is not authorized to execute supply contracts on behalf of the City unless such signature authority has been delegated by the City Manager in accordance with applicable provisions of the City Code.

City-wide Contract

A contract administered by the Procurement Services Division to procure supplies for multiple Departments.

Competitive Bidding

The process of soliciting bids and awarding a contract to the lowest responsive and responsible bidder.

Contract

Any binding contract document, regardless of what it is called, for the procurement of supplies. References to a "contract" shall be deemed to include all documents attached to or incorporated in the contract.

Contractor

A person, firm or other entity that contracts with the City to provide supplies.

Emergency Contract

A contract initiated when the public interest and necessity demand immediate procurement of supplies to safeguard life, health, or property, to permit the continued conduct of City operations or services, or to mitigate further damage.

Emerging and Small Business Enterprise (ESBE) Requirements

The procurement requirements and procedures imposed pursuant to the program established by the City Council to promote and provide incentives for the participation of emerging and small business enterprises in City contracts.

Invitation for Bid (IFB)

A written notice issued to potential bidders that includes bid specifications and specifies, among other things, the procedures for bid submittal and place, date and time of bid opening.

Lowest Responsible Bidder

The lowest responsible bidder determined in accordance with the criteria specified in City Code Section 3.56.020, that includes a bid evaluation deduction for local bidders subject to the City's local sales or use tax.

Market Price

Current prices that are established in the course of ordinary trade competition between buyers and sellers free to bargain, and prices that can be substantiated through competition or from sources independent of vendors that respond to a particular solicitation or request for information.

Payment Voucher

A document that records the accounting, distribution and payment of the invoice.

Procurement

Contracting, purchasing, renting, leasing or otherwise acquiring for the City any supplies. Unless indicated otherwise by the context, this term is intended to include all functions that pertain to obtaining the supplies, including the preparation of specifications and requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Procurement Guidelines

Written guidelines developed by City staff and approved by the City Manager that specify more detailed operational requirements for City procurement, consistent with applicable provisions of the City Charter, City Code and Administrative Policy Instructions (APIs).

Purchase Order

A written authorization for a vendor to supply goods or services at a specified price and over a specified period of time. Acceptance of the purchase order constitutes a binding contract.

Request for Proposals (RFP)

A written request for proposals to provide supplies, if permitted under Section 2 (When Competitive Bidding is Not Required) below.

Responsive Bidder

A bidder whose bid meets all of the bidding requirements in the IFB.

Specifications

A complete description of the physical and/or functional characteristics and quantity of the supplies to be provided. Specifications may also include a description of any requirement for inspecting, testing or preparing a material item for delivery. Specifications shall be included with the IFB and RFP.

Supplement

An amendment to the terms of a contract for supplies that must be approved in accordance with applicable provisions of City Code.

Supplies

Any goods, equipment, materials or other tangible items to be purchased, rented, leased or otherwise acquired by the City.

Appendices

None

Frequently Asked Questions

Policy

1. SOLICITATION THRESHOLDS AND REQUIREMENTS

1.1 GENERAL REQUIREMENTS APPLICABLE TO ALL PURCHASES

- (a) City Code Section 3.56.030 prohibits splitting or separating into smaller units any requirement for supplies, for the purpose of evading the requirements for competitive bidding and City Council award that apply to contracts of \$100,000 or more. The City Code defines this prohibited practice as reducing the amount of supplies to be furnished under circumstances where there is a reasonable knowledge that the same supplies will be required within the same budgetary term, that there are funds available for such additional supplies, and the purpose is to knowingly avoid formal competitive bidding.
- (b) To the extent practical, Departments shall include representatives from the Procurement Services Division in Departmental meetings that discuss long-range planning for the procurement of supplies and logistical supply requirements, and whenever possible:
 - 1. Departments shall use City-wide contracts, and
 - 2. Departments and the Procurement Services Division shall work together to plan annual requirements for supplies, in order to maximize economic efficiencies, and to avoid impermissible contract splitting.
- (c) The Procurement Services Division shall direct and manage the procurement process for all supplies defined as City-wide supplies. Authority for the management of a City-wide contract may be delegated by the Procurement Services Manager.
- (d) The solicitation and award procedures specified in this policy for the purchase of supplies vary depending on the amount of the procurement. For purposes of determining which solicitation and award procedures apply:
 - 1. When a City-wide contract is used, the procurement amount is the total amount of the City-wide contract.
 - 2. When a City-wide contract is not used, the procurement amount for a specific purchase is the sum of:
 - a) the amount of the contract or purchase order for that specific purchase, and
 - b) the total amount that the Department will pay for the same supplies in the same fiscal year under any other existing contract or purchase order within that Department (excluding existing contracts that have been awarded or approved by the City Council).
 - 3. The determination of what constitutes the "same supplies" under subsection 2, above, shall be made by the Procurement Services Division Manager or his/her authorized designee, based on criteria specified in the Procurement Guidelines Manual.

- (e) City Code Section 3.56.080 states that contracts less than \$100,000 do not require the approval of the City Council and may be executed on behalf of the City by the City Manager or any City employee to whom the City Manager has delegated such approval authority. Delegations of approval authority are specified in API # 22 (Signing Authority).
- (f) For purchases of any amount, the purchase amount shall be calculated based on the full cost of any term and/or quantity extensions provided for in the contract including all associated costs such as tax and shipping.
- (g) When purchase of equipment or supplies includes onsite installation or training services general liability and workers compensation insurance shall be required. If a vehicle is used to perform the services, auto liability insurance shall be required.

1.2 PURCHASES OF \$5,000 OR LESS

- (a) Purchases of \$5,000 or less do not require competitive bidding and the provider of the supplies may be selected at the discretion of the Buyer.
- (b) Price quotations shall be written. All prospective contractors contacted must be given the same information and allowed adequate time to respond.

1.3 PURCHASES OF MORE THAN \$5,000 UP TO \$25,000

- (a) The Buyer shall be responsible for soliciting at least three prospective bidders, unless the Buyer documents that the supplies are not reasonably available from at least three bidders.
- (b) Price quotations shall be written. All prospective vendors contacted must be given the same information and the same amount of time to respond with a quotation.
- (c) Contract award shall be made to the lowest responsive and responsible bidder.
- (d) Exceptions to the above requirements are provided for in Section 2 (When Competitive Bidding is Not Required) of this policy.

1.4 PURCHASES OF MORE THAN \$25,000 AND LESS THAN \$100,000

- (a) The issuance of an Invitation for Bids (IFB) and advertising on the City's web site for Contracting Opportunities are required.
- (b) Bids must be obtained in writing, and all prospective vendors must be given the same information.
- (c) The minimum time required for advertising bids on the City's web site for Contracting Opportunities is ten calendar days. Advertisement of IFBs should be appropriate to the industry standards for the particular supplies, to achieve the maximum practical public notice and competition.
- (e) Bids shall be received and opened by the Buyer.
- (f) Contract award shall be made to the lowest responsive and responsible bidder.

- (g) Exceptions to the above requirements are provided for in Section 2 (When Competitive Bidding is not Required) of this policy.
- (h) Notice of contractor selection shall be provided to all bidders as soon as reasonably practical.

1.5 PURCHASES OF \$100,000 OR MORE

- (a) City Code Section 3.56.120 requires advertising through the City Clerk's office and formal competitive bidding is required for purchases of supplies of \$100,000 or more.
- (b) All such purchases shall be advertised on the City's web site for Contracting Opportunities for a minimum of ten calendar days prior to the date set for receiving bids.
- (c) Bidding shall be conducted in accordance with the requirements of City Code Chapter 3.56 including public opening of bids by the City Clerk or designee.
- (d) Circumstances under which the City Code does not require competitive bidding for contracts of \$100,000 or more are summarized in Section 2 of this policy.
- (e) City Code Section 3.56.090 requires contracts of \$100,000 or more to be approved by the City Council.
- (f) Award is made to the lowest responsive and responsible bidder, unless a different action is taken by the City Council pursuant to the City Charter or City Code.
- (g) Notice of contractor selection shall be provided to all bidders as soon as reasonably practical.

2. WHEN COMPETITIVE BIDDING IS NOT REQUIRED

2.1 PURCHASES OF MORE THAN \$5,000 AND LESS THAN \$100,000

- (a) The bidding requirements specified in Section 1(Solicitation Thresholds and Requirements) of this policy do not apply if any of the following conditions are met:
 - 1. After advertising for bids as required, no bids are received, or all bids received are rejected because they are invalid or nonresponsive. If this occurs, a different procurement method may be used, provided the use of such method is documented and approved as provided in subsection 3, below.
 - 2. The contractor awarded a contract resulting from a City bid fails to enter into contract. If this occurs, the next lowest bidder, if there is one, shall be awarded the contract, if such bidder's price is acceptable. If there is no such bidder, a different procurement method may be used, provided the use of such method is documented and approved as provided in subsection 3, below.

3. It is in the City's best interest to use a different procurement method. This justification must be documented by the Buyer, and the request to use a different procurement method must be approved by the applicable Department Director and Procurement Services Manager, in accordance with applicable provisions of the Procurement Guidelines.

Examples of alternative procurement methods are:

- (i) Competitive negotiation: The Buyer negotiates with two or more suppliers to obtain a contract for the lowest price. Documentation shall be maintained of all negotiation discussions, terms, and offers.
- (ii) Sole source/sole brand procurement: After conducting a good faith review of available sources, the Buyer determines there is only one reasonable and practicable source for the required supplies. A requirement for a particular proprietary item does not justify a sole source procurement if more than one potential bidder or offeror for that item is reasonably and practicably available.

The following are other examples of circumstances that could necessitate sole source procurement:

1. Compatibility of equipment, accessories, or replacement parts is the paramount consideration;
2. A sole supplier's item is needed for trial use or testing or is to be procured for resale; or
3. The City receives an unsolicited written offer to provide supplies.

All requests for this restrictive method of procurement shall be accompanied by an explanation as to why no other source of supply will be suitable or acceptable to meet the need. Documentation shall be maintained of all negotiation discussions, terms, and offers.

- (iii) Use of RFP process: A RFP process is used consistent with applicable provisions of the Procurement Guidelines.
- (iv) Emergency contracts: When emergency conditions render competitive bidding impractical and the determination of an emergency is approved by the Department Director.
- (v) Cooperative agreements: The Buyer may obtain supplies through competitively bid cooperative purchasing agreements of other governmental jurisdictions or public agencies, when supported by a market analysis showing that the prices and terms are below or meet market rates.

2.2 PURCHASES OF \$100,000 OR MORE

- (a) Under City Code Section 3.56.230, competitive bidding is not required for purchases of \$100,000 or more under the following circumstances:
1. After advertising for bids as required, no valid bids are received. If this occurs, a different procurement method may be used, provided the use of such method is approved by the City Council consistent with applicable provisions of the City Code.
 2. The City Council determines on a **2/3 vote** that it is in the best interests of the City to suspend competitive bidding. The suspension of competitive bidding can be recommended for various reasons, including :
 - (i) *Other competitive methods*: Alternative methods for contractor selection, such as using a RFP process and/or selecting a contractor based on factors other than or in addition to price.
 - (ii) *Competitive negotiation*: The Buyer negotiates with two or more suppliers to obtain a contract for the lowest price.
 - (iii) *Sole source/sole brand procurement*: After conducting a good faith review of available sources, the Buyer determines there is only one reasonable and practicable source for the required supplies. A requirement for a particular proprietary item does not justify a sole source procurement if more than one potential bidder or offeror for that item is reasonably and practicably available. The following are other examples of circumstances that could necessitate sole source procurement:
 1. Compatibility of equipment, accessories, or replacement parts is the paramount consideration;
 2. A sole supplier's item is needed for trial use or testing or is to be procured for resale; or
 3. The City receives an unsolicited written offer to provide supplies.All requests for this restrictive method of procurement shall be accompanied by an explanation as to why no other source of supply will be suitable or acceptable to meet the need. Documentation shall be maintained of all negotiation discussions, terms, and offers.
- (iv) Council reports and resolutions prepared for a recommendation to suspend competitive bidding must set forth factual justification to support a finding that such action is in the best interests of the City. Questions concerning the applicability of competitive bidding requirements should be directed to the City Attorney's Office.
- (b) Cooperative purchase agreements: Under City Code Section 3.56.240, the City Manager, where advantageous to the City, may by cooperative purchasing agreements approved by the City Council, purchase supplies through legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City.

- (c) Surplus supplies: Under City Code Section 3.56.250, when it is advantageous to the City, the City Manager, on approval by the City Council, may direct the purchase of surplus supplies from the United States Government, or any agency thereof, or from the state of California, or any agency thereof, or any public body, without separate competitive bidding.

3. BLANKET PURCHASE ORDERS

Blanket purchase orders shall be utilized to fulfill temporary and/or unpredictable supply requirements that have not or cannot be efficiently obtained through the normal purchasing process.

4. ITEMS REQUIRING REVIEW PRIOR TO PURCHASE

- (a) Certain purchases require review by other City departments or divisions before a purchase can be made. Such reviews are intended to ensure consistency and conformity with City standards. Unless otherwise specified, these reviews are required regardless of the purchase amount. Review of proposed supplies by the noted departments/divisions prior to contracting for such supplies is required as follows:

- 1. *Department of Information Technology*

- a. Computer equipment, software, and other information technology items
- b. Radios, telephones, cell phones, pagers, and other communications

- 2. *Procurement Services Division Manager or authorized designee*

- a. Cooperative purchase agreements — for less than \$100,000 contracts

- 3. *Department of General Services -Fleet Operations*

- a. Vehicles and related equipment that require at least two of the following:
 - (i) fuel to be operated
 - (ii) tires or tracks
 - (iii) license/titling with DMV
 - (iv) mounting to fleet equipment that use fuel
 - (v) an operator to ride on to operate

- 4. *Department of General Services - Facilities and Real Property Management Division (in consultation with the department in which the facilities reside)*

- a. Purchases for supplies at facilities or sites that require electrical, mechanical, plumbing, or structural changes (except facilities or sites within the street right of way)

5. INVITATION FOR BID (IFB)

- (a) IFBs are required for the procurement of supplies costing over \$25,000, except as otherwise provided in Sections 2 (When Competitive Bidding is Not Required) and 3 (Blanket Purchase Orders) of this policy. This does not preclude the use of IFBs for procurements below this threshold.

- (b) The Buyer shall bear the overall responsibility for the preparation of bid specifications, utilizing a standardized IFB format, as provided in the Procurement Guidelines.

6. REQUEST FOR PROPOSAL (RFP)

- (a) RFPs are generally used to solicit services, but may be used to procure supplies where appropriate and practical as authorized under Section 2 (When Competitive Bidding is not Required) of this policy.
- (b) RFPs shall comply with applicable provisions of the Procurement Guidelines.

7. AMENDING OR CANCELING AN IFB OR RFP

- (a) An addendum shall be used to modify an IFB or RFP, and shall be issued not less than 3 working days before the deadline specified for receipt of bids or proposals. Addendums extending the deadline or canceling the IFB or RFP may be issued less than 3 working days before such date if necessary.
- (b) The minimum components required for addendums are identified in the Procurement Guidelines.
- (c) The addendum shall be published using the same media used to advertise the IFB or RFP, including the City website. Addendums shall be sent to all prospective bidders/proposers known to have received an IFB or RFP.

8. PUBLIC DISCLOSURE

- (a) IFBs and RFPs for purchases of \$25,000 or more shall be available for public inspection at the issuing Department and shall be posted on the City website.
- (b) After bid opening, bids shall be made available in response to a request for public inspection, in accordance with the California Public Records Act.
- (c) Proposals shall be made available in response to a request for public inspection in accordance with the California Public Records Act after the proposal evaluation process is completed.
- (d) If the bidder or proposer designates any portion of its bid as proprietary or confidential, or any other public disclosure issues are presented, the Buyer shall consult with the City Attorney's Office prior to any response or disclosure.

9. ACCEPTANCE AND EVALUATION OR REJECTION OF BIDS OR PROPOSALS

9.1 LATE BIDS OR PROPOSALS

- (a) A bid or proposal is late if it is received at the location designated in the IFB or RFP after the deadline specified in the IFB or RFP.
- (b) A late bid or proposal shall be rejected and not considered, regardless of the reason for lateness, including circumstances beyond the control of the bidder.

(c) A late bid or proposal shall not be opened, except (if necessary), for identification purposes. Delivery and return of late bids or proposals shall be handled in the following manner:

1. If delivered in person, a late bid or proposal shall be rejected and returned to the person delivering it;
2. If not delivered in person, a late bid or proposal shall be returned by certified mail;
3. Bidders or proposers submitting late bids or proposals that will not be considered for award shall be notified as soon as practicable.

9.2 GENERAL REQUIREMENTS FOR ACCEPTANCE AND EVALUATION

- (a) Bids or proposals shall not be altered or corrected after opening, except for minor irregularities as specified in the bid document and/or the City Code. A bid or proposal may be withdrawn by the bidder only if so authorized in the Procurement Guidelines or under State law.
- (b) Only the City Council has the authority to waive minor irregularities for bids or proposals of \$100,000 or more. For bids or proposals valued less than \$100,000, the City Manager or designee has the authority to waive minor irregularities.
- (c) No criteria shall be used in bid or proposal evaluations that are not referenced in the bid specifications or RFP or in applicable provisions of the City Code or other applicable laws or regulations.
- (d) When leasing is proposed, a lease cost vs. buy cost analysis shall be conducted as part of the bid or proposal evaluation; if this analysis shows that buying the supplies is a lower cost option, a written justification for selecting the lease option shall be prepared and approved by the Buyer for consideration by the approving authority prior to contract approval.
- (e) When a RFP process is used (if authorized instead of an IFB, as noted above), no discussions for any purpose other than administrative clarification may be conducted with proposers after submission of proposals, except during the presentation phase, if any.

9.3 DETERMINATION OF LOWEST BID

- (a) For an IFB, the contract shall be awarded to the lowest responsive and responsible bidder. Deferred cost factors, such as life cycle cost and disposal cost, may be considered in determining the bid amount, but only if specifically provided in the IFB.
- (b) If a bidder that otherwise would have been the lowest responsible bidder is determined to be non-responsible, after consulting with the City Attorney's office, the Buyer shall prepare a written determination of non-responsibility, setting forth the basis of the finding of non-responsibility and advising the bidder that it may request a hearing on the matter, and shall send such determination to the bidder by certified mail.

- (c) If there are two or more low responsive bids from responsible bidders that are identical in price, quality and service, and both meet all the requirements and criteria set forth in the IFB, then award, if made, shall be made by a drawing of lots.

9.4 REJECTION OF BIDS

- (a) For contracts less than \$100,000, the Department Director or the Buyer shall have the authority to reject bids.
- (b) For contracts of \$100,000 or more, only the City Council has the authority to reject bids.

9.5 CONTRACT FORM AND DOCUMENTATION

- (a) For all levels of contract award, current standard contract forms shall be used.
- (b) For contracts of \$100,000 or more, the contract must be signed by the contractor and the City Attorney's Office, and submitted to the City Clerk, **prior to City Council award of the contract.**
- (c) For all levels of contract award, contract documents must be fully executed (obtain all signatures and provide any required contract documents) prior to performance of the contract.

10. BID SECURITY/BONDS AND INSURANCE

10.1 BID SECURITY

- (a) The Buyer shall determine whether to require bid security, consistent with the level of risk associated with the purchase, and the requirement shall be specified in the IFB.
- (b) Bids received without the required security shall be considered non-responsive and will be rejected.
- (c) Bid security shall be returned to unsuccessful bidders after a successful bidder is selected and awarded the contract.
- (d) Bid security may be forfeited and applied as specified in City Code Section 3.56.150.

10.2 PERFORMANCE BONDS

- (a) The Buyer shall determine whether to require a performance bond, consistent with the level of risk associated with the purchase, and the requirement shall be specified in the IFB.
- (b) Performance bond requirements shall be described in the IFB or RFP, and shall conform to applicable provisions of the Procurement Guidelines.
- (c) Performance bonds shall be accepted only from sureties admitted and duly authorized to transact business in the State of California, and shall be approved as to form by the City Attorney's office.

- (d) Failure to submit the required bond within the time specified in the notice of award may be just cause for annulment of the award and forfeiture of the bidder's bid security.

11. BID PROTEST

11.1 CONTRACTS OF MORE THAN \$5000 AND LESS THAN \$100,000

- (a) A bidder on a contract may file a bid protest (1) claiming that one or more bidders on the contract should be disqualified or rejected for any reason, or (2) contesting a City staff recommendation to award the contract to a particular bidder, or (3) contesting a City staff recommendation to disqualify or reject one or more bidders on the contract. Only a bidder may file a bid protest on a contract.
- (b) The bid protest shall be in writing and shall be filed with the Buyer not later than 5 working days after City staff provides notice of the recommended contract award to the bidders. The bid protest shall provide the name, address, telephone and telecopier numbers of the protesting bidder, shall identify the contract to which the bid protest pertains, including the contract number and date that bids for such contract were received by the City, and shall identify the City department or division requesting bids. The bid protest shall identify and explain the factual and legal grounds for the protest, and shall include and attach any written materials that the protesting bidder wishes to have considered in determining the protest.
- (c) At the time a bid protest is filed, the protesting bidder also shall make payment to the Buyer of a bid protest fee in the amount established by resolution of the City Council, which fee shall be used to pay the City's costs of processing the protest as provided herein.
- (d) Any bid protest that is received by the Buyer after the time period specified above, or that is not accompanied by the bid protest fee, shall be untimely and invalid, and shall not be considered.
- (e) The protesting bidder and any other bidder(s) potentially affected by the bid protest shall be provided written notice of an informal hearing to be held not less than five working days after receipt of the bid protest. The hearing shall be conducted by the Director of the Department requesting bids or his or her authorized designee. The protesting bidder and any other bidder on the contract shall promptly provide any information requested by City staff prior to the informal hearing.
- (f) As soon as practicable after the informal hearing, the Department Director or authorized designee shall issue a written response to the bid protest, including an explanation of the reason or reasons for the decision made. The written response shall be provided to the protesting bidder and any other bidder(s) potentially affected by the bid protest.

- (g) Any bid protest, notice or bid protest response provided by or to the City shall be provided by registered or certified mail (return receipt requested), by telecopy, by personal delivery or by any other method that provides reliable evidence of the date of receipt. Written notice provided by telecopy shall be deemed received on the date that it is transmitted and transmission is confirmed by the transmitting machine. Written notice provided by personal delivery shall be deemed received on the date of delivery.

11.2 CONTRACTS OF \$100,000 OR MORE

- (a) The bid protest procedures specified in subsection 11.1, above, also shall apply to contracts of \$100,000 or more, provided that nothing specified in this section shall limit or otherwise affect the City Council's discretionary authority to accept, reject or modify the bid protest response issued by the Department Director or authorized designee or take any other action authorized under the City Charter or City Code.
- (b) Subsection 11.2(a) shall not apply in cases where the Invitation for Bids provides that bid protests shall be filed in accordance with the provisions of Article X of Chapter 3.60 of the Sacramento City Code (commencing with City Code Section 3.60.460).

12. MULTI-YEAR CONTRACTS

- (a) No contract term shall extend beyond a total term, including extensions and renewals, of five years, provided that:
 - 1. For contracts less than \$100,000 (in total including extensions), a longer term may be approved if the department head or authorized designee determines that special circumstances require a total term of more than five years, and the City Manager or the City Manager's authorized designee approves such extended term.
 - 2. For contracts of \$100,000 or more, a longer term may be approved by the City Council.
 - 3. The total contract amount shall be determined based on the compensation paid during the total term, including any extensions or renewals authorized by the contract.
- (b) An extension or renewal of a contract must be authorized in the contract and must occur prior to expiration of the contract term to be valid.
- (c) Contracts must be authorized by the City Council when the total price of the contract, including any extended or renewed term(s) authorized by the contract terms, will be \$100,000 or more.
- (d) The contract price shall be determined including the cost to the City of tax, shipping and any other applicable charge.

- (e) All multi-year contracts and contract extensions or renewals shall serve the best interest of the City. The decision whether to approve contract extensions or renewals shall consider factors such as market price adjustments, product and service availability, impact on city operations and the utilization of small businesses.

13. ESBE PARTICIPATION AND REPORTING REQUIREMENTS

- (a) Emerging and Small Business Enterprise (ESBE) requirements shall be met for all purchases as specified in the Procurement Guidelines (To Be Developed), unless these requirements are reduced or waived by the Office of Small Business Development (OSBD), or an external funding source requires the use of other business enterprise requirements.
- (b) Any modification or waiver of an ESBE requirement must be requested in writing and approved by the OSBD prior to any advertisement or posting to the City's website for Contracting Opportunities.
- (c) Departments shall be responsible for meeting annual ESBE participation goals on a Department-wide basis.
- (d) The OSBD shall compile data relative to ESBE expenditures and utilization and submit periodic reports to the City Manager detailing contract amounts and ESBE participation rates.

14. EQUAL BENEFITS ORDINANCE

- (a) Contracts exceeding \$25,000 are subject to applicable provisions of the City's Non-Discrimination in Employee Benefits Code, codified at Chapter 3.54 of the City Code (commonly referred to as the Equal Benefits Ordinance, or EBO).
- (b) All solicitations shall contain the City's standard EBO Requirements.
- (c) All contracts to which the EBO applies shall contain an executed EBO Declaration of Compliance.
- (d) More detailed information concerning the EBO requirements is set forth in API # 53.

15. SUPPLEMENTAL AGREEMENTS

- (a) Supplemental agreements may be approved by the City Manager or authorized designee, within the limits of approval authority specified in Article VI of City Code Chapter 3.56. Supplemental agreements exceeding these limits must be approved by the City Council.
- (b) Delegations of the City Manager's approval authority are specified in API #22 (Signing Authority).
- (c) Any supplemental agreement extending the term of a contract must be approved by the appropriate approval authority prior to expiration of the unextended term.

16. PAYMENT METHODS AND PAYMENT TERMS

16.1 PAYMENT METHODS

- (a) Original invoices shall be required for all payments.
- (b) No advance payments are allowed, unless approved by the Finance Department.

16.2 PAYMENT TERMS

- (a) Vendor invoices must contain all information required by the contract.
- (b) Payment terms are NET 30 days unless the vendor offers a prompt payment discount that is accepted by the City.
- (c) All payment discounts shall be computed from the date of acceptance of supplies, or from the date an invoice is received, whichever occurs later.
- (d) The Finance Department, Accounting Division must approve payment terms that are inconsistent with this policy.

17. TRANSACTION NUMBER LOG

- (a) Each Department shall establish and maintain a transaction number log for all Department solicitations for which an IFB or RFP is issued. The transaction number log shall be organized based on solicitations initiated within each Department.
- (b) A transaction number shall be assigned to each IFB or RFP, and will be used to identify and track all related activity through requisition and payment, if applicable.
- (c) Transaction numbers will be prominently displayed on the IFB or RFP and on the City's web site for Contracting Opportunities (if applicable).
- (d) Transaction numbers shall be created in accordance with procedures established by the Procurement Services Division Manager or authorized designee.

18. EMPLOYEE CONFLICT OF INTEREST/ETHICS

- (a) City employees who are tasked with the responsibility of making procurement decisions, awarding contracts or making recommendations for contract award must discharge their duties impartially so as to assure fair competitive access to City procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the City's procurement process. To achieve this purpose, it is essential that those performing procurement functions for the City observe this ethical standard and other City established standards that promote fairness, transparency, integrity and accountability in all procurement transactions.

Administrative Policies-Procurement February 16, 2010

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Non-Professional Services

FULL POLICY CONTENTS

Policy Statement
Reason for Policy
Procedures
Forms/Instructions
Contacts

Document Type: *Policy*

Policy Number: *AP-4101*

Version: *1.1*

ADDITIONAL DETAILS

Definitions
Appendices
FAQ
Related Information
History

Effective: *February 2010*

Last Updated: *February 2010*

Responsible Department/Division:
Department of General Services

Policy Statement

This Administrative Policy sets forth City policies that apply to contracting for Non-Professional Services and supplements requirements set forth in the Sacramento City Charter and City Code Chapter 3.56.

Special Situations

Not Applicable

Exclusions

Not Applicable

Purpose

To ensure that all contracting functions are performed in compliance with applicable Federal, State and City laws, regulations, ordinances and policies, to ensure the uniform and consistent application of the procurement process, and to ensure fairness, open competition, and competitive pricing.

Forms/Instructions

- Non-Professional Services Agreement (see intranet)

Procedures

Contacts

Department of General Services

Reina Schwartz, Department Director (916) 808-7195
Christopher Stewart, Procurement Division Manager (916) 808-6202
Craig Lymus, Program Specialist (916) 808-5524

Office of the City Clerk

Shirley Concolino, City Clerk, (916) 808-5442
Dawn Bullwinkel, Assistant City Clerk (916) 808-7267

Office of the City Attorney

Eileen Teichert, City Attorney, (916) 808-5346
Joe Robinson, Senior Deputy City Attorney (916) 808-5346

Related Information

- City Charter-Article XIV Public Contracts and Supplies
- City Code 3.56
- Administrative Policy (Signing Authority # 22)
- Procurement Guidelines
- Procurement Ethics and Standards of Conduct

Document History

Amended: NA
Supersedes: API # 1 – Procurement of Supplies and Non-Professional Services
Effective: February 2010

Definitions

Addendum

An amendment to an invitation for bid (IFB) or request for proposals (RFP)

Bid specifications

Complete directions, provisions and requirements for the performance of non-professional services. Bid specifications shall be included with the IFB.

City-wide Contract

A contract administered by the Procurement Services Division to procure non-professional services for multiple Departments.

Competitive Bidding

The process of soliciting bids and awarding a contract to the lowest responsive and responsible bidder.

Contract

Any binding contract document, regardless of what it is called, for the procurement of supplies. References to a "contract" shall be deemed to include all documents attached to or incorporated in the contract.

Contracts Manager

A position or employee authorized by the Department Director to administer the contracting process for non-professional services on behalf of the Department. A Contracts Manager is not authorized to execute non-professional service contracts on behalf of the City unless such signature authority has been delegated by the City Manager in accordance with applicable provisions of the City Code.

Contractor

A person, firm or other entity that contracts with the City to perform non-professional services

Emergency Contract

A contract initiated when the public interest and necessity demand immediate procurement of non-professional services to safeguard life, health, or property, to permit the continued conduct of City operations or services, or to mitigate further damage.

Emerging and Small Business Enterprise (ESBE) Requirements

The procurement requirements and procedures imposed pursuant to the program established by the City Council to promote and provide incentives for the participation of emerging and small business enterprises in City contracts.

Invitation for Bid (IFB)

A written notice issued to potential bidders that includes bid specifications and specifies, among other things, the procedures for bid submittal and place, date and time of bid opening.

Lowest Responsible Bidder

The lowest responsible bidder determined in accordance with the criteria specified in City Code Section 3.56.020, that includes a bid evaluation deduction for local bidders subject to the City's local sales or use tax.

Master Services Contract

A contract for on call services for a specified term.

Non-professional service

A service of a non-professional character of any type, description or variety such as: tree trimming services, janitorial services, appliance repair, pest control, window washing, canvas awning repairs, street/parking lot sweepers, pressure washing, carpet cleaning, repair services for office machines and equipment or automotive vehicles, landscape maintenance services, and work performed by a licensed contractor that does not constitute "public project" work under City Code Chapter 3.60, such as sidewalk maintenance and repair.

Payment Voucher

A document that records the accounting, distribution and payment of the invoice.

Procurement

The term is intended to include all functions that pertain to obtaining the service or work, including the preparation of specifications and requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Procurement Guidelines

Written guidelines developed by City staff and approved by the City Manager that specify more detailed operational requirements for City procurement, consistent with applicable provisions of the City Charter City Code and Administrative Policy Instructions (APIs).

Project Manager

The employee designated as the project manager responsible for administering the performance of a contract for non-professional services. A Project Manager is not authorized to execute non-professional service contracts on behalf of the City unless such signature authority has been delegated by the City Manager in accordance with applicable provisions of the City Code.

Purchase Order

A written authorization for a contractor to supply goods or services at a specified price and over a specified period of time. Acceptance of the purchase order constitutes a binding contract.

Request for Proposals (RFP)

A written request for proposals to provide non-professional services if permitted under Section 4 (Request for Proposal) below.

Responsive Bidder

A bidder whose bid meets all of the bidding requirements in the IFB.

Supplemental Agreement

An amendment to the terms of a contract for non-professional services that must be approved in accordance with the provisions of Article VI of Chapter 3.56 of the City Code.

Appendices

- City Charter-Article XIV Public Contracts and Supplies
- City Code 3.56

Frequently Asked Questions

Policy

2. SOLICITATION THRESHOLDS AND REQUIREMENTS

1.1 GENERAL REQUIREMENTS APPLICABLE TO ALL NON-PROFESSIONAL SERVICES

- (a) The City Code prohibits splitting or separating into smaller units any requirement for non-professional services for the purpose of evading the requirements for competitive bidding and City Council award that apply to contracts of \$100,000 or more. The City Code defines this prohibited practice as reducing the amount of non-professional services to be furnished under circumstances where there is a reasonable knowledge that the same services will be required within the same budgetary term, that there are funds available for such additional services, and the purpose is to knowingly avoid formal competitive bidding.
- (b) To the extent practical, (1) the Contracts Manager shall use master services contracts or City-wide contracts for various routine, recurring or on-call services, and (2) Departments and the Procurement Services Division shall work together to plan annual requirements for non-professional services to maximize economic efficiencies. Information about master services contracts can be found on the Procurement website (www.cityofsacramento.org/pss).
- (c) The solicitation and award procedures specified in this Policy for non-professional services vary depending on the amount of the procurement. For purposes of determining which solicitation and award procedures apply:

1. When a master services contract is used, the procurement amount is the total amount of the master services contract or contracts (if multiple master services contracts are being let to multiple contractors for the same services), or
 2. When a City-wide contract is used, the procurement amount is the total amount of the contract, or
 3. When a master services contract or City-wide contract is not used, the procurement amount for a specific contract is the sum of (i) the amount of the contract and (ii) the total amount that the Department will pay for the same services in the same fiscal year under any other existing contract within that Department (excluding existing contracts that have been awarded or approved by the City Council).
 4. The determination of what constitutes the "same services" under subsection 1 and 3 above, shall be made by the Procurement Services Division Manager or his/her authorized designee, based on criteria specified in the Procurement Guidelines Manual.
- (d) Contracts less than \$100,000 do not require the approval of the City Council and may be executed on behalf of the City by the City Manager or any City employee to whom the City Manager has delegated such approval authority. Delegations of approval authority are specified in API # 22 (Signing Authority).
- (e) For services of any amount, the contract amount shall be calculated based on the full cost of any term extensions provided for in the contract (e.g., the amount for a two-year contract in the amount of \$40,000 per year, with an optional extension for year 3, shall be based on the total three year term, for a contract amount of \$120,000).

1.2 NON-PROFESSIONAL SERVICES OF \$5,000 OR LESS

- (a) The procurement of non-professional services at a cost of \$5,000 or less does not require competitive bidding and the contractor may be selected at the discretion of the Project Manager, provided that the Contracts Manager shall approve the procurement process.
- (b) Price quotations shall be written. All prospective contractors contacted must be given the same information and allowed adequate time to respond.

1.3 NON-PROFESSIONAL SERVICES OF MORE THAN \$5,000 UP TO \$25,000

- (a) The Project Manager shall be responsible for soliciting at least three prospective bidders, unless the Contracts Manager documents that the non-professional services are not reasonably available from at least three bidders.
- (b) Price quotations shall be written. All prospective bidders contacted must be given the same information and the same amount of time to respond.
- (c) Award shall be made to the lowest responsive and responsible bidder and shall be approved by the Contracts Manager.
- (d) Exceptions to the above requirements are provided for in Section 2 (When Competitive Bidding is Not Required) of this Policy.

1.4 NON-PROFESSIONAL SERVICES OF MORE THAN \$25,000 AND LESS THAN \$100,000

- (a) The issuance of an Invitation for Bids (IFB) and advertising on the City's web site for Contracting Opportunities are required.
- (c) Bids must be obtained in writing, and all prospective bidders must be given the same information.
- (d) The minimum time required for advertising bids on the City's web site for Contracting Opportunities is ten calendar days. Advertisement of IFBs should be appropriate to the industry standards for the particular services, to achieve the maximum practical public notice and competition.
- (e) Bids shall be received and opened by the Contracts Manager.
- (f) Contract award shall be made to the lowest responsive and responsible bidder.
- (g) Exceptions to the above requirements are provided for in Section 2 (When Competitive Bidding is Not Required) of this Policy.
- (h) Notice of contractor selection shall be provided to all bidders as soon as reasonably practical.

1.5 NON-PROFESSIONAL SERVICES OF \$100,000 OR MORE

- (a) Advertising through the City Clerk's office and formal competitive bidding is required for non-professional service contracts with a cost of \$100,000 or more.
- (b) All bids shall be advertised on the City's web site for Contracting Opportunities for a minimum of ten calendar days prior to the date set for receiving bids.

- (c) Bidding shall be conducted in accordance with the requirements of City Code, Chapter 3.56, including public opening of bids by the City Clerk's office.
- (d) Circumstances under which the City Code does not require competitive bidding for contracts of \$100,000 or more are summarized in Section 2 (When Competitive Bidding is Not Required) of this Policy.
- (e) Staff recommendations for awarding contracts of \$100,000 or more must be presented to the City Council for approval.
- (f) Award is made to the lowest responsive and responsible bidder, unless a different action is taken by the City Council pursuant to the City Code.
- (g) Notice of contractor selection shall be provided to all bidders as soon as reasonably practical.

2. WHEN COMPETITIVE BIDDING IS NOT REQUIRED

2.1 NON-PROFESSIONAL SERVICES OF MORE THAN \$5,000 AND LESS THAN \$100,000

- (a) The bidding requirements specified in Section 1(Solicitation Thresholds and Requirements), above, do not apply if any of the following conditions are met:
 - 1. After advertising for bids as required, no bids are received, or all bids received are rejected because they are invalid or nonresponsive. If this occurs, a different procurement method may be used, provided the use of such method is documented and approved as provided in subsection 3, below.
 - 2. The contractor awarded a contract resulting from a City bid fails to enter into contract. If this occurs, the next lowest bidder, if there is one, shall be awarded the contract, if such bidder's price is acceptable. If there is no such bidder, a different procurement method may be used, provided the use of such method is documented and approved as provided in subsection 3 of this policy.
 - 3. It is in the City's best interest to use a different procurement method. This justification must be documented by the Project Manager, and the request to use a different procurement method must be approved by the Department Director and Procurement Services Division Manager, in accordance with applicable provisions of the Procurement Guidelines. Examples of alternative procurement methods are:
 - (i) Competitive negotiation: The Project Manager negotiates with two or more service providers to obtain a contract for the lowest price. Documentation shall be maintained of all negotiation discussions, terms, and offers.

- (ii) Sole source procurement: After conducting a good faith review of available sources, the Project Manager determines there is only one reasonable and practicable source for the required non-professional services. A requirement for a particular proprietary service does not justify sole source procurement if more than one potential provider for that service is reasonably and practicably available. All requests for this restrictive method of procurement shall be accompanied by an explanation as to why no other source of service will be suitable or acceptable to meet the need. Documentation shall be maintained of all negotiation discussions, terms, and offers.
- (v) Use of RFP process: A RFP process is used consistent with the provisions of the Procurement Guidelines.
- (vi) Emergency contracts: When emergency conditions render competitive bidding impractical, and the determination of an emergency is approved by the Department Director.
- (vii) Cooperative service agreements: A competitively bid cooperative service agreement of another governmental jurisdiction or public agency may be used, when supported by a market analysis showing that the prices and terms for the services to be performed are below or meet market rates.

2.2 NON-PROFESSIONAL SERVICES OF \$100,000 OR MORE

- (a) Under City Code Section 3.56.230, competitive bidding is not required for contracts of \$100,000 or more under the following circumstances:
 - 1. After advertising for bids as required, no valid bids are received. If this occurs, a different procurement method may be used, provided the use of such method is approved by the City Council consistent with applicable provisions of the City Code.
 - 2. The City Council determines on a **2/3 vote** that it is in the best interests of the City to suspend competitive bidding. The suspension of competitive bidding can be recommended for various reasons, including:
 - (i) *Other Competitive Methods*: Alternative methods for contractor selection, such as using a RFP process and/or selecting a contractor based on factors other than or in addition to price.
 - (ii) *Competitive negotiation*: The Project Manager negotiates with two or more service providers to obtain a contract for the lowest price. Documentation shall be maintained of all negotiation discussions, terms, and offers.
 - (iii) *Sole source procurement*: After conducting a good faith review of

available sources, the Department determines there is only one reasonable and practicable source for the required non-professional service. A requirement for a particular proprietary service does not justify a sole source procurement if more than one potential provider for that service is reasonably and practicably available. All requests for this restrictive method of procurement shall be accompanied by an explanation as to why no other source of service will be suitable or acceptable to meet the need. Documentation shall be maintained of all negotiation discussions, terms, and offers.

- (iv) Council reports and resolutions prepared for a recommendation to suspend competitive bidding must set forth factual justification to support a finding that such action is in the best interests of the City. Questions concerning the applicability of competitive bidding requirements should be directed to the City Attorney's Office.
- (b) Cooperative purchase agreements: City Code section 3.56.240 provides that, where advantageous to the City, the City Manager or authorized designee may obtain non-professional services through cooperative purchasing agreements of other governmental jurisdictions or public agencies that are approved by the City Council, without separate competitive bidding by the City.

3. INVITATION FOR BID (IFB)

- (a) IFBs must be used for the procurement of non-professional services costing more than \$25,000, except as otherwise provided in Section 2 (When Competitive Bidding is Not Required). This does not preclude the use of IFBs for procurements below this threshold.
- (b) The Project Manager shall bear the overall responsibility for the preparation of bid specifications, utilizing a standardized IFB format, as provided in the Procurement Guidelines.
- (c) The bid specifications shall contain a complete scope of work for the non-professional services to be performed.

4. REQUEST FOR PROPOSAL (RFP)

- (a) RFPs are used to solicit professional services, but generally are not used to solicit non-professional services. However, a RFP may be used where appropriate and practical as authorized under Section 2 (When Competitive Bidding is Not Required) in this policy.
- (b) RFPs shall comply with applicable provisions of the Procurement Guidelines.

5. AMENDING OR CANCELING AN IFB OR RFP

- (a) An addendum shall be used to modify or cancel an IFB or RFP, and shall be issued not less than three working days before the deadline specified for receipt of bids or proposals. Addendums extending the deadline may be issued less than three working days before such date if necessary.
- (b) The minimum components required for addendums are identified in the Procurement Guidelines.
- (c) The addendum should be published using the same media used to advertise the IFB or RFP, including the City website. Addendums shall be sent to all prospective bidders/proposers known to have received an IFB or RFP.

6. PUBLIC DISCLOSURE

- (a) IFBs and RFPs for non-professional services of \$25,000 or more shall be available for public inspection at the office of the Contracts Manager and shall be posted on the City website for Contracting Opportunities.
- (b) After bid opening, bids shall be made available in response to an official request for public inspection, in accordance with the California Public Records Act.
- (c) Proposals submitted in response to a RFP shall be made available in response to an official request for public inspection after the proposal evaluation process is complete, in accordance with the California Public Records Act.
- (e) If the bidder or proposer designates any portion of its bid as proprietary or confidential, or any other public disclosure issues are presented, the Contracts Manager shall consult with the City Attorney's Office prior to any response or disclosure.

7. ACCEPTANCE AND EVALUATION OR REJECTION OF BIDS OR PROPOSALS

7.1 LATE BIDS OR PROPOSALS

- (a) A bid or proposal is late if it is received at the location designated in the IFB or RFP after the deadline specified in the IFB or RFP.
- (b) A late bid or proposal shall be rejected and not considered, regardless of the reason for lateness, including circumstances beyond the control of the bidder.
- (c) A late bid or proposal shall not be opened, except (if necessary), for identification purposes. Delivery and return of late bids or proposals shall be handled in the following manner:

1. If delivered in person, a late bid or proposal shall be rejected and returned to the person delivering it;
2. If not delivered in person, a late bid or proposal shall be returned by certified mail;
3. Bidders or proposers submitting late bids or proposals that will not be considered for award shall be notified as soon as practicable.

7.2 GENERAL REQUIREMENTS FOR ACCEPTANCE AND EVALUATION

- (a) Bids or proposals shall not be altered or corrected after opening, except for minor irregularities as specified in the bid document and/or the City Code.. A bid or proposal may be withdrawn only if so authorized in the Procurement Guidelines or under State law.
- (b) Only the City Council has the authority to waive minor irregularities for bids or proposals of \$100,000 or more.
- (c) No criteria may be used in bid or proposal evaluations that are not referenced in the bid specifications or RFP or in applicable provisions of the City Code or other applicable laws or regulations.
- (d) When a RFP process is used (if authorized instead of an IFB, as noted above), no discussions for any purpose other than administrative clarification may be conducted with proposers after submission of proposals, except during the presentation phase, if any.

7.3 DETERMINATION OF LOWEST BID

- (a) For an IFB, the contract shall be awarded to the lowest responsive and responsible bidder.
- (e) If a bidder that otherwise would have been the lowest responsible bidder is determined to be non-responsible, after consulting with the City Attorney's office, the Contracts Manager shall prepare a written determination of non-responsibility, setting forth the basis of the finding of non-responsibility and advising the bidder that it may request a hearing on the matter, and shall send such determination to the bidder by certified mail.
- (c) If there are two or more low responsive bids from responsible bidders that are identical in price, quality and service, and both meet all the requirements and criteria set forth in the IFB, then award, if made, shall be made by a drawing of lots.

7.4 REJECTION OF BIDS

- (a) For contracts less than \$100,000, the Department Director or the Contracts Manager shall have the authority to reject bids.
- (b) For contracts of \$100,000 or more, only the City Council has the authority to reject bids.

7.5 CONTRACT FORM AND DOCUMENTATION

- (a) The current standard non-professional services contract form, as approved by the City Attorney's office, shall be executed prior to starting any services. Approved forms are available on the City intranet (www.cityofsacramento.org/pss).
- (b) For contracts of \$100,000 or more, the contract must be signed by the contractor and the City Attorney's Office, and submitted to the City Clerk, **prior to City Council award of the contract.**
- (c) For all levels of contract award, contract documents must be fully executed (obtain all signatures and provide any required contract documents) prior to performance of the contract.

8. BID SECURITY/BONDS AND INSURANCE

8.1 BID SECURITY

- (a) The Contracts Manager shall determine whether to require bid security, consistent with the level of risk associated with the non-professional services, and the requirement shall be specified in the IFB.
- (b) Bids received without the required security shall be considered non-responsive and will be rejected.
- (c) Bid security shall be returned to unsuccessful bidders after a successful bidder is selected and awarded the contract.
- (d) Bid security may be forfeited and applied as specified in City Code Section 3.56.150.

8.2 PERFORMANCE BONDS

- (a) The Contracts Manager shall determine whether to require a performance bond, consistent with the level of risk associated with the non-professional services.
- (b) Performance bond requirements shall be described in the IFB or RFP, and shall conform to applicable provisions of the Procurement Guidelines.

- (c) Performance bonds shall be accepted only from sureties admitted and duly authorized to transact business in the State of California, and shall be approved as to form by the City Attorney's office.
- (d) Failure to submit the required bond within the time specified in the notice of award may be just cause for annulment of the award and forfeiture of the bidder's bid security.

8.3 INSURANCE

- (a) All insurance requirements specified in the current standard contract form must be satisfied prior to award/approval/execution of the contract by the City, unless otherwise approved by Risk Management.
- (b) All changes to contractual provisions proposed by contractors must be approved by the City Attorney's Office and the Department Director prior to contract award/approval/execution by the City.
- (c) All changes to insurance requirements proposed by contractors must be reviewed by Risk Management and approved by the Department Director prior to contract award/approval/execution by the City.

9. BID PROTEST

9.1 CONTRACTS OF MORE THAN \$5000 AND LESS THAN \$100,000

- (h) A bidder on a contract may file a bid protest (1) claiming that one or more bidders on the contract should be disqualified or rejected for any reason, or (2) contesting a City staff recommendation to award the contract to a particular bidder, or (3) contesting a City staff recommendation to disqualify or reject one or more bidders on the contract. Only a bidder may file a bid protest on a contract.
- (i) The bid protest shall be in writing and shall be filed with the Contracts Manager not later than five working days after City staff provides notice of the recommended contract award to the bidders. The bid protest shall provide the name, address, telephone and telecopier numbers of the protesting bidder, shall identify the contract to which the bid protest pertains, including the contract number and date that bids for such contract were received by the City, and shall identify the City department or division requesting bids. The bid protest shall identify and explain the factual and legal grounds for the protest, and shall include and attach any written materials that the protesting bidder wishes to have considered in determining the protest.

- (j) At the time a bid protest is filed, the protesting bidder also shall make payment to the Contracts Manager of a bid protest fee in the amount established by resolution of the City Council, which fee shall be used to pay the City's costs of processing the protest as provided herein.
- (k) Any bid protest that is received by the Contracts Manager after the time period specified above, or that is not accompanied by the bid protest fee, shall be untimely and invalid, and shall not be considered.
- (l) The protesting bidder and any other bidder(s) potentially affected by the bid protest shall be provided written notice of an informal hearing to be held not less than five working days after receipt of the bid protest. The hearing shall be conducted by the Director of the Department requesting bids or his or her authorized designee. The protesting bidder and any other bidder on the contract shall promptly provide any information requested by City staff prior to the informal hearing.
- (m) As soon as practicable after the informal hearing, the Department Director or authorized designee shall issue a written response to the bid protest, including an explanation of the reason or reasons for the decision made. The written response shall be provided to the protesting bidder and any other bidder(s) potentially affected by the bid protest.
- (n) Any bid protest, notice or bid protest response provided by or to the City shall be provided by registered or certified mail (return receipt requested), by telecopy, by personal delivery or by any other method that provides reliable evidence of the date of receipt. Written notice provided by telecopy shall be deemed received on the date that it is transmitted and transmission is confirmed by the transmitting machine. Written notice provided by personal delivery shall be deemed received on the date of delivery.

9.2 CONTRACTS OF \$100,000 OR MORE

- (a) The bid protest procedures specified in subsection 9.1, above, also shall apply to contracts of \$100,000 or more, provided that nothing specified in this section shall limit or otherwise affect the City Council's discretionary authority to accept, reject or modify the bid protest response issued by the Department Director or authorized designee or take any other action authorized under the City Charter or City Code.
- (b) Subsection 9.2 (a) shall not apply in cases where the Invitation for Bids provides that bid protests shall be filed in accordance with the provisions of Article X of Chapter 3.60 of the Sacramento City Code (commencing with City Code Section 3.60.460).

10. MULTI-YEAR CONTRACTS

- (a) No contract term shall extend beyond a total term, including extensions and renewals, of five years, provided that:
 - 1. For contracts less than \$100,000 (in total including extensions), a longer term may be approved if the department head or authorized designee determines that special circumstances require a total term of more than five years, and the City Manager or the City Manager's authorized designee approves such extended term.
 - 2. For contracts of \$100,000 or more, a longer term may be approved by the City Council.
 - 3. The total contract amount shall be determined based on the compensation paid during the total term, including any extensions or renewals authorized by the contract.
- (b) An extension or renewal of a contract must be authorized in the contract and must occur prior to expiration of the contract term to be valid.
- (c) Contracts must be authorized by the City Council when the total price of the contract, including any extended or renewed term(s) authorized by the contract terms, will be \$100,000 or more.
- (d) The contract price shall be determined including the cost to the City of tax, shipping and any other applicable charge.
- (e) All multi-year contracts and contract extensions or renewals shall serve the best interest of the City. The decision whether to approve contract extensions or renewals shall consider factors such as market price adjustments, product and service availability, impact on city operations and the utilization of small businesses.

11. ESBE PARTICIPATION AND REPORTING REQUIREMENTS

- (a) Emerging and Small Business Enterprise (ESBE) requirements shall be met for all contracts as specified in the Procurement Guidelines, unless these requirements are reduced or waived by the Office of Small Business Development (OSBD), or an external funding source requires the use of other business enterprise requirements.
- (b) Any modification or waiver of an ESBE requirement must be requested in writing and approved by the OSBD prior to any advertisement or posting to the City's website for Contracting Opportunities.
- (c) Departments shall be responsible for meeting annual ESBE participation goals on a Department-wide basis.
- (d) The OSBD shall compile data relative to ESBE expenditures and utilization and submit periodic reports to the City Manager detailing contract amounts and ESBE participation rates.

12. EQUAL BENEFITS ORDINANCE

- (a) Contracts exceeding \$25,000 are subject to applicable provisions of the City's Non-Discrimination in Employee Benefits Code, codified at Chapter 3.54 of the City Code (commonly referred to as the Equal Benefits Ordinance, or EBO).
- (b) All solicitations shall contain the City's standard EBO Requirements.
- (c) All contracts to which the EBO applies shall contain an executed EBO Declaration of Compliance.
- (d) More detailed information concerning the EBO requirements is set forth in API 53.

13. LIVING WAGE ORDINANCE/PREVAILING WAGES

- (a) Departments that administer non-professional services contracts shall be responsible for compliance with applicable provisions of the City's Living Wage Ordinance (LWO) codified at Chapter 3.58 of the City Code.
- (b) All solicitations for non-professional services shall inform prospective bidders or proposers of the City's standard LWO Requirements.
- (c) All contracts for non-professional services to which the LWO applies shall contain an executed LWO Declaration of Compliance.
- (d) City Council reports that request approval for non-professional service contracts shall include a discussion on whether the LWO provisions are applicable in the Policy Considerations section of the report.
- (e) Contracts for laundry, window washing and janitorial services are not subject to the LWO, because these contracts are subject to the prevailing wage requirements specified in City Code Section 3.56.070.

14. SPECIAL REQUIREMENTS FOR CONTRACTORS WHO ARE SOLE PROPRIETORS (INDIVIDUALS)

- (a) When the contractor is not a business entity such as a corporation, partnership, etc. and utilizes a personal social security number as their Federal or State tax identification number, all transactions with such individuals must be entered into the City's financial system within ten working days after execution of a contract, or ten working days after the date services are commenced, whichever occurs first.
- (b) This includes any City contract with a contractor who is a sole proprietor.

15. SUPPLEMENTAL AGREEMENTS

- (a) Supplemental agreements may be approved by the City Manager or authorized designee, within the limits of approval authority specified in Article VI of City Code Chapter 3.56. Supplemental agreements exceeding these limits must be approved by the City Council.
- (b) Delegations of the City Manager's approval authority are specified in API #22.
- (c) Any supplemental agreement extending the term of a contract must be approved by the appropriate approval authority prior to expiration of the unextended term.

16. PAYMENT METHODS AND PAYMENT TERMS

16.1 PAYMENT METHODS

- (a) Original invoices shall be required for all payments.
- (b) No advance payments are allowed, unless approved by the Finance Department.

16.2 PAYMENT TERMS

- (a) Contractor invoices must contain all information required by the contract.
- (b) Payment terms are NET 30 days unless the contractor offers a prompt payment discount that is accepted by the City.
- (c) All payment discounts shall be computed from the date of completion and acceptance of services, or from the date an invoice is received, whichever occurs later.
- (d) The Finance Department, Accounting Division must approve payment terms that are inconsistent with this policy.

17. TRANSACTION NUMBER LOG

- (a) Each Department shall establish and maintain a transaction number log for all Department solicitations for which an IFB or RFP is issued. The transaction number log shall be organized based on solicitations initiated within each Department.
- (b) A transaction number shall be assigned to each IFB or RFP, and will be used to identify and track all related activity through requisition and payment, if applicable.

- (c) Transaction numbers will be prominently displayed on the IFB or RFP and on the City's web site for Contracting Opportunities (if applicable).
- (d) Transaction numbers shall be created in accordance with procedures established by the Procurement Services Division Manager or authorized designee.

18. EMPLOYEE CONFLICT OF INTEREST/ETHICS

- (a) All procurement activities shall be performed in compliance with the provisions of the Procurement Ethics and Standards of Conduct.

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Public Projects

FULL POLICY/GUIDELINE CONTENTS

Policy/Guideline Statement
Reason for Policy/Guideline
Procedures
Forms/Instructions
Contacts

Document Type: *Policy*

Policy Number: *AP-4002*

Version: *1.1*

ADDITIONAL DETAILS

Definitions
Appendices
FAQ
Related Information
History

Effective: *February 2010*

Last Updated: *February 2010*

Responsible Department/Division:
Department of General Services

Policy Statement

This Administrative Policy sets forth City policies that apply to contracting for public project work and supplements requirements set forth in the Sacramento City Charter and City Code, including City Code Chapter 3.60.

Special Situations

Not Applicable

Exclusions

Not Applicable

Purpose

To ensure that all contracting functions are performed in compliance with applicable Federal, State and City laws, regulations, ordinances and policies, to ensure the uniform and consistent application of the contracting process, and to ensure fairness, open competition, and competitive pricing.

Forms/Instructions

Procedures

Contacts

Department of General Services

Reina Schwartz, Department Director (916) 808-7195
Christopher Stewart, Procurement Division Manager (916) 808-6202
Craig Lymus, Program Specialist (916) 808-5524

Office of the City Clerk

Shirley Concolino, City Clerk, (916) 808-5442
Dawn Bullwinkel, Assistant City Clerk (916) 808-7267

Office of the City Attorney

Eileen Teichert, City Attorney, (916) 808-5346
Joe Robinson, Senior Deputy City Attorney (916) 808-5346

Related Information

- City Charter-Article XIV Public Contracts and Supplies
- City Code 3.60
- Administrative Policy (Signing Authority # 22)
- Procurement Guidelines
- Procurement Ethics and Standards of Conduct

Document History

Amended: NA
Supersedes: API 48-Contracts for Public Projects
Effective: February 2010

Definitions

Addendum

An amendment to a request for bid (RFB) or request for qualifications (RFQ) or proposals (RFP).

Bid Specifications

Complete directions, provisions, requirements, plans and specifications for the performance of a public project. Bid specifications shall be included with the RFB.

Change Order

An amendment to a contract for construction of a public project, that must be approved in accordance with the provisions of article VI of Chapter 3.60 of the City Code.

Competitive Bidding

The process of soliciting bids and awarding a contract to the lowest responsive and responsible bidder.

Contract

Any binding contract document, regardless of what it is called, for the procurement of public projects. References to a "contract" shall be deemed to include all documents attached to or incorporated in the contract, which also may be referred to as the "contract documents."

Contracts Manager

A position or employee authorized by the Department Director to administer the contracting process for public projects on behalf of that Department. A Contract Manager is not authorized to execute public project contracts or change orders on behalf of the City unless such signature authority has been delegated by the City Manager in accordance with applicable provisions of the City Code.

Contractor

A person, firm or other entity that contracts with the City to perform public project work.

Emergency Contracts

A contract initiated when the public interest and necessity demand immediate action, repair or replacement to safeguard life, health, or property, to permit the continued conduct of City operations or services, or to mitigate further damage.

Emerging and Small Business Enterprise (ESBE) Requirements

The procurement requirements and procedures imposed pursuant to the program established by the City Council to promote and provide incentives for the participation of emerging and small business enterprises in City contracts.

Lowest Responsible Bidder

The lowest responsible bidder determined in accordance with the criteria specified in City Code Section 3.60.020.

Master Contract

A contract for on call work for a specified term.

Procurement

This term is intended to include all functions that pertain to obtaining the work, including the preparation of specifications and requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Procurement Guidelines

Written guidelines developed by City staff and approved by the City Manager that specify more detailed operational requirements for City procurement, consistent with applicable provisions of the City Charter, City Code and Administrative Policy Instructions (APIs).

Project Manager

A position or employee authorized by the Department Director to administer a public project on behalf of the applicable Department. A Project Manager is not authorized to execute public project contracts or change orders on behalf of the City unless such signature authority has been delegated by the City Manager in accordance with applicable provisions of the City Code.

Purchase Order

A written authorization for a contractor to perform work at a specified price and over a specified period of time. Acceptance of the purchase order constitutes a contract and is legally binding on all parties.

Public Project

(1) A project for the erection, improvement and remodeling of public buildings or other public improvements, (2) street, sewer and water work (except maintenance or repair)*, and (3) furnishing supplies or materials for such projects. Maintenance and repair of public facilities, other than street, sewer or water facilities, constitutes public project work.

*The terms "maintenance" and "repair" are defined in City Code section 3.60.010.

Request for Bids (RFB)

A written notice issued to potential bidders that includes bid specifications and specifies, among other things, the procedures for bid submittal and place, date and time of bid opening.

Request for proposals (RFP)

A written request for proposals to perform public project work, if permitted under Section 4 (Requirements for RFPs) below.

Request for Qualifications (RFQ)

A written request for the submission of qualifications to perform specified public project work. RFQs are used to solicit SOQs from prospective contractors, in order to identify contractors with adequate qualifications to perform the specified work.

Responsive Bidder

A bidder whose bid meets all of the bidding requirements in the RFB.

Statement of Qualification (SOQ)

The written document submitted in response to a RFQ.

Standard Specifications

The City's current Standard Specifications for Public Construction, which constitute one of the contract documents.

Policy

1. SOLICITATION THRESHOLDS AND REQUIREMENTS

1.1 GENERAL REQUIREMENTS APPLICABLE TO ALL PUBLIC PROJECT WORK

- (a) The City Code prohibits splitting or separating into smaller units any requirement for public project work for the purpose of evading the requirements for competitive bidding and City Council award that apply to contracts of \$100,000 or more. The City Code defines this prohibited practice as reducing the size of the public project under circumstances where there is a reasonable knowledge that the remaining work after such reduction will be additionally required within the same budgetary term, that there are funds available for that project, and the purpose is to knowingly avoid formal competitive bidding. For emergency contracts, work requirements may be split into separate contracts of \$100,000 or less, provided the requirements of City Code Section 3.60.070 are met.
- (b) To the extent practical, Departments shall use master contracts for routine, recurring or on-call work, to maximize economic efficiencies.
- (c) The solicitation and award procedures specified in this Policy for public project work vary depending on the amount of the procurement. For purposes of determining which solicitation and award procedures apply:
 - 1. When a master contract is used, the amount of the procurement is the total amount of the master contract or contracts (if multiple master contracts are being let to multiple contractors for the same scope of work).
 - 2. When a master contract is not used, the amount of the procurement is the amount of the contract for a specific project and shall not include any payments made under other contracts with the same contractor for different projects, subject to the requirements specified in subsection (a) above.

- (d) The Contracts Manager shall be responsible for maintaining all bid documentation including analysis of bids, contractor notifications and contract award correspondence in accordance with the City's record retention policy. This shall include the responsibility for compiling and reporting data that will assist with ascertaining the utility of City programs associated with the procurement process, such as the City's equal benefits, disadvantaged business enterprise and emerging/small business enterprise requirements. The Contracts Manager shall use standardized RFB and RFP formats, as provided in the Procurement Guidelines .
- (e) Standard City contracts must be executed prior to the performance of any work and must be "approved as to form" by the City Attorney. A purchase order may be used in lieu of a contract for work of \$5,000 or less, provided that the purchase order shall incorporate all applicable requirements for the work, and the contractor shall be required to meet the City's standard insurance requirements, obtain a City Business Operations Tax Certificate and any other requirements specified in the Procurement Guidelines .
- (f) Contracts less than \$100,000 do not require the approval of the City Council and may be executed on behalf of the City by the City Manager or any City employee to whom the City Manager has delegated such approval authority. Delegations of approval authority are specified in API # 22.
- (g) For the performance of work in any amount, the contract amount shall be calculated based on the full cost of any term extensions provided for in the contract (e.g., the amount for a two-year contract in the amount of \$40,000 per year, with an optional extension for year three, shall be based on the total three year term, for a contract amount of \$120,000).

1.2 PUBLIC PROJECT WORK OF \$5,000 OR LESS

- (c) The procurement of public project work at a cost of \$5,000 or less does not require competitive bidding and the contractor may be selected at the discretion of the Project Manager; provided that the Contracts Manager shall approve the procurement process.
- (d) Price quotations shall be written. All prospective contractors contacted must be given the same information and allowed adequate time to respond.

1.3 PUBLIC PROJECT WORK OF MORE THAN \$5,000 UP TO \$25,000

- (a) The Project Manager shall be responsible for soliciting at least three prospective bidders, unless the Contracts Manager documents that the nature of the work is such that at least three bidders are not reasonably available to bid on the work.

- (b) Price quotations shall be written. All prospective bidders contacted must be given the same information and the same amount of time to respond.
- (c) Contract award shall be made to the lowest responsive and responsible bidder as recommended by the Contracts Manager.
- (d) Exceptions to the above requirements are provided for in Section 2 (When Competitive Bidding is Not Required) of this Policy.

1.4 PUBLIC PROJECT WORK OF MORE THAN \$25,000 AND LESS THAN \$100,000

- (a) The issuance of a Request for Bids (RFB) and advertising on the City's web site for Contracting Opportunities are required.
- (b) Bids must be obtained in writing, and all prospective bidders must be given the same information.
- (c) All such bids shall be advertised on the City's web site for Contracting Opportunities for a minimum of ten calendar days prior to the date set for receiving bids. Advertisement of RFBs should be appropriate to the industry standards for the particular work, to achieve the maximum practical public notice and competition.
- (d) Bids shall be received and opened by the Contracts Manager. (e) Contract award shall be made to the lowest responsive and responsible bidder as recommended by the Contracts Manager.
- (f) Exceptions to the above requirements are provided for in Section 2 (When Competitive Bidding is Not Required) of this Policy.
- (g) Notice of the contract award shall be provided to all bidders as soon as reasonably practical. Notice may be provided by any form of media used by those participating in the bid process.

1.5 PUBLIC PROJECT WORK OF \$100,000 OR MORE

- (a) Advertising through the City Clerk's office and competitive bidding is required for public project contracts with a cost of \$100,000 or more.
- (b) All such bids shall be advertised on the City's web site for Contracting Opportunities for a minimum of fifteen calendar days prior to the date set for receiving bids.
- (c) Bidding shall be conducted in accordance with the requirements of City Code, Chapter 3.60, including public opening of bids by the City Clerk's office.
- (d) Circumstances under which the City Code does not require competitive bidding for contracts of \$100,000 or more are summarized in Section 2 (When Competitive Bidding is Not Required) of this Policy.

- (e) Staff recommendations for awarding contracts of \$100,000 or more must be presented to the City Council for approval.
- (f) Award is made to the lowest responsive and responsible bidder, unless a different action is taken by the City Council pursuant to the City Code.
- (g) Notice of contractor selection shall be provided to all bidders as soon as reasonably practical.

2. WHEN COMPETITIVE BIDDING IS NOT REQUIRED

2.1 PUBLIC PROJECT WORK OF MORE THAN \$5,000 AND LESS THAN \$100,000

- (a) The bidding requirements specified in Section 1 (Solicitations Thresholds and Requirements) of this policy, do not apply if any of the following conditions are met:
 1. After advertising for bids as required, no bids are received, or all bids received are rejected because they are invalid or nonresponsive. If this occurs, a different procurement method may be used, provided the use of such method is documented and approved as provided in subsection 3, below.
 2. The contractor awarded a contract resulting from a City bid fails to enter into contract. If this occurs, the next lowest bidder, if there is one, shall be awarded the contract, if such bidder's price is acceptable. If there is no such bidder, a different procurement method may be used, provided the use of such method is documented and approved as provided in subsection 3, below.
 3. It is in the City's best interest to use a different procurement method. This justification must be documented by the Project Manager, and the request to use a different procurement method must be approved by the Department Director in accordance with applicable provisions of the Procurement Guidelines. Examples of alternative procurement methods are:
 - (i) Competitive negotiation: The Project Manager negotiates with two or more prospective contractors to obtain a contract for the lowest price. Documentation shall be maintained of all negotiation discussions, terms, and offers.
 - (ii) Sole source procurement: After conducting a good faith review of available sources, the Project Manager determines there is only one reasonable and practicable source for the required public project work. A requirement for a particular proprietary service does not justify a sole source procurement if more than one potential provider for that service is reasonably and practicably available. All requests for this

restrictive method of procurement shall be accompanied by an explanation as to why no other source of work or service will be suitable or acceptable to meet the need. Documentation shall be maintained of all negotiation discussions, terms, and offers.

- (iii) Prequalification: A RFQ process can be used to limit participation in the bidding process that follows to only those persons or firms determined to be qualified in accordance with the provisions of the preceding RFQ process. This can be done for a single project, or for multiple projects, as would be the case for approval of a master list of contractors by trade or specialty to be used on specified projects.
 - (iv) Use of RFP process: A RFP process is used consistent with the provisions of section 4 of this Policy.
 - (v) Emergency contracts: When emergency conditions render competitive bidding impractical, and the determination of an emergency is approved by the Department Director.
 - (vi) Cooperative service agreements: A competitively bid cooperative service agreement of another governmental jurisdiction or public agency may be used, when supported by a market analysis showing that the prices and terms for the work to be performed are below or meet market rates.
4. Federal or state law requires other selection procedures to be utilized.
 5. Maintenance, remodel, or repair work is performed by City employees.

2.2 PUBLIC PROJECT WORK OF \$100,000 OR MORE

- (a) Under City Code Section 3.60.170, competitive bidding is not required for contracts of \$100,000 or more under the following circumstances:
 1. After advertising for bids as required, no valid bids are received. If this occurs, a different procurement method may be used, provided the use of such method is approved by the City Council consistent with applicable provisions of the City Code.
 2. The City Council determines on a **2/3 vote** that it is in the best interests of the City to suspend competitive bidding. The suspension of competitive bidding can be recommended for various reasons, including:
 - (i) *Other competitive methods*: Alternative methods for contractor selection, such as using a RFP process, a design-build or design-assist process, and/or selecting a contractor based on factors other than or in addition to price, may be utilized for contracts of \$100,000 or more if the City Council determines prior to conducting such alternative process (on a **2/3 vote**) that it is in the City's best interests to suspend competitive bidding for this purpose.

- (ii) *Sole source procurement:* After conducting a good faith review of available sources, the Department determines there is only one reasonable and practicable source for the required non-professional service. A requirement for a particular proprietary service does not justify a sole source procurement if more than one potential provider for that service is reasonably and practicably available. All requests for this restrictive method of procurement shall be accompanied by an explanation as to why no other source of work or service will be suitable or acceptable to meet the need. Documentation shall be maintained of all negotiation discussions, terms, and offers.
 - (iii) *Prequalification:* A RFQ process can be used to limit participation in the bidding process that follows to only those persons or firms determined to be qualified in accordance with the provisions of the preceding RFQ process. This can be done for a single project, or for multiple projects, as would be the case for approval of a master list of contractors by trade or specialty to be used on specified projects.
 - (iv) Council reports and resolutions prepared for a recommendation to suspend competitive bidding must set forth factual justification to support a finding that such action is in the best interests of the City. Questions concerning the applicability of competitive bidding requirements should be directed to the City Attorney's Office.
3. Maintenance, remodel, or repair work is performed by City employees.

3. REQUESTS FOR BIDS (RFB)

- (a) RFBs must be used for the procurement of public project work costing more than \$25,000, except as otherwise provided in Section 2 (When Competitive Bidding is Not Required) of this Policy. This does not preclude the use of RFBs for procurements below this threshold.
- (b) The Project Manager shall bear the overall responsibility for the preparation of bid specifications, utilizing a standardized RFB format, as provided in the Procurement Guidelines.
- (c) The bid specifications shall contain a complete scope of work for the construction work to be performed, and shall conform to the City's Standard Specifications.

4. REQUIREMENTS FOR RFPS

- (a) An RFP may be used to solicit public project work if authorized as required under Section 2 (When Competitive Bidding is Not Required) of this policy.

- (b) The Project Manager shall bear the overall responsibility for the preparation of an RFP, in compliance with all applicable provisions of the Procurement Guidelines Manual.

5. ITEMS REQUIRING REVIEW PRIOR TO AN RFB OR RFP

- (a) Public project contracts that will include the provision of materials or equipment to be installed, configured or maintained may require a materials or equipment review by other City departments or divisions before the selection process is initiated. Such reviews are intended to ensure consistency and conformity with City standards and building codes. These reviews are required regardless of the contract amount.
- (b) Materials or equipment review prior to issuance of a RFB or RFP is required in the following situations by the Department or divisions indicated below:
 1. Installed computer-related equipment such as UPS, energy management, fiber connections, SCADA and other information technology items or services — review by Department of Information Technology.
 2. Green Building Rating System™ LEED (Leadership in Energy and Environmental Design) materials or equipment — review by the Facilities and Real Property Management Division (Department of General Services).
 3. Installations at facilities or sites that require new construction, remodeling, modifications, electrical, mechanical, plumbing, or structural changes in City facilities, as well as the installation of systems furniture or interior design work (except facilities or sites within the street right of way) — review by the Facilities and Real Property Management Division (Department of General Services).

6. AMENDING OR CANCELING AN RFB OR RFP

- (a) An addendum shall be used to amend or cancel an RFB or RFP, and shall be issued not less than three working days before the deadline specified for receipt of bids or proposals. Addendums extending the deadline may be issued less than three working days before such date if necessary.
- (b) The minimum components required for addendums are identified in the Procurement Guidelines.
- (c) The addendum should be published using the same media used to advertise the RFB or RFP, including the City website. Addendums shall be sent to all prospective bidders/proposers known to have received an RFB or RFP.

7. PUBLIC DISCLOSURE

- (a) RFBs and RFPs for public project work of \$25,000 or more shall be available for public inspection at the office of the Contracts Manager and shall be posted on the City website for Contracting Opportunities.
- (b) After bid opening, bids shall be made available in response to an official request for public inspection, in accordance with the California Public Records Act.
- (d) Proposals submitted in response to a RFP shall be made available in response to an official request for public inspection after the proposal evaluation process is complete, in accordance with the California Public Records Act.
- (e) If the bidder or proposer designates any portion of its bid as proprietary or confidential, or any other public disclosure issues are presented, the Contracts Manager shall consult with the City Attorney's Office prior to any response or disclosure.

8. ACCEPTANCE AND EVALUATION OR REJECTION OF BIDS OR PROPOSALS

8.1 LATE BIDS OR PROPOSALS

- (a) A bid or proposal is late if it is received at the location designated in the RFB or RFP after the deadline specified in the RFB or RFP.
- (b) A late bid or proposal shall be rejected and not considered, regardless of the reason for lateness, including circumstances beyond the control of the bidder.
- (c) A late bid or proposal shall not be opened, except (if necessary), for identification purposes. Delivery and return of late bids or proposals shall be handled in the following manner:
 - 1. If delivered in person, a late bid or proposal should be rejected and returned to the person delivering it;
 - 2. If not delivered in person, a late bid or proposal should be returned by certified mail;
 - 3. Bidders or proposers submitting late bids or proposals that will not be considered for award shall be notified as soon as practicable.

8.2 GENERAL REQUIREMENTS FOR ACCEPTANCE AND EVALUATION

- (a) Bids or proposals shall not be altered or corrected after opening, except for minor irregularities as specified in the bid specifications and/or the City Code. A bid or proposal may be withdrawn only if so authorized in the bid specifications or under State law.
- (b) For bids or proposals of \$100,000 or more, only Council has the authority to waive minor irregularities.
- (c) No criteria may be used in bid or proposal evaluations that are not referenced in the bid specifications or RFP or in applicable provisions of the City Code, other applicable laws or regulations or contract documents.

8.3 DETERMINATION OF LOWEST BID

- (a) For a RFB, the contract shall be awarded to the lowest responsive and responsible bidder.
- (f) If a bidder that otherwise would have been the lowest responsible bidder is determined to be nonresponsive, after consulting with the City Attorney's office, the Contracts Manager shall prepare a written determination of nonresponsibility, setting forth the basis of the finding of nonresponsibility and advising the bidder that it may request a Bid Protest hearing on the matter, and shall send such determination to the bidder by certified mail.
- (c) If there are two or more low responsive bids from responsible bidders that are identical in price, and both meet all the requirements and criteria set forth in the RFB, then award, if made, shall be made by a drawing of lots.

8.4 ADDITIVE OR DEDUCTIVE BID ITEMS

- (a) The evaluation of bids for public projects containing additive or deductive items shall comply with Public Contract Code Section 20103.8.

8.5 REJECTION OF BIDS

- (a) For contracts less than \$100,000, the Department Director or the Contracts Manager shall have the authority to reject bids.
- (b) For contracts of \$100,000 or more, only the City Council has the authority to reject bids.

8.6 CONTRACT FORM AND DOCUMENTATION

- (a) The current standard contract form approved by the City Attorney's office shall be executed prior to starting any work, provided that a purchase order may be used in lieu of a contract for work of \$5,000 or less, so long as the purchase order incorporates all applicable requirements for the

work, and the contractor meets the City's standard insurance requirements and any other requirements, obtains a Business Operations Tax Certificate number, specified in the Procurement Guidelines Manual.

- (b) For contracts of \$100,000 or more, the contract must be signed by the contractor and the City Attorney's Office, and **submitted to the City Clerk, prior to City Council award of the contract.**
- (c) For all levels of contract award, contract documents must be fully executed (obtain all signatures and provide any required contract documents) prior to performance of the contract.

9. BID SECURITY, BONDS AND INSURANCE

9.1 BID SECURITY

- (a) Bids require bid security (such as a bid bond or cashier's check) unless this requirement is waived as specified in the Standard Specifications. Bid security shall be provided in a standardized format specified in the Procurement Guidelines and/or Standard Specifications and included in the RFB.
- (b) Bids received without the required security shall be considered non-responsive and will be rejected.
- (c) Bid security shall be returned to unsuccessful bidders after a successful bidder is selected and awarded the contract.
- (d) Bid security may be forfeited and applied as specified in the Standard Specifications.

9.2 PERFORMANCE AND PAYMENT BONDS

- (a) Performance and payment bonds are required for public project contracts exceeding \$25,000, as provided in the Standard Specifications and as required by State law (for payment bonds).
- (b) The bond requirements shall be described in the RFB or RFP, and shall conform to applicable provisions of the Procurement Guidelines (To Be Developed).
- (c) Bonds shall be accepted only from sureties admitted and duly authorized to transact business in the State of California, and shall be approved as to form by the City Attorney's office.
- (d) Failure to submit the required bonds within the time specified in the notice of award shall be just cause for annulment of the award and forfeiture of the bidder's bid security.

9.3 INSURANCE

- (a) All insurance requirements specified in the current standard contract form must be satisfied when and as specified in the contract.
- (b) All changes to insurance requirements proposed by contractors must be reviewed by Risk Management and approved by the Department Director prior to contract award/approval/execution by the City.

10. BID PROTEST

10.1 CONTRACTS OF MORE THAN \$5000 AND LESS THAN \$100,000

- (o) A bidder on a contract may file a bid protest (1) claiming that one or more bidders on the contract should be disqualified or rejected for any reason, or (2) contesting a City staff recommendation to award the contract to a particular bidder, or (3) contesting a City staff recommendation to disqualify or reject one or more bidders on the contract. Only a bidder may file a bid protest on a contract.
- (p) The bid protest shall be in writing and shall be filed with the Contracts Manager not later than five working days after City staff provides notice of the recommended contract award to the bidders. The bid protest shall provide the name, address, telephone and telecopier numbers of the protesting bidder, shall identify the contract to which the bid protest pertains, including the contract number and date that bids for such contract were received by the City, and shall identify the City department or division requesting bids. The bid protest shall identify and explain the factual and legal grounds for the protest, and shall include and attach any written materials that the protesting bidder wishes to have considered in determining the protest.
- (q) At the time a bid protest is filed, the protesting bidder also shall make payment to the Contracts Manager of a bid protest fee in the amount established by resolution of the City Council, which fee shall be used to pay the City's costs of processing the protest as provided herein.
- (r) Any bid protest that is received by the Contracts Manager after the time period specified above, or that is not accompanied by the bid protest fee, shall be untimely and invalid, and shall not be considered.
- (s) The protesting bidder and any other bidder(s) potentially affected by the bid protest shall be provided written notice of an informal hearing to be held not less than five working days after receipt of the bid protest. The hearing shall be conducted by the Director of the Department requesting bids or his or her authorized designee. The protesting bidder and any other bidder on the contract shall promptly provide any information requested by City staff prior to the informal hearing.

- (t) As soon as practicable after the informal hearing, the Department Director or authorized designee shall issue a written response to the bid protest, including an explanation of the reason or reasons for the decision made. The written response shall be provided to the protesting bidder and any other bidder(s) potentially affected by the bid protest.
- (u) Any bid protest, notice or bid protest response provided by or to the City shall be provided by registered or certified mail (return receipt requested), by telecopy, by personal delivery or by any other method that provides reliable evidence of the date of receipt. Written notice provided by telecopy shall be deemed received on the date that it is transmitted and transmission is confirmed by the transmitting machine. Written notice provided by personal delivery shall be deemed received on the date of delivery.

10.2 CONTRACTS OF \$100,000 OR MORE

Bid protests on contracts of \$100,000 or more shall be filed and processed in accordance with the provisions of Article X of Chapter 3.60 of the Sacramento City Code (commencing with City Code Section 3.60.460).

11. ESBE PARTICIPATION AND REPORTING REQUIREMENTS

- (a) Emerging and Small Business Enterprise (ESBE) requirements shall be met for all contracts as specified in the Procurement Guidelines , unless these requirements are reduced or waived by the Office of Small Business Development (OSBD), or an external funding source requires the use of other business enterprise requirements.
- (b) Any modification or waiver of an ESBE requirement must be requested in writing and approved by the OSBD prior to any advertisement or posting to the City's website for Contracting Opportunities.
- (c) Departments shall be responsible for meeting annual ESBE participation goals on a Department-wide basis.
- (d) The OSBD shall compile data relative to ESBE expenditures and utilization and submit periodic reports to the City Manager detailing contract amounts and ESBE participation rates.

12. EQUAL BENEFITS ORDINANCE

- (a) Contracts exceeding \$25,000 are subject to applicable provisions of the City's Non-Discrimination in Employee Benefits Code, codified at Chapter 3.54 of the City Code (commonly referred to as the Equal Benefits Ordinance, or EBO).
- (b) All solicitations shall contain the City's standard EBO Requirements.
- (c) All contracts to which the EBO applies shall contain an executed EBO Declaration of Compliance.

- (d) More detailed information concerning the EBO requirements is set forth in API 53.

13. PREVAILING WAGES; USE OF APPRENTICES

- (a) The City Code mandates that public project contracts originally awarded in an amount exceeding \$25,000 require the payment of prevailing wages, as determined by the Director of the Department of Industrial Relations pursuant to Labor Code Section 1773.
- (b) Bid specifications for public projects exceeding \$25,000 shall include prevailing wage requirements.
- (c) More specific requirements relating to prevailing wages for public projects are specified in City Code Section 3.60.180.
- (d) Apprentices are required on all public project contracts originally awarded in an amount exceeding \$30,000. More specific requirements relating to the use of apprentices are specified in the Procurement Guidelines Manual.

14. SPECIAL REQUIREMENTS FOR CONTRACTORS WHO ARE SOLE PROPRIETORS (INDIVIDUALS)

- (c) When the contractor is not a business entity (such as a corporation, partnership, etc.) and utilizes a personal social security number as their Federal or State tax identification number, all transactions with such individuals must be entered into the City's financial system within ten working days after execution of a contract, or ten working days after the date services are commenced, whichever occurs first.
- (d) This includes any City contract with a contractor who is a sole proprietor.

15. CHANGE ORDERS

- (a) Change orders for public projects may be approved by the City Manager or authorized designee, within the limits of approval authority specified in article VI of City Code Chapter 3.60. Change orders exceeding these limits must be approved by the City Council.
- (b) Delegations of approval authority are specified in API 22.
- (c) Any change order extending the term of a contract must be approved prior to expiration of the contract term.

16. PAYMENT METHODS AND PAYMENT TERMS

16.1 PAYMENT METHODS

- (a) Original invoices are required for payment of all contracts.
- (b) Payments for contracts over \$25,000 must include an approved Pay Request Application and Schedule of Values.

- (c) More specific requirements are set forth in the contract documents and Procurement Guidelines.

16.2 PAYMENT TERMS

- (a) Progress payments and project retention, as applicable, may be reduced by any deduction or withholding authorized under the contract, and shall be reduced by the amount of any stop notice until a verified release of stop notice is provided on a City-approved form or a release bond is accepted by the City.
- (b) Time limits for progress payments and the release of retention are set forth in the contract documents and Procurement Guidelines.
- (c) A Notice of Completion must be filed with the Sacramento County Recorder's Office within ten days after the date that the City accepts the work as complete.

17. TRANSACTION NUMBER LOG

- (a) Each Department shall establish and maintain a transaction number log for all Department solicitations for which an IFB or RFP is issued. The transaction number log shall be organized based on solicitations initiated within each Department.
- (b) A transaction number shall be assigned to each IFB or RFP, and will be used to identify and track all related activity through requisition and payment, if applicable.
- (c) Transaction numbers will be prominently displayed on the IFB or RFP and on the City's web site for Contracting Opportunities (if applicable).
- (d) Transaction numbers shall be created in accordance with procedures established by the Procurement Services Division Manager or authorized designee.

18. EMPLOYEE CONFLICT OF INTEREST/ETHICS

- (a) All procurement activities shall be performed in compliance with the provisions of the Procurement Ethics and Standards of Conduct Policy.

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RESOLUTION NO. 2010-XXXX

Adopted by the Sacramento City Council

February 16, 2010

**ADMINISTRATIVE POLICIES REGULATING THE PROCUREMENT OF SUPPLIES,
NON-PROFESSIONAL SERVICES; AND CONTRACTS FOR PUBLIC PROJECTS**

BACKGROUND

- A. In an April 2006 internal audit report, the City's Auditor cited internal control weaknesses relative to the City's Administrative Policy Instructions for the procurement of supplies, non-professional services, and public project contracts.
- B. A multi-department collaborative effort, including department directors, legal counsel, and key procurement and contracting staff converged to revise and develop procurement policies to comply with best practices and recommendations made in response to the City's 2006 internal audit.
- C. As a result of this collaborative effort, City staff developed new policies for each type of contract. The policies incorporate a standard language that is less ambiguous and clarifies roles and responsibilities of those who are responsible for performing procurement tasks.
- D. These new policies for the procurement of supplies, non-professional services, and public project contracts have been presented to the City Council for approval, in accordance with Sections 3.56.040 and 3.60.040 of the Sacramento City Code.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL
RESOLVES AS FOLLOWS:**

- Section 1. The revised procurement policies for Supplies (Policy No. 10-4001), Non-Professional Services (Policy No. 10-4101) and Public Projects (Policy No. 10-4002) are approved. These procurement policies shall replace and supercede the City's prior Administrative Policy Instructions No. 1 (supplies and non-professional services) and No. 48 (public projects).