

# TITLE 7 PROCUREMENT AND CONTRACTING

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## **TITLE 7 PROCUREMENT AND CONTRACTING**

### **CHAPTER 7.01 GENERAL PROVISIONS**

#### **7.01.01 Purpose.**

The purpose of this Title is to set forth rules and regulations for the procurement, contracting, or disposal of all supplies, and services required by any office or department of the city government as provided in Section 403 of the City Charter which relates to the City Manager's powers and duties to prepare rules and regulations related to purchasing;

#### **7.01.02 Application of this title.**

This Title applies only to purchase orders and contracts solicited or entered into after the effective date of this ordinance.

#### **7.01.03 Public access and record retention for procurement information.**

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

#### **7.01.04 Procurement and Contracting Department authority.**

The City has created a centralized procurement and contracting department which shall have authority over the procurement of supplies, services and for construction of public projects for the public purposes of the City. The Department is led by the position of Director of Procurement and Contracting. Except as otherwise provided herein, the Director, shall serve as the public procurement official for the City, and shall be responsible to:

- (1) Manage the procurement process for all supplies, services, and public projects required by the City and develop policies and procedures related to the procurement and contracting functions;
- (2) Ensure compliance with this Title;
- (3) Adopt regulations, consistent with this Title, governing the Procurement, management, control and disposal of any and all supplies, services, and public projects procured by the City;
- (4) Approve purchase requisition and issuance of purchase orders in the procurement of supplies, services and public projects;
- (5) Sell, trade, or otherwise dispose of surplus supplies belonging to the City;
- (6) Retain records of the solicitation, award, and subsequent Contract or Purchase Order;

- (7) Ensure that the City Clerk receives the record copy of all Contracts;
- (8) Prepare and submit a monthly report to the City Manager of all purchase orders and contracts approved by the City Manager, or such other delegated authority, pursuant to the signature authority.

#### **7.01.05 Delegation of authority by the Director of Procurement and Contracting.**

- (1) The Director may authorize in writing any using department to purchase specified supplies, services, and to construct public projects independently of the Procurement and Contracting department, provided that: 1.) such purchases shall comply with the procedures established by this Title; 2.) it is deemed necessary for the effective procurement or disposal of those items; 3.) the Using Department shall be required to make periodic reports to the Director on all purchases made and 4.) the Procurement and Contracting Department will approve all purchase orders related to any delegated procurement to verify compliance with the procurement policies.
- (2) The Director shall have the power to render interpretations of this Title and to adopt and enforce written rules and supplemental regulations to clarify the application of this Title's provisions and any resolution(s) adopted pursuant to subdivision (1), above. Such interpretations, rules and regulations shall be in conformity with the intent and purpose of this Title and any such resolution(s). Without limiting the nature of the foregoing, such rules and supplemental regulations may include, without limitation, criteria upon which contracts shall be solicited and awarded. In the event of any conflict between such rules and regulations and the provisions of this Title or such resolution(s), this Title and any such resolution(s) shall prevail.

#### **7.01.06 Supplemental regulations.**

- (1) The City Council may, from time to time, adopt one or more resolutions establishing rules and supplemental regulations to clarify the application of this Title's provisions. Such rules and regulations shall be in conformity with the intent and purpose of this Title. In the event of any conflict between such rules and regulations and the provisions of this Title, this Title shall prevail.
- (2) Related polices that are included as part of these policies by reference are:
  - a. Procurement Card (P-Card) Policy - [P-Card Policies and Procedures.pdf](#)
  - b. Environmentally Preferable Purchasing Policy - [EPPP.pdf](#)

## CHAPTER 7.02 DEFINITIONS

### 7.02.01 Definitions of terms used in this title.

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

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

**“Bid”** means an offer submitted by a Bidder setting forth the price for the City’s procurement of supplies, services, or for construction of public projects, on bid forms issued by the City.

**“Bidder”** means any person or Business submitting a bid to the City in response to an Invitation for Bid (IFB) issued by the City.

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

**“Change Order”** means any City-issued written document used to amend an existing construction contract authorizing changes within the scope of work, additions or deletions to the work, an adjustment to the price, or changes to any other terms and conditions of the Contract. The term also refers to a change to a purchase order in the City’s ERP system.

**“City”** means the City of Palm Springs.

**“Coachella Valley”** means the area between the Salton Sea on the south, the San Jacinto and Santa Rosa Mountains on the west, and the Little San Bernardino Mountains on the east and north. For the purposes of this definition, “Coachella Valley” includes the nine cities of Cathedral City, Coachella, Desert Hot Springs, La Quinta, Indian Wells, Indio, Palm Desert, Palm Springs, Rancho Mirage along with the cities of Beaumont and Banning and the unincorporated areas between Banning and the City of Palm Springs.

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

**“Contract Administrator”** means the department director or other City employee designated by the City Manager to administer a contract between the City and a contractor and oversee and monitor the contractor’s performance under the terms of the contract.

**“Construction Manager at Risk (CMAR)”** means a project delivery method in which the City hires a general contractor through a Request for Proposal or Request for

Qualifications competitive process, who serves as both a construction manager and general contractor to perform construction work on a project.

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

**“Director”** means the Director of Procurement and Contracting

**“Enterprise Resource Planning System (ERP)”** a software system that helps business manage their core processes in a centralized way such as accounting, procurement project management, human resource management, etc. The City currently uses Tyler Munis as its ERP system.

**“Environmentally Preferable Purchasing Policy”** means a procurement policy created and maintained by the Sustainability Department that governs the procurement of goods and services in an Environmentally Sustainable manner.

**“Force Account”** means services performed by, or public projects constructed by, City employees.

**“Invitation for Bids”** (IFB) means all documents, whether attached or incorporated by reference, utilized for soliciting bids for supplies or services, including maintenance work, or for construction of public projects.

**“Local Business”** means a person or business who has a valid physical business address located within the Coachella Valley, at least six months prior to bid or proposal opening date, from which the person or business operates or performs business on a day-to-day basis and holds a valid business license by a jurisdiction located in the Coachella Valley. Post office boxes are not verifiable and shall not be used for the purpose of establishing such physical address.

**“Maintenance Work”** has the same meaning as contained in Public Contract Code Section 22002, as amended which currently includes routine, recurring and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes; minor repainting; resurfacing of streets and highways at less than one inch; landscape maintenance, including mowing, watering, trimming, pruning, replacement of plants, and servicing of irrigation and sprinkler systems; or work performed to keep, operate and maintain publicly owned water, power, or waste disposal systems, including but not limited to dams, reservoirs, power plants and electrical transmission lines of 230,000 volts or higher.

**“Procurement”** means the purchasing, renting, leasing, or otherwise acquiring of any supplies, services, or construction. It also includes all functions that pertain to the procurement, including description of requirements, selection, and solicitation of sources, preparation, and award of contract. It is also a reference to the combined functions of

purchasing, inventory control, traffic and transportation, receiving, inspection, storekeeping, salvage and disposal operations.

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

**“Proposal”** means: an offer submitted by a proposer in response to a Request for Proposals (RFP), where selection for award is based on criteria specified in the RFP documents.

**“Proposer”** means any person or business submitting a proposal to the City in response to a Request for Proposals (RFP) issued by the City.

**“Procurement Cards”** (P-Cards) are credit cards issued by the Procurement and Contracting Department which are used to spot purchase items needed to complete City work. P-Cards are also used for City business travel. A separate policy governs the use of the P-Cards.

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

- (1) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly-owned, leased, or operated facility;
- (2) Painting or repainting of any publicly owned, leased or operated facility;
- (3) In the case of a publicly owned utility system, the construction erection, improvement or repair of dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher;
- (4) Public project does not include Maintenance Work.

**“Purchase Order”** means a City-issued document with any necessary terms and conditions, which authorizes the procurement of supplies or services, or for construction of public projects, which encumbers City funds for the payment.

**“Purchase Requisition”** means an electronic procurement request submitted via the City’s Enterprise system and submitted by the using Department to the Procurement and Contracting Department for the approval of a purchase order for such procurement.

**“Quote”** means an informal purchasing process that solicits pricing information from several sources.

**“Request for Proposals” (RFP)** means a document that solicits persons or businesses to submit a proposal to perform the scope of work associated with a proposed project. Cost is not the sole basis for selection in the RFP instead other qualifications including experience, staff experience, understanding of the scope of work, reference, turnaround time and approach to work are important factors when evaluating proposals. Also known as best value method of procurement.

**“Request for Qualifications” (RFQ)** means a document that solicits persons or businesses to submit information about their qualifications and capabilities to perform the type of work associated with a proposed project, often called “Statements of Qualifications” or “SOQs”. The RFQ may be used as a pre-qualification step for receiving a RFP. If a RFQ is issued, only those persons or businesses who successfully respond to the RFQ and meet the qualification criteria stated in the RFQ will be included in the subsequent RFP process or placed on a pre-qualification list for on call work.

**“Responder”** means any person or business submitting a Statement of Qualifications to the City in response to a Request for Qualifications (RFQ) issued by the City.

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

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

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

**“Solicitation”** shall mean the City’s process to obtain formal bids, proposals or qualifications as provided in this Title for the purchase of supplies, services, or for construction of public projects.

**“Specifications”** means any City-issued detailed written description of the physical or functional characteristics or of the nature of the supplies to be furnished, the services to be performed, or the construction to be performed on a public project. Specifications shall promote overall economy for the purposes intended and encourage competition in satisfying the City’s needs.

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

## **CHAPTER 7.03 PROCUREMENT REQUIREMENTS**

### **7.03.01 General procurement requirements.**

**(1) Method Determined by Cost Estimate.**

The procedure to be followed in soliciting contracts or purchase orders is determined initially by the estimated cost to the City of the supplies or services over the time the supplies or services are needed.

**(2) No Division of Procurements.**

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

**(3) Cancellation of Solicitation**

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

**(4) Use of Electronic Means**

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

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

- (c) The City may use electronic signature platforms to obtain signatures on contracts and other related documents.

**(5) Use of Purchase Requisitions and Purchase Orders**

- (a) The Director shall prepare administrative policies and procedures controlling the implementation of each procurement approved pursuant to this Chapter through the use of a purchase requisition and corresponding purchase order. Each procurement may only be approved after issuance of a purchase requisition and approval of a purchase order approved by the Director, unless otherwise exempt pursuant to applicable supplemental regulations. Purchase orders are required for all purchases with the exception of spot purchased items under \$5,000 where a P-Card is used or where a claim voucher is allowed under Finance's claim voucher policy.
- (b) Purchase Requisitions are required through the City's ERP system (Currently Tyler Munis) to obtain purchase orders for the authorization to purchase supplies, services, and public projects for the City. Each department shall have selected staff trained to input required information into the system to obtain the required purchase orders. Preparing detailed notes and adding supporting documents in the system will help facilitate the approval process. The following documents shall be included with the requisition:
  - 1. the required number of quotes and signed contract
  - 2. for supplies, services and public projects, any insurance certificates and endorsements required to demonstrate the vendor has the required levels of insurance
  - 3. for sole source purchases a letter from the vendor explaining the sole source with a current date on it and an explanation from the department on why only that product or vendor can be used will also be required for approval. To avoid any delays in processing purchase orders, sole source items should be submitted in advance to the Procurement and Contracting Department for review and signoff.
  - 4. for emergency purchases proper authorization from the City Manager shall be included
  - 5. documentation for any exemptions that are being used for the purchase as defined in Section 7.04 of Title 7.
  - 6. purchase order terms must follow the Contract term and not just align with the fiscal year, or the purchase order and contract terms will become out of sync and cause a shortening or lengthening of the contract term. Budgets follow fiscal year terms, but contract terms may span between fiscal years or remain in effect for multiple fiscal years.

- (c) Release Purchase Orders – on-call contracts can be set up to allow for services to be performed on an as needed basis. If a contract of this nature is utilized, the Departments may use release purchase orders to authorize work under the on-call contract. Departments will contact the Procurement and Contracting Department to set up the contract in the ERP system for use. When a requisition is created the contract number will need to be selected on the line detail screen to tie the purchase order to the contract. The purchase order will then enter into a reduced workflow and will only be authorized by the department director allowing for a quicker issuance of the purchase order. The ERP system will then track the value of the commitments on the contract and will not allow ordering that exceeds the contract value. This tool can be very useful for Departments that need to perform quick repairs to maintain facilities or perform lower valued simple projects such a smaller building repair or remodeling projects. Please note release purchase orders can be authorized off estimates using the contract pricing from the Contractor or by the Department’s estimate in the event of an emergency.
- (d) Blanket Purchase Orders - may be issued each fiscal year for purchases of supplies and some limited services at lower dollar values that are repetitive in nature and on an “as needed” basis. Examples where a blanket purchase order may be used includes office supplies or other small but repeatedly purchased commodities.
- (e) Purchase Order Authorization - The Procurement and Contracting Department issues purchase orders to authorize the purchase of supplies, services, and public projects. Purchase orders are not issued after a purchase since the purchase has already taken place. The City and the vendor are at risk if items are purchased without proper authorization through a contract or purchase order. Noncompliance with the procurement policies and procedures may cause the transaction in question to be audited and presented to the City Manager and City Attorney for their review before payment can be made. All transactions are monitored and audited on a regular basis for compliance and violations are subject to disciplinary action.
- (f) Changes to Purchase Orders – should a change to a purchase order be needed after the purchase order is issued the change will be processed through the City’s ERP system. Information must be provided in the notes section to explain why the change is necessary with supporting documentation attached. For contracts spanning more than one year, the initial purchase order that was issued should be change ordered to add the additional years so that all costs are collected on one purchase order to match the contract. This allows for easier tracking of the contract value and for invoicing to be tied to the same PO.

- (6) Requests for Formal Solicitations - If a department needs a procurement by formal solicitation (IFB, RFP or RFQ), the department shall contact the Procurement and Contracting Department for further assistance. The using department must provide a scope of work, pricing structure and any specific qualifications or minimum requirements the department would like included in the solicitation. The Procurement and Contracting Department will draft the solicitation for review and comment by the department. Once the solicitation is finalized, the solicitation will be advertised to the public and the Procurement and Contracting Department, in conjunction with the department, will conduct any pre submittal meetings, prepare any addenda to make changes to the solicitation, open the bids or proposals, and finalize the evaluation and selection process until a contract is ready for recommendation of award.
- (7) Approval of specialized procurements
  - (a) All information technology related procurements shall be approved in advance by the Information Technology Department.
  - (b) Engineering and construction solicitations should be either procured by or coordinated with the Engineering Department.

#### **7.03.02 Competitive process – supplies and services.**

The total estimated cost of supplies or services over the required period of time determines the procurement process that must be followed, as described below:

- (1) Supplies, Services (Not Construction)
  - (a) \$5,000 or less for supplies can be obtained through the use of a City issued Procurement Card (P-Card) or through a single quote and purchase order.
  - (b) \$15,000 or less: one quote or by negotiated contract.
  - (c) \$15,000.01 - \$75,000: by the Informal Process three quotes.
  - (d) Over \$75,000 by the Formal Solicitation Process.
  - (e) Fleet vehicles may be procured using the three-quote process utilizing local dealerships for any amount. This exception is due to the difficulty in the market of getting vehicles in a timely manner.
  - (f) See other special procurement methods and exemptions for other methods such as emergency, cooperative, etc.
  - (g) The City Council may from time to time revise the amounts identified herein setting forth the procurement process for supplies, maintenance work, and general services through adoption of a resolution identifying the revised amounts therefor.

- (2) Public Works Construction Services - the process applicable for the procurement of public projects shall be established in accordance with the following bidding thresholds dependent upon the City Engineer's estimated cost of the public project:
  - (a) As established pursuant to the California Uniform Public Construction Cost Accounting Act (CUPCCAA) under Public Contract Code section 22032(a) and as amended, currently \$75,000 or less: by Force Account or negotiated Contract,
  - (b) As established pursuant to Public Contract Code section 22032(b) and as amended, currently \$220,000 or less: by Informal public project Bidding Procedures.
  - (c) As established pursuant to Public Contract Code section 22032(c) and as amended, currently over \$220,000: by formal public project bidding procedures utilizing the IFB process for fully designed projects and the RFP process for alternate delivery method projects such as Construction Manager at Risk, Design Build, etc.
- (3) Automatic amendment of bidding thresholds.

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

### **7.03.03 Informal process.**

- (1) Soliciting Informal Quotes For Supplies and Services under \$75,000

The using department shall prepare requirements or specifications for each procurement and solicit informal quotes via posted notice, telephone request, mail, email, or any other reasonable solicitation method. All quotes shall be documented in writing. If the department is unable to obtain a minimum of three quotes due to lack of available sources, the department shall document that reasonable efforts were made to obtain the minimum number of required quotes and request assistance from the Procurement and Contracting Department in obtaining additional quotes. The department may also request the Procurement and Contracting Department follow the formal process.

- (2) Award – Supplies, Services

Departments may award contracts under this informal process to the supplier/provider that provided the lowest quote. This informal process is not to be used for any subjective type scoring or best value selection process. Award is price based only.

#### **7.03.04 Formal process – Invitation for Bids (IFB) Supplies, Services and Public Works Construction Services.**

(1) The formal process for procurement of supplies, services including public works construction services shall comply with all aspects of state and local law governing formal competitive bidding, including, resolutions of the City Council as may be adopted from time to time, this Title, and applicable supplemental regulations. IFBs should be used when supplies, services and public works construction services are easily defined as price is the primary factor for award.

(2) Bidder List.

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

(3) Notice.

All qualified bidders on the City's list or registered in the City's electronic bidding system for the category of work being bid will be notified by the City's electronic bidding system. The notice will describe the scope of the supplies or services to be provided in general terms and how to obtain more detailed information about the procurement, and state the time and place for the submission of bids. All notices to qualified bidders through the City's electronic bid system registry of bidders shall be completed not less than ten calendar days before bids are due.

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

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

(5) Bid Opening Procedure.

(a) Sealed bids shall be submitted electronically through the electronic bid system used by the City to the Procurement and Contracting Department or the Engineering Department for certain public works solicitations by the date and time published in the IFB. Bids shall be opened by the City in public at the time and place stated in the IFB. Before bid opening, correction or withdrawal of mistaken bids for supplies, services, and public projects may be permitted in accordance with applicable provisions identified in the IFB issued for the procurement. If a mistake is discovered before bid opening, the bid may be withdrawn from the electronic system prior to the date and

time set for bid opening. Bids may then be resubmitted prior to the date and time set for bid opening.

- (b) After bid opening, any request for withdrawal of a bid for a public project, or for supplies or services where bid security is required, shall be made within five working days after bid opening and in accordance with Public Contract Code section 5100 et seq., as amended from time to time.
- (c) After bid opening for supplies and services where bid security is not required and a bidder withdraws its bid or fails to execute the contract, the bidder shall be prohibited from participating in further bidding on the project unless the bidder demonstrates good cause for withdrawal of its bid.

(6) Basis of Award - contracts resulting from the IFB process

If a Contract is to be awarded or a purchase order is to be issued, it shall be made with the lowest responsible bidder submitting a responsive bid. Minor bid irregularities may be waived as outlined in the IFB document.

(7) Tie Bids.

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

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

(8) No Bids.

If no Bids are received, the procurement may be performed by City employees by force account or by negotiated contract without further complying with this Title.

(9) Rejection of Bids

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

- (a) Cancel the procurement; or
- (b) Issue a new IFB in the manner described in this Chapter.
- (c) For Public Works Construction Projects submitted to the City Council, subject to passage by a four-fifths vote, a recommendation to declare that

the public project can be constructed more economically by the employees of the City, and have the public project completed by force account.

**7.03.05 Public Works Construction project bidding procedure for projects up to \$75,000 as of January 1, 2025.**

- (1) The bidding procedures for public projects are generally administered by the City's Engineering Department and shall comply with all aspects of state and local law governing informal competitive bidding, including, but not limited to the Public Contract Code, Government Code, Labor Code, resolutions of the City Council as may be adopted from time to time, this Title, and applicable supplemental regulations.
- (2) Work may be performed by employees of the City by force account or by negotiated contract or through the formal IFB process.
- (3) Adoption of Plans and Specifications; Authorization to Bid.

The City Engineer, or designee, is authorized to review and approve engineering plans for purposes of design immunity pursuant to Government Code section 830.6 for all public projects with an estimated cost less than the amount identified by Public Contract Code section 22032(b). This shall include review and approval of the working details, drawings, plans and specifications prepared for the public project, including emergency and change order work, which may affect the design or operation of public improvements, and which may bring into question the City's liability for dangerous conditions of public property.

- (4) Bids in Excess of Statutory Amount.

If all Bids received are in excess of the amount identified by Public Contract Code section 22032(b), the City Council may award the contract to the lowest responsible bidder submitting a responsive bid in accordance with Public Contract Code section 22034(d).

**7.03.06 Public project bidding procedure for projects over \$75,000 as of January 1, 2025.**

- (1) Public works construction projects may be procured through the IFB process for projects over \$75,000 but less than \$220,000 or when it is considered in the best interest of the City to pre-qualify contractors for public projects, the Director may approve the use of a pre-qualification process. Projects over \$220,000 must be formally procured through the IFB process or through an RFP if utilizing an alternate delivery method.
- (2) The City has elected to adopt the pre-qualification procedures of Public Contract Code section 20101 for individual public projects, which includes without limitation the following requirements:

- (a) Utilization of a standardized questionnaire and financial statement in a form specified by the City (Section 20101 (a));
  - (b) Application of a uniform system of rating contractors on objective criteria, and on the basis of the completed questionnaire and financial statement (Section 20101(b));
  - (c) An appeal procedure by which a contractor that is denied pre-qualification may seek a reversal of that determination (Section 20101(d);
- (3) The Director shall make a recommendation to City Council based on the findings of the evaluation process. Only those contractors successfully completing the pre-qualification process and approved by the City Council shall be allowed to submit bids for that public project.
- (4) If a prospective Contractor is denied pre-qualification and the contractor disputes its pre-qualification rating, the following appeal process shall be followed:
- (a) Upon written request by the contractor received by the City within two business days after receiving notification of its pre-qualification rating, the contractor will be provided the basis for the contractor's disqualification and any supporting evidence obtained by the City as a result of its investigation of the Contractor;
  - (b) The contractor shall, within five business days of receipt of the City's basis for the contractor's disqualification, provide a written rebuttal to the City's disqualification determination with all supporting evidence;
  - (c) The Director will consider the contractor's written rebuttal, and may uphold or reverse the Director's original disqualification determination based on the evidence submitted, and a written final determination of the contractor's qualification status will be provided to the contractor within five business days of the City's receipt of its written rebuttal;
  - (d) The Director's final written determination is conclusive and will be forwarded to the City Council as part of its action to approve the list of pre-qualified Contractors.
  - (e) A Contractor's appeal rights are limited to the process identified herein, and no other appeal process shall apply.

**7.03.07 Formal Process – Request for Proposals (RFP) and Request for Qualifications (RFQ) process.**

- (1) RFPs should be used when supplies or services are not easily defined and a best value process that combines the firm and teams' qualifications, solution offering, and price would be in the City's best interest. RFPs are also used for public works construction projects when alternate delivery methods are utilized. RFQs should

be used for professional services such as Architects and Engineers where qualifications of the firm and team members should be the predominate factor in selection and where price cannot be considered for the initial evaluation phase.

(2) Notice Inviting RFQs or RFPs.

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

(3) Published Notice.

City staff shall solicit RFPs or RFQs via published notice in a newspaper of general circulation and on the City's electronic bid system for at least ten calendar days before the date for receiving proposals or statements of qualifications or, unless urgent circumstances call for a shorter time.

(4) Review of Qualifications or Proposals.

The City will receive proposals or statements of qualifications at the date, time and place of submission on the noticing inviting RFPs/RFQs. Any proposals or statements of qualifications or received after the deadline will be rejected by the City's electronic bid system The City will review and evaluate proposals or statements of qualifications based on the evaluation and selection criteria in the RFPs/RFQs and will identify qualifications that pass or fail based the minimum requirements and score the remaining categories on factors listed in the RFP or RFQ, or will rank Proposals based on factors listed in the RFP or RFQ. For RFP's the Procurement and Contracting Department staff will evaluate the cost proposals and develop the scores for the cost portion.

(5) Negotiation.

For the RFQ process once responders are ranked, the City may negotiate a contract with the highest ranked responder first, if negotiations fail to reach a fair and reasonable price, then negotiations would continue with the next highest ranked responder until a contract can be awarded. The City may also dispense with negotiations reissue the RFQ if the negotiations are unsuccessful.

(6) Basis of Award – contracts under a RFP or RFQ process.

(a) Under the RFP process awards for services and consulting services not otherwise considered professional services shall be to the highest scoring proposer after considering the evaluation criteria in the RFP, which may include a combination of both a qualifications component and a cost component as established by the City in the RFP.

- (b) Under the RFQ process awards for professional services contracts shall be to the most qualified highest ranked responder who will best serve the City's interests considering the demonstrated competence and professional qualifications for the scope of services to be provided and at fair and reasonable price to the City.

(7) Rejection of Proposals and Statements of Qualifications.

The Director may reject all Proposals and Statements of Qualifications presented, and shall have the following options:

- (a) Cancel the procurement; or
- (b) Issue a new RFP or RFQ in the manner described in this Chapter.

**7.03.08 Local Business Preference Program.**

(1) Findings.

- (a) The City annually spends significant amounts on purchasing supplies and services. The dollars used in making these purchases are derived in large measure from taxes and fees derived from local businesses and the City Council has determined that funds generated in the community should, to the extent possible, be placed back in the local economy. Therefore, the City Council has determined that it is in the best interest of the City to give a preference to Local Businesses in making such purchases whenever the application of such a preference is reasonable in light of the dollar-value received in relation to such expenditure.
- (b) The City Council further finds that the Coachella Valley is in a state of economic depression and many Local Businesses have been forced to close their doors due to severe financial losses. Many of these local businesses have been doing business in the Coachella Valley for many years. The City Council finds that the City should promote and stimulate local businesses by requiring that purchases of supplies and services be acquired from local businesses.
- (c) The City Council further finds that this action is necessary to grow the local economy and preserve the local businesses that have diligently served the Coachella Valley for many years.
- (d) Strategies that encourage people to buy locally are an important component of economic sustainability. Retaining local dollars within a community reduces economic export and increases the financial productivity of taxpayer dollars and increases the consumption of supplies and services while fostering a sustainable community. In working towards a sustainable economy, the City Council recognizes that sustainable procurement policies are an important early step on the Palm Springs path to a sustainable

community. By leveraging the purchasing power of the City to buy local supplies and services, instead of supplies and services from outside the Coachella Valley, it strengthens the local economic activity and employment as well as sets an example that helps foster and maintain a vital economic community for future generations.

(2) Statement of Policy.

It is the policy of the City to promote employment and business opportunities for local residents and Local Businesses on all contracts and give preference to local residents, workers, businesses, contractors, and consultants to the extent consistent with the law and interests of the public.

(3) Local Preference in Purchasing.

In the procurement of supplies, as provided in this Title, the City Council or the Director may give a preference to local businesses in making such purchase or awarding such contract in an amount not to exceed five percent of the Local Business' total bid price, or \$15,000.00, whichever amount is lower. Total bid price shall include only the base bid price but also adjustments to that base bid price resulting from alternates requested in the Solicitation. In order for a local business to be eligible to claim the preference, the person or business must request the preference in the solicitation response and provide a copy of its current business license from a jurisdiction in the Coachella Valley.

(4) Local Preference in Services.

In awarding contracts for services, including professional services, preference to local business shall be given whenever practicable pursuant to this Title consistent with the Statement of Policy in subsection (2) above. If the RFP method is used is soliciting the services, five percent of the available points used to score the proposals will be used for evaluating the local preference component of the proposal. The person or business will also, to the extent legally possible, solicit applications for employment and proposals from subcontractors for services associated with the proposed contract from local residents and local businesses as opportunities occur and hire qualified local residents and local businesses whenever feasible. In order for a local business to be eligible to claim the preference, the person or business must request the preference in the solicitation response and provide a copy of its current business license from a jurisdiction in the Coachella Valley.

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

The contractor shall use good faith efforts to sub-contract supplies to local businesses and to sub-contract services to local businesses whose work force resides within the Coachella Valley. The contractor shall submit evidence of such good faith efforts at the time of submission of bids. Good faith efforts may be evaluated by placing advertisements inviting proposals in local newspapers,

sending request for proposals to local sub-contractors, or by demonstrating that no local sub-contractors are qualified to perform the services or provide the supplies. Any notice inviting bids which may require the use of sub-contractors shall include notification of this subsection. The City Council or Director may reject as non-responsive the bid of any contractor proposing to use sub-contractors that fail to comply with the requirements of this subsection.

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

- (a) Supplies or services provided under a cooperative purchasing agreement.
- (b) Purchases or contracts which are funded in whole or in part by a governmental entity and the laws, regulations, or policies governing such funding prohibit application of a local preference.
- (c) Purchases made or contracts let under emergency or noncompetitive situations.
- (d) Purchases with an estimated cost of \$75,000 or less.
- (e) Application of the local business preference to a particular purchase, contract, or category of contracts for which the City Council is the awarding authority may be waived at the City Council's discretion.

(7) Quality and Fitness.

The preferences established in this Section shall in no way be construed to inhibit, limit or restrict the right and obligation of the City Council and the Director to compare quality and fitness for use of supplies, materials, equipment, and services proposed for purchase and compare the qualifications, character, responsibility, and fitness of all persons, firms, or corporations submitting bids or proposals. In addition, the preferences established in this Section shall in no way be construed to prohibit the right of the City Council or the Director from giving any other preference permitted by law or this Title.

(8) Application.

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

(9) Verification of Local Business Preference Eligibility.

Any person or business claiming to be a local business, shall so certify in the bid, in writing to the Director. The Director shall not be required to verify the accuracy or any such certifications and shall have sole discretion to determine if a person or business meets the definition of "Local Business." The decision of the Director

declaring that any person or Business is not a local business shall be subject to appeal pursuant to the provisions of Chapter 2.50 of the Municipal Code.

(10) Enforcement.

- (a) The information furnished by each participant requesting a Local Business Preference shall be under penalty of perjury.
- (b) No person or business shall knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a local business for the purpose of this Section.
- (c) No person or business shall willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a City official or employee for the purpose of influencing the certification or denial of certification of any entity as a local business.
- (d) A business which has obtained City certification as a local business by reason of having furnished incorrect supporting information or by reason of having withheld information, and which knew or should have known, the information furnished was incorrect or the information withheld was relevant to its request for certification, and which by reason of such certification has been awarded a Contract to which it would not otherwise have been entitled, shall:
  - 1. Pay to the City any difference between the contract amount and what the City's costs would have been if the contract had been properly awarded;
  - 2. In addition to the amount described in sub-section (i) above, be assessed a penalty in an amount of not more than ten percent of the amount of the Contract involved; and
  - 3. Be subject to debarment from future award of contracts from the City.
- (e) The penalties identified in (d) above shall also apply to any business that has previously obtained proper certification and, as a result of a change in its status would no longer be eligible for certification, fails to notify the Director of this information prior to responding to a solicitation or accepting a contract award.

(11) Promulgation of Administrative Rules.

The Director is authorized to adopt administrative rules supplemental to the provisions of this Title as necessary or appropriate to implement the provisions of this Section. The provisions of this Section and the rules adopted by the Director shall be provided to participants to the widest extent practicable.

### **7.03.09 Special Procurement Methods.**

(1) General.

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

(2) Sole source procurement

(a) A Contract may be awarded without competition when the procurement is made after conducting a good faith review of available sources and the Director has determined that there is only one source for the procurement. The Director shall conduct negotiations, as appropriate, as to price, delivery, and terms. A written record of sole source procurement shall be maintained as a public record containing a sole source letter from the vendor or Contractor and the documentation from the Department Director of why sole source procurement was required and why only that product or service would meet the requirements of the department.

(b) Sole source purchases may be made when only one specific product or vendor meets a need by the City. Sole source procurements must be justified by obtaining a sole source letter with current date from the vendor that provides the necessary information to show how their product or services is a sole source, such as patent or copyright information, and an explanation from the Department why only that vendor or product meets the needs of the Department. Sole source requests should be sent to the Procurement and Contracting Director in advance for approval before proceeding with the requisition process so that the process is not delayed.

(3) Special expertise procurement

A contract may be awarded without competition when it is determined by the Director that an unusual or unique situation exists, in that due to experience and expertise demonstrated in prior contracts with the City, or experience or expertise with similarly described contracts with other public agencies, a particular contractor is uniquely qualified for a particular procurement, that makes the application of this Title contrary to the public interest. Any special expertise procurement shall be made with such competition as is practicable under the circumstances and any use of this exemption shall be documented with justification from the department as to why it was necessary.

(4) Emergency procurement

- (a) Chapter 2.20 and Public Contract Code section 1102 define an “Emergency” as a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.
- (b) Departments may experience emergencies that affect the health and safety of the public or the City’s assets. In the event an emergency purchase is needed, the City Manager can authorize these purchases. The City Manager should be contacted right away, and an email should be sent to the City Manager explaining the emergency, the proposed resolution and estimated cost. The City Manager will return the email approval which will be used as the support for the contract and/or purchase order. The emergency purchase is to cover the emergency only and not for extra items or work needed that can be properly procured after the emergency is subsided. Also, poor planning or not procuring things on time shall not be eligible for emergency approval.
- (c) During an emergency, the procurement as approved by the City Manager may occur without applying the provisions of this Title. All such procurements shall be obtained at the lowest reasonable price available in the best interests of the City, and for public projects in compliance with the applicable provisions of Public Contract Code section 22050.
- (d) When determined by the City Manager that repair or replacement of a public facility requires immediate procurement, at the recommendation of the City Manager and in accordance with Public Contract Code section 22050, the City Manager may approve emergencies up to the signature authority allowed by Council. For emergencies over the City Manager’s authority the City Council may by a four-fifths vote authorize the Procurement directly related to the repair or replacement of the public facility without applying the provisions of this Title. All such procurement shall be obtained at the lowest reasonable price available in the best interests of the City. In the case of an extreme emergency involving public property, the City Manager may proceed with immediate Procurement pursuant hereto subject to ratification by a four-fifths vote of the City Council at its next regular meeting.
- (e) In accordance with Public Contract Code section 22050, for emergency Procurement associated with a public project where the provisions of Informal or Formal Bidding would otherwise apply, the Director shall provide a written report to the City Council at its next regular meeting, and subsequently at each regular meeting thereafter. During the emergency procurement involving a public project otherwise requiring application of the informal or formal procurement procedures, the City Council shall determine by a four-fifths vote the continuing need for the emergency procurement without the benefit of competitive bidding. The City Council shall terminate

the emergency procurement of a public project at the earliest possible date that conditions warrant, allowing for application of this Title to the remainder of the actions that may be completed with regard to the public project.

(5) Cooperative purchasing programs

- (a) The City Council may authorize the acquisition of supplies or services through a joint powers or other cooperative purchasing program with a public entity or association of public agencies or officials, provided that the contractor selected has been selected through a competitive process and the Director finds: (a) that the competitive process is similar to that contained in this Title or adequate to protect the public interest; and (b) that due to economies of scale, the nature of the product, or market conditions, the price of the supplies or services is likely to be less through the cooperative purchase than through the City's independent purchasing pursuant to this Title.
- (b) Departments may utilize purchasing cooperatives and State contracts to purchase needed items. The City participates in purchases through the State's California Multiple Award Schedules (CMAS) and through non-State cooperatives such as but not limited to NASPO, OMNIA, HGAC and Sourcewell. Departments needing to utilize a cooperative contract or if a vendor indicates they are part of a cooperative contracting program, shall contact the Procurement and Contracting Department for further assistance. These contracts may fulfill the need to obtain quotes or perform a formal solicitation process as they have already been procured by a qualifying agency. The contract must be open for use and the items needed must be on the contract. The price offered to the City must be at or below the price listed on the cooperative contract.

(6) Federally Funded Projects

Along with the procurement and administrative requirements in this Title , there are additional requirements when spending federal funds. This includes complying with CFR Part 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which must be followed when spending certain federal funds. Federal funding typically has additional procurement requirements that must be carefully reviewed in order to be in compliance. These requirements vary, but typically require different procurement methods and forms and certain procurement and contract clauses, while some City policies will not apply when using federal funding such as the Local Preference Ordinance. Additional federal contract administrative requirements will apply during the contract. Departments must work with the Procurement and Contracting Department if procuring federally funding projects to make sure the solicitation and resulting contract are federally compliant.

(7) Alternate Delivery Procurement Methods

(a) Policy.

The Director is authorized to establish policies and procedures for implementation of alternate delivery procurement methods such as but not limited to Construction Manager at Risk (CMAR), Design-Build (D/B) Procurement, Public Private Partnerships, etc. within the guidelines in this Section.

(b) Procurement.

1. Construction of public projects may be procured through alternate project delivery methods by undertaking an RFP process. Notwithstanding the foregoing, the City may prequalify proposers through an RFQ process prior to the RFP process. The RFP must contain, at a minimum, the following elements:
2. The procedures to be followed for submitting proposals, the criteria for evaluation of the proposals and their relative weight, the procedure for selection of a contractor and the timing for making awards.
3. The proposed terms and conditions for the contract.
4. The project requirements, criteria for the intended use of the project, expressed in conceptual documents, basis of design, bridging documents, performance-oriented preliminary drawings, outline specifications and other documents provided to the contractor by the City establishing the project's basic elements and scale, and their relationship to the work site suitable to allow the contractor to submit a proposal.
5. A description of the project approach, work plan or other submittals to be submitted with the proposal, with guidance as to the form and level of completeness required.
6. A schedule for planned commencement and completion of the project.
7. Any other information that the City, in its discretion chooses to supply, including without limitation, surveys, soils reports, drawings or models of existing structures, environmental studies, photographs, or references to public records.

(c) Evaluation and Selection.

Once received, proposals shall be submitted for review by a selection committee. Clarifications may be required to ensure proposals are responsive to the RFP. Clarifications may require revised cost and/or technical proposals. Criteria for selecting a Contractor for award of a Contract may include but are not limited to the following:

1. An evaluation of references provided with respect to responsiveness, quality of work, timeliness and overall performance.
2. An evaluation of overall quality, capability, resource availability and financial stability of the contractor.
3. An evaluation of the contractor's experience, training and qualifications.
4. Consideration of items such as proposed design approach, initial and/or life cycle costs, project features, quality, capacity, schedule, and operational and functional performance of the facility.
5. The extent to which the contractor's proposal meets the requirements set forth in the RFP.
6. Analysis of the cost relative to the contractor's ability to meet the requirements set forth in the RFP.
7. Depending on the number of proposals received, the selection committee may develop a "short list" of top ranked proposers. The selection committee may require "short listed" proposers to participate in an interview and/or make a presentation to establish a final ranking. The selection committee will then either recommend the top ranked firm where pricing has been provided during the process or begin negotiations with the top ranked proposers where pricing could not be provided as part of the evaluation process. The negotiations may include but not be limited to project costs, scope, and schedule. If negotiations are unsuccessful, negotiations will cease with the top ranked proposers and may begin with the next highest ranked proposer. The City reserves the right to reject all proposals, select by proposal review only or interview as needed. The City's selection committee shall select and recommend to the City Council for contract award a contract providing the best value to the City.

**7.03.10 Protest Policy.**

- (1) This section sets forth the protest remedies available with respect to the procurement process. Each participant by submitting its response to the solicitation, expressly recognizes the limitation on its rights to protest contained

herein, and expressly waives all other rights and remedies. Each participant agrees that the decisions on any protest, as provided herein, will be final and binding on the protestant.

(2) All protests and related statements described in this section shall be submitted for filing to the following addresses:

(a) Submittal via hand delivery or U.S. Mail:

City of Palm Springs  
Procurement and Contracting Department  
3200 Tahquitz Canyon Way  
Palm Springs, CA 92262  
Attn: Director of Procurement and Contracting

(b) Submitted via email to the Director of Procurement and Contracting

(3) Protests Regarding Solicitation Requirements

(a) If any attempts to resolve participants' concerns during the request for clarifications/question and answer period were unsuccessful, protests regarding the solicitation requirements shall be filed only after the question-and-answer period ends, but no later than five calendar days after the final addendum is issued.

(b) Participants may protest the solicitation requirements on the grounds that:

1. A material provision in the solicitation is ambiguous to a point that the participant cannot respond to the solicitation, or
2. The solicitation restricts fair and open competition,
3. Any aspect of the solicitation requirements described herein violates applicable local, state or federal law.

(c) Protests regarding the solicitation requirements shall completely and succinctly state the grounds for protest and shall include all factual and legal documentation in sufficient detail to establish the merits of the protest. Evidentiary statements, if any, shall be submitted under penalty of perjury. The protestant shall have the burden of proving its protest by preponderance of the evidence. The outcome of the solicitation requirements protest shall be decided on the basis of the written submissions by the City's Procurement and Contracts Department in conjunction with the City's Legal Department, whose decision shall be final and binding on the protestant. The City will issue a written decision regarding any protests to the protestor or to all participants.

(d) Notwithstanding the existence of a protest the City may continue the procurement process. The failure of a participant to file a basis for a protest regarding the solicitation requirements within the applicable period shall preclude consideration of that ground in any future protest related to solicitation requirements.

- (e) This is the only time a prospective participants can file a protest over solicitation requirements.
  - (f) The City may issue addenda or extend the solicitation due date to address the issues raised in a requirement related protest.
- (4) Protests Regarding Selection
- (a) The City will only consider protest by participants that respond to the solicitation.
  - (b) Participants may protest the selection only on the grounds that the City did not comply with solicitation process and procedures.
  - (c) Any protests regarding the City's decision of selection shall be filed within seven calendar days after the selection or recommendation of intent to award issuance or bid result posting. The City will not accept protests filed after this time period.
  - (d) The City will not entertain protests of solicitation requirements during this stage in the process.
  - (e) The protestant shall file a detailed written statement on the grounds, legal authority and facts, including all documents and evidentiary statements in support of the protest. Evidentiary statements, if any, shall be submitted under penalty of perjury. The protestant shall have the burden of proving its protests by a preponderance of the evidence. Failure to file a protest within the applicable period shall constitute a waiver of the right to protest the selection.
  - (f) The City shall issue a written decision regarding the protest within 30 calendar days after the filing of the detailed statement of protest. The decision shall be final and binding on the protestant.
  - (g) The City reserves the right to request information and/or documentation from the other participants to respond to issues raised in a protest.
- (5) Under no circumstances shall the City be held liable for payment of the protestant's costs or attorneys' fees. The City shall not be liable for any damages to the protestant filing the protest or to any participant in the protest, on any basis, express or implied.

#### **7.03.11 Reporting of anti-competitive practices.**

When for any reason collusion or other anti-competitive practices are suspected among any participants in the solicitation process, a notice of the relevant facts shall be transmitted to the State Attorney General and the Riverside County District Attorney's Office.

## CHAPTER 7.04. PROCUREMENT EXEMPTIONS

The provisions of this Title are not applicable to:

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

- (15) When expenditures are mandated by law or regulation, such as county booking fees, utilities, postage, waste disposal fees or other non-negotiable permit, use or application fees.
- (16) Best Interest of City - except where otherwise prohibited by law, when the City Council or City Manager authorizes the award and execution of purchase orders or contracts for supplies and services and for construction of public projects subject to the signature authority consistent with this Title, without following the required procurement methods, provided that the City Council or City Manager finds that such award is in the best interest of the City, or of the public health, safety, and welfare.

## CHAPTER 7.05 CONTRACTS

### 7.05.01 Ethics in Public Contracting.

- (1) Employee conflict of interest.
  - (a) It shall be unethical for any city employee or city official to participate directly or indirectly in a procurement when the city employee or official knows that:
    1. The city employee or official, or any member of the city employee's or official's immediate family has a financial interest pertaining to the procurement Contract; or
    2. Any other person, business, or organization with whom the city employee or official, or any member of the city employee's or official's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.
  - (b) A city employee or city official, or any member of the city employee's or official's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.
  - (c) No city employee nor official shall purchase any goods, supplies, equipment, etc., from the City unless the goods, supplies, equipment and materials are offered to the general public on the same terms and conditions as those applicable to the employee or official, or as the result of a competitive bid process open to the public.
  - (d) City employees or city officials who approve the designation of city property as surplus or recommend an item be deemed surplus are ineligible to purchase said items under any process, including competitive bid.
- (2) Gratuities and kickbacks.
  - (a) Gratuities.

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

other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal.

(b) Kickbacks.

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

(c) Contract Clause.

The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every contract and solicitation.

(3) Prohibition against contingent fees.

It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a City contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

(4) Contemporaneous employment prohibited.

It shall be unethical for any City employee who is participating directly or indirectly in the procurement process to become or to be, while such a City employee, the employee of any person contracting with the City by whom the City employee is employed.

(5) Waivers from contemporaneous employment prohibition and other conflicts of interest.

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

- (a) The contemporaneous employment or financial interest of the city employee has been publicly disclosed;
- (b) The City employee will be able to perform its procurement functions without actual or apparent bias or favoritism; and
- (c) The award will be in the best interests of the City.

(6) Use of confidential information.

It shall be unethical for any City employee or former City employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

**7.05.02 Non-Discrimination in Contracting.**

(1) Statement of Policy.

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

(b) It is also the policy of the City to ensure that work performed on behalf of the City is done in a cost effective and high-level manner. Employees who are treated fairly are more productive in their jobs and less likely to change jobs, thus helping to ensure that government contracts are both cost effective and completed in a professional manner.

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

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

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

1. Employees on the basis of an employee's, employee's spouse's, employee's domestic partner's, or dependent's actual or perceived race, color, religion, ancestry, national origin, disability, medical condition, marital status, domestic partner status, sex, gender,

gender identity, gender expression, or sexual orientation as these terms are defined by California Law;

2. Employees on the basis of an employee's or dependent's actual or perceived gender identity, including, but not limited to, the employee's or dependent's identification as transgender; or
  3. Employees with spouses and employees with domestic partners, or discrimination between employees with spouses or domestic partners of a different sex and employees with spouses or domestic partners of the same sex, or discrimination between same-sex and different-sex domestic partners of employees or between same-sex and different-sex spouses of employees.
- (b) For purposes of this Section, an employee health plan is discriminatory if the plan is not consistent with California Law including, but not limited to, Section 1365.5 of the Health and Safety Code and Section 10140 of the Insurance Code.
- (4) Certification. Every contractor shall submit a nondiscrimination certificate in a form acceptable to the City Manager. No contract shall be awarded until the contractor has submitted to the City such certificate. The certificate shall contain the following:
- (a) Contractor certifies and represents that, during the performance of the contract, the contractor and any other parties with whom it may subcontract shall adhere to the City's non-discrimination and equal benefits as provided in this Section to assure that applicants and employees are treated equally and are not discriminated against because of their actual or perceived race, color, religion, ancestry, national origin, disability, medical condition, marital status, domestic partner status, sex, gender, gender identity, gender expression, national origin, ancestry, or sexual orientation. Contractor further certifies that it will not maintain any segregated facilities.
  - (b) Contractor shall, in all solicitations or advertisements for applicants for employment placed by or on behalf of the contract, state that it is an "equal opportunity employer" or that all qualified applicants will receive consideration for employment without regard to their actual or perceived race, color, religion, ancestry, national origin, disability, medical condition, marital status, domestic partner status, sex, gender, gender identity, gender expression, or sexual orientation.
  - (c) Contractor shall, if requested to so do by the Contract Administrator, certify that it has not, in the performance of this contract, discriminated against applicants or employees because of their actual or perceived race, color, religion, ancestry, national origin, disability, medical condition, marital status, domestic partner status, sex, gender, gender identity, gender expression, or sexual orientation.

- (d) If requested to do so by the Contract Administrator, contractor shall provide the City with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
  - (e) Contractor agrees to recruit Coachella Valley residents initially and to give them preference, if all other factors are equal, for any new positions which result from the performance of a Contract and which are performed within the City. The Contract Administrator may agree to modify this requirement where it is in conflict with federal or state laws or regulations.
  - (f) Nothing contained in the contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
  - (g) The Contractor shall include the provisions set forth in paragraphs (a)—(f) of this Subsection 4 of this Section, inclusive, in each of its subcontracts.
- (5) Investigation and Monitoring. All contracts shall include appropriate provisions that will allow the Contract Administrator to review, monitor, and investigate compliance with this Section and to require each contractor to allow and provide full access to all applicable records, rules, regulations, documents, and other pertinent data necessary for the qualitative and quantitative evaluation of each contractor's compliance with the provisions of this Section.
- (6) Enforcement and Appeals.
- (a) In the event the Contract Administrator determines the contractor is not in substantial compliance with the provisions of this Section, the Contract Administrator may recommend to the City Manager, the initiation of one or more of the following rights and remedies described in this subsection, in addition to any rights and remedies otherwise provided in the applicable Contract or by law or equity:
    - 1. Termination of the contract and bar the contractor from bidding on future contracts with the City for two years from the effective date of the contract termination;
    - 2. Assess liquidated damages in the amounts specified in the contract where it is found the contractor willfully violated the requirements of this Section; and
    - 3. Seek recovery of reasonable attorneys' fees and costs incurred for enforcement of this Section.
  - (b) The Contract Administrator shall issue written findings and mail a copy of the findings to the contractor by first class mail and by any other means provided in the contract.

(7) Appeals.

- (a) Within five business days of the notice of the Contract Administrator's findings, the contractor may file a written appeal of the Contract Administrator's determinations to the City Manager.
- (b) The City Manager shall set the matter for hearing and shall cause a Notice of Hearing to be given to the contractor and to such other persons as may have identified themselves as interested in the decision and as otherwise required by the California Ralph M. Brown Act.
- (c) The hearing shall be conducted as an independent reexamination of the matter. The contractor shall have the burden of proof in all cases, and if the contractor fails to appear either in person or by counsel, or fails to present or offer any evidence, the City Manager may adopt the decision of the Contractor Administrator or may decide the matter upon the record with or without taking any additional evidence. Any oral or documentary evidence may be received, but the City Manager shall exclude irrelevant, immaterial or unduly repetitious evidence. The City Manager's decision shall be made upon substantial evidence. In other words, if an essential finding is based upon hearsay or secondary evidence, such evidence must be of the type which would be admissible in a court of law as proof of such finding.
- (d) Upon the hearing of the appeal the City Manager may refer the matter back to the Contract Administrator with directions for further consideration, or the City Manager may reverse, affirm, or modify the decision as may appear just and reasonable in light of the evidence presented. The decision of the City Manager shall be supported by written findings and shall include the reasons for the ruling. Notice of the City Manager's decision shall be served on the contractor, the Contract Administrator, and the City Clerk. The decision shall be final unless City Council agrees to review the matter pursuant this Code.

(8) Exceptions and Waivers.

- 1) The City Manager, with the consent of the City Council, may waive the requirements of this Subsection under the following circumstances:
  - 1. Whenever the City Manager finds that there is only one prospective contractor willing to enter into a real property agreement with the City for use of City property on the terms and conditions established by the City, or that the needed goods, services, construction services for a public work or improvement, or interest in or right to use real property are available only from a sole source, and the prospective contractor is not currently disqualified from doing business with the City, or from doing business with any governmental agency based on any contract compliance requirements;

2. Where the City Manager certifies in writing to the City Council that the contract or real property agreement is necessary to respond to an emergency which endangers the public health or safety and no entity which complies with the requirements of this Section capable of responding to the emergency is immediately available; provided that such certification must be made prior to or within twenty-four hours of execution of the contract or real property agreement on behalf of the City;
  3. Where the City Attorney certifies in writing to the City Council that the contract involves specialized litigation requirements such that it would be in the best interests of the City to waive the requirements of this Section; provided such certification is made prior to execution of the contract on behalf of the City.
- 2) This Section shall not apply where the prospective contractor is a public entity and the City Manager finds that supplies, services, construction for a public project or improvement or interest in or right to use real property of comparable quality or accessibility as are available under the proposed contract or property contract are not available from another source, or that the proposed contract or property contract is necessary to serve a substantial public interest.
  - 3) This Section shall not apply where the City Manager finds that the requirements of this Section will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement, provided that the contracting officer has made a good faith attempt to change the terms or conditions of any such grant, subvention or agreement to authorize application of this Section.
  - 4) Upon the request of a potential contractor or upon the Contracting Administrator's own initiative, after taking all reasonable measures to find an entity that complies with the law, the City Manager may waive any or all of the requirements of this Section for any contract, real property agreement, or bid package advertised and made available to the public, or any competitive or sealed bids received by the City under the following circumstances:
    1. Where the City Manager determines that there are no qualified responsive bidders or prospective contractors who could be certified as being in compliance with the requirements of this Section and that the contract or real property agreement is for supplies, a service, or a public project that is essential to the City or City residents; or
    2. Where the City Manager determines that transactions entered into pursuant to bulk purchasing arrangements through federal, State, or

regional entities which actually reduce the City's purchasing costs would be in the best interests of the City; or

3. Where the City Manager determines that the requirements of this Section would result in the City's entering into a contract with an entity that was set up, or is being used, for the purpose of evading the intent of this Section, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Section.
- 5) The waiver authority granted to City Manager in this Subsection shall be subject to the requirements that:
  1. All proposed waivers must set forth the reasons the City Manager is requesting the waiver, what steps were taken to find an entity that complies with this Subsection and why the waiver does not defeat the intent of this Section, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Chapter. Such waivers shall be filed in the Office of the City Clerk and a notice of such waiver shall be presented to the City Council on the next available City Council agenda; and
  2. For any contract or real property agreement subject to approval by the City Council, the City Manager shall include a statement in the approving resolution and related staff report whether any waiver under this Section is proposed for that contract.
- 6) Annual Reports. The City Manager shall conduct an annual comprehensive review of the administrative implementation of the provisions of this Section, including without limitation, the use of the waiver authority and the disposition of complaints of contractor non-compliance with any provision of this Section, and shall submit a report to the City Council.

#### **7.05.03 Contract provisions.**

- 1) The Director shall use contracts in standard form prepared by the City Attorney that incorporate all required standard terms and conditions for use in City contracts. Purchase order forms shall include standard terms and conditions as may be required by the City Attorney. Any variation of standard terms and conditions shall require review and approval by the City Attorney prior to their use in any procurement. All contracts shall incorporate provisions ensuring the City's ability to audit and inspect a contractor's accounting system and records, including at a contractor's place of business, and extending to any subcontractor records. Contracts shall be included in all solicitations for review during the procurement process and any requested changes to the contract language shall be resolved during the procurement process and prior to selection of a Contractor for award to maintain a level playing field for all participants.

- 2) Contract templates are available for use in preparing contracts and are preferred over vendor contracts. Staff shall always attempt to use City standard contracts first before accepting to use the vendors form agreement. Once the contract has been completed including scope and pricing, a contract abstract form shall also be completed. Once the contract and abstract are complete, they should be transmitted along with the required insurance certificate, business license and applicable quotes or documentation of the procurement process used to satisfy the procurement requirements to the Procurement and Contracting Department for review and assignment of the contract number. Once the number has been assigned and included on the contract, the contract can be routed for signature using the electronic signature process through DocuSign. DocuSign accounts and instructions are available through the Procurement and Contracting Department.
- 3) All contracts should contain a term showing how long the contract will last and a dollar value. Even on call contracts should have an estimated not to exceed value for tracking and authorization purposes. Task Orders and Release POs can be issued by the Department Director for any value as long as the cumulative total of the Release POs or Task Orders are within the total value of the contract. On Call contracts that do not have a value will require each Task Order or Release PO to be authorized by the appropriate staff member or Council depending on the signature authority delegation that is issued by the City Manager's office.

#### **7.05.04 Prevailing wages and benefits.**

Except on locally funded public projects of \$25,000 or less when the public project is for construction work, or \$15,000 or less when the public project is for alteration, demolition, repair or maintenance work, all contractors performing work on City public projects shall be subject to California Prevailing Wage Law, codified at California Labor Code section 1720 et seq., as it may be amended from time to time, or otherwise required by law. The only limitation on the provisions of this subsection shall be in the event federal funding requirements supersede state prevailing wage laws, the higher wage rates shall apply. Any Invitation for Bids for maintenance and public projects subject to the California Prevailing Wage Law shall include notification of this subsection.

#### **7.05.05 Multi-year contracts.**

- (1) Specified Period.

Unless otherwise provided by law and in accordance with this section, a contract for supplies or services may be entered into for any period of time deemed to be in the best interest of the City provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal year period at the time of award of contract. Payment and performance obligations for succeeding fiscal year periods shall be subject to the availability and appropriation of funds therefor. Any multi-year Contract exceeding

a potential term of five years, including any options to renew or extend, shall be approved by the City Council.

(2) Use.

A multi-year Contract is authorized where:

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

**7.05.06 Authorization to execute documents.**

All documents may be executed by the City Manager whenever such authorization is granted in a resolution, motion, or minute order adopted by the City Council. All Contracts shall be “approved as to form” by the City Attorney and attested by the City Clerk. Contracts which do not require City Council approval shall only be executed by City Manager, or designee pursuant to the signature authority.

**7.05.07 Authorization for the use of electronic transmissions and payments.**

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

**7.05.08 Contracting authority.**

- (1) The contracting authority applicable for the procurement of supplies and services shall be established as follows:
  - (a) Signature authority of the City Manager.
    - 1. The City Manager may approve purchase orders or enter into contracts for supplies and services in an amount not to exceed \$150,000 for supplies and services and \$220,000 for construction. The City Manager may further delegate signature authority to other

City employees as the City Manager deems appropriate not to exceed the signature authority set forth by the City Council herein.

2. The City Manager may approve purchase orders or enter into contracts for legal services required by the City Attorney where legal services will be performed under separate contract directly with the City outside of and separate from the City's agreement for Legal Services with its City Attorney, and where the cost for legal services is within the budget previously appropriated by the City Council. The City Attorney shall provide the City Council with regular updates on all matters requiring legal services and the costs associated therewith.

(b) Authority of the City Council.

The City Council shall approve purchase orders and contracts for supplies and services that exceed \$150,000, or \$220,000 for construction unless such approval is otherwise delegated to the City Manager pursuant to separate action by the City Council. The City Council may also, from time to time, change the City Manager's signature authority.

## **CHAPTER 7.06 CONTRACT CHANGES**

### **7.06.01 Contract or purchase order amendments.**

- (1) Policy.
  - (a) Modifications to a contract through a City issued written amendment documenting the changes to the contract may be utilized for purposes of: (1) adding and/or deleting quantity of items being purchased; (2) modifying unit prices; (3) modifying the scope of work or services to be provided; (4) changing the funding sources; (5) changing the performance schedule; or (6) any other change required by the City.
  - (b) Changes to the purchase order can also be issued through the City's Enterprise System to add contract amendment changes or to make needed changes to a previously issued purchase orders.
- (2) Specific Authority.
  - (a) The City staff or the City Manager may approve amendments to contracts or changes to purchase order for supplies and services if the amendments or changes are within the signature authority. Contracts and purchase order values are aggregated over the life of the agreement and therefore cannot exceed the signature authority in aggregate. For example, if a contract was signed by the City Manager up to the signature authority limit and an amendment is needed the amendment would need Council approval as the aggregate will be over the City Manager's signature. If the contract was originally approved by the City Council, staff or the City Manager could sign amendments up to the signature authority limit and anything over the City Manager's limit would then go to Council. Once Council approval has been obtained at any stage, the signature authority limit may be reapplied up to the aggregate of the amount that has not be approved by Council.
  - (b) The City Council shall approve contract amendments or purchase order changes for supplies and services where the aggregated amounts exceed the signature authority.
  - (c) During the approval of a contract or purchase order by the City Council, the City Council may delegate specific signature authority to approve contract or purchase order amendments, specific to that contract or purchase order, based on either a percentage of the original contract or purchase order amount or a specific dollar amount. If no specific signature authority is given by the City Council, the City Manager may approve contract amendments or purchase order changes for a City Council awarded contract or purchase order up to the signature authority otherwise allowed pursuant to this Chapter.

(3) Procedure

Contracts may be amended or changed through the use of formal amendments or change order documents. Departments shall contact the Purchasing and Contracting Department and/or the City Attorney's Office for any assistance needed in preparing these documents. The City Manager may approve amendments and change orders if the amendments or change orders aggregated with the original contract do not to exceed the signature authority established by the City Council, currently \$150,000 for supplies and services (non-public projects) and \$220,000 for construction projects. The City Council may delegate specific signature authority to approve amendments or change orders, specific to that contract, based on either a percentage of the original contract amount or a specific dollar amount.

**7.06.02 Change orders.**

(1) Policy.

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

(2) Specific Authority.

- (a) The City Manager may approve change orders for public projects if the amount of the change orders aggregated with the original contract does not exceed the amount identified by public contract code section 22032(b),
- (b) The City Council shall approve change orders for public projects where the amount of the change orders aggregated with the original contract exceeds the amount identified by Public Contract Code section 22032(b) currently \$220,000. During the approval of a contract for a public project by the City Council, the City Council may delegate specific signature authority to approve change orders, specific to that public project, based on either a percentage of the original contract amount or a specific dollar amount. If no specific signature authority is given by the City Council, the City Manager may approve change orders for a City Council awarded contract up to the amount identified by Public Contract Code section 22032(b) currently \$220,000, subject to an unencumbered appropriation in the funds against which such expenditure is to be charged.

(3) Exception.

Change orders in excess of the City Manager's signature authority or the amount identified by Public Contract Code section 22032(b) currently \$220,000 may be approved by the City Manager and submitted to the City Council for ratification at its next available regular meeting under the following circumstances:

- (a) The failure to immediately issue a change order may result in significant cost increases or an unacceptable delay due to work stoppage or other inefficiencies;
- (b) A regularly scheduled meeting of the City Council is not available within a reasonable period of time to sufficiently remedy the issue presented with the proposed change order; and
- (c) Funding for the change order is currently available within the appropriated budget for the public project.

## **CHAPTER 7.07 CONTRACT ADMINISTRATION**

**7.07.01 General.** - unless other contract administration is designated by the Director, the following shall apply:

- (1) All public projects shall be administered by the City Engineer or designee;
- (2) All maintenance work shall be administered by the Director of Public Works (facilities and maintenance) or designee, or such other director of the applicable using Department;
- (3) All Information Technology projects/contracts shall be administered by the Director of Information Technology.
- (4) All contracts for supplies and services, including professional services, for the Department of Aviation shall be administered by the Director of Aviation or designee;
- (5) All master contracts for supplies and services which apply to multiple using departments will be administered by the designated Director or designee;
- (6) All other contracts shall be administered by the director of the applicable using department.

### **7.07.02 Contract Administrator Responsibilities.**

- (1) Each department should have a contract administrator that is assigned to each contract that monitors the Contractor's performance to make sure that all supplies and services are received in accordance with the purchase order, contract requirements, contract term and contract pricing.
- (2) Contract Administrators shall monitor the progress of the work to make sure deliverables are received and work progresses as required.
- (3) Contract Administrators shall make sure all certificates of insurance are kept current until the expiration of the contract term.
- (4) It is the Contract Administrator's responsibility to make sure all invoices are reviewed in accordance with the contract before recommending invoices for payment.
- (5) Contract Administrators shall also make sure all contracts and corresponding purchase orders get closed out when the supplies or services have been received or completed.
- (6) Should any disputes arise on the contract, the Contract Administrator should take immediate action to resolve and if assistance is needed contact the Procurement and Contracting Department.

- (7) If the project is federal funded Contract Administrators shall make sure all of the federal requirements are met, that any reports that are needed are completed and that solid documentation is kept on the project.
- (8) The Contract Administrator shall also make sure the purchase orders and contracts are closed out and that all records are maintained in accordance with the record retention policies.

#### **7.07.03 Contract and Purchase Order Close Out.**

Once a contract or purchase order is complete, the department shall take the steps to close out the contract or purchase order and release any unused funds. For blanket purchase orders, this process should occur at the end of each fiscal year. Files should be complete and organized for record retention. For public projects, project closeout should be in accordance with the contract, including, but not limited to, filing project completion notices, obtaining from the contractor any warranties, operations and maintenance manuals and attic stock as applicable and releasing retention to the contractor as warranted prior to closing the contract.

#### **7.07.04 Acceptance of public projects; notices of completion.**

The City Manager, or designee, upon a recommendation of the City Engineer, is authorized to accept the work completed by contractors associated with a public project on behalf of the City Council and is authorized to execute and cause to be recorded notices of completion where required or authorized by law. Upon acceptance of the work by the City Manager or designee, the City Clerk is authorized to release bonds and security instruments filed with the City associated with the public project as otherwise required in the specifications issued by the City for the public project.

## **CHAPTER 7.08 DISPOSITION OF SURPLUS PROPERTY**

### **7.08.01 Surplus property disposition regulations.**

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

### **7.08.02 Disposition of surplus property.**

- (1) Each using department shall submit reporting to the Director, at such times and in such form as the Director requires, describing all property held by the using department, which the using department has determined to be surplus property. At such time that a periodic physical inventory of the property held by any using department is required by the Director, the using department shall segregate all of its surplus property and a report thereof shall be furnished to the Director for the transfer of disposition of such surplus property.
- (2) The Director, upon notification by using departments of excess City-owned surplus property, is authorized to determine whether any such City-owned property is surplus to the present or future needs of the City and will coordinate the disposition of such property. This Chapter is not applicable to personal property or money, to the extent the disposition of such is governed by other applicable law, including, without limitation, escheat pursuant to Government Code section 50050 et seq., personal property or goods pursuant to Health and Safety Code section 11000 et seq., or unclaimed property pursuant to Code of Civil Procedure section 1500 et seq.
- (3) Using departments shall provide information such as description, condition, photographs and estimated values as required by the Director to request a determination as to whether property may be declared surplus by the Director.
- (4) Each using department shall retain custody of its surplus property in such manner and at such place as the Director shall require, until their transfer or final disposition has been determined. No using department shall, in any event, permit any surplus property held by it to be loaned or donated without prior City Council approval, or destroyed or otherwise removed from the City's custody without the prior written approval of the Director.

- (5) Before disposing of surplus property, including unclaimed property delivered to the Director by the Police Department, the Director shall canvas all other using departments to determine whether the surplus property has beneficial use to another using department. If another using department requests such surplus property it may be transferred in accordance with policies and procedures established by the Director.
- (6) The Director is hereby authorized to dispose of surplus property which are not used or needed by any using department or which has become unsuitable for City use. Such surplus property may be disposed by any of the following procedures:
  - (a) Exchanged or traded in for new property;
  - (b) Sold utilizing the competitive procedures similar to those prescribed in this Title;
  - (c) Sold at public auction conducted by a professional auctioneer which the Director is hereby authorized to retain on the basis of a negotiated flat fee, hourly fee, or percentage of the amount of the sale, whichever is determined by the Director to be in the best interests of the City;
  - (d) Sold utilizing a negotiation process when the Director determines in writing that such a process is in the best interests of the City;
  - (e) Disposed of as scrap material or destroyed if no resale value exists;
  - (f) Disposed of in accordance with state or local law;
  - (g) Donated to a non-profit organization or other public entity following determination by the City Council that such donation would serve a public purpose.
- (7) Unless otherwise provided, all proceeds from sale or auction of surplus property will be deposited into the City's general fund. Proceeds from sale of enterprise, federal, grant or other special designation property will be reimbursed, less prorated selling expenses to the appropriate fund, after completion of each sale.