

CITY OF MONTEREY



PURCHASING POLICY AND PROCEDURES MANUAL

Updated Oct 1, 2020

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CHAPTER 1

GENERAL INFORMATION

A. INTRODUCTION

Welcome to the City of Monterey Purchasing Policy and Procedures Manual, (hereafter "PPM" or "Manual"). This Manual is intended to be a working document for the purpose of implementing City purchasing policies, establishing guidelines and defining standard practices, procedures, and clarifying issues relevant to the purchasing function. From time to time, this Manual may be updated and/or revised. All stated and referenced monetary limits (Cal-Card purchases, formal vs. informal bids) are current as of the revision date printed in this document footer. Limits are subject to change in accordance with Chapter 28 (Purchasing Ordinance) of the City Code. Federal procurement policy references are indicated throughout this Purchasing Manual as Code of Federal Regulations, Title 2 Grants and Agreements, Procurement Standards (henceforth, 2 CFR) and the relevant Section number. Please see Chapter 1, Section L for additional information and compliance documentation.

(2 CFR 200.318 (a))

B. AUTHORITY

The City Purchasing Ordinance, adopted as Section 28 of the Municipal Code (the "City Code") of the City of Monterey, defines the responsibilities of the Purchasing Agent and designated Departmental representatives and confers the authority to purchase, negotiate or contract for supplies, services, materials and equipment as required by the City's Departments.

Purchasing Agent shall be the City Manager except with respect to the procurement of legal services in which case the Purchasing Agent shall be the City Attorney. The Purchasing Agent, or designee(s) shall have the powers and duties to purchase and execute contracts for materials, supplies, services and equipment, as limited in City Code Chapter 28, required by any department. Notwithstanding any other provision in that Chapter, the authority of the Purchasing Agent to execute contracts may not be delegated (other than to the Acting City Manager in the event of the City Manager's absence or disability) except that the Purchasing Agent may delegate in writing to Department Heads the authority to execute contracts for their respective department that are below the threshold requiring informal bids or proposals.

In the event one or more representatives are designated as City purchasing agents, those individuals shall be included in the City Conflict of Interest Code as persons who must file an annual statement of economic interest with the City Clerk. (MCC 28-5; 2 CFR 200.318 (c)(1))

This Manual compliments the City Code to address the majority of purchasing related transactions one is likely to encounter in the course of normal business. Once you have reviewed the City Code, Manual, and available purchasing online resources, please contact the Finance Department when you encounter unique situations not specifically addressed. The City utilizes a cooperative, collaborative approach to resolving unique purchasing related issues. Such an approach works best when all parties are thoughtful, comprehensive, and forthright in communicating their needs on a proactive basis, as well as the Departmental staff conducting research in support of its issues so meaningful analyses can be made.

C. HIGHLIGHTS OF THE CITY PURCHASING ORDINANCE

The City Code sets forth formal, informal, and open market law to be followed in carrying out the purchasing function. All persons directly involved with purchasing goods and services for their divisions should familiarize themselves with the ordinance, based upon the value and circumstances of the intended purchase.

D. ETHICAL STANDARDS FOR PURCHASING

When placing City business with the business community, it is every Employee's responsibility to follow good business and ethical practices and to adhere to the City's applicable law, policies, and procedures. This is a

responsibility that should not be taken lightly as it is a duty under the law (CA Public Contract Code §20163). All vendors shall be treated equally and fairly at all times by City personnel, with equal information given to each vendor who participates in a competitive situation.

City Employees must discharge their duties under the City's Code and Manual in an impartial manner to foster the integrity of the City's purchasing function and to assure fair and open competition for City business and the selection of competent, responsible vendors. (2 CFR 200.319)

The following actions constitute a violation of the City Code:

- Aiding or assisting a bidder in securing a contract to furnish labor, materials or other supplies or favoring one bidder over another; giving or withholding information from any bidder not given or withheld from all other bidders; willfully misleading any bidder in regard to the character of the materials or supplies of a quality inferior to that called for by the contract; knowingly certifying to a greater amount of labor performed or material or supplies furnished than has been performed or received;
- Accepting, directly or indirectly, any gift, rebate, money, or anything else of value whatsoever from any person or entity if the gift, rebate, money, or item of value is intended as a reward or inducement for conducting business, placing orders with, or otherwise using the Employee's position to favor the contributor. When in doubt, just say no.

It is a violation of State law for any Employee or City Officer to be a party to, or have a financial interest in, any City contract made by them in their official capacity (CA Gov. Code 1090).

It is a breach of ethical purchasing standards:

- For any Employee to participate directly or indirectly in City procurement when the Employee knows that:
 - * The Employee, or any member of the Employee's immediate family, has a financial interest pertaining to the procurement;
 - * A business or organization in which the Employee or any member of the Employee's immediate family has a financial interest pertaining to the procurement; and/or
 - * Any other person, business or organization with whom the Employee, or any member of the Employee's immediate family, is negotiating, or has an arrangement concerning prospective employment, is involved in the procurement
- For any person to offer, give, or agree to give any Employee, or for any 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 purchase request.
- For a person to be retained, or to retain a person, to solicit or secure a City purchase order contract upon an agreement, or understanding for a commission, percentage, brokerage or contingent fee, except for bona fide selling agencies established for the purpose of securing business.
- For any Employee, who is participating directly or indirectly in the procurement process to become or be, while such an Employee, the Employee of any person contracting with the City.
- For any Employee to engage in selling supplies, equipment or services to the City.
- For any Employee of the City to act as a principal, or as an agent for anyone other than the City, in connection with any judicial or other proceeding, contract, claim, charge or controversy, other than when acting within the Employee's official responsibility.
- For any Employee or former Employee to knowingly use information for actual or anticipated personal or business gain, or for the actual or anticipated gain of any other person or business.

For City personnel to accept gifts, rebates, money, entertainment, personal services, or in any way incur material personal gain from any vendor doing business with the City or from any potential City vendor, or if circumstances create the impression that

one's vote, judgment or action could be affected, or that staff are being rewarded for the performance or nonperformance of an official duty or if the item is of a value that exceeds statutory limits. Promotional items of nominal value such as calendars, pens, balloons, etc., shall not constitute a gift if received as a non-personal item by the Employee and the item is distributed to customers or potential customers routinely by the contributor [Monterey City Code §28-65].

E. GOALS

The objectives of governmental Purchasing programs are:

- To comply with all current laws and regulations.
- To be transparent.
- To provide a cost-effective purchasing function.
- To buy materials and services at the optimum time, in the appropriate quantities and of the appropriate quality for the intended purpose.
- To ensure the continuity of City operations.
- To encourage competitive bids from responsible providers who are qualified, capable and willing to meet the City's requirements.
- To maintain a reputation for fairness and integrity.
- To ensure open, honest and fair competition for the City's business, and
- To support the City's ultimate goal to serve the best interests of the public.

F. RESPONSIBILITIES

The Finance Department shall be responsible to:

- Oversee and coordinate the City purchasing program, including, without limitation, to prepare and maintain a comprehensive manual of purchasing policies and procedures which defines the purchasing function and complements City law.
- Administer the opening of sealed bids as specified in Chapter 28 of the City Code.
- Prescribe and maintain such forms as are reasonably necessary to the purchasing operation.

City Departments shall be responsible to:

- Negotiate and properly prepare contracts for the procurement of the needed quality and quantity of materials, supplies, services and equipment, required by any Department at the least expense to the City and in conformity with the procedures established for that purpose as limited by Chapter 28 of the City Code. (2 CFR 200.318 (d))
- Prepare descriptive specifications for materials, supplies, and equipment that are sufficiently broad to promote competitive and uniform bidding and to attract and develop a group of responsible bidders able to offer the best prices consistent with the required quality, delivery and service.
- Adhere to all purchasing law, policies, and procedures established by the City.

- Inform Finance in writing of designated Departmental representatives authorized to execute purchasing documentation.
- Explore and encourage bulk purchasing when possible in order to take advantage of discounts; to join with the State, County of Monterey, or any other public agency in cooperative purchasing or piggy-backing on another agency's bid effort. (2 CFR 200.318 (d, e))
- Keep informed of current developments in the field of purchasing, prices, market conditions and new products.
- Be familiar with and conform to the limitations prescribed by law, legal opinions and such other regulations as may be established by the City Council.
- Purchase equipment and supplies that conform to Occupational Safety and Health Administration (OSHA) requirements.
- Coordinate with Finance, when appropriate, in the preparation of formal bids and in the preparation of all resolutions calling for an award of bids to be considered by City Council.
- To supervise, when practical, the inspection of all supplies, materials, services and equipment to insure conformance with the specifications. (2 CFR 200.318(b))
- To prepare bid packages (plans, specifications, cost estimates, etc.). (2 CFR 200.323)
- To obtain City Council approval to award contracts if so required by the Purchasing Ordinance.
- To obtain as full and open competition as possible on all purchases. (2CFR 200.319)

It is not the primary role of Finance Department to tell Departments whether they comply with the City's purchasing ordinance. Rather, City-wide staff and Departments are each fully responsible for being knowledgeable about the City's purchasing law and policy. Each staff member is fully responsible for only submitting purchases that comply with City law and policy. City staff has been trained regarding City purchasing law and policy and made aware that violations can constitute criminal acts. Online training, pending an update, will be available 24/7 for staff members. In addition, all City staff should read and familiarize themselves with the City Code and this Manual.

G. FUNDING AND APPROPRIATION

Resources to purchase goods and services for the City's operating Departments are appropriated in the various operating and capital funds and are identified in the approved annual budget by Department and account codes. It is the user Department's responsibility to ensure that expenditures are applied to the appropriate existing account codes and that adequate funding exists within the Departments/funds service and supply budget. In the event a new account code needs to be added to a Department budget, contact the Finance Department.

H. DEFINITIONS

Amendment: (1) An agreed addition to, correction or modification of a document or contract. (2) To revise or change an existing document; a formal revision, improvement or correction.

Change Order: A written alteration that is issued to modify a contract or purchase order.

City: The City of Monterey.

Consultant: A person or company that possesses unique qualifications which allow them to perform specialized advisory services usually for a fee.

Contractor: Any individual or business having a contract with a governmental body to furnish goods, services, or construction for an agreed upon price and specified term.

Department: Specialized functional area within the City or a division, such as accounting, marketing, planning. Generally every department has its own manager.

Department of Record: The requesting department (the buyer) is the Department of Record and as such shall maintain copies, and produce copies for auditors, of relevant documents and forms, i.e. Sole Source, Piggyback, Bid/Quote/Proposal Summary, etc. Retention: in Series 405-05 of the buyer's department. Neither Finance nor the City Clerk's Office is the Department of Record. (2 CFR 200.318 (i), 200.324)

Employee: A person who is hired to provide services to the City of Monterey in exchange for a salary or wage and who does not provide these services as part of an independent business.

Responder: One who submits a response to a solicitation document.

Responsible Bidder: A contractor, business entity or individual who is fully capable to meet all of the requirements of the solicitation and subsequent contract. Must possess the full capability, including financial and technical, to perform as contractually required. Must be able to fully document the ability to provide good faith performance.

Responsive bidder: A contractor, business entity or individual who has submitted a bid or request for proposal that fully conforms in all material respects to the IFB/RFP and all of its requirements, including all form and substance.

Solicitation: For this section, the term solicitation shall include an invitation for bids, a request for proposals, telephone calls or any document used to obtain bids or proposals for the purpose of entering into a contract.

Staff Member Responsible: The staff member who is responsible for thoroughly reading and understanding the contents of a contract, developing an accurate scope of work, editing and modifying the contract, negotiating contract terms, ensuring that any staff with responsibilities under the contract are aware of their responsibilities, etc.

Vendor: A supplier/seller of goods and services. A reference to a provider of product or service.

I. RESOURCES

In addition to this Policy Manual, please consult the resources listed below for additional purchasing guidance.

- 1) **Purchasing Ordinance:** Chapter 28 of the Monterey City Code. These are the City laws that regulate all purchasing processes. The City Code is located at <https://monterey.municipal.codes/>
- 2) **Online Purchasing Training:** This training should be taken by any Employee who makes purchases or processes contracts on behalf of the City, including any Employee who has a Cal card. The training takes approximately two hours to complete and is available online through Target Safety at www.preventionlink.com/monterey. Please contact Finance Administration at ext. 3940 to obtain a username and password.
- 3) **OnBase Legal Agreement SOPs:** Required reading for anyone who will be loading contract documents into OnBase, or who may be involved as additional reviewers of these workflow items: <http://atwork.monterey/Portals/0/ECM/LegalAgreements/Legal-Agreement-Workflow-Help.pdf>
- 4) **Outline of Competitive Bidding Process and links to forms:** These are the "start to finish" steps required for most purchases of goods and services requiring competitive bidding and written contracts: <http://atwork.monterey/Forms/Competitive-Bidding-Contract-Forms-and-Procedures>
- 5) **Contract templates:** Located in OnBase and required to be utilized for the majority of contracts entered into by the City. These templates are updated frequently by the City Attorney's Office and Risk Management, so must be utilized as a starting point for any contract (rather than using an old form saved

from a prior contract). Also included are other related forms including the Bid/Quote Proposal summary, Sole Source Justification, and Emergency Exception forms. These forms and templates may be accessed in OnBase. Only contract template language in red is to be changed by staff. If a vendor requests that other contract language be changed, staff must contact the City Attorney's Office prior to agreeing to any changes.

[NOTE: Contract drafters should always read through the contract language in the template they are utilizing - and not just fill in the blanks - so that they are aware of all terms and conditions that will bind the City and the vendor/contractor once the agreement is signed and in effect].

- 6) Quick Reference Guide: An at-a-glance spreadsheet that can be used to determine what steps are required based on the amount of a purchase. <http://atwork.monterey/Portals/0/Policies-Procedures/Finance/Purchasing/Purchasing-Quick-Reference-Guide.pdf>

Following a review of sources listed above, these additional resources are also helpful in researching a purchasing issue:

- American Bar Association (ABA) Model Procurement Code <http://apps.americanbar.org/dch/committee.cfm?com=PC500500>
- California Public Contracts Code <http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=pcc>
- California Government Code <http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=gov>
- California Association of Public Procurement Officials <http://www.cappo.org>
- National Association of State Procurement Officials (NASPO) publication "State & Local Government Procurement, A Practical Guide" - available in the Finance office

J. USE OF CITY LOGO

Vendors requesting use of the City's logo as part of a response to a solicitation should submit a written request to the City and a single use file will be made available if request is approved.

K. VENDOR LISTS

It is a very common occurrence for vendors to contact departments requesting to be added to a distribution list in the event of future needs of the City. Departments are encouraged to maintain a list of vendors, organized by scope of services/products, to which solicitations can be distributed. Such list can be made available on the department specific page @Work for easy reference by all staff. Finance does not maintain a comprehensive list of vendors.

L. FEDERAL PROCUREMENT POLICY, City utilizing Federal grant funds

When the City procures goods and services utilizing funds through Federal grants, the City will follow all guidance and ensure proper financial stewardship of taxpayer resources. This document serves to outline the City's procurement policy to include all Federal grant funded projects and purchases. These policies and procedures reflect applicable state and local laws and their conformity to the applicable Federal laws and standards identified in the Uniform Guidance, Procurement Standards (2 CFR 200.317-.326). The City's compliance, and notification thereof, are indicated here, in Chapter 1, and throughout this Purchasing Manual by referencing the applicable Uniform Guidance section. Additionally, the Uniform Guidance Procurement Standards (2 CFR 200.317 - .326) are included in the Appendix.

All City employees procuring goods and/or services utilizing Federal grants are responsible for complying with the Federal Procurement Standards referenced throughout the Purchasing Manual and attached in the Appendix. Federal grant funds include funds that are Federal in origin that are passed through state or other agencies. Employees obtaining grants are responsible for determining the source of funds and notifying the Finance Department Accountant Auditor responsible for grant reporting of any Federal funds awarded. Legal Agreements where the City

provides services to the federal government, such as the Intergovernmental Service Agreement (IGSA), are contracts for services not grants, and as such follow each Agreement's purchasing guidelines, not the Federal grant procedures.

Where thresholds differ between City and Federal procurement policies, City employees utilizing Federal grants will follow the most restrictive rule. For example, currently the Federal "micro-purchase" (informal bid) threshold is \$10,000 whereas the City's is \$12,000. In this instance informal bids/quotes would be obtained starting at the Federal limit of \$10,000. (2 CFR 200.320 (a)) Conversely, the Federal "simplified acquisition threshold" (formal bid) is \$250,000 whereas the City's are \$75,000, and \$150,000 depending upon the type of procurement. In these instances, formal bids would be required at the City's lower threshold limits.

For Federal grant funded contracts, the City solicitation and contract documents must comply with requirements regarding small and minority businesses, women's business enterprises, and labor surplus area firms. Please refer to Appendix D, Section 2 CFR 200.321.

CHAPTER 2

REQUISITIONS/PURCHASE ORDERS/REQUEST FOR CHECK (RFC)

The City's purchasing cycle is summarized as follows:

A. BUDGET

The budget appropriation is the authorization by the City Council to purchase specified equipment, supplies, services and materials for City operations during a specific fiscal year, July 1 through June 30.

B. REQUISITION

A requisition is a request to authorize the acquisition of materials, equipment, supplies or services from a specified consultant, contractor, or vendor. The requesting Department prepares electronic requisitions in the City's Eden financial system and forwards to Finance. Finance reviews the requisition for completeness and compliance. See Appendix A for information on entering a requisition into Eden.

A requisition is NOT required for purchases of less than \$4,500.

A requisition is processed subject to the following criteria:

For purchases of material, equipment, supplies or services (including rolling stock) valued between \$12,000 and \$74,999.99 and for Public Works projects valued between \$12,000 and \$149,999.99, written or verbal informal bids or approved exceptions are required. Documentation of the competitive process shall be noted in the Requisition, Comments Log. Purchasing exception requests should be emailed to Finance Administration for approval. Once approved, the signed exception request should be emailed to Finance Administration. Include the corresponding requisition number in the email text.

For purchases of material, equipment, supplies, rolling stock, or services valued at \$75,000 or more and Public Works projects valued at \$150,000 or more, formal bids or approved exceptions are required, followed by City Council award of contract. Indicate the resolution number and Ag# authorizing the acquisition in the Requisition, Comments Log.

C. METHODS OF PROCUREMENT

1. CAL-CARD - A credit card procurement system used for purchases at or below a specified dollar amount (currently \$4,500, except as noted above). See Chapter 7 of this Manual for more information.
2. PURCHASE ORDER - A written contract for equipment, supplies, services or materials with a specified consultant, contractor, or vendor. A purchase order submitted by an authorized person becomes a legally binding contract. It can stand alone or include attachments for clarification purposes. A purchase order encumbers a specified amount (\$4,500 or more) to provide specified equipment, supplies, services, materials and/or fixed assets. Regular purchase orders may be paid through a one-time payment of an amount up to the purchase order amount at the conclusion of performance (delivery of materials, services, etc.), or in incremental (progress) payments as provided in a contract or each time items are purchased.
3. For purchases of professional services
 - (a) Valued under \$75,000 include the OnBase assigned contract number.
 - (b) Valued at \$75,000 or more, the Department must have conducted a formal Request for Proposal ("RFP") process including award of contract by Council. Indicate the resolution number authorizing the acquisition and the OnBase assigned agreement number on the on-line requisition.

Each Department is responsible for verifying quantity, quality and delivery of all its orders and for follow up of any problems that may arise. Invoices will not be paid until delivery of an order is verified and the Department assures that the product or service meets specifications.

D. PAYMENT APPROVAL AGAINST A PURCHASE ORDER

Authorization to process payments against invoices is to be done by using the Accounts Payable (A/P) stamp. If you need a stamp, contact the A/P office.

All invoices should be sent by the consultants, contractors, or vendors to the Department and by the Department to Accounting. Invoices are paid on a bi-monthly payment cycle. For the first payment cycle on the 15th of the month, invoices are due to A/P by 5:00 p.m. on the 8th. For the second payment cycle on the 30th of the month, invoices are due to A/P by 5:00 p.m. on the 23rd. You will be informed of changes in this schedule during holiday periods.

E. REQUEST FOR CHECK

A Request for Check (RFC) is authorization to process payments without a purchase order for reimbursements or for payment for specific materials or services with appropriate documentation and authorization. Request for checks are processed by using the A/P stamp.

Refer to Appendix B for instructions for completing the A/P stamp and Request for Checks.

Request for Checks are due to Finance Accounts Payable according to the bi-monthly payment cycle.

The following items may be processed as a Request for Check (RFC):

- a. Pre-authorized Employee reimbursements (i.e., safety shoe reimbursement, tuition reimbursement, mileage reimbursement)
- b. Travel advances
- c. Seminar and conference registrations
- d. Dues and memberships
- e. Utility payments
- f. Bond and lease payments
- g. Payments to instructors (umpires, dance)
- h. Insurance payments
- i. Payments for payroll taxes, etc.
- j. Publications
- k. Refunds and reimbursements
- l. Contractual part-time services
- m. Personnel recruitment advertisements
- n. Claim settlements
- o. Trade show registration
- p. All City Council functions
- q. Down Payment Assistant Program/Rehabilitation loans
- r. Paying agent fees
- s. Reimbursable medical services as authorized by resolution
- t. Purchase of real property
- u. Legal expenses, fees and judgments
- v. Relocation reimbursement
- w. Council-approved Non-profit donations/grants

If a Request for Check does not fall under one of these categories, it will be returned requesting an explanation as to why a purchase order was not obtained in advance.

ALL purchases of less than \$4,500 (i.e., not requiring a purchase order) will be processed as a check request.

Payments/invoices shall not be split to avoid a purchase order.

F. **SPLIT PURCHASES**

A split purchase occurs when the quantity of a required item or service is known prior to the initial purchase, and is divided into multiple purchases in order to avoid the requirement for obtaining bids or proposals. Split purchases are prohibited by the Monterey City Code (MCC §28-17), are **criminal misdemeanors** under State law (PCC §20163), and are considered fraud, waste, and/or abuse by auditors and in violation of best practices standards. Multiple purchases with the same vendor within the same month for the same goods or services are typically considered a split purchase.

Splitting purchases does not allow for a competitive market among vendors, increases the administrative workflow, and evades risk mitigation procedures.

Questions to consider:

1. Have I contracted with this same consultant, contractor, or vendor within the same month for the same items?
2. Am I purchasing with the same consultant, contractor, or vendor under separate contracts for the same scopes of work/projects?
3. Have I identified other similar projects for which I will be contracting that I have not included in this contract?

Examples of Split Purchases:

- (a) *Landscaping service needed, required work is weeding in zones 1-5. Vendor Lawns-R-Us submits bid of \$3,000 per zone, total of \$15,000.*
 - Inappropriate: Submitting a separate contract for each zone to avoid going over the \$12,000 no-bid limit.
 - Appropriate: Award one contract for entire job, after obtaining 2 additional bids. Contract should be awarded based on lowest bid from responsible bidder.
- (b) *Landscaping services needed. Department budgets for \$400,000 worth of landscaping, mowing, plant, and walkway work annually but breaks the work into numerous mini-projects to avoid having to go to formal bid.*
 - Inappropriate: Submitting a separate contract for several smaller projects to avoid going over the \$12,000 no-bid limit or \$75,000 informal bid limit.
 - Appropriate: Issue one formal request for bids for all budgeted landscaping, mowing, plant and walkway work and award one contract.
- (c) *Bathroom remodel project, including shower repair and ADA upgrades to water closet. Estimated cost \$165,000. Formal bid process was used, but bids came back much higher than estimate. Showers are leaking into lower floor offices.*
 - Inappropriate: Split project into 2 separate bids, one for shower repair and one for ADA upgrades. This will lower cost below formal bid requirement and work can commence quickly following informal re-bid.
 - Appropriate: Rebid project as base (shower repair) and alternate (ADA upgrades) using formal bid process. This will allow for repair of shower leak with possibility of upgrades if budget becomes available.
- (d) *Painting work required. Department identifies several small painting projects required for completion in the next 6 months. Total value of all projects is \$160,000.*
 - Inappropriate: Bidding and awarding all projects separately to avoid formal bidding.
 - Appropriate: Combining all projects under one formal contract and awarding to one vendor.

CHAPTER 3 COMPETITIVE BID and PROPOSAL PROCESSES

The City's Purchasing Ordinance requires that all purchases of goods and services valued at \$75,000 or more and all Public Works projects valued at \$150,000 or more, go through a formal bid process.

For the purposes of public bidding requirements, MCC 28-2 defines a Public Works project as a project paid in whole or in part with public funds for the construction, alteration, repair, improvement, painting, reconstruction, or demolition of any public building, facility, street, sidewalk, utility, park or open space improvement, or other public improvement.

**Note that the definition of a Public Works project differs in other areas of the law. For example, when determining whether a particular project or job is a public works project requiring payment of prevailing wages, the definition under Labor Code §1720 et seq. (or, if a federally funded project, the Davis-Bacon Act) must be reviewed. Please contact the City Attorney's Office if legal guidance in this area is needed.*

A. FORMAL BID PROCESS

Competitive bids shall be solicited from a minimum of three qualified contractors or vendors (whenever possible) or from as wide a range of contractors or vendors as is considered practical in terms of time, potential savings and good business practice. (2 CFR 200.320 (c), 200.319 (c))

The City reserves the right to reject any and all bids, to accept or reject any one or more items of a bid, or to waive any irregularities or informalities in the bids or the bidding process.

1. CALL FOR BIDS.

The Department must send a "Bid Opening Request Form" (available on the @Work Forms and Procedures page) to Finance Administration so that the necessary advertising can be placed on the City's website and online at E-Bidboard.com (if appropriate). This form must be submitted to Finance Administration at least two weeks prior to the requested bid opening date. The notice on the City's website must be posted at least ten days prior to the bid opening date. Finance will schedule and host bid openings on the 2nd and 4th Tuesdays of the month. Bid openings are held at 2:00 pm in Council Chamber. Departments should wait to schedule a bid opening until the project specifications have been reviewed and approved by the Department and City Attorney's Office. Departments will receive a gmail appointment request from Finance confirming a bid opening date.

Departments should review the timeline information on the Bid Opening Request form to adequately time any required pre-bid conferences or site visits.

This Information for Bid Opening Request includes the project name and number, the bid opening date, the engineer's estimate of the cost of the project (or the Department's estimate), and the amount budgeted for the project with the corresponding account number(s). It is best practices to identify adequate funding sources prior to publishing your Call for Bids and submitting your Information for Bid Opening Request form. Soliciting bids without having the funds to make a contract award is not a best practice. Companies have to spend time and money to prepare the bids with no chance of award, and the process would also reveal bid prices to competitors with no financial gain¹. Check the box indicating whether or not a bid bond is required. Contingency is required, but the exact percentage is based on project risks and unknowns; 10% is standard, but should be evaluated based on project specifics. A precise description of the specifications should be included along with the Labor Code/Prevailing Wages clause, if necessary.

¹ Soliciting Proposals Without Funds. (2009, September 1). Retrieved October 24, 2014, from http://www.fta.dot.gov/13057_6231.html

Upon Finance Administration's confirmation of the bid opening date, the Department should send the Call for Bids to all qualified, responsible contractors and vendors known to the Department and contractors and vendors that request bid packets. Departments are responsible for posting their Call for Bids to Ebidboard and/or the City's website (Monterey.org) and are responsible for providing copies of specifications and any amendments to the Finance Revenue desk. (2 CFR 200.319 (c))

All Calls for Bids, if required in the specifications, must include the following: Noncollusion Declaration, Debarment and Suspension Certification Form (2 CFR 200.318 (h)), Local Hiring Requirement², signature line for an authorized representative of the bidder that can bind the company contractually and a Certification of Good-Faith Effort to Hire Monterey Bay Area Residents (Appendix C).

The City requires a Noncollusion Declaration form to be submitted with "every bid on every public works contract of a public entity." Note: there is no dollar threshold; every bid on every project no matter how large or small must include the executed form.

The Debarment and Suspension Certification, is a good source of protection for the City against inadvertently hiring a contractor who has been suspended or debarred by another public agency or who has been convicted of fraud or misconduct within the past 3 years. It is a simple "insurance policy" and while won't necessarily prevent the City from hiring an unscrupulous contractor, it will at least, provide information for the City review. Neither document requires notarization. Debarred parties may not be used for Federal grant funded Projects (2 CFR 200.212).

Local Hiring Requirements cannot be imposed on Federal grant funded Projects (2 CFR 200.319 (b)). MCC §28-72 provides exception from local hiring requirements in cases of emergency endangering public health, safety or welfare; when prohibited by state or Federal law, or when the City determines that a suitable pool of persons providing specialized skills, such as marine-related pile drivers, does not exist locally for a specific public works project. When a department determines that the exemption applies due to the specialized skills classification, approval should first be obtained from the City Attorney's office before a contract is awarded.

2. NOTICE INVITING BIDS – Notices inviting bids are submitted by Finance Administration to the City Clerk and Communications Analyst who then publishes them on the City of Monterey website at least ten days prior to the opening of the bids.

3. CANCELLATION OF SOLICITATION – Each notice inviting bids shall state that the solicitation may be cancelled and all bids rejected, either prior to the time set for bid opening or after opening but prior to award, in whole or in part when the City determines that such action is in the City's best interests. The Department shall be responsible for sending a written notice of rejection to all vendors that submitted bids or were sent bid proposals.

4. BID OPENINGS – It is the responsibility of the contractors and vendors to submit their bids sealed, clearly identified on the envelope, and delivered to the address or place or person specified in the notice inviting bid at or before the time specified on the notice. Submitted bid packets will be date/time stamped upon arrival. The City is not responsible for any bids arriving after the scheduled bid opening time or that are not clearly marked. A bid is considered late if it arrives at the location designated in the notice inviting bids after the scheduled bid opening time. Late bids are not accepted and will be returned, unopened, to the bidder. Bids received late because they arrived at a City location not specified in the notice inviting bids or were not clearly labeled as required in the notice inviting bids will be returned, unopened, to the bidder.

At the time and place specified, the bids shall be publicly opened and read. Bidders are not required to be present during the bid opening. Bidders or their representatives and the public may be present during the bid opening.

² Local Hiring Requirements cannot be imposed on Federally Funded Projects per Monterey City Code §28-72

If, prior to the scheduled bid opening, a bidder requests that his/her bid packet be returned to him/her, the Finance Department representative shall return the unopened bid as requested by the bidder. A bidder may make modifications to his/her bid any time prior to the established bid opening time. Any bid modified under these circumstances must be delivered to the City at the specified location prior to the bid opening time, sealed, in writing, and clearly identified.

If a bid packet is received marked proprietary or confidential or otherwise indicating that the bid proposal contains information not for public disclosure, the Finance Department representative will endeavor to contact the bidder and inform the bidder that the information contained in its bid proposal is subject to public dissemination and give the bidder an opportunity to withdraw its bid prior to the bid opening or to acknowledge, in writing, they approve of the dissemination of its bid information upon request.

Prior to the time of the bid opening, the Finance Department representative shall determine time by accessing www.time.gov on the internet or via a GPS enabled mobile phone or internet connection.

At the time of bid opening, the Finance Department representative shall announce that it is now _____ o'clock, the time specified for the receipt of bids and no more bids shall be received. The closing of receipt of bids shall be exactly at the time specified. Any bids submitted after the closing will not be accepted. Timely receipt of bids is one of the areas where public agencies have no flexibility to bend the rules. As stated in Bruner & O'Connor on Construction Law: One of the rigid "square corners" of public procurement is that bids must be submitted timely and in conformance with the exact requirements of the invitation for bids. The form and method of submission are dictated by the bid invitation. [See F.A.R. §14.304(b)(1), 48 C.F.R. §14.304(b)(1), "Any bid, modification, or withdrawal of a bid received at the governmental office designated in the bid documents after the exact time specified for receipt of bids is "late" and will not be considered."

The Finance Department representative may then introduce him/herself and other City representatives and/or consultants in attendance at the bid opening.

The Finance Department representative will explain the bid opening procedure and what documents are required for bids to be initially deemed responsive and read. Bids not read shall be returned to the bidder as soon as possible after the bid opening.

The Finance Department representative shall proceed to open the bids individually by announcing that s/he has a bid from the _____ [name of bidder] and then follow the prescribed procedure below:

Announce:

- the bid bond or other approved bid security is enclosed (bids requiring a bid bond must be accompanied by an appropriate, original bid bond, cashier's check, or cash; personal checks, including checks drawn on a business account are not acceptable). If a bidder notifies a Department that he will be using cash as bid security, the Department should notify Finance in order that appropriate security measures can be taken.
- the Non-Collusion Affidavit is enclosed;
- the Good-Faith Local Hire Certification is enclosed; (if applicable, i.e. not Federal grant projects (2 CFR 200.319 (b)))
- any required Acknowledgement of Addenda is enclosed
- the bid amount (which must be able to be readily determined);
- the bid is signed by the contractor or vendor.

If any of the above items are missing or incomplete, the bid will not be read but will be returned in the envelope to the bidder. If the above items are all enclosed and in order, then the bid shall be read. On unit price proposals, upon request the individual unit prices for the apparent low bidder shall be read after all of the total base bids are read. All bids will be recorded on a bid tabulation sheet.

A bidder may be asked to clarify a given point for purposes of announcing its bid; however, the bidder will not be requested to alter the substance or price offered after the bid opening session has commenced.

After all bids have been read, the Finance Department representative shall announce the apparent low bidder and explain that the bids will be referred to the appropriate Department for further tabulation, evaluation, and presentation to the proper officials and/or authorities.

Vendors may not verbally withdraw or make material adjustments to their bids after the bid opening. All opened bids become the property of the City of Monterey. Not awarded bid packets are held in Finance for 5 (five) days and are then forwarded to the City Clerk's office for retention. The bid tabulation sheet and bid files will be available for public inspection at the City Clerk's Office following completion of review and analysis by staff. Bid submittals are not exempt from public requests for information under the California Public Records Act (PRA) and will be disclosed upon request.

With the City's consent, bidders may make corrections if the bid contains an excusable mistake and the following conditions are met:

- Bidder submits written notice of the mistake to the City, within five working days after the opening of bids specifying in detail how the mistake occurred.
- The mistake makes the bid materially different from what the bidder intended it to be.
- The mistake was made in filling out the bid (e.g., a clerical, transposition or arithmetic error) and is not due to an error in estimating, judgment, carelessness in inspecting the site of the work, or in interpreting the bid specifications.

Written amounts will take precedence over numerical figures when there is a discrepancy.

At the bid evaluation stage, Departmental staff may request bidders to provide additional information as to how they arrived at their prices. Evaluation of a bidder's price and any opinions related to whether a bidder has submitted an appropriate price will be conducted during the Departmental bid evaluation.

5. UNSUCCESSFUL BID OPENINGS –

- **No Bids Received:** When a bid opening is unsuccessful due to no bids received, the Staff Member Responsible should review the process to ensure that sufficient response time was provided, the City utilized broad and timely advertising, and provided clearly written specifications. If there was a flaw in the bid process, staff may recommend that City Manager re-advertise for bids. If the bidding process was complete and appropriate, staff may recommend that Council declare by Resolution that the equipment, supplies, materials, services, or project may be more economically or satisfactorily procured in the open market and direct such procurement on the open market by direct negotiations.
- **All Non-Responsive Bids.** When a bid opening is unsuccessful because all bids received are deemed non-responsive, the City Manager may reject all bids presented and, in its discretion, re-advertise for bids. Council does not have the authority in this instance to reject all bids and direct negotiations on the open market.
- **Bids Received Exceed Available Funds.** In the event all bids for a Public Works Project exceed available funds and the lowest responsive and responsible bid does not exceed such funds by more than ten percent (10%), the Finance Director is authorized, in situations where time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate with the lowest responsive and responsible bidder for an adjustment of the bid price, including changes in the bid scope and bid requirements, in order to bring the bid within the amount of available funds.

When the lowest responsive and responsible bid exceeds available funds by more than ten percent (10%), and an essential operation or City service affecting the public's health, welfare or safety would be greatly hampered if the City were required to formally re-solicit bids, the procurement may proceed under the emergency procurement provisions of the City Code [Section 28-5].

If the lowest responsive and responsible bid exceeds available funds by more than ten percent (10%) and does not meet the definition of an emergency procurement, staff should request that City Manager reject all bids and re-advertise for bids with changes in the bid scope and/or utilizing base bid and additive alternate provisions to ensure that future bids are within the amount of available funds.

6. POSTPONEMENT OF BID OPENINGS - Publicly announced receipt of bids shall be considered postponed when the City Department must amend or modify the bid specifications and cannot meet the requirements of Monterey City Code §28-4 or an unforeseen circumstance occurs that would affect or prohibit the opening of bids. Whether to postpone a bid opening is a determination that should be made by the department staff member responsible for the project upon review of the City Code, these purchasing policies and procedures, and the specific language in the call for bids or proposals and/or bid specifications. If department SMR decides to postpone a bid opening, SMR is to notify Finance Administration that the opening has been postponed or canceled and provide Finance with a copy of the addendum notifying bidders of the change.

Without limitations, a bid opening may be postponed even after the time scheduled for the bid opening (but otherwise in accordance with Formal Bidding) when:

- The contracting City Department has reason to believe that the bids of a significant segment of bidders have been delayed in the mail, or in the communications system specified for transmission of bids.
- For causes beyond the control and without the fault or negligence (e.g., flood, fire, accident, weather conditions, strikes, or Government equipment blackout or malfunction when bids are due) of the contracting City Department.
- Emergency or unanticipated events interrupt normal governmental processes so as to render the scheduled bid opening impossible or impractical.

The following procedures are suggested best practices in the event a contracting unit must postpone the receipt of publicly advertised bids.

- a) All vendors that have either submitted bids, or received specifications, shall be notified by telephone, fax, or email that the receipt therefore has been postponed, the reason therefore, and notification regarding the return of any unopened bids. Should any bidder request that a submitted bid be held and considered as early submission for the rescheduled opening, the Staff Member Responsible should direct the vendor to submit a written request clearly stating that the bid packet should be considered a bid for the rebid/rescheduled opening, with an appropriate citation to the project.
- b) An addendum shall be added to the original eBidboard and/or online posting, notifying current plan holders of the postponement, the reason therefore and notification regarding the return of any unopened bids.
- c) The contracting City Department shall allow bidders to retrieve bids that had been:
 - * Submitted at or before the time of postponement;
 - * Previously sent but not arrived by the time of postponement; or
 - * For those not picked up by a bidder within 10 days of being notified of their availability, the contracting City Department shall return them, unopened, by certified mail or other delivery service that provides a delivery receipt.
- d) On the day and time originally scheduled for receipt of bids, the Department staff member responsible for postponement shall post a notice at the place where bids were to have been received, stating that the receipt of bids has been postponed. No bids may be received at this time.

7. CANCELLATION OF A SOLICITATION - Solicitations may be canceled if there are changes to be made to a bid or proposal that are substantial or would be difficult to communicate in an addendum. Examples include:

- a) the specifications may be too narrow, limiting the number of available bidders,
- b) the instructions for response may be unclear, causing a number of responses to be rejected for the same deficiency,
- c) an omission of an essential requirement from the scope of work statement

A new bid or proposal may be issued that cancels and supersedes the old bid/proposal. The staff member should proceed as follows:

- (1) Cancel old bid/proposal. The responsible Department or staff member must send an addendum to all bidders/responders who received solicitation notices or packages. The addendum must state that the bid/proposal has been canceled.
- (2) Issue new bid/proposal. The buyer must send the new solicitation to all bidders/proposers who received the original solicitation. A cover letter explaining the difference between the old solicitation and the new one will help responders quickly identify the changes.

Solicitations may be cancelled and not reissued if the project is abandoned or there is lack of funding for the project.

Example: A department issued a solicitation for bids on a project to repave, paint, improve safety at intersections and comport with ADA requirements all walking/biking/jogging trails in the City, an estimated 29 miles of trail. The engineer's estimate and approved budget for the project was \$300,000. After receiving bids, staff found that the low bid was \$400,000, well over the available budget for the project. The department rescaled the project, prioritizing trail sections most in need of repair. The department cannot award the contract for the revised project to the lowest bidder of the original project. The reduced scope of work due to the lack of funding might result in a different bidding outcome, therefore the original solicitation should be cancelled and the re-scoped project needs to be re-bid.

8. REJECTION OF BIDS – A bid may be rejected at bid opening or during Departmental bid evaluation for reasons including, but not limited to, the following:

- a) the business that submitted the bid is not a responsible bidder as determined by the City of Monterey;
- b) the bid is not responsive and/or does not conform in all material respects to the invitation for bids;
- c) the supply, service, or construction item offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the invitation for bids.

Non-Responsibility Hearings (Monterey City Code §28-12): Bidders have the right to contest staff's determination of non-responsibility at an open and public meeting by the body responsible for making the award. The Staff Member Responsible should inform the bidder in writing of the bid rejection and basis for the determination of non-responsibility. The bidder should be invited to provide evidence to rebut the determination within five days of receipt of the notice. At the Council meeting when the contract award is to take place, the bidder will have an opportunity to present their case to Council and refute evidence presented by City staff. After hearing all the evidence, Council will make a determination and award the contract to the lowest responsible bidder.

Monterey City Code §28-4 (c) (2) The City Council may waive any informalities or minor irregularities in bids received. When appropriate, staff may consider asking City Council to waive a minor error and accepting the bid as an alternative to rejection. Determination of whether a particular bid error that caused staff to deem the bid non-responsive (either at bid opening or subsequently upon further review) is a "minor irregularity" is something that would have to be evaluated on a case-by-case basis.

All bids may be rejected at the discretion of the City, including but not limited to under the following conditions:

- a) All bids exceed the budgeted amount (but see MCC §28-5 (d) as described in Section 5. above, which states that in the event all bids for a public works project exceed available funds and the lowest responsive and responsible bid does not exceed such funds by more than ten percent (10%), the Finance Director is authorized, in situations where time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate with the lowest responsive and responsible bidder for an adjustment of the bid price, including changes in the bid scope and bid requirements, in order to bring the bid within the amount of available funds).
- b) There are no responsive bidders.
- c) There are no responsible bidders.
- d) Material inadequacies or ambiguities in the City's bid documents.
- e) Loss of funding or abandonment of the project for other legitimate reason.
- f) Collusion among bidders
- g) The specifications, scope and/or terms and conditions are revised for re -bidding.

Example: A Department issues a solicitation and receives only one response. At bid opening, it is found that the bid was not signed and it is deemed non-responsive. Can the Department move to open market negotiations or rebid the project? Even though only one bid was received, and that bid was deemed non-responsive due to lack of signature, it still was an actual bid so the correct action is for the Department to ask City Council to reject all bids and direct staff to rebid the work.

9. AWARD OF BIDS - All formal bids must be awarded by City Council with two exceptions. For contracts pertaining to the informational technology systems that would be exempt from disclosure under the Public Records Act, the City Manager shall award such contracts to the lowest responsible bidder whose bid complies with the specification. Bids cannot be awarded within the first five business days from the bid opening date. The requesting Department will tabulate and analyze the bids, check references as indicated and recommend the lowest responsible bid to the City Council. If the Department is recommending award to other than the low bidder, the staff report to Council should include specific details to clearly explain the deficiency in the low bidder's package. The Department is responsible for placing the award of bid on the agenda, preparation of the written staff report and for preparation of a resolution awarding the bid. The Department will provide the resolution, agenda cover sheet, staff report, bid specifications, and any other supporting documentation to the City Clerk by the deadline. The Clerk will retain the award of bid resolution until such a time that the contract is awarded.

If City Council deems it in the best interests of the City, City Council may, on refusal or failure of the successful bidder to execute the contract within the time frame set forth in the bid specifications, award it to the second lowest responsible bidder. If the second lowest responsible bidder fails or refuses to execute the contract, City Council may likewise award it to the third lowest responsible bidder, etc.

10. AVAILABILITY OF BID RESULTS AND BID DOCUMENTS - Bid documents may be requested by interested parties immediately following the bid opening and should be produced by staff as soon as possible. Bid results may be obtained by calling the City Clerk's office, the Finance Administration office, or the Department awarding the bid.

11. CONTRACT REQUISITIONS - Requisitions encumbering contract amounts must document the bid results and cite the resolution number authorizing the purchase.

12. BIDDER PROTESTS –

The following procedures shall apply to bidder protest(s) (MCC §28-13) (2 CFR 200.318 (k)):

- a. Authority to protest shall be limited to bidding vendors. A written protest may be filed based on the following grounds:

1. Failure of the City to apply correctly the standards of review, evaluation, or scoring of a bid or proposal as specified in the solicitation documents.
 2. Such other grounds as would create a cause of action at law or in equity.
- b. Bidder protests must be submitted to the City, in writing and containing all information specified in subsection (c) herein, in person or via mail to City of Monterey, Finance Department, 735 Pacific Street, Suite A, Monterey, CA 93940, and shall be accompanied by the bid protest filing fee, which shall be set by resolution of the City Council.
1. For contracts awarded pursuant to a notice inviting bids, the protest must be received by the Finance Department no later than 5:00 pm on the fifth business day after the date of the bid opening.
 2. For contracts awarded pursuant to a request for proposals, the protest must be received by the Finance Department no later than 5:00 pm on the fifth business day after the City notifies the bidders of the winning proposal.
 3. Notwithstanding subsections (1) and (2) above, if a bidder's bid or proposal is rejected as non-responsive, the protest must be received by the Finance Department no later than 5:00 pm on the fifth business day after the City notifies the bidder that the bid or proposal is being rejected.
 4. The City's notification under subsections (2) and (3) above may be by any reasonable means, including but not limited to U.S. mail, electronic mail, or internet posting. The effective date of notice by mail is the date that the notice is deposited in the mail. The effective date of all other means of notice is the date it is transmitted.
 5. If the fifth business day falls on a weekend or a City holiday, the deadline to submit a protest shall be extended to 5:00 pm on the next business day.
 6. The party filing the protest must concurrently transmit a copy of the protest to the bidder deemed the apparent low bidder and to any bidder that is the subject of the protest.
 7. A written protest that is late or fails to include the bid protest filing fee shall be returned without further action by the City.
- c. The written formal protest must contain the following:

1. Identification of the specific City Purchasing Code (Chapter [28](#) of the Code) or other statutory or regulatory provision(s) that the bidder or department is alleged to have violated;
 2. Description of each act alleged to have violated the statutory or regulatory provision(s) identified above;
 3. A precise statement of the relevant facts that includes dates, timelines and involved parties, and all supporting documents. Supporting documentation not submitted at the time of submission of the written protest will not be considered;
 4. An identification of the issue(s) that need to be resolved that support the protest;
 5. A statement of the form of relief requested;
 6. A signed statement by an authorized representative that the protest is submitted under penalty of perjury under the laws of the State of California.
- d. If a timely protest is filed, Finance Director, or designee, shall notify the involved department(s) and any further action related to the bidding process shall be suspended until a determination is made on the merits of the protest.
 - e. Finance Director, or designee, will conduct an investigation, gather information, prepare documentation of its findings and make every effort to resolve the protest to the mutual satisfaction of all stakeholders. If the protest cannot be mutually resolved, the Finance Director will make a decision as to the protest and so inform the involved department(s) and notify the protest bidder(s) in writing.
 - f. The notice to the protester shall state the basis of bidder's protest(s), the results of the investigation, findings, recommendation(s) and reasons for the action taken and delivered, in writing, to the protesting bidder(s).
 - g. Bidders may appeal the Finance Director's determination, in writing, to the City Manager within five (5) business days of receipt of the written notification. The City Manager, or Assistant City Manager if designated by the City Manager, shall have five (5) business days to make a decision, which shall be in writing and shall be final.
 - h. The procedures and time limits set forth in this section are mandatory and are the bidder's sole and exclusive administrative remedy in the event of a bid protest. The bidder's failure to comply with these procedures shall constitute a waiver of any right to further pursue a bid protest, including a filing a challenge of the award of contract, filing a claim pursuant to the California Government Code, or filing any other legal proceedings. These bid protest procedures shall not limit the City Manager's authority to reject all bids. Rejecting all bids or proposals shall render a protest moot and terminate all protest proceedings.
13. **BID WITHDRAWALS** – The following procedures shall apply to requests for bid withdrawals:
- a. Requests for bid withdrawals must be submitted, in writing, prior to award of contract and within five (5) business days after the date aggrieved bidder knows or should have known of the facts giving rise to the request to withdraw the bid. Such request may be filed immediately subsequent to the bid opening. The written formal request for bid withdrawal must contain the following:
 - i. Identification of the specific reasons and/or mistakes the bidder made in the bid.
 - ii. A statement that the bidder wishes to withdraw their bid due to the reasons and/or mistakes cited.
 - iii. Description of how the reasons and/or mistakes make the bid materially different than the bidder intended it to be.
 - iv. A statement describing why the bidder cannot honor the bid as submitted.

- b. If a timely request for withdrawal of bid is filed, Finance and/or the involved Department(s) shall be notified and any further action related to the bidding process shall be suspended until a determination is made on the merits of the request.
- c. Finance or the involved Department will conduct an investigation, gather information, prepare documentation of their findings, and make recommendations to the City Manager concerning the merits of the withdrawal request and the dispensation of the bidder's bond. The City Manager, or designee, shall determine whether to grant the withdrawal request.

Staff shall make their written report available for inspection as a public record.

B. INFORMAL BIDS

- 1. INFORMAL WRITTEN BID - Informal written (or electronic) bids are to be obtained if the purchase is for, supplies, materials, furnishings, vehicles, rolling stock, general services, and equipment estimated in value at \$12,000 or more and below \$75,000 (\$10,000 is informal bid threshold for all categories if utilizing Federal grant funds (2 CFR 200.320 (a))); and Public Works projects valued from \$12,000 up to \$149,999.99. Three responsive bids/quotes are required unless infeasible. If a bid is deemed non-responsive, it does not count as one of the required bids unless there are not three available responsive sources in the area. The inquiry/informal bid information should be recorded online in the Comments Log portion of the requisition submitted to Finance, or on the Bid/Quote Summary form for contracts submitted for review and approval in OnBase; if three bids are not provided an explanation is required as to the availability of bidders.
- 2. INFORMAL VERBAL BID - Informal verbal bids (minimum of three, if possible) are to be obtained if the purchase is needed immediately and meets the same criteria as outlined above for Informal Written Bid. The inquiry/verbal bid information should be recorded online in the Comments Log portion of the requisition that is submitted to Finance, or on the Bid/Quote Summary form for contracts submitted for review and approval in OnBase.

- C. EXCEPTIONS TO BIDDING REQUIREMENTS (not exceptions to contract requirements) - Approvals are generally for a one-time specific purchase. The requesting department (the buyer) is the Department of Record and as such shall maintain copies, and produce copies for auditors, of relevant documents and forms, i.e., Sole Source, Piggyback Request Form, Bid/Quote/Proposal Summary, etc. Retention: in Series 405-05 of the buyer's department. Neither Finance nor the City Clerk's Office are the Department of Record.**

1. BY ANOTHER GOVERNMENTAL AGENCY (2 CFR 200.318 (e))

Formal and/or informal bidding is not required when the contract and/or purchase is able to be performed by another governmental agency.

2. PIGGYBACKING ONTO OTHER GOVERNMENTAL AGENCY BIDS (2 CFR 200.318 (e))

Piggybacking (cooperative purchasing) is provided for in Section 28-14(a) and 28-25(d) of the City Code. Piggybacking allows the City to dispense with formal or informal bidding requirements in cases where the contract or purchase is capable of being performed through purchasing contracts negotiated by another governmental agency that utilized acceptable bidding procedures under California law. The outside entity which has the bid being piggybacked MUST be a governmental agency. Joint Powers Authorities (JPAs) formed under California law are themselves governmental agencies, however JPA's formed in other states may not be, so out-of-state JPAs should be evaluated to determine eligibility. NASPO Value Point is a cooperative purchasing group made up of procurement officials from various governmental agencies, but is not a governmental agency itself. However, all NASPO ValuePoint contracts are solicited and issued by a lead state, making the contracts eligible for piggybacking.

The process used by the other government agency MUST be a lawful process under California law and the Monterey City Code. This is mandatory since the law requires the use of a competitive process judged by California standards, not some other state or country. For example, in California it is NOT OK to use an RFP instead of a bid for goods and materials, but it is OK to use an RFP for professional services such as engineers, architects, and attorneys. (Reference PCC §20162, CA Government Code §4526, COM Ordinance Chapter 28) Key concept: The

bid process is not only about getting the best price but also about ensuring fair, open competition. Price is used as a measurement of who wins the bid only when the process meets all the rules.

It is appropriate to piggyback onto another government contract when the Staff Member Responsible has developed a specification for which another governmental agency already has a bid developed for essentially the same product. Once a governmental agency is found to possess items that the City wishes to purchase, the Staff Member Responsible must determine that the other governmental agency used an appropriate competitive process to secure its bid.

The Staff Member Responsible should document the request by submitting a Piggyback Purchase Request form along with a copy of the contract on which to piggyback to Finance Administration. This form is available in OnBase. Select Documents, Custom Searches, Legal Agreement Templates. After Finance review and approval, you can contact the consultant, contractor or vendor with your specification, which needs to be virtually the same as the original, and directly purchase the product. Contract requirements still apply and the approved Piggyback Request Form should be included as an attachment to the OnBase Legal Agreement workflow.

Suggested programs to search for Piggyback Opportunities follow, (review of contracts by the Staff Member Responsible is still necessary). Use of one of the suggested programs below still requires submittal of Piggyback Purchase Request form.

Omnia Partners (formerly U.S. Communities and National IPA)
Federal GSA Schedules (limited to only GSA Schedules 70 and 84)
CMAS – California Multiple Award Schedules
National Association of State Procurement Officials “NASPO” ValuePoint Contracts (formerly WSCA-NASPO)
Sourcewell (formerly National Joint Powers Alliance (NJPA))
National Cooperative Purchasing Alliance (NCPA)
Houston-Galveston Area Council (HGAC Buy)
Buy Board
National Purchasing Partners Gov (NPPGOV)

Federal GSA Schedules: GSA Schedules are also referred to as Multiple Award Schedules and Federal Supply Schedules. Under the GSA Schedules Program, GSA establishes long-term government wide contracts with commercial firms. Local governments are authorized to purchase from the GSA schedules, but are limited to using products on Schedule 70 “IT” and Schedule 84 “Law Enforcement, Security”. For a current list of contracts available under these schedules, please visit www.gsa.gov and use the search option to find the schedule in which you are interested.

CMAS – California Multiple Award Schedules: CMAS is a program similar to the Federal GSA Schedules; in order for a vendor to get into the CMAS list, he/she must first be accepted as a GSA contractor. The State takes the GSA contract and adds to it, including some additional procurement language and such. Effective 1/1/2010, local government agencies no longer pay the Department of General Services “DGS” an administrative fee to place an order against a CMAS contract. In lieu of this fee paid by the using local government agency, the selling CMAS contractor pays the DGS a 1% incentive fee.

The following Non-IT services are examples of services not available on the CMAS program: Architectural, Engineering, and Environmental Services (GC §4525)
Financial Audits (GC §8546.4(e))
Legal Services (GC §11040)
Public Works (PPC §101)
Facility Planning, Registered Nursing, & Security Guard Services (by CMAS Policy)

Local Governments can use the CMAS website to search for contractors by company name, or by CMAS product/service description. Go to www.pd.dgs.ca.gov/cmas, then select the link entitled “Find a CMAS Contract.”

CMAS contractors are required to provide copies of their contracts upon request from an agency. Your Request For Offer should include a requirement that the contractor include a complete copy of its CMAS contract with its offer to substantiate that:

- The required products and/or services are included in the contract.
- The prices offered are equal to or lower than the prices stated in the CMAS contract. You may verify the current CMAS/GSA product & services prices at the GSA eLibrary: www.gsaelibrary.gsa.gov. Search at this site using the base GSA contract number identified in the CMAS contract.

Prior to issuing an order, the Staff Member Responsible should check the CMAS website (www.pd.dgs.ca.gov/cmas, select Find a CMAS Contract) to substantiate the contract is still active.

The original purchase order is sent directly to the awarded contractor shown on the PO. Local government agencies are required to send a copy of the purchase order to the DGS Procurement Division at the following address:

California Department of General Services
 Procurement Division – Data Management Unit,
 MS #2-203 PO Box 989052
 West Sacramento, CA 95798-9052

NASPO: ValuePoint Contracts: NASPO ValuePoint is a cooperative purchasing program that facilitates public procurement solicitations and agreement using a lead state model. NASPO ValuePoint uses a "Lead State" model in issuing cooperative solicitations. One participating state leads the procurement, issues the solicitation and awards the contract based on that state's statutory requirements and processes. The Lead State owns and manages the contract(s). All authorized governmental entities are welcome to use NASPO ValuePoint approved agreements. For a listing of current opportunities, go to <http://www.naspovaluepoint.org/#/current-contracts/search>.

There are some instances that will need further discussion, but in general terms, Staff Member Responsible needs to make sure that when using another entity's bid, it will meet Monterey's own bid standards. In instances where questions arise, contact Finance Administration.

The purchases permitted under this Section shall be subject to fair, just and equitable contract conditions. Contracts for goods or services procured for \$75,000 or more, or for Public Works projects of \$150,000 or more are subject to City Council approval.

3. EMERGENCIES

In the event of an emergency as defined herein, the Mayor or City Manager may order the suspension of normal bidding or purchasing and procurement requirements for projects related to abatement of the impacts or effects of such emergency. (see MCC §28-14 (c)) If an emergency proclamation is issued by the City Manager or City Council pursuant to Chapter 11 of the City Code, then those emergency procedures shall control. Section 28-14 is meant to address smaller emergencies that do not rise to the level of requiring a formal declaration of emergency for the entire City. As an example, if a large sinkhole developed in a City street this may not require a City-wide emergency declaration, but may necessitate the emergency procurement of goods or services in order to abate the emergency.

The City Council shall, if possible, ratify such emergency suspension of procedures at the next properly noticed Council meeting following the emergency procurement and consider whether further suspension of procedures is required to abate the impacts of the emergency. An emergency shall be deemed to exist if:

1. There is a public calamity such as a fire, flood, earthquake, storm, or similar disaster that poses a serious threat to the public safety or national defense; or
2. There is an immediate need to prepare for national or local defense; or
3. An essential operation or City service affecting the public health, welfare or safety would be greatly hampered if adherence to the prescribed purchasing procedures would cause undue delay in procurement of the needed item or service.

A condition, where it would simply be expeditious, convenient, or in the City's best interests to dispense with the bidding process, does not constitute an emergency. Please contact the Finance Department if contemplating an exception to bidding requirements on the basis of an emergency.

Department Staff is responsible for documenting all emergency requests following the emergency by submitting an Exception to Competitive Bidding Requirements Emergency Request form to Finance Administration and for obtaining City Council ratification, including obtaining a resolution from City Council at the next properly noticed Council meeting.

The purchases permitted under this Section shall be subject to fair, just and equitable contract conditions. The ratification of emergency contracts procured (see MCC §28- 14 (c) of \$75,000 or more or for Public Works projects of \$150,000 or more are subject to City Council approval.

4. SOLE SOURCE

Sole source purchasing is authorized by Monterey City Code §28-14 (d) in the event the contract and/or purchase contemplated is capable of being performed by a sole provider such as a public utility or the holder of an exclusive patent or franchise, for purchase of unique or innovative goods or services including but not limited to computer software and technology, or for purchases of goods or services when there is a demonstrated need for compatibility with an existing item or service. A sole source may be designated when it is apparent that a needed product or service is uniquely available from the source, or for all practical purposes, it is justifiably in the best interest of the City. Under some circumstances, City bidding requirements may be dispensed with when the services or goods are only available from one source either because:

- the brand or trade name article, goods, or product or proprietary service is the only one which will properly meet the needs of the City or;
- the item or service is unique and available only from a sole source, or;
- the item/service is designed to match others already in use or necessary to be compatible with others already in use.

Examples of bona fide sole source vendors are public utilities or holders of exclusive patents or franchises. Sole source cannot be justified on the basis that the vendor has previously done business with the City or is familiar with City operations or may have worked on the same project or done similar work for the City. When asked to approve a sole source contract or purchase order, Finance will consider the following:

- whether there are other vendors within a reasonable distance that can provide the necessary service/product;
- whether other vendors can be utilized for the servicing and/or maintenance of the product

Sole source purchasing is an exception to the normal procurement function and requires a detailed explanation. The following factors **do not** apply to sole source requests and should not be included in your sole source justification.

- Personal preference for product or vendor
- Cost, vendor performance, and local service (this may be considered an award factor in competitive bidding)
- Features which exceed the minimum department requirements
- Explanation for the actual need and basic use for the equipment, unless the information relates to a request for unique factors

Please document your request by submitting an **Exception to Competitive Bidding Requirements – Sole Source Justification Form** to Finance Administration. This form is available in Legal Agreement Templates in OnBase. The approved Sole Source Justification Form should be included as an attachment in the Legal Agreement workflow.

The purchases permitted under this Section shall be subject to fair, just and equitable contract conditions. Contracts procured (see MCC §28- 4) of \$75,000 or more, or for Public Works projects of \$150,000 or more are subject to City Council approval.

5. USED EQUIPMENT

Formal and/or informal bidding is not required when the contract and/or purchase is for used equipment. (2 CFR 200.318 (f))

6. LEASING OR RENTING EQUIPMENT

Formal and/or informal bidding is not required when the contract and/or purchase is for leasing or renting equipment.

7.Placement of insurance coverage and surety bonds.

8.Legal services contracts, including without limitation, the services of outside counsel, consultants and other experts needed for litigation, administrative, or other legal proceedings.

9.Conferences, trainings, and seminars as approved in advance by the Department Head.

10.The Library Director is authorized to rent, purchase or otherwise acquire all books, magazines, periodicals, recordings, films, pictures, photographs, programs received through electronic media, documents, or any other cultural items for circulation from or study in the Public Library pursuant to the procedures prescribed by the Board of Library Trustees subject to the appropriations of the approved budget for the Library.

D. PROPOSALS FOR PROFESSIONAL SERVICES (2 CFR 200.320 (d))

Professional services are defined as those provided by a person or firm engaged in a profession based on a generally recognized special knowledge or skill, including, but not limited to, the professions of accountant, artist, architect, landscape architect, construction manager, engineer, environmental consultant, dentist, physician, training or educational consultant, or land surveyor, and whole services are considered distinct and unique to such a degree that bidding of such services would not be feasible. MCC §28-2 Veterinary Services are also considered professional.

CA Govt. Code §4525 (the "mini Brooks Act") defines professional services for the purpose of a competitive selection process that does not have to be awarded based on low bid for Public Works Project related services as 1. Architects, 2. Landscape Architects, 3. Engineers, 4. Environmental Consultants (services performed in connection with project development and permit processing in order to comply with federal and state environmental laws), 5. Land Surveyors and 6. Construction Managers (construction management services must be provided by a licensed architect, registered engineer, or licensed general contractor).

Contracts for professional services should be awarded on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required at a fair and reasonable price to the public agency, as well as any other specific selection criteria set forth in the RFP. The Request for Proposals "RFP" shall state the relative importance of price and other factors and subfactors, if any. A statement in the RFP of the specific weighting to be used for each factor and subfactor is recommended so that all offerors will have sufficient guidance to prepare their proposals. (ABA Model Procurement Code §3-203) For such contracts, price can be considered but may not be the sole determining factor. (California League of Cities, Municipal Law Handbook).

No person, company, or subsidiary thereof who has been awarded a consulting services contract with the City for preparation of a request for proposal or call for bids or specifications may submit a bid for, or be awarded a contract for the provision of services, procurement of goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract. The purpose of this prohibition is to avoid a conflict of interest or bias situation in which a contractor could draft specifications favoring its own products or capabilities. In this way the City can be assured of getting unbiased advice as to the content of specifications it contracts with third parties to prepare and can avoid allegations of favoritism in the award of contracts. (2 CFR 200.318 (c)(1))

California Government Code §1090 prohibits City officers and Employees from having a financial interest in any contract "made" by them or by any board or body of which they are members. Virtually all board members, officers, Employees, and consultants of a public entity are considered public officials under Government Code §1090. So in a case where a consultant is developing a scope of work for a future project, creation of that scope of work is considered part of the "making" of the contract and defined by Section 1090. As such the consultant would be prohibited from submitting a proposal and/or being awarded a contract for the work. The League of Cities Municipal Law Handbook states the following on the subject:

"Caution must be exercised whenever a consultant advises an agency during the process of formulating a contract or a proposal for a contract and then wishes to be awarded the contract or to be respond to the call for proposals. The mere status of the consultant as an independent contractor will not insulate the eventual contract from the application of Govt. Code §1090." (pg. 174, 2014 edition of the Municipal Law Handbook)

Contracts entered into in violation of G.C. §1090 are VOID and payment by the agency is prohibited. Willful violation of Section 1090 by a public official or employee is a felony with a maximum fine of \$1000 or imprisonment and the official is "forever disqualified from holding any office in this state." (California Government. Code §1097) Consultants found to have violated Section 1090 are not subject to criminal prosecution, but are subject to civil and administrative penalties and even if the consultant does thousands of dollars worth of work under the contract, the City would be prohibited from paying him.

If your RFP is for a high-profile project, land-use project, or a high dollar project, as Staff Member Responsible you may choose to ask for a City Council Resolution that directs you to issue the RFP. This request for Resolution would be an additional, non-traditional step but would ensure that City Council is on board with the intended project. The City Manager's Office can further guide you as to the business decision of whether it would be ideal for you to request City Council Resolution prior to RFP issuance.

Prior to release or advertisement, formal RFP language must be reviewed by City Attorney's Office. Departments should route all formal Requests for Proposals to the City Attorney and Risk Management departments prior to public release or advertisement via the [Call for Bids/Bid Specifications and Request for Proposals Review and Transmittal Form](#) available on the Competitive Bidding, Contract Forms and Procedures page of the @ Work site.

All modifications to the contract, or scope of work provisions should be submitted by the consultant as part of the original response to proposal. Amending items after the fact diminishes the fair competition requirement of the purchasing code. Requests to change insurance or indemnification requirements should be handled by departmental staff explaining to vendor that the City does not entertain request for modifications to indemnification provisions. If City Staff determines that it is in the City's best interest to negotiate such provisions with vendor (i.e. there are no other qualified vendors), Staff Member Responsible should contact Risk Management for consultation and analysis. Risk Management can provide a Risk Evaluation Matrix to help assist Staff Member Responsible, as well. If the department chooses to modify the scope requirements or extend the deadline for responding, the department should send the modifications to all responding consultants, providing all a chance to provide a best and final proposal.

If modifications are requested that are unacceptable to the City (i.e. removal of indemnification language) and the responding consultant is unwilling to change their position, that consultant's proposal will have to be rejected.

Once proposals have been ranked based on the selection criteria as stated in the RFP (qualifications, experience, etc.), fee proposals can be reviewed to determine the range of fees/costs. That information can be used to prepare for negotiations with the most qualified firms. Remember, while cost can be considered, it cannot be the sole factor in your selection.

1. **Contracts for professional services valued at \$75,000 or more** are subject to City Council approval and the following competitive process:
 - a) REQUEST FOR PROPOSALS - Requests for proposals shall specify the deadline and place for submission, the nature of the services required, and the selection criteria to be used for awarding the contract. (RFP templates and tips are available online at @Work under the Finance page) RFPs can be issued in a format that allows for consultants to directly type into the document (i.e. Microsoft Word), however if that format is used, consultants should be directed to make any modifications with track changes turned on. Also, if they submit an electronic version back to the department, it should be submitted in Word format and the department should run a blackline against the original version to make sure nothing is truly deviating from what the City sent or if there are deviations they are transparent for Risk and Legal review.

Send the RFP to many consultants; sending to a greater number of consultants increases the chances that a suitable number of responses will be obtained. It is also advisable to publicly post the RFP on trade or professional organization websites. Contracts for Professional Services should be, unless infeasible, based on at least three proposals. A Department must also document to Finance (as an attachment to an Eden Requisition or on the Bid/Quote Summary form for contracts) the names of the other consultants that were contacted and failed to or declined to respond.

Allow adequate time for responses. Depending on the complexity of the project, allow for an average response time of 3 to 6 weeks. Remember, if it took 4 weeks to develop the RFP, it will take a consultant more than 10 days to draft a response.

- b) AWARD OF CONTRACT - Except as otherwise provided herein, the City Council shall award **by RESOLUTION** a contract based on qualifications, experience and responsiveness, in addition to any other criteria set forth in the Request for Proposals. A Department can ask Council to approve more than one not-to-exceed professional services contract for a particular type of design professional if warranted by the quantity of work and time constraints.
- c) REJECTION OF PROPOSALS - In the event of one or more of the following:
 - 1. All responses exceed the budgeted amount or the City was unable to negotiate a fair and reasonable price with any of the qualified consultants.
 - 2. There are no responsive consultants
 - 3. There are no responsible consultants
 - 4. The project is abandoned
 - 5. The specifications, scope and/or terms and conditions are revised for a new RFP

All proposals may be rejected and the Request for Proposals reissued or a contract for services may be negotiated on the open market with adequate documentation of the results of the Request for Proposals process. See item I of this section.

If the Staff Member Responsible sets out that rejection of all proposals is necessary, clear written justification should be provided. The decision must be made objectively, not to favor or solicit select vendors.

Award of contract is still subject to City Council approval and must be reviewed and signed off by the City Attorney and Finance, Risk Manager before final execution.

- d) CONTRACT PAYMENT - Requisitions submitted for the payment of contract amounts must contain information indicating the providers from whom proposals were received and evaluated, the criteria for the selection made or the resolution number authorizing the contract.
- 2. **Contracts for professional services valued from \$12,000 up to \$74,999.99** may be made on the open market and are not subject to City Council approval. Open market contracts shall, unless infeasible, be based on at least three informal proposals and shall be let to the most qualified firm. Requisition submitted for the payment of contract amounts must be accompanied by information indicating the consultants contacted and the criteria for the selection made. (\$10,000 instead of \$12,000 if utilizing Federal grant funds (2 CFR 200.320 (a)))
 - 3. **Contracts for professional services valued under \$12,000** may be let to the most qualified consultant at the discretion of the Department without informal proposals, subject to fair, just and equitable terms and conditions. (\$10,000 instead of \$12,000 if utilizing Federal grant funds (2 CFR 200.320 (a)))
 - 4. **Open-ended ("On-Call") contracts for professional services** - All such contracts are subject to the formal Request for Proposal process. These contracts are for a specific period of time and a not-to-exceed dollar amount. The approved dollar expenditure contained in the authorizing resolution may not be exceeded without City Council review and approval. The purpose of such open-ended contracts is to place firms on retainer to provide **professional** services for a variety of City projects. Site specific or unique professional services (i.e.

architect for library project) should be issued and awarded as separate RFPs from the on-call professional services contracts.

5. **Request for Qualifications (RFQ):** An RFQ may be issued prior to a Request for Proposal for the purpose of prequalifying and/or short listing vendors so long as a Request for Proposal timely follows the RFQ process. This process is **not a substitute** for the RFP process.

E. TRADING OR BARTERING

Trade transactions, meaning those involving an exchange of services or goods between the City and a vendor are not prohibited. Such transactions must adhere to the same bid/bid limits as cash transactions. For example, if the value of the traded service or good is greater than \$12,000 (amount subject to change in accordance with City Code §28-4) three bids or proposals must be obtained. The request for bid/proposal can include a requirement for a bartered transaction. A Contract for Services is required, regardless of amount, and must include detailed information regarding the goods or services to be received by the City and the vendor. **Example contract language:**

Mona's Floral will trade 52 (fifty-two) floral arrangements, of a size and composition valued at \$40 in the Mona's Floral retail store in exchange for 3 (three) One-Year Family Memberships to the Monterey Sports Center currently valued at \$690/each.

Alisa's Photography will trade 1 (one) Events Photo Session, valued at \$1,800, which includes 5 hours of stationary shooting time and 200 4x6 prints of the event, for 2 (two) One-Year Family Memberships to the Monterey Sports Center, currently valued at \$690/each and 1 (one) Six-Month Adult Membership to the Monterey Sports Center, currently valued at \$305.

Shakespeare Pizza will trade 60 (sixty) large pizzas, each valued at \$23 for 2 (two) One-Year Family Memberships to the Monterey Sports Center, currently valued at \$690/each.

The IRS requires reporting of bartered services over a certain dollar amount annually. [See IRS Tax Topic 420 - Bartering Income] As of July 30, 2017 the reporting amount is of \$600. In order to properly record such transactions all Departments participating in trade transactions are required to file an annual report of all bartered contracts to the Accounts Payable office no later than January 15th of the following year. Similar to cash transactions, all new vendors will need to submit a W9 form to the Accounts Payable office.

The City Attorney's Office has created a Sample Contract For Bartered Services template which is available on OnBase, under Legal Agreement Templates. Document your trade request by submitting Trade Justification form to Finance Administration. This form is available in the OnBase Legal Agreement Templates. The approved Trade Justification Form should be included as an attachment to the OnBase Legal Agreement workflow.

F. ENVIRONMENTALLY PREFERRED PURCHASING (resolution 13-191 passed 11/19/13)

Full text of the Environmentally Preferred Purchasing Policy, [\(EPPP\)](#), can be found in Appendix E.

G. OPEN MARKET NEGOTIATION

MCC §28-4 (c) (6)) states that in the event no bids are received, the Purchasing Agent may, in their discretion, re-advertise for other bids, cancel the procurement, or recommend that the City Council declare by resolution that the equipment, supplies, materials, or general services may be more economically or satisfactorily procured on the open market and order such procurement on the open market by direct negotiations.

.Council may NOT authorize open-market negotiations when bids are received but deemed non-responsive, or all bids come in over-budget, or bids are received but are otherwise rejected by Council for any other reason.

Example: The City extensively advertised for bids on a well-digging construction project and held a pre-bid meeting which two contractors attended. Although e-bid board showed that the project specifications were accessed by several vendors, *no bids were received* for the project. In discussions with the vendors who attended the pre-bid meeting, it was revealed that the remote location of the site, the extensive security clearances required and the construction challenges associated with the project made it an unattractive bid. All appropriate measures (extensive advertising, clear and understandable project specifications and timely communication with vendors) in the purchasing process were taken by the Staff Member Responsible in order to best achieve a successful bid opening. In this instance, it is recommended that the Staff Member Responsible request approval of the Purchasing Agent authorizing open market negotiation and if approved, open negotiations with both vendors who attended the pre-bid meeting and recommend contract award to the vendor offering the best terms for the City.

All steps in the process of conducting a non-competitive or limited competition procurement must be documented. (The National Association of State Procurement Officials publication, State and Local Government Procurement: A Practical Guide). The following is a best practices approach to open market negotiations when no bids are received.

Formal Bids/Proposals

- City Council must declare and direct by resolution that the equipment, supplies, materials, services, or project may be more economically or satisfactorily procured in the open market and direct such procurement on the open market by direct negotiations. MCC §28-4 (c) (6).
Before initiating negotiations, the procuring Department shall draft a resolution for City Council detailing the need for the non-competitive purchase process including documentation of the prior unsuccessful competitive bid process and research showing vendor(s) selected to negotiate with are the only available suppliers/service providers or why selected vendors were chosen for the negotiation process.
- To prepare for negotiation, the Department should list specific objectives for the contract including price, delivery, performance standards, warranty, contract terms and conditions. It is critical that the substantiation of prices or costs that haven't been tested through a competitive procurement be part of the process of awarding a non-competitive procurement. (NASPO Guide, Chapter 8).
- The final contract terms and format must be reviewed and approved by the City Attorney and Risk Manager.

Informal Bids/Proposal

Informal bids and proposals should follow the steps listed above for formal bids/proposals with the exception of needing City Council to reject all bids and approve the use of open-market negotiations.

CHAPTER 4

CONTRACTS/LEGAL AGREEMENTS

A. CONTRACT CONTENT

The City enters into contracts for acquisition of a variety of services, supplies and Public Works projects. Such contracts can vary in form, format and complexity. However, every contract entered into by the City shall include the following:

1. A stated beginning and ending date – although not a legal requirement, most contracts generally should not be more than five (5) years in order to encourage a fair and competitive environment for vendors and contractors wishing to contract with the City.
2. Either a total or a "not-to-exceed" cost. (2 CFR 200.318 (j))
3. A clear statement of terms and conditions regulating the contract, including consideration by both parties. (2 CFR 200.318 (k), 200.326)
4. Review and sign off by the City Attorney, City Manager, and Risk Manager. This review/approval process is handled through the OnBase Legal Agreement workflow system.

All City contracts are subject to the City's Purchasing Ordinance as well as the purchasing procedures outlined in this Manual. All Federal grant funded contracts must contain the applicable provisions described in Appendix II to Part 200 of the Uniform Guidance (2 CFR 200.326). This section is available as a reference in the Purchasing Manual Appendix.

California law gives an electronic signature the same legal significance as an original signature - see California Civil Code from Sections 1633.1 to Section 1633.17 (known as the Uniform Electronic Transactions Act, or UETA).

B. CONTRACT REVIEW AND EXECUTION – VALUED AT \$12,000 OR MORE

All services require a contract regardless of dollar value. All contracts for goods and services, regardless of their dollar value and obtained either by the formal Call for Bids, Request For Proposals or the informal bid process, must be executed by either the Mayor or the City Manager. In the absence of the Mayor or City Manager, the Vice-Mayor or Assistant City Manager may sign contracts when expressly authorized to do so by the Mayor or City Manager. All legal agreements must be submitted via the Legal Agreements Workflow process in OnBase. See Legal Agreements Standard Operating Procedure available on the @Work intraweb.

All contracts for goods and services valued at \$75,000 or more, ,or Public Works Contracts valued more than \$150,000 are subject to City Council approval and must be signed by the Mayor or the City officer so designated in the approving resolution.

Legal Agreement templates are found in OnBase.

(\$10,000 is informal bid threshold for all categories if utilizing Federal grant funds (2 CFR 200.320 (a)))

C. CONTRACT REVIEW AND EXECUTION – VALUED UNDER \$12,000

All services require a contract regardless of dollar value. All agreements for services valued at less than \$12,000 must be subject to a written contract between the City and the contractor. These small contracts must be in a form approved by the City Attorney. While sufficient insurance is required as a general term of these small contracts, contractors are generally not required to provide their certificate of insurance to the City.

Legal Agreement template is found in OnBase.

All contracts for purchases of goods valued at less than \$12,000 may be handled through the City's Cal-Card program or with a purchase order executed at the Department level by the designated purchasing representative.

(\$10,000 is informal bid threshold for all categories if utilizing Federal grant funds (2 CFR 200.320 (a)))

D. TYPES OF CONTRACTS

REGULAR CONTRACTS

Contracts for specified services and/or goods generally for a specified period of time and generally for a specified price to be paid at the conclusion of the contract.

OPEN-ENDED CONTRACTS FOR PROFESSIONAL SERVICES

Please see above section (Chapter 3, §D-4) on RFP's for specific information about open-ended contracts for Professional Services.

JOB ORDER CONTRACTS

Job order contracts are individual annual contracts awarded by the City Council, pursuant to the City's Purchasing Ordinance, for repair, remodeling, paving, sidewalk repair or other repetitive work to be done according to unit prices. Each contract may not exceed \$1,000,000. Job order contracts do not set aside or guarantee funds to pay the contractor, they merely qualify the contractor to work for the City. Job orders for repairs, remodeling, paving, sidewalk repair or other restorative work of any size or amount, with project approval, are allowed without further competitive process, up to the annual, cumulative not-to-exceed on-call contract limit.

Separate job order contracts for new construction projects up to \$149,999.99 may be issued under a job order contract.

MUNICIPAL SERVICE AGREEMENTS

Government Code §54981 requires City Council approval of municipal services agreements between cities. Note there is no dollar threshold for this requirement; all such agreements must have City Council approval.

DESIGN-BUILD CONTRACTS

Design-build contracts are a delivery method for construction projects that combines the architectural, engineering and construction services required for a project into a single contractual agreement. Such contracts are permitted under the Monterey City Code for public works projects \$500,000 or more if City Manager approved this purchasing method at initial project approval.

Conflict of Interest Policy relating to Design-Contracts: A consultant who provides design assistance in developing the master plan or procurement requirements for the City is forbidden from then submitting a bid for the design-build project.

CHANGE ORDERS, MODIFICATIONS, AND AMENDMENTS

Change orders, modifications, and amendments to contracts shall be limited to avoid any material alteration in the original terms or scope; henceforth referred to as a "cardinal" change. Whether a change is "cardinal" depends upon whether it is viewed as (1) unreasonably altering the character of the work, (2) unduly increasing the cost of the work, or (3) effecting a material change in the work constituting a radical departure from the original contract³. Generally, changes constituting more than a 25% change from the original contract amount will be considered a "cardinal change". Change orders over this threshold should be discussed with Finance and City Attorney's Office.

Example: Can a formally bid contract be amended to add additional scope such as an additional elevator servicing with additional payments? Yes, so long as the additional work is along the same lines of the original scope of work, and the original project specifications allowed for additional work or did not include language prohibiting, and so long as the increased scope would not be considered "cardinal".

³ Bruner & O'Conner Construction Law July 2014 §2:43

Change orders within the project contingency limits are not considered contract amendments and as such, are not required to go through the OnBase review process. The language used in contracts with contingency amounts states, "City shall pay \$xxx dollars, plus a sum of up to 10% (or sometimes 15%) for such contingencies as the City Manager deems appropriate"

Contract amendments or changes outside a stated contingency should be documented using the addendum template in OnBase and routed through the legal agreement process. Authorization to approve change orders is stated in the awarding resolution.

EXPIRED CONTRACTS

An expired contract cannot be revived via amendment. A new contract will have to be put in place.

TEST DRIVING OR BORROWING EQUIPMENT

Departments contracting with a vendor to borrow or test drive equipment should coordinate with Finance/Administration to ensure adequate insurance and liability coverage is in place. Departments should complete the Temporary Vehicle Insurance Request Form located on @Work/Finance/Risk Management and submit it to the Risk Manager.

E. CONTRACTOR'S BONDING REQUIREMENTS

The City's standard bid specifications include payment and performance bond forms. The City does not require the surety company to utilize the bond forms, however the bond paperwork must conform to the requirements stated in the solicitation or contract specifications and the conditions listed below.

Under certain bidding conditions, prospective vendors will be required to furnish bonds along with their quotation. Cash, cashier's check or certified checks may be substituted for bonds. If the Department is aware that a bidder will be submitting cash as surety, please notify Finance so appropriate security measures can be taken.

All bid bonds on Public Works projects must be original and executed by an admitted surety insurer under Public Contract Code Section 20129. Bonds furnished by insurance, bonding or surety companies are acceptable to the City under the following conditions:

- Company must be listed on the U.S. Treasury Department's "T-list";
- An A.M. Best rating of "B" or better;
- Company must be authorized to do business in the State of California;
- Surety companies must produce the following within ten (10) calendar days of receipt of request(s) for copies:
 - Original or certified copy of unrevoked appointment, power of attorney, by-laws, or other instrument entitling or authorizing person executing bond to do so; and
 - Certified copy of certificate of authority of insurer issued by Insurance Commissioner;
 - Certificate from Clerk of Monterey County that certificate of authority of insurer has not been surrendered, revoked, canceled, annulled or suspended, or if it has, that renewed authority has been granted;
 - Copies of insurer's most recent annual statement and quarterly statement filed with the Department of Insurance.

The following bonding requirements may be required as determined by the requesting Department:

BID BOND: Bid bonds are required as assurance that the bidder's quotation is sincere and well intentioned. If a bidder failed to enter into an agreement with the City once the award was made, the City could submit a claim against the bid bond. Bid bonds will be included with the bidder's quotation. When specifically required in the bid specification the bid bond requirement will be for an amount of not less than ten (10%) percent of the total bid price. The successful bidder's bid bond can be released after they have signed a contract/agreement with the City AND after they have presented all other bonds required in the contract. The bid bonds of unsuccessful bidders may be returned as soon as the successful bidder has signed a contract/agreement with the City and after they have presented all other bonds required in the contract, or upon the expiration of the bid validity period, whichever comes first. (2 CFR 200.325)

LABOR & MATERIAL BOND: Also referred to as "Payment Bonds". Labor & Material bonds assure payments to subcontractors and material suppliers in the event the primary contractor defaults or becomes insolvent. Labor &

Material bonds are required for all construction, public improvement and certain other types of contracts. Service contracts exceeding \$25,000 annually require a Labor & Material bond. The Department and Staff Member Responsible may decide to waive the bond requirement for service contracts less than \$25,000, if it is determined that the project is not a public work and the bond is not needed to protect the City's interest. All contracts for projects valued at \$25,000 or more must, by state law, require a Payment Bond valued at 100% of the project cost (California Civil Code §9550 - 9554). Labor & Material bonds may be held by the City for at least thirty (30) days after the City has filed Notice of Completion or 90 days after completion or cessation of work if a Notice of Completion has not been filed. (2 CFR 200.325)

FAITHFUL PERFORMANCE BOND: Faithful performance bonds assure completion of a contract, job or project in the event the primary contractor does not complete the contract, job or project and help protect public entity resources. Although not required by law, Faithful Performance bonds are strongly recommended for all construction, public improvement and certain other types of contracts, particularly for high dollar contracts. If required by the Department, bid specifications shall require a performance bond in an amount up to one hundred (100%) percent of the total amount of the quotation. Such performance bond may be returned to the contractor only after the City files a Notice of Completion. (2 CFR 200.325 requires 100% for PW contracts over \$150k)

ALTERNATE SECURITIES: The contractor may substitute adequate securities for any bond, excepting payment bonds⁴, called for in the project specifications as set forth in Public Contracts Code Section 22300. Alternate security substitutions, other than for bid bonds, shall be submitted to the City no later than 10 days after written notice of contract award to allow processing an escrow agreement for in lieu security. The simplest alternate security is for the contractor to deposit cash or a cashier's check in lieu of the bond. All cash or cashier's checks (reminder - a check drawn on vendor's personal or business account is not acceptable) should be delivered to Finance and will be held until all payroll for the job has been verified, and the notice of completion is recorded, and all stop notices issued by suppliers and/or subcontractors have been released. It is suggested that a transmittal or memo should go in the department's project file as a reminder that a check needs to be returned at the end of the project. It is the department's responsibility to notify Finance when alternate securities can be returned to the contractor.

PROGRESSIVE BONDING: At the discretion of the Department, a progressive bonding option may be used. This option is an alternative for job order or not-to-exceed type contracts wherein the total amount of work is not guaranteed to the contractor. At the time of signing and executing the contract, the contractor shall execute and file an initial performance bond to the satisfaction and approval of the City, generally in the amount of \$250,000, conditional upon the faithful performance of the contract. Contractor shall also, at the time of signing and executing the contract, file with the City a public works payment and materials bond, generally in the amount of \$250,000. Additional performance and payment bonds shall be required once the work orders issued reach the initial level of bonding. The specification documents must detail this process.

LIEN NOTICES: Lien notices should be directed to the project manager and retained in the project folder. The project manager should ensure that there is sufficient retention to cover the all of the preliminary lien notice amounts combined. This is to protect the City in the event the prime contractor goes out of business or otherwise refuses to pay the subcontractors. If there is a failure, the liens could come out of retention. The preliminary lien puts the City on official notice that there is another party to the agreement out there. Alternatively, in a case where there is not sufficient retention to cover the lien, the City can accept written correspondence from the lien holder that identifies that there are no outstanding payments due to him on the contract.

F. PAYING CONTRACTS

A Purchase Order is required to make payments required under contract. See Chapter 2.

G. PREVAILING WAGES

Local prevailing wage rates shall be paid in accordance with MCC section 28-5(f) and Sections 1770, 1773, and 1782, as amended, of the California Labor Code on all public works construction contracts exceeding twenty-five thousand dollars (\$25,000) and all public works contracts for alteration, demolition, repair or maintenance work exceeding fifteen

⁴ California Civil Code 9550 and 9554 does not allow for acceptance of alternate securities for payment bonds

thousand dollars (\$15,000). Local wage rates may be obtained from the Director, Department of Industrial Relations, State of California, 455 Golden Gate Avenue, San Francisco, California (415-703-4774). Any Bidder awarded a public works contract that uses a craft or classification not in the general prevailing wage determinations may be required to pay the wage rate most closely related in the general determinations, effective at the time of the call for bids.

H. DUTY TO NOTIFY AWARD OF PUBLIC WORKS CONTRACTS

In accordance with the provisions of Section 1773.3 of the Labor Code, the City of Monterey shall provide notice to the Department of Industrial Relations (DIR) of the award of any public works contract subject to the requirements of Chapter 1 of the Labor Code, within five days of the award. The notice shall be transmitted electronically in a format specified by the DIR (see <https://www.dir.ca.gov/pwc100ext/>) and shall include the name of the contractor, any subcontractor listed on the successful bid, the bid and contract award dates, the contract amount, the estimated start and completion dates, job site location, and any additional information the DIR specifies that aids in the administration and enforcement of this chapter.

I. LABOR CODE REQUIREMENTS:

Contracts for public works subject to the provisions in paragraphs G and H above are also subject to compliance monitoring and enforcement by the Department of Industrial Relations in accordance with the provisions of Sections 1725.5, 1771.1, 1771.3, and 1771.4 of the Labor Code. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal (subject to the requirements of Section 4104 of the Public Contract Code), or engage in the performance of any contract for public work, as defined by that chapter of the Labor Code, unless currently registered and qualified to perform public work pursuant to Section 1725.5 of the Labor Code. [Previous sentence is required in notice and in contract, effective March 1, 2015, for submittal of bids and April 1, 2015, for award of contracts.] An inadvertent error in listing a subcontractor that is not registered shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any one of Section 1771.1(c)(1)-(3) applies. Failure of a listed subcontractor to be registered shall be grounds for the contractor to substitute a registered subcontractor for the unregistered subcontractor. The City shall not accept any bid, nor shall the City or bidder enter any contract or subcontract, without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5 of the Labor Code. The prime contractor shall post job site notices, as required by Section 1771.4(a)(2) of the Labor Code and regulations. The prime contractor shall submit records to the Labor Commissioner, as required by Sections 1771.4(a)(3), 1771.4(c)(2), and 1776 of the Labor Code.

CHAPTER 5 SURPLUS SUPPLIES AND EQUIPMENT

Pursuant to City Code §28-50: The City shall have the authority to, in the most equitable manner, dispose of all supplies and equipment which cannot be used by any Department or which have become unsuitable for City use, or to exchange the same for, or trade in the same on, new supplies or equipment⁵.

A. DEFINITION OF SURPLUS SUPPLIES AND EQUIPMENT

Surplus supplies and equipment are defined as items no longer needed by a given Department.

B. PROPERTY CONTROL FORM

All disposition methods require notification to Finance via use of the Property Control Form, available on the Forms page of the @Work site.

C. DISPOSITION METHODS

1. Reassignment to another Department: The Department should circulate a notice to all other City Departments including a description of the surplus item, contact name and deadline for responding. The Department can email details regarding surplus items to Communications & Outreach for posting in The Exchange section of the Employee Lounge page on the @Work site.
2. Donation: Must be to a governmental or non-profit organization. If transport of equipment is needed, Department must submit a work order to Building Maintenance and include a copy of the Property Control Form. Building Maintenance will schedule the pickup and transport the donated items to Last Chance Mercantile, a resale shop operated by the Monterey Regional Waste Management District. Building Maintenance cannot transport items to any other location. Donated items require completion of the Donation of Property and Release From Liability Agreement. The form is located in OnBase, under Legal Agreement Templates. (2 CFR 200.318 (f))
3. Sale: The sale of any City property to a City of Monterey Employee, family member of the Employee or intermediary is not allowed under any circumstances. All items sold require completion of the Contract for Sale and Release From Liability form. The form is located in OnBase, under Legal Agreement Templates.

Sales shall be accomplished using the following approved means.

- a. Classified advertisements in print. The Department may place classified ads in public newspapers and/or specialty newspapers/periodicals/catalogues. If there are costs associated with such advertisement, the cost of the advertisement is paid by the Department.
 - b. Online classified advertisements and auction sites.
 - i. Public Surplus. The Department may list the item on PublicSurplus.com, an auction website specifically designed for public agencies. This is the City's preferred method of sale.
 - ii. Other online auction sites. The Department may list items on other online auction sites so long as no City financial information is required for the listing or transaction. For instance, Craig's list allows for advertisements via an email address but does not require any City credit card or banking account to be linked, and is an acceptable online disposition site; whereas; Ebay because it requires the linkage of financial accounts, is an unacceptable disposition site.
 - iii. Employees are prohibited from using personal accounts, whether email or financial, for advertising City property. All City business is to be conducted with City email accounts and/or information.
 - c. Direct marketing. The Department may inquire of any public or non-profit agency directly.
 - d. Trade-in. The Department may trade or exchange the item in for needed supplies or equipment.
4. Storage: Each Department is responsible for locating a storage space for any items they wish to store.

⁵ This Manual does not apply to surplus property seized as evidence by Police. Such property is governed by City Code.

D. EXCEPTION

Books, magazines, and other library materials are exempt from the above-stated disposition methods and may be disposed of in the most expeditious and cost-effective manner as determined by the Library Director.

E. E-Waste Recycling Policy

Due to ongoing technological advancement, many electronic products become obsolete within a very short period of time, creating a large amount of unwanted electronic devices, or “e-waste.” Disposing of e-waste in landfills has the potential to cause severe human and environmental health impacts.

The California Department of Toxic Substances has adopted regulations designating e-wastes as universal wastes. Because they pose lower immediate risk to people and the environment when properly managed, universal wastes can be handled and transported under more relaxed rules as compared to hazardous wastes. However, e-wastes contain hazardous materials and must be taken to a designated handler or recycler.

In order to protect public health and ensure compliance with State law, all e-waste must be separated from the solid waste stream for collection by a certified e-waste handler.

“E-waste” refers to any unwanted electronic device or Cathode Ray Tube (CRT) and is classified as universal waste. E-waste frequently contains hazardous materials, predominantly lead and mercury, and is produced by households, businesses, governments, and industries.

waste includes but is not limited to:

- CRT devices including older televisions and computer monitors
- LCD desktop computer monitors and laptop computers
- LCD televisions
- Plasma televisions
- Portable DVD players with LCD screens
- Cash registers and oscilloscopes containing CRTs
- Computers and printers
- Computer keyboards and other peripherals (mice, etc.)
- Telephones, cell phones, and answering machines
- Stereo equipments, radios, tape and CD players/recorders, phonographs
- Video cassette recorders and calculators
- Microwaves

Procedures for Disposal

The first step in proper e-waste disposal is to verify with the Information Services Department (ISD) that the material may be designated for disposal. The requesting Department should complete a property control form (available on @Work) and submit it to ISD for review and approval. Once ISD has approved the e-waste item for disposal, the property control form should be routed to Finance Administration.

Once a Department has approval from the Information Services Department and the Finance Department that an e-waste item may be designated for disposal, the Department should notify the Sustainability Coordinator.

The Sustainability Coordinator will work with the Department to arrange drop off and storage of the e-waste item. Currently, there is storage set aside at 450 Madison for these items. When a large enough collection has been accumulated, the Sustainability Coordinator will contact a non-profit e-waste recycling company and arrange for pick up of the e-waste items.

Currently, there are two non-profit companies in the Monterey area that can accept e-waste for recycling: Hope Services and Loaves, Fishes and Computers.

Loaves, Fishes and Computers only accepts the following items:

PC's running Windows Vista or Windows 7	Flat screen monitors	Hard drives (40 gigs or more)
Macs 2007 or newer	Memory (RAM)	Working speakers
iphones/ipods	smart phones	

Hope Services has a broader range of acceptable items. They will accept, working or not:

Computers	Cables	Mice
VCR/DVD players	Televisions	Radios
Telephones	Fax Machines	CPUs
Stereos	Speakers	Monitors
Printers		

The Sustainability Coordinator will strive to equitably dispose of the City's e-waste items between the available non-profits. Other non-profits may be added to the list of potential e-waste recipients upon request; in addition, the Sustainability Coordinator will conduct an annual search for other potential non-profits to add to our contact list for disposal of City e-waste items.

The Sustainability Coordinator shall require the receiving non-profit entity to sign a Release of Liability, Indemnity and Hold Harmless form before transfer of the e-waste items.

Please note that the City of Monterey e-waste collection program is only for e-waste generated in the course of business by City of Monterey staff and is not meant for non e-waste or items brought from a household.

CHAPTER 6

TRAVEL, REIMBURSEMENT & EMPLOYEE EXPENDITURE POLICY

A. GENERAL POLICY

1. Representatives of the City of Monterey will endeavor to maintain a standard of economy that generates the highest function and effectiveness at the lowest cost to the City.
 - a. All expenses related to travel should be limited to those deemed "reasonable and necessary."
 - b. The most economical mode of transportation shall be secured in keeping with availability and convenience and safety.
 - c. Accommodations used for all out-of-town travel shall be the most economical in keeping with availability, convenience, and safety.
 - d. Whenever possible, meals shall be provided in the most cost-effective manner in keeping with availability and convenience.
 - e. See Paragraph E-15 for policy regarding reimbursement for the purchase of alcohol.
 - f. Employees with Cal-Cards should use the card for all travel related expenses including commercial travel (plane, train, car, etc.) and hotel expenses.
 - g. Other expenses will be reimbursed only to the extent required to effectively conduct City business.
2. All claims for reimbursement must be documented with receipts and filed within ten (10) days of the end of travel. The only exception to providing receipts is the provision for a Per Diem Allowance (see D-6) when traveling out of the local area as discussed in paragraphs D-1 and D-2.
3. All Employee expenditures and/or reimbursements are subject to Department Head and Finance Director's approval.
4. All expenditures and/or reimbursements to City Council Members, Board and Commission Members, and Executive Management are subject to the City Manager and/or Finance Director's approval.
5. All expenditures and/or reimbursements to the City Manager are subject to the Mayor and/or Finance Director's approval.
6. There will be no reimbursement of travel or incidental expenses incurred by a spouse when accompanying a City official or Employee on official business, except that the City will reimburse reasonable costs for City Council Member spouses to attend local functions when the City Council Member attends as a representative of the City.
7. This policy is subject to administrative exception subject to approval by the City Manager or Finance Director as is appropriate to the circumstances.

B. LOCAL MEAL FUNCTIONS

1. City Council Members, Executive Management, and Management Employees may receive City reimbursement for documented costs incurred in providing meals or refreshments for City Council, Board and Commission on-premises consumption in conjunction with working sessions.

2. City Council Members, Executive Management and Management Employees may receive reimbursement for documented meal or refreshment costs incurred in the context of local meetings directly involving City business.

C. REIMBURSEMENT OF ADVISORY AND ADMINISTRATIVE BODY EXPENSES

A monthly stipend of \$25 for each regular, special, or adjourned meeting up to a maximum of \$75 per month will be paid to members of the following commissions: Parks and Recreation Commission, Planning Commission, Architectural Review Committee, Colton Hall Museum Committee, Cultural Arts Commission, Historic Preservation Commission, and the Library Board.

D. TRAVEL REIMBURSEMENT (All City Employees, City Council Members and Boards & Commission Members).

All Employees who travel will be issued Cal-Cards.

1. LOCAL TRAVEL - Local travel is defined as any travel within the Monterey Peninsula (Monterey, Sand City, Seaside, Marina, Pacific Grove, Carmel, Carmel Valley, Highway 68 corridor to Ryan Ranch boundary).
 - a. Meals - Documented meal expenses only if necessary in conjunction with meeting, seminar, or if POST/STC reimbursable.
 - b. Alcoholic Beverages - **NO REIMBURSEMENT**
 - c. Gratuities - As reasonable and necessary subject to 15-20% maximum.
 - d. Transportation - As reasonable and necessary. Includes public transportation, vehicle use tolls and mileage.
 - e. Parking - As reasonable and necessary.
2. NON-LOCAL TRAVEL - Non-local travel is defined as all travel outside of the Monterey Peninsula.
 - a. Meals - A portion of the Per Diem Allowance (See D.6) for each meal expense as reasonable and necessary while on City business OR Employee may elect to be reimbursed only for documented meal expenses.
 - b. Alcoholic Beverages - **NO REIMBURSEMENT**
 - c. Gratuities - Included in Per Diem Allowance.
 - d. Transportation - As reasonable and necessary. Includes public transportation, airfare, vehicle use, tolls and mileage.
 - e. Parking - As reasonable and necessary.
 - f. Lodging - Room and tax for Employee only based on single occupancy only as necessary.
 - g. Phone Calls - Business related calls, one personal telephone call per day of reasonable cost may be reimbursed while away on City business.
 - h. Incidental Expenses - Other personal need nominal costs are included in Per Diem Allowance.
3. OUT-OF-STATE TRAVEL - All out-of-state travel must have prior written approval of the City Manager.
4. TRAVEL ADVANCES - When necessary, Employees may receive cash advances for the estimated cost of the trip upon completion and approval of a Travel Expense Form, available on the Forms and Procedures page of the @Work site. When Accounts Payable processes advances, only per diem rates and Yahoo or Mapquest mileage will be used for meals and mileage.
5. TRAVEL REIMBURSEMENTS - Each time an Employee travels outside the LOCAL area and requires reimbursement for their travel expenses the Employee must complete and submit a Travel Expense Form, with all supporting receipts/documents, to the Accounts Payable office within ten (10) days from the return date.

- Documented meal reimbursements will be capped at the per-diem rate.
- Any amounts not supported by a receipt, excluding per diem allowance or Yahoo/Mapquest mileage, must be explained in writing (with details as to who was paid, the amount, what service/supply was received and why, and the date of payment) and approved by the Department Head and Finance Director.
- Per IRS regulations, if within sixty (60) days of the return date an expense report that adequately accounts for the travel expenses is NOT submitted, the amount paid by the City will be reported as taxable income for the Employee or elected/appointed official.

6. PER DIEM – The City provides a Per Diem daily allowance for all business related non-local travel. This allows for the payment or reimbursement of all meal charges and other incidental costs incurred during travel without documented receipts.

Examples of incidental costs include gratuities (15-20% max.), dry cleaning, snacks, necessary personal sundry items, etc.). Tips for handling City property are not included and can be claimed separately with documentation.

In calculating the Per Diem allowances for partial days, the following guidelines will be used.

Breakfast	=	Twenty (20%) of Per Diem Allowance
Lunch	=	Thirty (30%) of Per Diem Allowance
Dinner	=	Fifty (50%) of Per Diem Allowance

If full breakfast, lunch and/or dinner meals are provided without charge at a meeting appropriate deductions will be made from the per diem allowance. Continental breakfast or airline meals may or may not be counted as meal deductions at the Employee's discretion.

7. Mileage will be paid at the current rate per mile allowable by the IRS when an Employee utilizes a vehicle other than a City vehicle. For Employees receiving a monthly automobile allowance only travel outside the Monterey Peninsula will be eligible for reimbursement.

The total amount to be reimbursed for mileage, shuttle/parking, airfare & taxes is limited, however, to the equivalent of the costs related to coach airfare by common carrier. In cases where coach airfare cannot be easily calculated, the Employee will be reimbursed at a reasonable rate as determined by the Finance Director.

No Employee shall receive mileage reimbursement unless they have an Authorization to Use Privately Owned Vehicles form on file in Finance Administration.

8. Special circumstances requiring expenditures exceeding "normal trip expenditures" are to be reviewed and approved individually by the Finance Director or City Manager. Reimbursement of such expenditures for the City Manager or City Attorney are subject to the approval of the Finance Director.
9. The City will not reimburse any travel, lodging, or incidental costs associated with a spouse or family member accompanying a City representative to meetings or conferences.

E. MISCELLANEOUS

1. BEVERAGE SUPPLIES
The City will reimburse for beverage supplies if you supply beverages to the public. You must write the purpose and for whom on the receipt.
2. FIRST AID SUPPLIES
Purchase of legitimate first-aid kit supplies for each City office is an allowable expense. Pain medication is not an allowable expense.
3. REFRESHMENTS FOR STAFF MEETINGS
Reimbursement for the cost of minimal refreshments served at Employee-only staff meetings are considered an appropriate expenditure if approved by the Department Head.

4. INTERVIEW PANELS
Reimbursement may be received for the purchase of refreshments or lunch for participants of selection panels engaged in official City recruitment activities as approved by the Personnel Department. The title of the job recruitment and the persons serving on the panel must be documented on the receipt.
5. SAFETY SHOES REIMBURSEMENT PER MOU
All Employees required to wear safety shoes as a condition of employment are entitled to regular shoe replacements or reimbursements as specified in the applicable MOU. To be eligible for reimbursement, receipts documenting OSHA approved shoes and the amount spent must be submitted to the Employee's supervisor. Otherwise the shoes can be obtained and billed to the City at an eligible and authorized location(s) specified by the City (currently Red Wing shoes in Monterey). Safety shoes for Fire Department personnel are handled within that Department.
6. TUITION REIMBURSEMENT PER MOU
All Employees, including executive management and management may receive tuition reimbursement for seminars, accredited courses and text books that are job related and taken on off-duty time. Prior Department Head approval of the course, seminar and/or text books as job-related is required in accordance with the City's Personnel Rules and Regulations. (See Personnel Department for procedures and forms).
7. PHYSICAL EXAM REIMBURSEMENT PER MOU
GEM Employees who participate in a physical fitness program may receive reimbursement for the cost of a medical physical or fitness consultation as specified in the applicable MOU.
8. SYMPATHY GIFTS
Departmental gifts of flowers or other gifts sent in the event of a serious illness or death are considered to be PERSONAL expressions of sympathy and **will not** be reimbursed or paid for by the City. However, such gifts sent from the City at large may be paid for by the City out of the appropriate City Council or City Manager's Office operating account as directed or approved by the City Manager.
9. BIRTHDAY CAKES/GIFTS
Departmental gifts of flowers, cakes or other gifts in celebration of a staff member birthday are considered to be PERSONAL celebrations and **will not** be reimbursed or paid for by the City.
10. STAFF MEAL REIMBURSEMENTS (not training or travel related) Employees can be reimbursed for meals involving staff as follows:
 - a. Meals will be reimbursed if:
Staff meets with City Council member(s), Board and Commission member(s), or other non-Employee individual(s) subject to prior Department Head approval only when the meeting is business related.

On a very occasional basis, and only with Department Head approval, reimbursement can be made for a meal function that involves staff members only.
 - b. Meals will **NOT** be reimbursed if:
Staff must stay in the evening to attend a meeting, i.e. Planning Commission meeting, City Council meeting, ARC meeting, or any other special session.
 - c. Staff attending a POST related event will receive the POST lunch stipend (no receipt required).

All meal receipts submitted for reimbursement must be noted with the reason for the meeting and the names of the individuals involved. **There is no reimbursement for alcoholic beverages.**
11. EMPLOYEE RECOGNITION PROGRAMS

Department heads may design some type of Employee recognition program for which the City will reimburse expenses within reasonable and budgetary limits. Employee recognition awards determined to be taxable will be paid through the payroll system.

12. REIMBURSEMENT FOR CIVIC, SERVICE, PROFESSIONAL ORGANIZATIONS OR PROFESSIONAL FEES

a. Civic Service Organizations

The City will not reimburse any costs associated with Employee memberships in civic service organizations. The City recognizes the importance of Employee participation in Monterey service organizations. Therefore, at the discretion of the Department Head, time off may be approved for participation in meetings and activities of service organization within the City of Monterey.

b. Professional Organizations

Membership in professional organizations that are directly related to an Employee's job may be reimbursed.

c. Professional Registrations, License or Certification

Costs for individual professional registrations, licenses, or certifications that are required for employment or provide a direct benefit to the City and enhance job performance are reimbursable.

13. REIMBURSEMENT FOR PERSONAL CREDIT CARD USE

For administrative efficiency, Employees who regularly travel and/or purchase equipment, supplies or services for the City are strongly encouraged to utilize their City issued Cal-Card rather than using their personal credit cards. The approving official for Employees requesting reimbursement for use of their personal credit card for City related purchases on a regular basis will be contacted about issuing the Employee a Cal-Card. All City purchasing policies must still be observed if a personal credit card is used for a City purchase (e.g., spending limits, obtaining bids, etc).

14. CELL PHONES

Employees may be reimbursed for business use of their personal cell phones pursuant to Section B of the City's Wireless Telephone Personal Use Policy.

15. PETTY CASH

Reimbursement for purchases \$25 or less may be handled through petty cash with appropriate form and documentation. Petty cash reimbursements are paid weekly. Forms can be obtained from Accounts Payable.

16. REIMBURSEMENT FOR PURCHASE OF ALCOHOLIC BEVERAGES

Employees are not authorized to purchase alcohol for City related purposes without express prior written consent of the City Manager or Finance Director. On a case-by-case basis for a special occasion, written requests to purchase alcohol should be submitted, in advance, to the City Manager or Finance Director via the relevant Department Head.

CHAPTER 7 CITY CREDIT CARDS CAL-CARD (I.M.P.A.C.) , “FLOATER” (AMERICAN EXPRESS) CARDS AND OTHER CITY CREDIT CARDS

This chapter describes the CAL-Card program and “Floater” credit cards. The cards are intended for travel and for any other purchases (that can be paid for with a VISA card) authorized by the Purchasing Ordinance.

A. **CAL-CARD (I.M.P.A.C. VISA)**

The CAL-Card is available for use to authorized City officials and Employees. A written request must be submitted to the CAL-Card Program Coordinator (*Wendy Davies, Accountant/Auditor*) by the Department Head or Approving Official for a card to be issued to an Employee.

The CAL-Card program is the City’s preferred payment method for all purchases and travel expenses that can be paid for with a VISA card. The cards are assigned to individual Employees who are responsible for the card and its appropriate use. All receipts for charges must be attached to the statement which then must be forwarded to Finance. **This must be done by the tenth (10th) of each month.**

At the end of each month the CAL-Card Program Coordinator receives a monthly report from Payroll of terminated Employees. The CAL-Card Program Coordinator deactivates any cards assigned to a terminated Employee.

For additional information about this program, please see CAL-Card program policy manual, available on the Forms and Procedures page of the @Work site.

B. **FLOATER CARDS (AMERICAN EXPRESS)**

“Floater” cards are available for use to authorized City officials and Employees. These cards may be signed out through the Finance Department (Revenue Office).

The credit card must be returned to the Revenue Office immediately following use.

Receipts for all credit card charges must be submitted to the Finance Department **within five business days from the date of use** attached to a credit card voucher expense form with the appropriate Department authorization.

When using the floater card for travel, copies of the credit card receipts are to be attached to the Travel Expense Form with the original receipts attached to a credit card voucher expense form.

C. **COSTCO**

Authorized Employees may purchase items (not to exceed \$4,500) using the City of Monterey account at COSTCO. To purchase at COSTCO Employees will need to:

- a. Stop by Finance Administration (Revenue Office) to check out the City COSTCO membership card.
- b. Upon checkout at COSTCO present a membership card along with payment. As with any other City purchase, CALCard is the preferred method of payment. If an employee does not have a City CALCard, they may use an alternative form of payment and submit for reimbursement or use the City “Floater” card and follow the procedures in section B.
- c. Return the City’s COSTCO membership card to the Revenue Office **as soon as possible.**

CHAPTER 8 AUTHORIZED SIGNATURES

PURCHASING DOCUMENTS

City Department Heads may authorize Employees within their department to sign specific purchasing documents, including Requests for Checks, Purchase Requisitions, Purchase Order modifications and Visa Card expense vouchers. All Executive Managers are automatically eligible to authorize purchasing documents for their Department. It is the job of the department to keep Finance Administration informed of any personnel changes in their Department that apply to purchasing authorizations. Notification of changes must be made via the Purchasing Authorization Designation form and submitted to Finance Administration. Individual Employees generally lack the authority to bind the City into contracts unless signature authority is pre-approved and granted in writing. Contracts must be routed via OnBase through the City Attorney's Office then Finance, Risk Management (except that CAO may waive Finance, Risk review) before reaching the City Manager's Office for signature.

A list of City Employees authorized to sign purchasing documents is located on the on the Purchasing page of the @Work site.

PURCHASING EXCEPTION REQUESTS - AUTHORIZED APPROVERS

The Finance Director and her designees are authorized to approve requests for exceptions to competitive purchasing requirements, including sole source, piggybacking, and emergency exception requests, as well as trade justification requests. All exception requests should be routed to Finance Administration.

Appendix, Table of Contents

- A. A/P Stamp and Request for Check Procedures
- B. Environmentally Preferred Purchasing Policy
- C. Sample Bid/Quote/Proposal Summary form
- D. Uniform Guidance, Procurement Standards (2CFR 200.317-.326)
- E. Uniform Guidance, Appendix II

APPENDIX A

A/P STAMP AND REQUEST FOR CHECK PROCEDURES

When the original invoice is received in your office, stamp the invoice on the front (unless it will obscure information, then stamp on the back of the invoice). Complete the appropriate information and forward to Accounting in an inter-office envelope.

When paying from a **PURCHASE ORDER** fill in the following information:

- Skip vendor number.
- PO# or if the correct PO# is shown on the invoice, simply circle it. If the PO# indicated is incorrect, strike through it and fill in the correct number.
- Date received or when services were completed.
- If paying the PO in full, indicate F.
- If payment is a partial, indicate P. Fill in the PO LINE# and amount to be charged against that particular line.
- Authorized Signature - **DO NOT use initials only** .
- Send to Accounting once completed.

CITY OF MONTEREY		VENDOR #	
PO # 56210		DATE REC'D 5/22/17	
PA-	PO LINE # / ACCT CODE	P/F	AMOUNT
	Line #1	F	22.45
APPR BY: (signature required)		TOTAL \$22.45	

NOTE: When making a final payment, if the invoice is over the amount of the PO, a PO Modification is required. Please send your PO Mod request to Finance Administration.

Invoices are paid on a bi-monthly payment cycle. **For the first payment cycle on the 15th of the month, invoices are due to A/P by noon on the 8th. For the second payment cycle on the 30th of the month, invoices are due to A/P by noon on the 23rd.** You will be informed of changes in this schedule during holiday periods.

REQUESTING A CHECK (RFC)

Payment for reimbursements or specific materials or services not requiring a purchase order may be made by check with appropriate documentation and authorization. Such payments are processed by using the A/P Stamp.

The following information is to be filled in:

- Vendor # or write "new" above box. If a "new" vendor, submit W-9 with invoice.
- Date received or when services were completed.
- Account code and amount to be charged.
- When using Project Accounting, please indicate PA shortcut.
- Authorized Signature - **DO NOT use initials only.**
- Send to Accounting once completed.

CITY OF MONTEREY		VENDOR #	
PO # RFC		DATE REC'D 9/23/14	
PA-	PO LINE # / ACCT CODE	P/F	AMOUNT
(shortcut if applicable)	101-531-6250-9245		22.45
APPR BY: (signature required)		TOTAL \$22.45	

APPENDIX B

RESOLUTION NO. 13-191 C.S.

A RESOLUTION OF THE COUNCIL OF THE CITY OF MONTEREY

ADOPT ENVIRONMENTALLY PREFERRED PURCHASING POLICY (EPPP)

WHEREAS, the City of Monterey has demonstrated an ongoing dedication to the preservation and protection of human health and the environment;

WHEREAS, recycling is a critical component of reducing the use of landfills and the preservation of natural resources;

WHEREAS, purchasing recycled content and green materials are essential to supporting the sustainability goals of the City of Monterey;

WHEREAS, many environmentally preferred items conserve energy and water, and demonstrate a cost savings for the City over time; and

WHEREAS, the City of Monterey determined that the proposed action is not a project as defined by the California Environmental Quality Act (CEQA)(CCR, Title 14, Chapter 3 ("CEQA Guidelines), Article 20, Section 15378). In addition, CEQA Guidelines Section 15061 includes the general rule that CEQA applies only to activities which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Because the proposed action and this matter have no potential to cause any effect on the environment, or because it falls within a category of activities excluded as projects pursuant to CEQA Guidelines section 15378, this matter is not a project. Because the matter does not cause a direct or any reasonably foreseeable indirect physical change on or in the environment, this matter is not a project. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

APPENDIX B, continued


NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MONTEREY that the EPPP (Exhibit A) is adopted as guidance for all City purchases.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 19th day of November, 2013, by the following vote:

AYES:	5	COUNCILMEMBERS:	Downey, Haffa, Selfridge, Sollecito, Della Sala
NOES:	0	COUNCILMEMBERS:	None
ABSENT :	0	COUNCILMEMBERS:	None
ABSTAIN:	0	COUNCILMEMBERS:	None

APPROVED:

ATTEST



Mayor of said City



City Clerk thereof

APPENDIX B, continued

City of Monterey Environmentally Preferred Purchasing Policy

The City of Monterey recognizes the positive impact that it can make on the environment through the purchasing decisions that its Employees make.

I. Purpose:

The purpose of this policy is to support the purchase of recycled and environmentally preferred products. Operating in accordance with current City of Monterey purchasing regulations, including price, performance, availability and safety considerations, personnel should seek to reduce the negative environmental impact associated with purchases by increasing acquisition of environmentally preferable products and services to the extent feasible. This policy is designed to:

Encourage waste prevention, recycling and use of recycled/recyclable materials through purchasing practices with vendors, contractors, businesses and other governmental agencies.

Adopt waste prevention, recycling and use of recycled supplies/materials as a City of Monterey priority.

Generate less waste material by reviewing how supplies, materials and equipment are manufactured, purchased, packaged, delivered, used, and disposed.

Promote conservation through purchasing products that minimize waste of water and energy

Purchase products that include recycled content, are durable and long-lasting, conserve energy and water, reduce greenhouse gas emissions, use unbleached or chlorine free manufacturing processes, are lead-free and mercury-free, and use wood from sustainably harvested forests.

II. Definitions

"Recycling" means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace.

"Waste Prevention" means any action undertaken by an individual or organization to eliminate or reduce the amount or toxicity of materials before they enter the municipal solid waste stream. This action is intended to conserve resource, promote efficiency, and reduce pollution.

APPENDIX B, continued

"Environmentally Preferable Products" means products that have a lesser impact on human health and the environment when compared with competing products. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation and/or disposal of the product.

"Recycled Products" are products manufactured with waste material that has been recovered or diverted from the waste stream. Recycled material may be derived from post-consumer waste, industrial scrap, manufacturing waste and/or other waste that otherwise would not have been utilized.

"Practical" means sufficient in performance and reasonably available at a competitive cost.

III. Policies

Source Reduction

- City of Monterey Departments/divisions shall practice waste prevention whenever practical by (a) reducing the consumption of consumable materials wherever possible, (b) fully utilizing all materials prior to disposal, and (c) minimizing the use of non-biodegradable products wherever possible.
- Institute practices that reduce waste and result in the purchase of fewer products whenever practicable and cost-effective, but without reducing safety or workplace quality. Products that are durable, long lasting, reusable or refillable are preferred whenever feasible.
- Purchase remanufactured products such as laser toner cartridges, tires, furniture, equipment and automotive parts whenever practicable, but without reducing safety, quality or effectiveness.

Sustainable Purchasing

- Purchase products that minimize environmental impacts, toxics, pollution, and hazards to worker and community safety to the greatest extent practicable.
- Request that vendors eliminate packaging or use the minimum amount necessary for product protection, to the greatest extent practicable. Packaging that is reusable, recyclable or compostable is preferred, when suitable uses and programs exist. Vendors shall be encouraged to take back and reuse pallets and packaging materials.
- Suppliers of electronic equipment, including but not limited to computers, monitors, printers, and copiers, shall be required to take back equipment for

APPENDIX B, continued

- reuse or environmentally safe recycling when the City discards or replaces such equipment, whenever possible.
- On purchases (capital or non capital) less than \$3500, a ten percent (10%) price preference will be allowed for recycled content products if the recycled product is more expensive than non-recycled, with all such purchases subject to final approval. The \$3500 limit will increase periodically in accordance with Monterey City Code, Chapter 28, Section 25 (c).

Recycled Content Products

- All products for which the United States Environmental Protection Agency (U.S. EPA) has established minimum recycled content standard guidelines, such as those for printing paper, office paper, janitorial paper, construction, landscaping, transportation, vehicular products, miscellaneous, and non-paper office products, shall contain the highest postconsumer recycled content practicable.
- Copiers and printers bought shall be compatible with the use of recycled content products.
- All pre-printed recycled content papers intended for distribution that are purchased or produced shall contain a statement that the paper is recycled content.

Energy and Water

- Where applicable, energy-efficient equipment shall be purchased with the most up-to-date energy efficiency functions. This includes, but is not limited to, high efficiency space heating systems and high efficiency space cooling equipment.
- When practicable, the City shall replace inefficient lighting with energy-efficient equipment.
- All products purchased by the City and for which the U.S. EPA Energy Star certification is available shall meet Energy Star certification, when practicable. When Energy Star labels are not available, choose energy-efficient products that are in the upper 25% of energy efficiency as designated by the Federal Energy Management Program.
- The City shall purchase water-saving products, such as low flow toilets, waterless urinals and faucet aerators whenever practicable.

IV. Exemption

This policy does not supersede City of Monterey Ordinance §28 Purchasing. Nothing in this policy shall be construed as requiring the purchase of products that do not perform adequately and/or are not reasonably available at a competitive cost.

APPENDIX C

Please see OnBase/Legal Agreement templates for the Bid Quote Summary form.

CITY OF MONTEREY BID/QUOTE/PROPOSAL SUMMARY

NOTE: Your department (the buyer) is the Department of Record and is responsible for completing and retaining this form. Retention: in Series 405-05 of your department. Finance is not the Dept of Record for this form.

1. **ITEMS/SERVICES TO BE PURCHASED:**

2. **ACCOUNT CODE:**

3. **CHECK THE APPROPRIATE CATEGORY:**

FORMAL CALL FOR BIDS
 Formal bids are required for purchases and contracts for materials, supplies, equipment or contractual services with an estimated value of \$75,000 or more or for Public Works (PW) projects of \$150,000 or more. For formal bids, you must provide the Award of Bid Resolution or Ordinance Number.

RESOLUTION/ORDINANCE NUMBER:

Comments:

INFORMAL WRITTEN CALL FOR BIDS
 Informal written bids (a minimum of three, if possible) are to be obtained if the purchase is for materials, supplies, equipment, or contractual services with an estimated value from \$12,000 up to \$74,999.99, or for PW projects from \$12,000 up to 149,999.99.

INFORMAL VERBAL CALL FOR BIDS OR RFP
 Informal verbal bids or proposals (a minimum of three, if possible) are to be obtained if the purchase is needed immediately and meets the same criteria as outlined above for Informal Written Call for Bids or Informal Written RFP.

FORMAL REQUEST FOR PROPOSAL (RFP)
 Contracts for professional services valued at \$75,000 or more require the competitive Request for Proposals process and are subject to Council approval. For formal proposals, you must provide the Award of Professional Services Resolution Number.

RESOLUTION/ORDINANCE NUMBER:

Comments:

INFORMAL WRITTEN RFP
 Informal proposals (minimum of three, if possible) are to be obtained for professional services valued from \$12,000 to \$74,999.99.

EXCEPTION TO COMPETITIVE BIDDING
 Attach Exception form approved by Finance.
 Sole Source Justification
 Piggyback Purchase Request
 Emergency Exception Request

4. **RECORD OF BIDS/PROPOSALS**
 Please list all vendors contacted. If three bids or proposals cannot be obtained, please explain clearly under "Comments" below. Note that cost can be listed for professional services but that cost cannot be the sole criteria for award of the contract.¹

Vendor Name: <input style="width: 95%; height: 15px;" type="text"/> Bid/Proposal Amount: <input style="width: 95%; height: 15px;" type="text"/> Qualified? <input type="checkbox"/> Yes <input type="checkbox"/> No (Explain Below)	Vendor Name: <input style="width: 95%; height: 15px;" type="text"/> Bid/Proposal Amount: <input style="width: 95%; height: 15px;" type="text"/> Qualified? <input type="checkbox"/> Yes <input type="checkbox"/> No (Explain Below)
Vendor Name: <input style="width: 95%; height: 15px;" type="text"/> Bid/Proposal Amount: <input style="width: 95%; height: 15px;" type="text"/> Qualified? <input type="checkbox"/> Yes <input type="checkbox"/> No (Explain Below)	Vendor Name: <input style="width: 95%; height: 15px;" type="text"/> Bid/Proposal Amount: <input style="width: 95%; height: 15px;" type="text"/> Qualified? <input type="checkbox"/> Yes <input type="checkbox"/> No (Explain Below)
Vendor Name: <input style="width: 95%; height: 15px;" type="text"/> Bid/Proposal Amount: <input style="width: 95%; height: 15px;" type="text"/> Qualified? <input type="checkbox"/> Yes <input type="checkbox"/> No (Explain Below)	Vendor Name: <input style="width: 95%; height: 15px;" type="text"/> Bid/Proposal Amount: <input style="width: 95%; height: 15px;" type="text"/> Qualified? <input type="checkbox"/> Yes <input type="checkbox"/> No (Explain Below)

¹ California League of Cities, Municipal Law Handbook

APPENDIX D

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR data is current as of October 29, 2019

Title 2 → Subtitle A → Chapter II → Part 200 → Subpart D → Subject Group

Title 2: Grants and Agreements

PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Subpart D—Post Federal Award Requirements

Procurement Standards

§200.317 Procurements by states.

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322 Procurement of recovered *materials* and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §§200.318 General procurement standards through 200.326 Contract provisions.

§200.318 General procurement standards.

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when 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 any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company,

affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also §200.213 Suspension and debarment.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

Competition.

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process.

(b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
- (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and

free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014] **§200.320**

Methods of procurement to be followed.

The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by 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 (§200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. 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. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited 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, if the conditions in paragraph (c)(1) of this section apply.

(1) 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.

(2) If sealed bids are used, the following requirements apply:

(i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(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) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(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 cost, and life cycle costs must be considered in determining which bid is 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.

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

(1) 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;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) 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 price is not used as a selection factor, can only be used in 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.

(e) [Reserved]

(f) 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:

(1) The item is available only from a single source;

(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or

(4) After solicitation of a number of sources, competition is determined inadequate.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 80 FR 54409, Sept. 10, 2015]

§200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

§200.322 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014] **§200.323**

Contract cost and price.

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E— Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§200.324 Federal awarding agency or pass-through entity review.

(a) 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 or pass-through entity 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 or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

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

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;

(4) 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

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass through entity 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;

(2) 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.

§200.325 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity 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.

(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 fulfillment of all the contractor's obligations under such contract.

(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 law of all persons supplying labor and material in the execution of the work provided for in the contract.

§200.326 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

APPENDIX E

Office of Management and Budget (OMB) Uniform Guidance

“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.

(A) 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.

(B) 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.

(C) 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.”

(D) 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, and 3146–3148) 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. The contracts must also include a provision for compliance with the Copeland “AntiKickback” 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 subrecipient 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.

(E) 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 which 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.

(F) 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 subrecipient 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 subrecipient 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.

(G) 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).

(H) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

(I) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(J) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not 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.

(K) See §200.322 Procurement of recovered materials.”