

Original Issue Date: October 19, 1983	CITY OF FULLERTON, CALIFORNIA POLICY AND PROCEDURES MANUAL	Policy No. 4.1.2
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Revised Issue Date: June 6, 2016	SUBJECT: PROCUREMENT OF GOODS AND SERVICES	Approved By: <i>Julia James</i> Dir. of Admin. Svcs

PURPOSE

To clearly establish roles, responsibilities and thresholds for procurement in the open market and competitive bidding processes.

POLICY

The Fullerton Municipal Code Section 2.64 establishes conditions and procedures for purchases or contracts required by the City. The Code requires that the City obtain goods and services consistent with the quality needed for the proper operation of the various departments through the use of quotes and competitive bids whenever possible. It is the intent of this policy to obtain the best value in procurement utilizing an open and competitive environment. The Purchasing Agent, as designated by the City Manager, shall be responsible to execute such purchases or contracts in the manner established by this procedure.

The policy delegates the responsibility for the purchases of supplies, equipment, services and public works projects to various officials of the City in accordance with the provisions of this procedure. The following procedures do not preclude departments from having more limiting procedures.

PROCEDURE

Reasonable effort shall be made to obtain three or more competitive bids for procurement of goods or services. The Open Market process shall be used whenever possible for purchases of \$5,000 or more to ensure a competitive process. For purchases of \$50,000 or more, the formal bid process will be used.

A	B	C
DEPARTMENT AWARD	MANAGER AWARD	COUNCIL AWARD
Open Market Procedure	Formal Bid Procedure	Formal Bid Procedure
Up to \$49,999	\$50,000 to \$124,999	\$125,000 and greater

I. PURCHASE AUTHORIZATION LEVELS

Approval levels are established for the purchase of commodities, fixed assets, emergency contracts for goods and services, service contracts, change orders, sole source and “cumulative” purchases.

- A. The Department award procedure will be utilized for all purchases and contracts under \$50,000 as outlined below. The Department Director may designate a Division Manager or other appointee to approve purchases by including them on the Authorized Signature Form provided to the Purchasing Manager.

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1. On purchases of \$5,000 or less, at least three verbal quotes should be obtained whenever possible;
 2. On purchases greater than \$5,000 and up to \$50,000, at least three written quotes should be obtained whenever possible.
- B. The City Manager award procedure will be utilized whenever the expenditure involved is within the range of \$50,000 - \$124,999. Requests for Proposals or written bid specifications are issued at this level. The *Supplemental Purchasing Information* form (see Attachment A) is required and shall be attached to the requisition and forwarded to the City Manager for review and approval. After approval from the City Manager, the Purchasing Division shall review the requisition for compliance and issue a purchase order.
1. This City Manager award authority may not be delegated, except in the City Manager's absence, whereby that authority may be delegated to the Acting City Manager;
 2. Upon City Manager approval, the City Manager may delegate to the Department Heads the authority to execute all implementing contracts and documentation;
 3. City Manager awards requiring insurance, bonds and contracts shall be secured by the department and forwarded to the City Clerk's office for retention. Copies shall also be forwarded to the Purchasing Manager for monitoring.
- C. The City Council award procedure will be utilized for all purchases, contracts or agreements of \$125,000 and greater. The formal bid process will be required for purchases at this level.

Notwithstanding the above requirements, any purchase of \$25,000 or greater for services involving outside labor for the construction of, or improvements to, facilities, structures or equipment, shall be considered a capital improvement project and must be administered by the Public Works Department.

II. OPEN MARKET PROCESS

- A. The Open Market process includes quotes (verbal or written) or bids for purchases of goods or services under \$50,000. These may be solicited by mail, fax, phone or internet, using the Request for Quote form (see Attachment B).

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- B. All recommended purchases are subject to the review and approval of the Purchasing Manager, who will ensure that the item(s) has been budgeted with sufficient funds to cover the purchase, prior to award of contract.
- C. The Purchasing Manager retains the authority for source selection on all procurements and is authorized to make awards to the lowest responsible bidder.
- D. Procurement of contract labor services totaling \$1,000 or more requires registration with the California Department of Industrial Relations (DIR) as a Public Works contract and requires payment of prevailing wages. This does not include services performed by City staff. The department procuring the service must register the contract on the DIR website and notify the Purchasing Manager for issuance of a Purchase Order prior to the commencement of services.
- E. Whenever possible, the open market process shall apply to all professional service contracts over \$25,000, excluding Public Works contracts.
- F. Upon award, all contracts and/or bids received by the City are open to public inspection in accordance with the Public Records Request.

III. FORMAL BID PROCESS

A. PREPARATION OF NOTICE AND CONTRACT DOCUMENTS

1. Notice

- a. The notice inviting bids or proposals will describe the project to be done or the purchase to be made. It will set a date, time and opening of bids or proposals. The City may reserve the right to extend the time for the receipt of bids or proposals by up to 30 days if only one bid/proposal is received by the bid deadline. The notice prepared by the initiating department will then be published on the City's website and the local newspaper, if applicable. Notices may also be distributed to potential bidders and procurement websites;
- b. The length and content of the notice will vary in other respects according to the type of project to be done.

2. Requests for Proposals/Qualifications must adhere to the following guidelines:

- a. Provide a clear and accurate description of the requirements for the product or service procured;

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- b. Identify all requirements which proposers must fulfill and all other factors to be used in the evaluation of bids or proposals;
 - c. Include sufficient qualified sources whenever possible to ensure maximum open and free competition, including minority-owned businesses when applicable (see City's minority-owned business policy);
 - d. Avoid restrictions to competition such as unnecessary experience, requiring only "brand name" products, allowing for geographical preference, or other arbitrary action.
3. Bidder's Security in the form of cash, certified or cashier's check or bidder's bond, equal to 10% of the aggregate amount of the bid will be required when the expected pricing for the project is \$100,000 or greater. Bids shall not be considered unless accompanied by one of these types of security, except as follows:
- a. The bid bond requirement was waived by the City Manager prior to bid solicitation;
 - b. The bid relates to materials and supplies procurement.

Bidders shall be entitled to the return of the bid security unless the bidder fails or refuses to execute the contract within ten days after the notice of award of contract.

The City may, upon refusal or failure of the successful bidder to execute the contract, award the contract to the next lowest bidder. In this case, the amount of the lowest bidder's security shall be applied to the difference between the low bid and the next successful bidder, including any costs incurred by the City, and any remainder shall be refunded.

4. Insurance and indemnification is required in all bid documents and contracts. Vendors must secure the minimum scope and limits of insurance as established by the City's Risk Manager and complete the Indemnity Form prior to delivery of goods or commencement of services. (See Attachment C for insurance requirements and indemnity forms.)

B. BID OPENING PROCEDURE

1. All formal bid openings on purchases of \$100,000 or greater will be conducted by the City Clerk, who will:

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- a. Ensure that all pre-bid requirements as prescribed in this procedure have been met;
 - b. Ensure that all bids have been stamped as received by the date and time specified in the Notice Inviting Bids. However, bids received prior to the opening of the first bid will be considered timely;
 - c. Ensure that bid opening occurs at the time and location specified in the notice.
2. In the event only one bid is obtained the City may either award the contract to the sole bidder or reject the bid and reissue the RFP.
 3. In the event of tie bids the City may, at its discretion:
 - a. Reject all bids presented and rebid the project;
 - b. If the public interest will not permit the delay of rebidding, the city may accept either one or accept the lowest bid made by negotiation with the bidders.
 4. City staff, consultants, and outside evaluators who are participants in the bid evaluation process are required to sign the Confidentiality Agreement form (see Attachment D) which binds the participants not to share any information about responses received and the evaluation process until the City issues a Notice of Intended Award.

C. AWARD OF BIDS

1. Award of bid shall be to the lowest responsible bidder except as otherwise provided herein. All valid and responsible bids shall be considered in determining the lowest bid, along with the following:
 - a. Delivery time after receipt of order;
 - b. Terms and conditions;
 - c. Conformity to specifications;
 - d. Price;
 - e. Past performance;
 - f. Financial stability.
2. If the bidder has not previously contracted with the City, the Purchasing Manager may require proof of responsibility.

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3. The Purchasing Manager has the authority to award contracts for commodities, services or equipment as defined in the bid process and which have been approved and appropriated in the current fiscal year operating budget.
4. Participants in the contract award process must adhere to the City's Standards of Ethics in Procurement Policy No. 4.1.1 to avoid conflicts of interest. Violations may lead to disciplinary action, including termination.

IV. EXCEPTIONS TO THE BID PROCESS

Exemptions to the Open Market process may occasionally arise under the following conditions:

- A. Bona fide "emergency" as defined in Fullerton Municipal Code Section 2.64.090 and Section VI of this policy.
- B. Clearly established "sole source" suppliers, i.e., a single supplier who is the sole distributor or manufacturer of a product or service such that there is no acceptable substitute within a specific geographical area, e.g., Southern California or California. This exclusiveness must be verified in writing by the manufacturer, with confirmation on file with the Purchasing Manager.
- C. When "negotiation" has been the method of procurement established by the Purchasing Manager or designee.
- D. When participating in an established governmental "Cooperative Purchasing Agreement."
- E. On a purchase of less than \$1,000 (including tax) provided it is in compliance with this policy.
- F. When the purchase of goods or contract for services is beneficial to the interests of the City of Fullerton. The Purchasing Manager may contract with a vendor who has been awarded specific items or services in a contract, within the previous 365 days, resulting from a formal competitive bid by another governmental agency or by the federal government, or at any time during the term of an existing contract. This includes, but is not limited to, General Service Agreements (GSA), California Multiple Award Schedule (CMAS) agreements, or "piggyback" contractual agreements of other governmental agencies.
- G. The Purchasing Manager may purchase from or sell to any other governmental agency when such action is beneficial to the interests of the City of Fullerton.

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H. When the Purchasing Manager bases negotiations upon a purchase by another governmental agency for materials, equipment, or services

V. PUBLIC WORKS PROJECTS

Contracts for Public Works projects are governed by the “Local Agency Public Construction Act”, Division 2, Part 3, Chapters 1 and 2 of the California Public Contract Code 22000, et seq.

The City of Fullerton recognizes all capital improvements as Public Works projects. A capital improvement project is defined as any project involving labor services related to the construction of, or improvements to, facilities, structures or equipment in the amount of \$25,000 or more. All capital improvement projects shall be administered by the Public Works department.

VI. EMERGENCY PURCHASES

Emergency purchases may be made only when it is essential to prevent serious delays or which vitally effect the preservation of life, health, safety or property. Upon approval of an emergency purchase by the City Manager, Purchasing Manager, or specified designee, the requesting department shall:

- A. Request a Purchase Order number from the Purchasing Manager with which to procure the necessary goods or services. If an emergency arises at a time when the City Hall is closed, a vendor may be selected without the use of a Purchase Order;
- B. A Purchase Requisition detailing the emergency purchase must be submitted to the Purchasing Manager on the first normally scheduled working day after the emergency;
- C. Confirming orders may be permitted for emergency purchases of mechanical parts and supplies needed to expedite the return to service of safety vehicles, computer systems, or any equipment vital to City operations;
- D. A written report from the requesting Department Director detailing the circumstances of all emergency purchases in excess of \$5,000 shall be filed with the City Council at the next regularly scheduled Council meeting as required by FMC Section 2.64.090;

VII. PAYMENT ADVANCES AND PROGRESS PAYMENTS

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Payments to contractors or vendors in advance of delivery are prohibited. Should a situation arise where a contractor or vendor requires a deposit to secure materials, the Purchasing Manager shall determine the appropriate course of action.