

# **PURCHASING and CONTRACT POLICY**



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## **I. INTRODUCTION TO PURCHASING AND CONTRACT POLICY**

The Purchasing and Contract Policy (“Policy”) represents a formalization of the City of Barstow’s (“City”) and Barstow Fire Protection District’s (“BFPD”) procedures as they relate to contracting with vendors for the provision of goods and services to the City/BFPD and its residents. It has been developed not only to document the procedures, but to also provide a tool for training staff, increasing standardization, clarifying responsibilities, and promoting consistent application of management procedures. The Policy is established by which all City and BFPD procurement is to be conducted, and to ensure compliance with applicable laws relating to the expenditure of public funds.

In developing this Policy, consideration has been given to balance the need for consistency within and among the various departments, provide management with reasonable assurances that the City/BFPD is well served by each vendor, that contracts are implemented under management’s expectations and that the provisions of the contract are complied with by the vendor.

Both the term “contract” and the term “agreement” are used throughout this document. It is intended that both terms have the same meaning.

This Policy is distributed to all departments. As with all procurement Policies, this Policy is a living document; that is, from time to time, changes will be made to improve its clarity, understanding, scope, and usability. All changes to this Policy are subject to the written approval of the City Council/BFPD Board.

The Finance Director is the City/BFPD’s purchasing agent charged with the responsibility for overseeing the City/BFPD’s purchasing system. Authority for establishing these policies and procedures is found in Chapters 2.40, 2.41, and 2.42 of the Barstow Municipal Code which sets forth, in both general and specific terms, the policies and procedures of the City/BFPD regarding purchasing. Those policies and procedures are incorporated into this Policy by this reference and provide the authority and basis on which it has been prepared. If any conflict arises between this Policy, Barstow Municipal Chapters 2.40, 2.41, or 2.42, and/or the procurement standards in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (commonly referred to as “Uniform Guidance”) as per 2 Code of Federal Regulations (CFR) 200.317 through 200.327, the conflict shall be resolved in the following order: 1) 2 CFR 200.317 through 200.327; 2) other applicable federal law for federally funded projects; 3) applicable state law; 4) Barstow Municipal Code Chapters 2.40, 2.41, and/or 2.42; and 5) and this policy.

When authorized to procure material or service, all City and BFPD employees shall follow this policy to correctly and ethically process a procurement need and ensure the efficient use of public funds.

All City and BFPD rules, regulations, laws, resolutions, and the Purchasing Ordinance are incorporated herein by reference, including the following chapters of the Municipal Code and the procurement standards in 2 CFR 200.317 through 200.327:

Chapter 2.40 – Purchasing System

Chapter 2.41 – Disqualification of Contractors

Chapter 2.42 – Awarding Public Projects

## **II. GOODS AND NON-PROFESSIONAL SERVICES – NO CONTRACT IS REQUIRED**

### **A. An Overview of the Purchasing Process**

1. The purchasing process is decentralized; with each Department/Division responsible for compliance with City policies and procedures. Purchasing responsibility and authority shall be delegated to the lowest possible level consistent with good business practice and sound financial management policy to the extent practical. The Finance Department has designated the purchase order (PO) as the primary and preferable procurement and payment method for goods and non-professional services. The PO is the main source of encumbering and procuring services and goods and serves to communicate to a vendor the City's/BFPD's terms and conditions, authorizes an encumbrance of City funds, and is a contractual agreement to order goods and services.
2. The person requesting ("Initiator") the merchandise (other than office supplies and general printing) or service seeks out potential vendors, obtains the proposals, and interacts with the vendor.
2. A Purchase Requisition is not required for City/BFPD credit card purchases or nominal purchases, defined as purchases <\$5,000. Nominal purchases under \$1,000 require approval by the CalCard holder. Nominal purchase under \$5,000, or such other limit as set in the SCHEDULE OF DOLLAR LIMITS AND APPROVALS, requires Department Manager approval and must be made with prudent judgment and via comparative pricing whenever possible. A Purchase Requisition is prepared if the item exceeds the limit as set in the SCHEDULE OF DOLLAR LIMITS AND APPROVALS and/or if the vendor requires a Purchase Order. Purchasing requirements and approval levels are documented in this Policy. The Initiator in conjunction with the Finance Director is responsible for assuring that adequate budgeted funds are available. No purchase will be approved or undertaken unless an appropriation has been

established, through either the adopted annual budget or City Council/BFPD Board approval of additional appropriations. It is the responsibility of the Department/Division to maintain budget control of their respective budgets. Ultimate responsibility for a department/division budget rests with the Department Manager/Director.

3. A Purchase Requisition is routed for approval through the appropriate levels using the City's financial system. Once approved, it is routed to the Finance Department for further action as described below.
4. After review of a properly completed Purchase Requisition by the Finance Department, including all necessary approvals, a Purchase Order will be prepared when required. This process causes the funds to be encumbered.
5. The Purchase Order is sent to the Initiator who transmits the original to the vendor.
6. The merchandise or service is received; the invoice is received, checked, and approved by the Initiator.
7. The invoice is approved either by the Initiator or by an authorized staff member, noting the Purchase Order number, if applicable, and it, along with any supporting documents are sent to the Finance Department for payment.
8. The check is prepared, signed, and sent to the vendor. The encumbrance is liquidated if a Purchase Order is issued.

B. Purchase Requisitions/Purchase Orders

1. The Purchase Requisition is designed to document vendor and ordering information, approvals, and budget compliance. Purchase requisitions are submitted through the financial system to the Finance Department for the supplies, materials, equipment, and contractual services as required for operations and for the purposes of verifying that requested expenditures are within the limits of funds appropriated.
2. A complete and accurate Purchase Requisition contains all of the information necessary to allow a Purchase Order to be generated.
3. A Purchase Requisition is required when purchasing goods or services for capital improvement projects or capital outlay which

exceeds the limit as set in the SCHEDULE OF DOLLAR LIMITS AND APPROVALS and whenever a vendor requires a Purchase Order to be issued.

4. The Purchase Requisition requires approvals as set in the SCHEDULE OF DOLLAR LIMITS AND APPROVALS.
5. If the Purchase Requisition is for a first-time vendor, a completed “Request for Taxpayer Identification Number and Certification” (IRS form W-9) must accompany the Purchase Requisition. Form W-9 can be requested from the Finance Department if needed. New vendors must fill out a W-9 and departments should forward this to the Finance Department for vendor setup. Checks will not be mailed to a new vendor until the form is completed and received by the Finance Department.
6. All vendors must comply with the Business License ordinance. Prior to contracting or using a selected vendor, the Initiator should verify the vendor has a business license, if required.
7. Grant expenditures may be subject to different and stricter rules. Grant documents are to be reviewed by Finance Department and the appropriate department director for such rules prior to preparing a Purchase Requisition.
8. The Initiator obtains certificates of insurance and additional endorsements from the vendor, as required given the nature of the contract. Copies of the certificate of insurance and additional insured endorsements are provided to the Risk Manager to ensure required compliance and appropriate coverages.

C. Internal Review

Finance Department Review: The Finance Department is responsible for administering the financial policies and procedures of the City/BFPD and provides a supportive role in assuring budget accountability. In addition, the Finance Department performs a “reasonableness review” which includes the following:

1. Review the Purchase Requisition for completeness.
2. Determination that proposals or bids have been obtained if required.
3. Determination that the appropriate approvals are included.

4. Determination that the account number charged is appropriate for the item being acquired.
5. Review for the availability of funds or determination that the Request for Budget Transfer has been completed, when necessary.
6. Approval of the Purchase Requisition, if applicable (provided Items #1 through #5 are correct), that causes the Purchase Order to be printed when required, which results in the encumbrance to be recorded in the General Ledger.

If the Purchase Requisition has missing, or what appears to be incorrect information, Finance personnel will use their judgment in handling the situation.

Department Director/Manager Review: Budget accountability rests primarily with the operating departments of the City/BFPD. In accomplishing the programs and objectives for which the budget was authorized, department directors/managers are responsible for ensuring that their respective budgets stay within the prescribed funding levels.

D. Receipt of Merchandise or Service

1. The initiating department is responsible for receiving incoming goods or services, inspecting them as to quality and condition, and confirming the quantities received by counting, measuring, or weighing. The receipt of goods or services must also be recorded in the City's financial system.
2. Documentation noting receipt and inspection of the merchandise should accompany the invoice when it is sent to the Finance Department for payment.
3. If there is a partial delivery, its receipt should be documented and a copy of the documentation should be attached to the invoice for payment.
4. If merchandise is not acceptable, the Initiator will arrange for a replacement or return for credit for the defective items. The Finance Department should also be notified.
5. Many vendors will not give credit for returned merchandise unless a return authorization is obtained prior to returning the items. The vendor should be contacted for their specific requirements to expedite the return and credit or replacement.



6. If the Purchase Order has been issued for services, the Initiator will approve the invoice for payment denoting that the services were provided in a satisfactory manner.

### **III. CONTRACTS FOR NON-PROFESSIONAL SERVICES, EQUIPMENT, AND SUPPLIES: PURCHASING REQUIREMENTS, EXCEPTIONS, AND PROCEDURES**

Non-professional services, equipment, and supply purchases have the same purchasing requirements and levels of approval. Non-professional services include those activities which do not require a high degree of professional certification such as maintenance services or other services which do not require specialized expertise or unique skills. When purchasing non-professional services, equipment, and supplies, the contract is awarded to the lowest responsive and responsible vendor, subject to the exceptions in III-A below. When purchasing computer equipment (hardware and software), it is required that the Information Technology Manager or his/her designee be contacted for assistance and approval. All public works projects for \$1,000 or more must comply with the California Department of Industrial Relations bid noticing and contract reporting requirements as defined by Labor Code sections 1771.1 and 1773.3, and other applicable laws.

#### **A. Exceptions**

The City does not need to obtain proposals or bids for non-professional services, equipment, and supplies if one or more of the following conditions are met:

1. The equipment or supplies is unique because of their quality, durability, proprietary nature (such as software licenses), availability, or fitness for a particular use, or where a warranty, guarantee, or other assurance would be voided. However, if the price exceeds the City Manager limit as set by City Council/BFPD Board, the City Council/BFPD Board must approve the purchase.
2. Sole source purchases are purchases of supplies, services, and equipment that are exempt if they are one-of-a-kind or unique and can be obtained from only one vendor. Any sole source purchase shall be made within the expenditure limits set by adopted administrative regulations.
3. The City Manager determines that emergency circumstances require the immediate purchase of the services, equipment, or supplies pursuant to Barstow Municipal Code Section 2.40.110 or Section 2.42.070.

4. An open purchase order where the services, equipment, or supplies are provided by an independent contractor who has a contract with the City/BFPD to provide labor and materials for projects other than a public works project (i.e., office supply contract which is in place for one year and purchases of supplies are made periodically based on the contract) pursuant to Barstow Municipal Code section 2.40.110.
5. Work performed by the City/BFPD with its own employees is exempt pursuant to Barstow Municipal Code section 2.40.110.
6. Where advantageous to the City/BFPD, purchases made under a cooperative purchasing program, utilizing purchasing agreements maintained by the state, county, or other public agencies are exempt from this Policy, subject to confirmation by the Risk Manager and the City Attorney the proposed cooperative purchasing program complies with applicable law.

B. The Informal Purchasing Process (Other than Public Works Projects)

1. Responsibilities

The responsibilities for completion of the informal purchasing process pursuant to Barstow Municipal Code section 2.40.130 are shared by the City Manager, Assistant City Manager, Finance Director, and the Initiator.

*Initiator:*

- a. Initiator determines that sufficient funds are available for the proposed purchase prior to initiating the informal purchasing process.
- b. Solicit at least three proposals by telephone or written request from prospective vendors. For informal purchases below the threshold set in the SCHEDULE OF DOLLAR LIMITS AND APPROVALS, the Assistant City Manager can approve the contract with prudent judgment and via comparative pricing whenever possible, without the necessity of securing three proposals.
- c. Receive the proposals and prepare a proposal summary.
- d. Obtain authorization from the City Manager, Assistant City Manager, and the Finance Director, as applicable, per the SCHEDULE OF DOLLAR LIMITS AND APPROVALS.

- e. Upon approval, award to the lowest priced responsive, and responsible vendor, consistent with quality and delivery requirements.
- f. Prepare the contract in conformance with the City professional services agreement (PSA) template and submit it to the City Attorney for review and subsequent approval before proceeding. Upon approval by the City Attorney, prepare two copies of the approved PSA for execution by the City/BFPD and its vendor. This will provide an original copy for the City/BFPD and the vendor.
- g. Submit the record of orders and proposals to the City Clerk who shall keep a record for six months.
- h. Obtains certificate of insurance and required additional insured endorsements from the vendor. Copies of the certificate of insurance and additional insured endorsements are provided to the Risk Manager to ensure required compliance and appropriate coverages.

*City Clerk:*

- a. Maintain the record of orders and proposals for a period of six months after placement of the order. This record, while so kept, shall be open to public inspection.
- b. Provide a copy of the contract and certificate of insurance to the Initiator, Risk Manager, and Finance Department. An original copy of the contract is sent to the vendor and one original copy is also retained in the contract file.

C. The Informal Purchasing Process (Public Works Projects)

A list of contractors shall be developed and maintained in accordance with Public Contract Code section 22034. Such a list shall be maintained by the City Manager or his/her/their designee.

When a public contract is to be bid pursuant to the procedures in section 2.42.040 of the Barstow Municipal Code, a notice inviting informal bids shall be mailed to all construction trade journals as specified by the California Uniform Construction Cost Accounting Commission in accordance with Public Contract Code section 22036.

As an option, notification may also be provided to contractors on the list created above for the category of work being bid, and to any additional contractors and/or construction trade journals.

Also, if the product or service is proprietary in nature such that it can be obtained only from a certain contractor (s), the notice may be sent exclusively to such contractor or contractors.

All mailing of notices to contractors and construction trade journals shall be completed not less than ten (10) calendar days before the bid is due.

The notice inviting informal bids shall describe the project in general terms, and how to obtain more information about the project, and state the time and place for the submission of bids.

The City Manager is authorized to award bids up to limits in the attached SCHEDULE OF DOLLAR LIMITS AND APPROVALS. Bid award for projects greater than the City Manager's limit as set by City Council/BFPD, must be awarded by the City Council/BFPD Board. The contract shall be awarded to the lowest responsible bidder.

If no bids are received (either by informal or formal bid), the project may be performed by City/BFPD employees, or by negotiated contract. The City may also reject all bids and rebid all or a part of the project, subject to applicable law.

D. The Formal Purchasing Process

1. Responsibilities

The responsibilities for completion of the formal purchasing process pursuant to Barstow Municipal Code section 2.40.140 are shared by the Finance Director and the Initiator. These responsibilities apply to any formal purchasing process, with additional requirements applicable to any formal bidding process for a public works project.

*Initiator:*

- a. In conjunction with the Finance Director, determines that sufficient funds are available for the proposed purchase prior to initiating the formal proposal or bid process.

- b. Prepares a notice inviting sealed proposals or bids. The form contract for the proposal or bid package is prepared by the Initiator.
- c. Within the time period set forth in Barstow Municipal Code section 2.40.140 publish the notice of bid at least once in a High Desert Local Newspaper or other Barstow newspaper with the widest circulation.
- d. If no bids are received, the City Clerk shall publish the notice of bid within the time period set forth in Barstow Municipal Code section 2.40.140 in a trade or other publication likely to be received by prospective bidders.
- e. Reviews qualifications and references of the lowest priced responsible and responsive bidder(s).
- f. After the opening of sealed proposals or bids by the City Clerk, negotiates the contract with the vendor selected as the lowest responsible and responsive bidder, as approved by the applicable City official per the SCHEDULE OF DOLLAR LIMITS AND APPROVALS. Sends request for the contract to Initiator who coordinates City Attorney approval of the contract.
- g. Prepares the agenda report for presentation to City Council/BFPD Board, which includes the proposed contract, and places the contract on City Council/BFPD Board agenda for approval.
- h. Obtains certificate of insurance and required additional insured endorsements from the vendor. Copies of the certificate of insurance and additional insured endorsements are provided to the Risk Manager to ensure required compliance and appropriate coverages. If required, also obtains payment/performance bonds from the vendor and verifies that the surety is admitted in California. Also verifies the contractor's current license in California where required under the contract. Sends these documents to the City Clerk and three original contracts signed by the vendor, to the Initiator. The Initiator coordinates the execution of the contract with the City Clerk.
- i. After the City Clerk has completed the execution of the contract, prepares, and processes the Purchase Requisition if the vendor requires a Purchase Order.

- j. Deals with the vendor on a day-to-day basis for completion of the contract and processing of payments.
- k. Coordinates City Attorney approval of contracts.

*City Clerk:*

- a. Assists as described above in the publication process before the scheduled proposal or bid opening date.
- b. Opens the proposals or bids at the time and place stated in the public notice.
- c. Prepares a tabulation of all proposals or bids and makes the tabulation available for public inspection during regular business hours for at least thirty (30) calendar days after the proposal or bid opening.
- d. Notifies vendors whose proposals or bids were not accepted and returns bid bonds.
- e. Maintains copies of the losing proposals or bids in accordance with the City/BFPD's records retention schedule.
- f. Obtains the City Manager's or Mayor's signature on the contract with an attest by the City Clerk and approval as to form by the City Attorney.
- g. Sends a copy of the contract and certificate of insurance to the Initiator, Risk Manager, and Finance Department. The City Clerk sends an original to the vendor and retains one original contract on file.
- h. Monitors contract expirations and follows up with Initiator as appropriate.

*Risk Manager:*

- a. Monitors certificates of insurance and follows up on expirations of coverage.

2. Notice Inviting Sealed Proposals or Bids

The notice should include the following:

- a. General description of the non-professional services or item to be purchased.
- b. Statement indicating where proposal or bid forms and specifications can be obtained.
- c. Statement specifying the date, time, and place for the opening of proposals or bids.
- d. Statement describing the bid security required, if any. (Example: A bid bond equal to 10% of the amount of the bid.)
- e. Statement describing payment/performance bond requirements if the vendor is selected.

F. The Formal Purchasing Process--Notice of Inviting Bids & Awarding Formal Bids (Additional Requirements for Public Works Projects):

In addition to the above requirements, the following apply to public works projects per Sections 2.42.050 and 2.42.060 of the Barstow Municipal Code and the Uniform Public Construction Cost Accounting Act, Public Contract Code section 22000, et seq...

Notices inviting bids shall state the time and place for the receiving and opening of sealed bids and distinctly describe the project.

The notice shall be published for at least fourteen (14) calendar days before the opening of bids in a newspaper of general circulation, printed and published in the City, or otherwise comply with the requirements of Public Contract Code 22037.

The notice inviting formal bids shall also be sent electronically, if available, by either facsimile or electronic mail and mailed to all construction trade journals specified in Public Contract Code 22036. Such notice shall be sent at least 15 calendar days before the date of opening the bids. The City/BFPD may provide additional notice.

The City/BFPD may reject any bids presented, if the City/BFPD, prior to rejecting all bids and declaring that the project can be more economically performed by its employees, furnishes a written notice to the apparent low bidder. Please see Section 2.42.060 of the Barstow Municipal Code for specific procedural details.

If a contract is awarded, it shall be awarded to the lowest responsible bidder. If two bids are the same, either may be selected.

If no bids are received (either by informal or formal bid), the project may be performed by employees, or by negotiated contract. The City may also reject all bids and rebid all or a part of the project, subject to applicable law.

G. Selecting a Vendor and Review of Proposals or Bids

The City/BFPD's policy is to obtain non-professional services, equipment, and supplies from the lowest responsible, responsive bidder. Except for public works projects, the criteria for determining the lowest priced responsible, and responsive bidder shall include, but not be limited to, the following:

1. Cost to City/BFPD.
2. Ability, capacity, and skill.
3. Ability to meet time requirements.
4. Character, integrity, and reputation.
5. Previous experience with the vendor.
6. Responsiveness of the bid.
7. Sufficiency of financial resources needed to perform. (Note security and bid bond requirements when formal bids are received.)
8. Ability to provide future maintenance and service, if necessary.

H. Contract Award

Contracts shall be awarded in the manner described in this policy and Chapter 2.40 of the Barstow Municipal Code as set in the attached SCHEDULE OF DOLLAR LIMITS AND APPROVALS

I. Change Orders

- a. A contract for non-professional services, equipment, supplies, or construction contracts within the City Manager's limit or less awarded pursuant to Chapter 2.40 of the Municipal Code, may be amended by the issuance of a change order or written contract



amendment, provided the change which is the subject of an amendment is reasonably related to the scope of the original contract. Any change order or amendment may be approved by the City Manager's limit, provided the aggregate amount of all changes to a particular contract, including the change order under consideration, does not exceed 10% of the original contract cost. Any change order or amendment in the amount greater than the limit of the City Manager or any change order which, when considered with the aggregate amount of all other changes to a contract, exceeds 10% of the original contract cost, shall be approved by the City Council/BFPD Board, unless otherwise specified by the City Council/BFPD Board at the time of approval of the original contract.

- b. A contract for a public works project awarded pursuant to Chapter 2.42 of the Municipal Code may be amended by the issuance of a change order, provided the change which is the subject of amendment is reasonably related to the scope of the original contract. The requesting department will maintain control relative to the scoping, estimating, and negotiation of the proposed change(s) and the Finance Director will certify the availability of funds for the proposed change in the event that the change order increases the contract cost. Any change order with a total cost that does not exceed 10% of the original contract amount may be approved by the City Manager, provided the aggregate amount of all changes to a particular contract, including the change order under consideration, does not exceed 10% of the original contract cost. Any change order which, when considered with the aggregate amount of all other changes to a contract, exceeds 10% of the original contract cost, shall be approved by the City Council/BFPD Board, unless otherwise specified by the City Council/BFPD Board at the time of approval of the original contract.

#### **IV. PROFESSIONAL SERVICES: RFP/RFQ REQUIREMENTS, EXCEPTIONS AND PROCEDURES**

##### **A. Introduction to Requirements for Professional Services**

Professional services are those activities to be performed by specially-trained persons or firms who provide services in connection with financial, economic, accounting, engineering, administrative, or other matters involving specialized expertise or unique skills. The City shall award professional services contracts to the most qualified, experienced, and suitable bidder, taking into account demonstrated competence, professional qualifications, price, familiarity with the City, experience and suitability for meeting the City's needs, and the other factors stated in each RFP or RFQ

as applicable. The price, however, should be reasonable. A Request for Proposal ("RFP") or Request for Qualifications ("RFQ") is required if the service exceeds the amount on the attached SCHEDULE OF DOLLAR LIMITS AND APPROVALS. All consultants must execute the City/BFPD's professional services agreement template unless approved otherwise by the City Attorney. Any professional service agreement submitted to the City Council/BFPD Board for approval must provide sufficient background analysis to support the recommendation. In the event of a vacancy of a City/BFPD employee position previously approved by the City Council/BFPD Board, the City Manager shall have the authority to award any and all contracts for the same or substantially similar services to independent contractors or consultants. Each agreement needs to be properly executed and held on file with the City Clerk.

B Engineering and Design Contracts - Federally Funded

For engineering and design contracts that are either federally funded or funded through the State Transportation Agency, Caltrans, the City/BFPD do hereby adopt 23 CFR, 172.3 by reference and shall follow the procurement procedures detailed in Caltrans Local Assistance Procedures Manual Chapter 10 "Consultant Selection" and any similar, applicable federal procurement regulations standards, for federally funded projects, together with applicable law.

C. Phase I – Development and Approval

This section covers the actions from the determination of the need for service to a recommendation of the best-qualified vendor.

1. Method of Service Delivery

The very first step in the process is to determine if the service should be provided by the City/BFPD or is the responsibility of another agency or private entity. Factors to consider for a mandated program are: if the service can be provided by another entity, if it is a budgeted service, and if City/BFPD management, and the City Council/BFPD Board authorized the provision of the service, etc.

The next step is to determine whether the service should be provided by a vendor through a contract or by City/BFPD employees. This method has been proven to provide greater flexibility to the City/BFPD when increasing or decreasing the service level, changing the service delivery method, changing the service provider, etc. However, for each new proposed service or significant expansion of an existing service, one needs to determine

the most cost-effective method (contract or employee) to deliver the service.

2. Scope of Work

The scope of work outlines the tasks and duties to be performed by the vendor. It is also one of the key elements by which the performance of the vendor will be measured. The scope of work is similar to the job description for an employee.

After the scope of work has been drafted by the department that will supervise and evaluate the service, the department should then review the scope from two different viewpoints. First, the vendor should understand what needs to be done and how to tell if the job has been done well. Secondly, the scope should be sufficiently detailed so the vendor can do the work without needing to ask a lot of questions and described it in such a way that staff can evaluate the vendor's performance. Extra time spent in developing the scope of work will result in an improved analysis of RFP/RFQ responses, contract administration, and performance evaluation.

3. Prequalification

Depending on the department in question and prior to issuing an RFP, a department may conduct a prequalification of professionals for anticipated services. Prequalification of professionals can streamline the process of evaluating and selecting professionals during a future RFP process by categorizing prequalified professional services and professional service firms. After the prequalification of professionals pursuant to this process, notices for a subsequent RFP process in a particular category of services are sent only to the list of prequalified consultants. The qualification of prequalified consultants in areas relating to a specific project is rated later in connection with the RFP for that particular project. The prequalification process should include a review of the statement of qualifications, interviews, if necessary, and reference checks.

4. Request for Proposal

An RFP should be prepared in accordance with the SCHEDULE OF DOLLAR LIMITS AND APPROVALS and should include the following at minimum: the scope of work, the deadline for submitting responses, and a few areas of optional wording. These need to be completed before the RFP is considered to be complete. In addition, the City's professional services agreement (PSA) template must be attached to the RFP. When the service is expected

to exceed the City Manager signing authority as set forth in the SCHEDULE OF DOLLAR LIMITS AND APPROVALS, the department supervising and evaluating the proposed service prepares a report to the City Council/BFPD Board. The agenda report is to include the entire RFP as an attachment.

The project/contract should be approved by the City Manager and the City Attorney prior to the development of the RFP and at the completion of the RFP. The entire modified RFP would be attached to the report to the City Council/BFPD Board.

If the department is issuing an RFP to a list of prequalified vendors (from the RFQ process), the department should include in the agenda report to City Council/BFPD Board the results of that prequalification and the list of prequalified consultants. The RFP will require information relating to the professional service provider's qualifications as they relate to the particular project, in addition to the prequalification information. If no prequalification has occurred, the RFP will require general and project-specific qualifications.

5. Requesting Authorization-City Council/BFPD Board to Issue RFP

When the service is expected to require City Council/BFPD Board approval, the City Council/BFPD Board must authorize the issuance of an RFP. This report should include a description of the service; scope of service; justification, especially for a new service; budget amount, if any; estimated cost of the service; key dates in the RFP, and the proposed term of the contract. The changes to it need to be stated along with the proposed RFP attached to the agenda report.

C. Phase II - Selection of Vendor

1. Solicit Proposals From Qualified Vendors

The RFP is to be distributed to vendors after approval. There are a variety of methods to use in developing a list of vendors to receive the RFP.

In some instances, a department may decide to establish a list of prequalified vendors. In those instances, an RFP is distributed to prequalified vendors at the time the service is required.

In all other cases, a notice of the RFP shall be disseminated by the broadest means possible. For example, notices should be mailed to previous vendors used by the City/BFPD (provided their

performance meets the requirements of the City/BFPD), firms shown in listings or ads in professional journals/magazines, listings or ads in *Western Cities Magazine*, those who have sent a letter to the City/BFPD or otherwise contacted the City/BFPD. A copy of the RFP is then mailed to each prospective vendor. A list of those who were sent the RFP should be maintained. This not only documents those who were sent the RFP, but also those who need to be contacted if there are clarifications and/or changes to the RFP.

The RFP should require the responders to state any requested exceptions or changes to the RFP. Exceptions or changes not identified in the response to the RFP will not be considered by the City/BFPD.

## 2. Review Proposals and the Select Best Vendor

Promptly after the deadline for submitting proposals, either the City Clerk or a designated representative opens them. They are generally submitted in two parts; the main or technical proposal and the cost proposal. If a cost proposal is submitted in a separate envelope, this envelope remains sealed until the qualitative review is completed.

The City Clerk retains one copy of the proposal from each vendor. The department that will supervise and evaluate the service takes all other copies and begins the evaluation process. This process includes the following:

### a. General Review

A Selection Committee, comprised of at least three members of City/BFPD employees, will be formed by the Initiator, or his or her designee, to determine if the vendor submitted all required items, completed their response in the format specified in the RFP, and exceptions or changes to the RFP and/or Agreement, if any, noted by the vendor. If the vendor did not submit all required items or respond in the specified format, the vendor can be eliminated from further consideration. Additionally, based on the exceptions or changes to the RFP and/or Agreement taken, the vendor may also be eliminated from further consideration.

### b. Qualitative Evaluation

A detailed analysis of each vendor's qualifications and proposal is conducted by the approved multi-department Selection Committee (at least three). One of the panelists

must be from the department issuing the RFP. Each person selected to perform the review is to thoroughly read the proposals and score each firm considered for a qualitative review pursuant to the Project Proposal Evaluation Criteria in the approved RFP, which includes:

- i. Mandatory elements (licenses, absence of conflicts of interest, letter of transmittal, and conformance to RFP instructions);
- ii. Expertise and Experience (expertise, experience and past performance on comparable engagements, quality of personnel and support, references, understanding of work to be done, and firm's statement regarding qualifications);
- iii. Allocation of Resources (appropriateness of qualifications and proposed level of services to the requirements of the City/BFPD, distinguishing features, skills, and/or services); and
- iv. Scope of Work (responses to all items and additional information, prioritization of tasks in the scope of services, appreciation of the difficulty and complexity of tasks in the scope, and "fit" between the firm's qualifications and City/BFPD's needs).

The department director/manager appoints one person on the Selection Committee as the coordinator. It is the responsibility of the coordinator to call references, including those listed as clients lost, and to combine the scoring of each member of the Selection Committee performing the review. The coordinator will then average the scores of each vendor, based on the scoring provided by each member of the Selection Committee. The potential vendors and their respective average scores will be ranked.

c. Oral Presentations/Interview

The Selection Committee will request all firms with a minimum score of 70 points to make oral presentations. Such presentations will provide firms with an opportunity to answer any questions the Selection Committee may have on the firm's Project Proposal.

d. Review of Cost Proposal

The cost proposal is opened for each vendor who has received a score of at least 70 points after the qualitative review and the oral presentation. The cost proposal of the top-ranked vendor is evaluated to determine if it is reasonable. The primary tests of reasonableness are a comparison of the cost proposal to the City/BFPD's estimated project cost and the City/BFPD's project budget. Additional factors include prior experience, comparative project costs in neighboring or other relevant communities, professional judgment, and comparison to the costs submitted by qualified vendors for the proposed project.

Prior to submitting an agenda report to City Council/BFPD Board, the department shall also negotiate contract terms with the selected vendor and include such terms in the draft Agreement submitted to City Council/BFPD Board.

- e. Contract Award. Contracts shall be awarded per the attached SCHEDULE OF DOLLAR LIMITS AND APPROVALS.
- f. Contract Execution by Selected Vendor

The professional services agreement template, which is an exhibit to the RFP, is completed by the Department, based on the contents of the selected vendor's proposal and it is approved by the City Attorney. The Agreement (three originals) is then submitted to the vendor for signature. Agreements requiring City Council/BFPD Board approval must be executed by the vendor prior to submission of the agenda report.

3. Report to the City Council/BFPD Board

Once the vendor has been selected, the City Council/BFPD Board approval before contract execution by the City/BFPD is required per the SCHEDULE OF DOLLAR LIMITS AND APPROVALS. This is accomplished by the responsible department preparing an agenda report in accordance with the Standardized Agenda Format. This agenda report should include a description of the service, the cost of the service and the City/BFPD 's budget amount or the requested appropriation amount, a description of the process used in selecting the vendor, results of the reference checks, ranking of the vendors, the cost proposal for each qualified vendor, the total number of RFPs mailed, and the total number of vendors submitting proposals. The agenda report should allow the City Council/BFPD Board to

determine why the recommended vendor was selected. The agenda report also needs to include a statement that the City/BFPD's standard form Agreement was used or, if not, a discussion of the changes to it. Any changes to the standard form Agreement must be submitted in the red-line form to the City Attorney for review and approval *prior* to scheduling the item for City Council/BFPD Board consideration.

The City Council/BFPD Board retains the authority (1) to approve or reject the staff recommendation, (2) to reject any or all proposals, (3) to instruct staff to re-negotiate all or any portion of the proposed contract, (4) to seek supplemental information from any or all participating firms, or (5) to instruct staff to re-evaluate any staff determination made in the RFP process based on criteria contained in this Policy as articulated by the City Council/BFPD Board.

4. Contract Execution

After approval by City Council/BFPD Board, three copies of the Agreement are signed by either the City Manager or the Mayor. The three originals are provided to the City Clerk. The City Clerk sends one original to the vendor and one to the department administering the contract and a copy to the Finance Department.

a. Vendor Signature Requirements

**Corporation:**

Two signatures are required, one from each category as follows:

- (1) Chairman of the Board, President or Vice President; and
- (2) Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer.

**Limited Liability Company:**

Two signatures are required, one from each category as follows:

- (1) Chairman of the Board, President or Vice President; and
- (2) Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer.

**Partnership:**

One signature from any partner of the Partnership.

**Limited Partnership:**

One signature from one of the General Partners of the Limited Partnership.

**Sole Proprietorship:**



From the individual doing business under their own or a fictitious name, with confirmation of a lawfully filed fictitious business name.

5. Contract Addendum

Any written amendment to the contract Scope of Work with a total cost in the amount within the City Manager's limit may be approved, provided that the aggregate amount of all amendments to a particular contract, including the amendment under consideration, does not exceed 10% of the original contract cost. Any written amendment in an amount exceeding the City Manager's limit or any amendment which, when considered with the aggregate amount of all other amendments to a contract, exceeds 10% of the original contract cost, shall be approved by the City Council/BFPD Board, unless otherwise specified by the City Council/BFPD Board at the time of approval of the original contract.

A written amendment to the contract scope of work may be allowed if the addendum or amendment is related to the current scope of work. If the work is for an unrelated project, contract procurement procedures should be followed.

D. Phase III - Contract Operation

1. Internal Approvals

Prior to the vendor beginning the work, the City/BFPD must verify that the required elements of the Agreement are in place. The elements would include insurance and any other requirements that are in the Agreement. Once all contract requirements are resolved, the department issues the vendor a notice to proceed. In instances where a purchase order is required, a purchase requisition is to be prepared by the department administering the contract and submitted to the Finance Department.

2. Administration of Contract

The Administration of the contract is vital to the City/BFPD. Elements of administration include:

- a. **Periodic Performance Review:** Each vendor should receive a periodic performance review. Vendor's performance should be reviewed internally by the initiating department in conjunction with each request for payment. When the vendor's performance fails to meet the terms of the RFP or agreement, the department should refer to Barstow Municipal Code Section 2.41.

- b. Insurance Requirements: The Risk Manager in conjunction with the initiating department, maintains a system that verifies that the appropriate insurance coverage is secured by the vendor and maintained throughout the term of the contract. Prior to the expiration of the insurance, the vendor is notified of the pending expiration. If appropriate documentation has not been received prior to expiration, the Risk Manager and/or responsible department notifies the vendor. In the event, the vendor fails to provide updated insurance policy information and the required insurance expiration has exceeded thirty (30) days, payments to the vendor may be withheld until appropriate insurance documentation is in place.

E. Phase IV - Contract Completion/Extension

At least two (2) months prior to the contract termination date, the department administering the contract shall prepare an agenda report to the City Council/BFPD Board regarding the contract and related services. The agenda report requests authorization to issue an RFP including the scope of services and key dates to be included in the RFP, or the department may recommend continuing with the same vendor beyond the contract termination date. The agenda report must contain the reasons/justification for continuing with the vendor.

If the department recommends continuing with the same vendor, Council/BFPD Board approval is required for a one-year contract extension with a maximum of two one-year extensions. The maximum term for any software agreements is up to five (5) years. Two-month Council/BFPD Board notification is required when the initial term will expire and the software agreement will continue on an automatic extension basis from year to year.

**V. SPECIAL PURCHASING TRANSACTIONS**

A. Organic Materials

Addendum A: SB 1383 Recovered Organic Waste Procurement Policy shall be incorporated into this document and in the event of a conflict between or among the terms of the Addendum, the higher standard or greater requirement shall prevail.

B. Office Supplies

In general, all Departments will order their own standard office supplies utilizing the company offering the best price, delivery, and service. Staff is encouraged to consider and use local vendors. The Department should use their City/BFPD-issued credit card for amounts per the attached schedule, SCHEDULE OF DOLLAR LIMITS AND APPROVALS, charging it to their department's office supply budget category. Central Services will be coordinated between the Finance Department and the City Clerk's Office.

### C. Business Cards

Business cards must conform to the City/BFPD/BPD standard logo and title of the employee. The design must be approved by the respective department director/manager. Any exceptions must be approved by the City Manager. Requests are to be given to local Barstow vendors whenever possible. Delivery times can vary.

### D. Petty Cash Reimbursement

The Petty Cash fund is used to reimburse purchases that were originally paid out-of-pocket by a City/BFPD official or employee. Reimbursements will either be paid in cash or check/ACH, depending on the amount. If the amount is \$100.00 or less, the reimbursement will be paid in cash. Amounts larger than \$100.00 will be paid by check. The petty cash fund is maintained by the Finance Department, and reimbursements are processed through the Clerk/Cashier/Receptionists.

#### 1. Petty Cash Procedures (\$100.00 or less)

The Expense Reimbursement Form should be coded with appropriate account numbers. Petty cash requests are submitted to the Finance Department for review, then forwarded to the Cashier for payment.

#### 2. Petty Cash Procedures (over \$100.00)

Completion of an Expense Reimbursement Form is required, including the account number to be charged, description, date requested, and amount. Supporting documentation should be attached to the check request and department director approval is required. The documents are submitted to Accounts Payable for processing via check/ACH.

## **VI. LOCAL VENDOR PREFERENCE**

Pursuant to Barstow Municipal Code section 2.40.180, and as permitted under 2 Code of Federal Regulations (CRF) 200.317 through 200.327 (Uniform Guidance) and other applicable law, it is the City/BFPD's policy to encourage the purchase of supplies, services, and equipment from vendors located within the boundaries of the City/BFPD. Local vendors are individuals, businesses, partnerships, or corporations which maintain a place(s) of business located within the limits of the City of Barstow, which have a current City of Barstow business license.

The City Council/BFPD Board finds and declares all of the following with respect to the provision of a local vendor preference:

Qualified local vendors bidding on the purchase of services, supplies, and equipment, and meeting the above criteria will receive a 10% preference. The City/BFPD will also encourage local vendors by seeking to develop local vendor outreach and education programs and involving local vendors to the maximum extent possible. The local vendor preference shall not apply to those contracts where State or Federal law, or other laws or regulations precludes such a preference.

Bid documents on public works projects will include language requiring bidders to circulate the opportunity to subcontract for components of the project to local businesses and demonstrate that they have made a reasonable effort to inform local businesses of the opportunity. Local vendor preference may not apply to those projects

#### **VII. CREDIT CARD AND/OR PURCHASING CARD PURCHASES**

The City/BFPD uses a variety of methods for the purchase of goods and services and recognizes that in certain circumstances the issuance of a City/BFPD credit card will allow for efficient, cost-effective, and secure purchasing within the Policy of the program.

For specific details on processes, acceptable use, necessary forms, and all other details of the program see the City/BFPD Board Policy Memorandum and/or Purchasing Card Policy. City/BFPD credit cards are under no circumstances to be used for personal purchases, even if the purchase is reimbursed.

#### **VIII. PURCHASES WITH FEDERAL GRANT FUNDS**

The following section is being added to the Purchasing and Contract Policy to establish standards for the procurement of supplies, equipment, real property, and other services with federal funds as required by 2 CFR 200.317 through 200.327 to comply with the Uniform

Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards commonly called “Uniform Guidance”.

A. Purchases Using Federal Grant Funds

Follow applicable state statutes and rules and local policies only to the extent that those statutes, rules, and policies do not conflict with the Uniform Administrative Requirements (UAR) outlined below. 2 CFR 200.318(a)

B. Contract Performance and Payments

Contract performance and payments must be monitored during the course of the contract. 2 CFR 200.318(b).

C. Written Standards of Conduct and Conflict of Interest

1. No employee, officer, or agent must participate in the selection, award, or administration of a contract supported by a federal award if he or she (the employee, officer, or agent), any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ
  - the employee, officer, or agent;
  - an immediate family member of the employee, officer, or agent; or
  - the partner of the employee, officer, or agenthas a financial or other interest in or will receive a tangible personal benefit from a firm considered for the contract. Officers, employees, and agents must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. 2 CFR 200.318(c)(1)

D. Before Starting a Procurement Process

1. Review of All Proposed Procurements

Review all proposed procurements to avoid unnecessary/duplicative purchases of equipment, supplies, and services. Consider whether it will it save money/time to consolidate procurements; if so, consolidate. If relevant, consider whether a lease or a purchase is the most economical approach (and document how you came to your decision). 2 CFR 200.318(d).

2. State or Local Agreements / Competitive Bidding Group Purchasing Programs

Look for state or local intergovernmental agreements (such as competitive bidding group purchasing programs, state term contracts, GSA contracts, or formal intergovernmental agreements) -but get awarding agency approval before using one of those agreements. 2 CFR 200.318(e).

E. Purchasing Guidelines

1. Documentation

Keep records showing:

- Basis for vendor selection
- Documentation of lack of competition when competitive bids or offers are not obtained
- Why you chose a specific procurement method;
- The basis for your award (why did you select the contractor or vendor you selected? Why did you reject the others?);
- The basis for the contract price; and
- Any other significant decisions that were a part of the procurement process.

2. Award Only to “Responsible Contractors Possessing the Ability to Perform Successfully Under the Terms and Conditions of a Proposed Procurement.”

In determining which contractors are responsible, you must consider “matters such as contractor integrity, compliance with public policy, a record of past performance, and financial and technical resources.” 2 CFR 200.318(h). (Note: This means that your solicitation documents must ask for information that will allow you to assess whether a contractor is “responsible.”)

3. Keep Records to Detail the History of Each Procurement.

These records must include, at least, records showing your rationale for (1) the method of procurement, (2) the selection of contract type, (3) contractor selection or rejection, and (4) the basis for the contract price. 2 CFR 200.318(i)

4. Prohibit Awarding of Time and Materials Type Contracts

Prohibit awarding time and materials type contracts unless (1) you have determined that no other contract is suitable and (2) the

contract includes a ceiling price that the contractor exceeds at its own risk.

The UAR defines a time and materials type contract as “a contract whose cost to a non-Federal entity is the sum of: (1) the actual cost of materials; and (2) direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.” 2 CFR 200.318(j). For the purposes of this policy, the term “non-Federal Entity” means the City of Barstow.

5. Restricting Competition.

The following actions on procurements funded with federal grants are prohibited:

- a. Allowing contractors that develop or draft specifications, requirements, statements of work, invitations for bids, or requests for proposals to compete for such procurements;
- b. Placing unreasonable requirements on firms for them to qualify to do business (if you’re not sure if a requirement is unreasonable, ask the Federal awarding agency);
- c. Requiring unnecessary experience or excessive bonding;
- d. Permitting noncompetitive pricing practices between companies;
- e. Awarding contracts to consultants on “retainer” contracts;
- f. Permitting organizational conflicts of interest
- g. Specifying a brand name product without permitting an equal product to be offered, and without describing the performance requirements that must be met for a product to qualify as an equal;
- h. Acting arbitrarily in awarding contracts. 2 CFR 200.319(a).

5. Local Vendor Geographic Preference

Prohibit awards based on local geographic preferences, except where applicable Federal statutes expressly mandate or encourage geographic preference. However, geographic location may be selection criteria when awarding contracts for architectural or engineering services, provided that using such criteria “leaves an appropriate number of qualified firms” to compete for the work, “given the nature and size of the project.” 2 CFR 200.319(b).

6. All solicitations must identify: (1) all requirements that the offerors must fulfill and (2) all other factors to be used in evaluating bids or proposals. 2 CFR 200.319(c)

7. Use of Prequalified Lists of Entities or Products

If you use prequalified lists of entities or products when procuring goods or services, make sure those lists are “current and include enough qualified sources to ensure maximum open and free competition,” and do not preclude other potential entities or products from participating in the solicitation. 2 CFR 200.319(d).

F. Methods of Procurement to be Followed

1. Micro-Purchases

Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold as set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and adjusted periodically for inflation. As of the date of this ordinance, the micro-purchase threshold is \$3,500.

2. Small Purchase Procedures

Procurement by small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold as set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908 and periodically adjusted for inflation. If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources. As of the date of this ordinance, the simplified acquisition threshold is \$150,000. For purchases exceeding one hundred fifty thousand (\$150,000), City Council/BFPD Board approval is required.

3. Purchases Requiring Sealed Bids with Formal Advertising

Procurement by sealed bids that require formal advertising are publicly solicited (Post to the Bids Online System) and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction.



- a. In order for sealed bidding to be feasible, the following conditions should be present:
  - i. A complete, adequate, and realistic specification or purchase description is available;
  - ii. Two or more responsible bidders are willing and able to compete effectively for the business; and
  - iii. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
  
- b. If sealed bids are used, the following requirements apply:
  - i. The invitation for bids must be publicly advertised, providing suppliers sufficient response time prior to the date set for opening the bids;
  - ii. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
  - iii. The bids must be opened publicly at the time and place prescribed in the invitation for bids;
  - iv. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs must be considered in determining which bid is the lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
  - v. Any or all bids may be rejected if there is a sound documented reason. 2 CFR 200.320(c)

4. Procurement by Competitive Proposals

Procurement by competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- a. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- b. Proposals must be solicited from an adequate number of qualified sources;

- c. The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
- d. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- e. The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where the price is not used as a selection factor, can only be used in the procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort. 2 CFR 200.320(d)

5. Procurement by Noncompetitive Proposals

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- a. The item is available only from a single source;
- b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- c. The Federal awarding agency expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- d. After solicitation of a number of sources, competition is determined inadequate.  
2 CFR 200.320(f)

6. Use of Minority Firms and Women's Business Enterprises

Take certain steps to assure that minority firms and women's business enterprises are used when possible. These steps are:

- a. Place qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. Assure those small and minority businesses and women's business enterprises are solicited whenever they are potential sources;

- c. Divide total requirements into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- d. Establish delivery schedules that encourage participation by small and minority businesses and women's business enterprises;
- e. Use the services and assistance of the Small Business Administration (<http://www.sba.gov>) and the Minority Business Development Agency of the Department of Commerce (<http://www.mbda.gov>); and
- f. Require prime contractors to take the same steps listed above. 2 CFR 200.321

G. Contract Cost and Price

1. Cost or Price Analysis

Perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold (\$150,000), including contract modifications. Make the Independent Cost Estimates (ICE) before receiving bids or proposals. 2 CFR 200.324(a)

2. Profit Negotiation

Negotiate profit as a separate element of the price (1) for each contract in which there is no price competition and (2) in all cases where cost analysis is performed. 2 CFR 200.324(b)

3. Prohibited Methods of Contracting

A prohibition on using "cost plus a percentage of cost" or "percentage of construction cost" methods of contracting. 2 CFR 200.324(d)

H. Federal Awarding Agency Review

1. Availability of Technical Specifications

The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase. 2 CFR 200.325(a)

2. Availability of Procurement Documents

The non-Federal entity must make available upon request, for the Federal awarding agency pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

- a. The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
- b. The procurement is expected to exceed the Simplified Acquisition Threshold (\$150,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
- c. The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
- d. The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- e. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold. 2 CFR 200.325(b)

3. Exemption from Pre-Procurement Review

The non-Federal entity is exempt from the pre-procurement review in the above paragraph if the Federal awarding agency determines that its procurement systems comply with the standards of this part.

- a. The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency to determine whether its system meets these standards in order for its system to be

certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

- b. The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review. 2 CFR 200.325(c)

## I. Bonding Requirements

1. For construction or facility improvement contracts or sub contracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency may accept the bonding policy and requirements of the local agency provided that the Federal awarding agency has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:
  - a. A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified. 2 CFR 200.326(a)
  - b. A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure the fulfillment of all the contractor's obligations under such contract. 2 CFR 200.326(b)
  - c. A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by the law of all persons supplying labor and material in the execution of the work provided for in the contract. 2 CFR 200.326(c)

## J. Contracting Provisions - Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

1. Remedies

Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation-adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

2. Terminations

All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

3. Equal Employment Opportunity

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” ( 30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

4. Davis-Bacon Act, As Amended ( 40 U.S.C. 3141- 3148)

When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act ( 40 U.S.C. 3141- 3144) as supplemented by Department of Labor regulations ( 29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less

than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

5. Copeland “Anti-Kickback” Act: ( 40 U.S.C. 3145)

As supplemented by Department of Labor regulations ( 29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”), the Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

6. Contract Work Hours and Safety Standards Act: ( 40 U.S.C. 3701-3708).

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations ( 29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

7. Rights to Inventions Made Under a Contract or Agreement

If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or sub-recipient wishes

to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

8. Clean Air Act: ( 42 U.S.C. 7401- 7671q.) and the Federal Water Pollution Control Act ( 33 U.S.C. 1251- 1387), As Amended

Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act ( 42 U.S.C. 7401- 7671q) and the Federal Water Pollution Control Act as amended ( 33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

9. Debarment and Suspension: (Executive Orders 12549 and 12689)

Verify that a vendor is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. Confirm and document that vendors are not on the federal government’s Excluded Party list found at [www.sam.gov](http://www.sam.gov).

10. Byrd Anti-Lobbying Amendment: ( 31 U.S.C. 1352)

Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not use, and has not used, Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

**IX. PURCHASING DEFINITIONS:**



**ARCHITECTURAL AND ENGINEERING SERVICES:** Professional services within the scope of the practice of architecture and professional engineering, as defined by the jurisdiction, usually involving research, design, development, construction, alteration, or repair of real property. Includes those professional services of an architectural, landscape architectural, engineering, environmental, geotechnical, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

**BID SPLITTING:** It is unlawful to split or separate procurement into smaller work orders or projects for any public work project for the purpose of evading the provisions of Article 4, Division 2, Section 20163 of the Public Contract Code, requiring public work to be done by contract after competitive bidding. Every person who willfully violates this provision of this section is guilty of a misdemeanor.

**CAPITAL ASSET:** A capital asset is either tangible or intangible, with a life expectancy of two or more years, and a combined purchase amount as stated below:

Buildings/Building Improvements	\$50,000
Furniture	\$10,000
Equipment	\$20,000
Infrastructure	\$100,000
Capital Improvement Projects	\$100,000

**CAPITAL EXPENDITURE:** Money spent for the acquisition of an item, inclusive of all costs, relating to assets that add to long-term net worth. Can be used for the acquisition of hardware, equipment, real property, buildings, or permanent improvements to existing assets. Must meet a certain level of criteria and/or expense per the definition of Capital Asset.

**COMPETITIVE QUOTE:** A statement of price, terms of sale, and description of goods or services offered by a vendor to a prospective purchaser. Used by the purchaser to evaluate and compare quotes from competing sources.

**FORMAL BID:** An offer submitted by a prospective vendor in response to an invitation to bid issued by a purchasing authority; becomes a contract upon acceptance by the buyer. Public opening (versus closing time and place). Read prices, items bid, discounts offered, delivery terms, etc. No discussion with bidders. Responses evaluated against specifications. Award made to the lowest responsive and responsible bidder. Once the City Clerk has received a bid, no changes may be made. Entire record is public after the award.

**OPEN MARKET PURCHASE:** The procurement of materials, supplies, or equipment, usually of a limited monetary amount, from any available and reliable source. Open market purchases shall be made when feasible and when in the best interest of the City/BFPD utilizing the methods prescribed herein.

**OPEN (OR ANNUAL) PURCHASE ORDER:** A purchaser's written document to a vendor allowing for the purchase of a variety of materials and supplies, by authorized personnel, during a specified period of time. Issued for a specific amount of consideration that is drawn from throughout the specified time frame for payment of invoices related to the annual purchase order.

**PIGGYBACK:** A form of intergovernmental cooperative purchasing in which an agency purchaser requests competitive sealed bids, enters into a contract, and arranges, as part of the contract, for other public purchasing agencies to purchase from the selected vendor under the same terms and conditions as itself.

**PROCUREMENT:** Purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction; includes all functions that pertain to the acquisition, including description or requirements, selection and solicitation or sources, preparation and award of contract, and all phases of contract administration.

**PROFESSIONAL SERVICES:** Services rendered by members of a recognized profession or possessing a special skill. Such services are generally acquired to obtain information, advice, training, or direct assistance. For purposes of this document, the following are, but not limited to, professional services:

- a) Architectural, construction management, construction surveys, material testing, inspection services, appraising, ad campaigns, engineering, environmental, finance, fine arts, insurance, land surveying, landscape architectural, legal management consultants, management information consultants, janitorial, landscape maintenance, grounds keeping, medical, document processing services, municipal program implementation, performing arts, personnel, psychological, sports, and underwriting. Providers of such services are hereinafter referred to individually as "consultant" or collectively as "consultants".

**PROPOSAL:** In competitive negotiations, the document submitted by the vendor in response to the RFP is to be used as the basis for negotiations to enter into a contract.

**PUBLIC PROJECT:** As defined in Section 22002 of the Public Contract Code

**PURCHASE AMOUNT:** The “purchase amount” for purposes of applying the limits of this policy can be defined as all purchases from an individual vendor, purchased at the same time. For example, if three vehicles are purchased from a vendor on the same day, or same order, this would be considered one purchase, rather than three separate purchases.

**PURCHASE ORDER:** The primary procurement method. Used to communicate to a vendor the City/BFPD’s terms and conditions, authorizes an encumbrance of City/BFPD funds and is a contractual agreement to pay for acceptable goods or services received. Used to process payments and track an expenditure in the financial system.

**REQUEST FOR PROPOSAL (R.F.P):** All documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals.

**REQUEST FOR QUALIFICATIONS (R.F.Q.):** A document issued by the City/BFPD that provides for a scope of work and requirements of the project in enough detail to let potential proposers determine if they wish to compete. This differs from the request for proposal (R.F.P) in that more emphasis is placed on the qualifications of the bidder.

**RETENTION:** The withholding of a part of the payment due, until final acceptance of the purchase by the purchaser, in accordance with the contract terms.

**REQUISITION:** A written (or electronic) document used to communicate a need to the Purchasing Agent. Unless otherwise noted in this policy, the requisition requires appropriate signatures as outlined in the signature authority section. At least an expenditure code must be designated for the purchase. Indicate a description of the item or service to be purchased and include any pertinent documentation, i.e. insurance documentation, contracts, quotes received, etc.

**SOLE SOURCE:** When only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation, such as technical qualifications, matching to currently owned equipment or supplies, the ability to deliver at a particular time, or services from a public utility.

**PURCHASING AND CONTRACT POLICY  
SCHEDULE OF DOLLAR LIMITS AND APPROVALS  
REVISED MAY 2023**

<i>TYPE</i>	<i>CATEGORY</i>	<i>FEATURES</i>	<i>AWARDED BY:</i>
CALCARD PURCHASES AND OTHER NOMINAL PURCHASES	\$1,000 OR LESS	Prudent judgment required; comparative pricing whenever possible	Authorized CalCard holder
	\$5,000 OR LESS	Prudent judgment required; comparative pricing whenever possible	Department Manager / Director
NON-PROFESSIONAL SERVICES CONTRACT: Including supplies, equipment operating or maintenance services and construction projects other than "Public Works Projects"	\$1,000 OR LESS	Prudent judgment required; comparative pricing whenever possible	Authorized Staff Member
	\$5,000 OR LESS	Prudent judgment required; comparative pricing whenever possible	Department Manager / Director
	\$5,000 TO \$14,999	Prudent judgment required; comparative pricing whenever possible	Assistant City Manager
	\$15,000 TO \$24,999	Informal proposals required; department solicits at least 3 quotes (may be verbal as long as properly documented)	Assistant City Manager
	\$25,000 to \$75,000	Formal proposals required	City Manager
	\$75,001 or more	Formal proposals required	City Council
	PUBLIC WORKS PROJECTS	\$60,000 OR LESS	Force account, purchase order, or contract-informal bidding process
\$60,001 to \$75,000		Informal Bidding process	City Manager
\$75,001 to Amount set by Public Contract Code Section 22032(b) (Currently \$200,000 as of 1/1/2019)		Informal Bidding process	City Council
Amount set by Public Contract Code Section 22032(c) (Currently more than \$200,000 as of 1/1/2019)		Formal bidding required	City Council
PROFESSIONAL SERVICES: The evaluation and selection of Consultant Services may vary on a case-by-case basis.	\$1,000 OR LESS	Prudent judgment required; comparative pricing whenever possible	Authorized Staff Member
	\$5,000 OR LESS	Prudent judgment required; comparative pricing whenever possible	Department Manager / Director
	\$5,000 to \$24,999	Department solicits at least 3 proposals (may be verbal if documented)	Assistant City Manager
	\$25,000 to \$75,000	Formal Request for Proposal required	City Manager
	\$75,001 or more	Formal Request for Proposal required	City Council
Emergency Purchases	\$75,000 or less	Prudent judgment required; comparative pricing whenever possible	City Manager
	Greater than \$75,000	Prudent judgment required; comparative pricing whenever possible	City Manager, with subsequent report to City Council