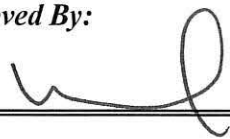




**PROCUREMENT POLICY AND PROCEDURE**

<b>Subject:</b> Purchasing Policies & Procedures	<b>Index:</b> Financial Services  <b>Number:</b> 201-2-1
<b>Effective Date:</b> July 18, 2024	<b>Prepared By:</b> Finance & Administration Services
<b>Supersedes:</b> 102-5, 201-2-1, 201-2-2, 201-2-3, 201-2-5, 201-2-6, 201-2-8	<b>Approved By:</b> 

**I. PURPOSE:**

The Purchasing Policies & Procedure manual establishes a common understanding and uniform procedures for the City’s procurement of supplies, materials, equipment, professional and general services consultants/contractors, public construction projects, other purchasing related activities and emergency procurements. These policies ensure the systematic and consistent preparation and processing of City contracts in accordance with the City’s Municipal Code, State and Federal law. In its discretion, the City Council may at any time, without amending the Municipal Code, waive the purchasing procedures or alter these proceedings to fit a specific purchase contract, when such waiver is not in violation of State or Federal law. Furthermore, the City’s purchasing is to be conducted in a business-like and ethical manner.

**II. ORGANIZATIONS AFFECTED:**

All Departments/Divisions.

**III. REFERENCES:**

San Clemente Municipal Code, Title 3 Revenue and Finance, Chapter 3.40 Purchasing  
 California Code of Regulations, Title 8, Section 16000  
 Public Contract Code, Sections 1100-22355  
 City of San Clemente Finance Policy 201-3  
 Labor Code Section 1720

**IV. TABLE OF CONTENTS:**

V. PURCHASING CYCLE.....3  
 VI. PROCUREMENT OF SUPPLIES, MATERIALS AND EQUIPMENT.....16  
 VII. PUBLIC CONSTRUCTION PROJECTS.....23



## PROCUREMENT POLICY AND PROCEDURE

VIII. SELECTION OF PROFESSIONAL SERVICE CONSULTANTS AND CONTRACTORS.....	31
IX. SELECTION OF GENERAL SERVICE CONSULTANT AND CONTRACTORS.....	37
X. SELECTION OF OTHER PURCHASING RELATED ACTIVITIES FOR SERVICES, ITEMS, COMMODITIES AND UNSOLICITED PROPOSALS.....	41
XI. EXEMPTIONS TO THE FORMAL & INFORMAL SOLICITATION PROCESS..	44
XII. EMERGENCY PURCHASES & CONTRACTING.....	48
XIII. ENVIRONMENTALLY PREFERABLE PROCUREMENT.....	51
XIV. CONTRACT ADMINISTRATION.....	56



## PROCUREMENT POLICY AND PROCEDURE

### PURCHASING CYCLE

#### V. PURCHASING CYCLE

##### A. Purchasing Overview

##### 1. Decentralized Purchasing System

The City has a decentralized purchasing system, which means that for most purchases, departments can directly solicit bids or proposals and place orders with suppliers or service providers. These actions are subject to the limitations established in this Policy and to the approval of the appropriate awarding authority. Nothing precludes staff from seeking procurement assistance from the Finance Department to clarify policies, processes and procedures with best practices.

1.1 In a decentralized purchasing system, all users must understand and abide by the City's procurement process to ensure fair and consistent application.

##### 2. General Categories for Purchases

City purchase categories generally consist of the following categories, for which different procurement methods may apply:

2.1 **Supplies, Materials and Equipment (Goods)**

2.2 **Professional and General Consultant/Contractor Services (Services)**

2.3 **Public Construction Projects**

2.4 **Other Purchasing Related Activities for Services, Items, Licenses, Commodities, and Unsolicited Proposals**

2.5 **Emergency Procurements**

##### 3. Responsibility of City Staff

3.1 **Responsibilities of all employees** – City employees are required to discharge their duties fairly, impartially and with the highest degree of integrity. In support of these concepts as they apply to the purchase of goods, services, and public construction projects, City staff shall:

3.1.1 Read, understand and implement this Policy and ask questions as necessary to do so.

3.1.2 Clearly identify procurement needs and funding availability.



## PROCUREMENT POLICY AND PROCEDURE

### PURCHASING CYCLE

- 3.1.3 Work with departments to develop suitable competitive specifications.
  - 3.1.4 Participate in the evaluation of bids and proposals as required.
  - 3.1.5 Inspect goods delivered and services performed to determine conformity with established requirements and contractual obligations.
  - 3.1.6 Authorize payment for conforming goods, services, and public construction projects.
  - 3.1.7 Notify the Finance Department of non-conforming goods, services, or public construction projects.
  - 3.1.8 Document tangible or intangible value to the City when requisitioning goods, services, and public construction projects without competition when authorized.
  - 3.1.9 Recognize that fair and open competition results in better value to the City.
  - 3.1.10 Understand and be accountable for the policies and procedures established for purchasing goods, services, and public construction projects.
4. **Purchasing Requisition Required** – Requisitions are required for purchases in excess of \$5,000 or in a lesser amount as determined by finance based on the inherent procurement risk. Goods, services and public construction purchases that require a contract, purchase order, or blanket purchase order, including public construction projects, must be initiated with a properly documented and approved purchase requisition that includes:
- 4.1 Concise description of the purchase that adequately communicates need.
  - 4.2 Actual or estimated dollar amount.
  - 4.3 Valid project number (if applicable).
  - 4.4 Verification of available funding or identification that funding is needed, including City Council approval date as applicable.
  - 4.5 Price bids/proposals/quotes with recommended vendor selection and valid award justification.





## PROCUREMENT POLICY AND PROCEDURE

### PURCHASING CYCLE

- 4.6 Description of procurement process utilized and efforts taken to solicit bids/proposal from local vendors.
- 4.7 Bid/Proposal exemption documentation (if applicable).
5. **Purchasing Documentation** – Every purchase should be documented with records and written statements of the kind, and with sufficient detail, to show consideration for the factors pertinent to good buying. These include criteria related to solicitation, authorization, availability, quality, service, and price. The selection basis for the final award must be clearly documented with all documents maintained for at least three (3) years before destruction, with longer destruction timeframes subject to State and Federal grant requirements and the City’s retention schedule. Specific procurement procedures for goods, services, and public construction projects are further documented in the Policy.
6. **Authorization of Purchases** – Each requisition must be authorized by a Department Head, Division Manager or designee. Finance will maintain an authorization list. The Department Head or Division Manager is responsible for notifying Finance of any changes or temporary assignment of authorization.
  - 6.1 **Budget Approval** – The City’s budget authorizes funding availability for the procurement of goods, services, and public construction projects. Purchases and contracts for certain dollar amounts are subject to Division Manager, City Manager, Department Head and City Council approval and/or solicitation requirements as referenced herein.
  - 6.2 **Approval and Award of Contract** – Contracts must be awarded by the appropriate authority level. Approval thresholds are determined by the initial term of the contract, plus authorized extensions and options. Contract contingency levels shall be approved by City Council or a designated individual. Contracts shall not knowingly be staged or separated into smaller units or terms solely for the purpose of circumventing approval authority.
    - 6.2.1 **Contract Award Determination** – The City Council, City Manager or designee shall have final determination to award, reject all bids/proposals or recommend the re-advertisement of certain procurements in the event of bid/proposal inconsistencies and if consistent with applicable law.



## PROCUREMENT POLICY AND PROCEDURE

### PURCHASING CYCLE

#### 6.2.2 Approval and Award Thresholds:

Division Manager	Up to \$10,000
Department Head	\$10,000.01 to \$25,000
City Manager	\$25,000.01 to \$60,000
City Council	\$60,000.01 and over

The approver can, at their administrative discretion, delegate approval authority on their behalf in writing. Approval authority thresholds governing invoice payment approval levels are listed separately in Policy 201-8 .

- 6.3 **Contracts Awarded by the City Manager** – Contracts or amendments awarded by the City Manager shall be reported by the City Manager during the next Regular Council Meeting and posted on the website.
- 6.4 **Contracts Awarded by Department Heads and Division Managers** – Contracts or amendments awarded and approved by Department Heads and Division Managers shall be reported to the City Manager or designee at least monthly.
- 6.5 **Local Vendor Preference** – Prices, fitness, quality, delivery, and service being equal, a seven percent (7%) rating scale preference may be given to Local Bidders as defined in the San Clemente Municipal Code section 3.40.030 and Article (XIV)(C)(13) of this Policy in accordance with State law.
7. **Contracting Requirements** – The following section explains the various contracting requirements associated with City funds.
- 7.1 **Contract Award** – A contract is not considered to be awarded until it is approved by the appropriate award authority, *i.e.*, the City Council, City Manager, Department Head or Division Manager as described in Section 6.2 above.
- 7.2 **Standard Contract Terms and Conditions** – Use of the City’s standard contracts (or terms and conditions for purchase orders) approved by the City Attorney is required whenever feasible.
- 7.3 **Written Contract Requirement** – Written contracts on City templates provided and approved by the City Attorney are required for good, services



## PROCUREMENT POLICY AND PROCEDURE

### PURCHASING CYCLE

or public construction projects. Written contracts on City templates are to be used for purchases where vendor standard terms and conditions are insufficient to manage the City's risk as it relates to liability, prevailing wage compliance or any other relevant risk exposure. Finance has authority to make a final determination on the use of vendor standard terms and conditions or written contracts on City templates.

- 7.4 **City-Provided Scope of Work Requirement** – Contracts must include well-defined scopes of work and should be provided by City staff. If feasible, use of consultant or vendor-provided scopes of work should be minimized.
- 7.5 **No Contract Splitting** – Under no circumstances can any contract be split or separated into smaller components to determine the appropriate award authority or for any other purpose.
- 7.6 **Contract Types and Procurement Methods** – The City utilizes several different types of procurement methods.
  - 7.6.1 **Petty Cash** – See Finance Policy 201-3
  - 7.6.2 **Purchase Order** – Use of purchase order should be limited in favor of City standard written contracts for goods, services or public construction and should be used in conjunction with a City standard written contract. Purchase orders for an approved amount with a copy provided to the contractor/consultant and copies distributed internally may be used as the primary contract document for certain purchases wherein the risk to the City is minimal and the terms and conditions on the purchase order are sufficient to manage the City's risk as it relates to liability, prevailing wage compliance and any other relevant risk as determined by Finance. Purchase orders may be used independently for certain procurements when any of the following conditions apply:
    - (a) Another form of written contract is not feasible or practical.
    - (b) Finance determines the procurement is of acceptable risk to the City.
    - (c) Finance determines that a purchase order is appropriate.
  - 7.6.3 **Blanket Purchase Order (BPO)** – Purchase of designated products or services on a repetitive basis from a specific vendor on



## PROCUREMENT POLICY AND PROCEDURE

### PURCHASING CYCLE

an as needed basis. BPO's are issued unencumbered and are restricted by an annual service agreement not to exceed the approved contract.

- 7.6.4 **Contract Purchase Order** – A “Contract Purchase Order” is an agreement whereby the terms and conditions, pricing, and special provisions are agreed to and apply to individual commitments within a pre-established time period.

Under a “Contract Purchase Order” the items to be procured are identifiable within the orders, but the quantities of each are unknown. Therefore, in consideration of firm prices being agreed to for the life of the agreement or subject to escalation by a predetermined formula, most Contract Purchase Orders are either an “exclusive requirement” or “minimum requirements” type.

- (a) Exclusive Requirements – No guarantee is made as to the quantity to be purchased, but it is agreed any and all requirements will be purchased only under that order and from no other source.
  - (b) Minimum Requirements – No exclusiveness is provided, but Purchasing guarantees to purchase a minimum quantity during the life of the contract.
- 7.6.5 **Change Order** – Changes that affect the contractual agreement established under a purchase order or a contract shall be authorized at the appropriate level. Any change affecting service, design, specifications, quantity, delivery schedule, price, payment of invoice, transportation, and similar contractual considerations may be negotiated, but must have proper authorization and approval prior to commitment or performance. Where a firm contract is in effect to produce an item or service at a given price, the City and the vendor are expected to comply. Change Orders should not be used as a means of recovering losses or increasing vendor profits.

- (a) Change Orders can be processed by staff at the Department level if the amount falls within the City Council project contingency authorized or is less than or equal to \$25,000 in aggregate and less than 19% of the contract price.
- (b) City Manager Approval is required for project Change Orders that increase the aggregate Purchase Order for an



## PROCUREMENT POLICY AND PROCEDURE

### PURCHASING CYCLE

excess of \$25,000 and less than or equal to \$60,000. If the Change Order exceeds the project contingency amount, City Council approval will be required. Change Orders in the aggregate in excess of 19% of the contract price or that violate applicable law are prohibited.

- (c) City Council approval is required for Change Orders that increase the aggregate Purchase Order to exceed \$60,000 or exceed the approved contingency level.
- (d) The department submitting the Change Order shall document the reason for the change with appropriate support.
- (e) Upon proper approval, the Change Order shall be entered in the City's financial system and Finance will distribute as appropriate.
- (f) Incidental or de minimis out of pocket costs may not be considered part of the purchase order amount, unless specifically addressed in the contract.

7.6.6 **Substitutions** – No Purchase Order substitution shall be requested or accepted by City personnel without department manager approval. If it becomes necessary to substitute, verbal approval may be obtained from the department manager, which should be documented. Other necessary substitutions may require a written Change Order.

7.6.7 **Cancellation of Purchase Order or Portion Thereof** – When part of an issued Purchase Order must be canceled, changes should be made through purchasing in the City's financial system cancelling either single line items or the entire purchase order. Copies will be sent to vendor upon request.

7.6.8 **Purchase Contract** – A contract that procures Supplies Materials and Equipment. (*See Article VI, Procurement of Supplies, Materials, and Equipment.*)

7.6.9 **Agreement for Public Construction Projects** – A contract that procures services which directly result in the physical construction of a public improvement. (*See Article VII, Public Construction Projects.*)



## PROCUREMENT POLICY AND PROCEDURE

### PURCHASING CYCLE

- 7.6.10 **Professional Services Agreements** – A contract that procures professional, technical, and or/ clerical services which will not directly result in the physical construction of a public improvement. *(See Article VIII, Selection of Professional Services Consultants and Contractors.)*
- 7.6.11 **General Services Agreements** – A contract that procures services that typically do not require a high degree of professional certification or specialized expertise either with or without the furnishing of materials and that do not constitute a public works project. *(See Article IX, Selection of General Services Consultants or Contractors.)*
- 7.6.12 **Information Technology Agreements** – A contract that procures information technology related services or license agreements for use of technology. *(See Article VI, Procurement of Supplies, Materials, and Equipment, Article VIII, Selection of Professional Services Consultants and Contractors and Article X, Selection of Other Purchasing Related Activities for Services, Items, Commodities and Unsolicited Proposals.)*
- 7.6.13 **Key Contracting Prerequisites** – Contractors or vendors conducting business in the City or working on City property or in City rights-of-way must be properly licensed, insured, and otherwise comply with all lawful requirements such as obtaining a business license as required by the Finance Department and having appropriate insurance coverage as required by the Risk Manager. The contractor or vendor must include the City of San Clemente and its officials, officers, employee, agents and volunteers as an “additional insured” on their insurance Policy and provide up-to-date insurance certificates with required Policy endorsements. Insurance requirement must be met before any work can commence.

### B. Methods of Procurement

1. **Force Account, Negotiated Contract or by Purchase Order** – procurement method used for public construction projects and regulated by the California Uniform Public Construction Cost Acting Act (“CUPCCAA”).
2. **Micro-purchase (single bid, proposal or quote)** – single bid, proposal or quote required for certain procurements amounts set by federal regulation or state law. The informal, formal bidding/solicitation process should be sought if there is a





## PROCUREMENT POLICY AND PROCEDURE

### PURCHASING CYCLE

reasonable possibility of obtaining better prices commensurate with the time and effort expended.

3. **Informal Purchase Process** – an unsealed competitive offer using simpler and more efficient procurement methods for obtaining written bids, proposals or quotes allowed for certain procurements amounts. Formal bids or request for proposals should be sought if there is a reasonable possibility of obtaining better prices commensurate with the time and effort expended. Purchases and contracts shall not knowingly be staged or separated into smaller units or segments solely for the purpose of circumventing the formal or informal process as documented herein. Informal bids shall be submitted to and opened by the City Manager or their designee.
  
4. **Formal Purchase Process** – Formal bid or request for proposals procedures for procurements shall be followed for public purchases as defined in this Policy and required by State or Federal law and may also be followed when Finance determines that formal procedures might best serve the public interest. Formal purchase procedures are further documented herein.
  
5. **Exemptions to the Informal and Formal Purchase Process** – Exemptions to the bidding and solicitation process must be approved by Finance or as defined in the San Clemente Municipal Code Chapter 3.40 and as documented in Article (XI)(A)(1) Exemptions to the Formal, Informal Bidding, and Solicitation Process herein.

#### C. **Sealed Bid (Bid) vs. Request for Proposals (RFP) Process**

The purchasing process to be followed will be based on the various considerations, criteria, amount, and type of purchase. This section includes a summary of each type of Formal Purchase Process, considerations, criteria and comparison of the two processes.

The following table summarizes the sealed bid and request for proposal process.

<b>Process Step</b>	<b>Sealed Bids</b>	<b>Requests for Proposals</b>
<i>Applicability</i>	Typically public works or general services or goods	Typically professional services
<i>Specifications</i>	Very specific as to performance and design requirements	Allows for more flexibility; vendor proposes one or more options



## PROCUREMENT POLICY AND PROCEDURE

### PURCHASING CYCLE

<i>Opening</i>	Public – all data available to other bidders and public	Public – only names of proposers are public; no pricing or other data is made available until award
<i>Evaluation</i>	Based strictly on meeting specifications – no material deviations accepted	Based on overall responsiveness to proposal and criteria provided in RFP for evaluation
<i>Discussion</i>	Only to clarify question on meeting technical specifications with answer being published in addenda	Questions to any or all proposing firms to clarify items in proposal; may include formal interviews
<i>Changes</i>	Only minor technicalities may be corrected	Negotiations may be conducted with proposing firm(s) evaluated as being most responsive to RFP criteria
<i>Award</i>	Lowest responsive and responsible bidder	Best overall value proposal – not necessarily lowest price

#### **Considerations for using the competitive sealed bid process:**

- The specifications for the good, service or public construction project to be purchased are explicitly clear and communicated for both buyer and seller.
- The market has an adequate number of sellers capable of meeting the specifications to allow for competition.
- The sellers that make up the market are technically qualified and are willing to price competitively.
- Competitive bid process is required by applicable law.

#### **Considerations for using the RFP process instead of a sealed bid:**

- Oral or written discussions may be necessary with the responding firms regarding technical and price clarifications or scope of work requested.
- Offers an opportunity to determine staffing or other technical qualifications of the provider to meet the needs of the City.





## PROCUREMENT POLICY AND PROCEDURE

### PURCHASING CYCLE

- It is advantageous to allow an opportunity for responding firms to modify their offer prior to award.

#### **Evaluating Criteria for Proposal Solicitation**

- Comparative analysis of different technical products or solutions must be made.
- Situations in which it is impossible to estimate costs with a high degree of certainty.
- Situations in which price is not the only important variable; quality, schedule, and service may be variables of equal or greater importance.
- Situations in which the buyer anticipates a need to make changes in some aspect of the purchase/contract where negotiations are foreseen before the contract can be finalized.
- Typically, most types of professional services are purchased with this method.

#### **Compare and Contrast:**

Each method has its strengths and weaknesses. The ease of evaluating bids on price alone needs to be balanced against the risk that price alone may not be all that distinguishes one product or service from another. Often, other factors such as quality of the product or after-sales service can be equally or more important.

Evaluation of a competitive sealed bid is straightforward. The award is normally on the basis of price to the lowest responsive and responsible bidder. Bids that conform in all material respects to the requirements stated in the invitation to bid are responsive; bidders who have the capability to fully perform the contract requirements (necessary experience, technical knowledge, facilities, licenses, equipment, and credit required to perform) are considered responsible.

The RFP process allows more flexibility than the sealed bid process in the evaluation process. The evaluation team first evaluates proposals for compliance to the specifications and requirements in the RFP and creates a list of those firms whose proposals meet mandatory requirements. Only the firms from this list will be further evaluated and considered for the award based on evaluation criteria specified in the RFP. Interviews and/or negotiations with the top-rated firm(s) may be conducted before final selection.

When it is not in the City's best interest to acquire commodities or services through competitive bidding, a contract may be solicited using the Request For Proposal (RFP) method as permitted by state and federal law and if approved by Finance. Such a situation may arise for any number of reasons, including, but not limited to:



## PROCUREMENT POLICY AND PROCEDURE

### PURCHASING CYCLE

- The City's requirements are not well-defined;
- The City is interested in evaluating a range of offers so that it may take advantage of technical innovation and developments in the market place; and,
- Factors such as availability, expertise, and quality override price as a criteria for award.

#### **Addenda:**

Addenda to specifications may be made in advance of response due dates for both the sealed bid and request for proposals process. The purpose of an addendum is to provide notice to all potential bidders/proposers that there have been changes or clarifications made to the terms of the solicitation.

#### **Definitions:**

1. **Purchasing Cycle** – The process used to purchase goods, services or public construction projects as described in this Policy.
2. **Petty Cash** – May be used for items under \$100, purchased by an employee and reimbursed in accordance with the Finance Policies and Procedures.
3. **Requisition** – Informs Finance of procurement requirements and allows for department/division approval.
4. **Purchase Order** – A written contractual agreement for goods, services and public construction projects for an approved amount. These instruments have limited or incorporated terms and conditions as compared to a standard City written contract and are typically used independently for procurements with minimal risk with Finance approval.
5. **Purchase Order Number** – Assigned by the City's financial system.
6. **F.O.B. (Free on Board) Point** – Without Finance approval, F.O.B. shall be "Destination" (San Clemente). With F.O.B. "Destination" the legal title to the material does not pass from the seller to the City until the carrier delivers the material at the City's destination address, otherwise the City bears the risk of non-delivery, which should be avoided.
7. **Blanket Purchase Order** – Unencumbered Purchase Orders established by Finance with suppliers that are restricted by the annual service agreement.



## PROCUREMENT POLICY AND PROCEDURE

### PURCHASING CYCLE

8. **Contract Purchase Order** – An agreement made by Finance whereby the terms, conditions, pricing and special provisions are agreed to and applied within a pre-established time period.
9. **Change Order** – Changes made to any agreement, verbal or written, which will affect the agreement established by the supplier or service provider and requesting department.
10. **Scope of Work** – detailed written outline of the project, including timeline, budget, assigned tasks, project stakeholders, workflow strategies and exact description of what the contractor/consultant will be doing for the City.
11. **Request for Proposal** – the process and documentation used for soliciting proposals for goods and services.
12. **Notice Inviting Bids** – the process and documentation used for soliciting bids for goods, services and public construction.
13. **Quote** – Fixed price document that is time-sensitive due to fluctuations in the price of goods.
14. **Sealed Bid** – Formal procurement method where a city publicly solicits bids and a firm fixed-price contract (lump sum or unit price) is awarded to the lowest responsible bidder whose bid conforms with all material terms and conditions of the invitation for bids. The project offer is for a defined project scope, work schedule and timeline.
15. **Responsible bidder** – A bidder with the capability in all aspects to perform in full the contract requirements and who has the integrity and reliability which will assure good faith performance. The bid conforms in all material respects to the terms and conditions, specifications, and other requirements of the solicitation.
16. **Proposal** – Submission by the prospective bidder demonstrating how they will meet the objectives of the scope of work and the cost to accomplish.
17. **Bidder** – a participant in the initial stage of the procurement process by submitting a proposal or bid.
18. **Bidder's Security** – A monetary guarantee in a form and amount approved by the City that secures the bidder's intent to execute a contract with the City.
19. **Performance Bond** – A guarantee by a third party in form and amount approved by the City that secures the bidder's intent to execute a contract with the City.



## PROCUREMENT POLICY AND PROCEDURE

### PROCUREMENT OF SUPPLIES, MATERIALS AND EQUIPMENT

#### VI. PROCUREMENT OF SUPPLIES, MATERIALS AND EQUIPMENT

##### A. Policy

1. Procurement of Supplies, Materials and Equipment policies & procedures are established to provide a common understanding of the methods for securing the supplies, materials, and equipment needed for all City functions. These policies and procedures ensure all requests follow the Purchasing Ordinance, as well as, other legal requirements; and to provide a system to track that the supply, material, and equipment ordered, received, approved for payment and above all, to ensure that City purchasing is conducted in a business-like and ethical manner.

##### B. Definitions

1. **Supplies, Materials and Equipment** – any goods, supplies, plant, materials, chemicals and equipment of any kind, including but not limited to machinery, vehicles, parts, components, consumables and non-consumables. The following describe other types of purchases considered to be supplies, materials or equipment:
  - 1.1 **Rental & Lease of Equipment** – The owner of the equipment allows the City to operate or otherwise make use of the equipment in exchange for periodic lease or rent payments. The owner of the equipment bears the risk of obsolescence and depreciation of the equipment.
  - 1.2 **Publications/Newsprint** – Contracts to receive periodicals, magazines, trade journals, etc., either in print or electronic/digital subscriptions.

##### C. Procurement Methods – The following limits are provided as guidelines for the method of procurement:

1. **Micro-Purchase** – Solicitation is not required, but recommended, for procurements expected to be less than \$10,000 or up to the micro-purchase threshold set by federal regulation. Informal or Formal Purchase Process should be assessed to determine if there is a reasonable possibility to obtain better prices commensurate with the time and effort expended. The Formal or Informal process is recommended but not required for micro-purchases. Finance has the authority to determine if the Formal or Informal procedures should be implemented.
  - 1.1 The following criteria shall be considered before using the Micro-Purchase Process.



## PROCUREMENT POLICY AND PROCEDURE

### PROCUREMENT OF SUPPLIES, MATERIALS AND EQUIPMENT

- 1.1.1 Determine dollar value of purchase is less than or equal to \$10,000 including shipping, taxes, etc.
  - 1.1.2 Evaluate if the formal or informal process will result in better pricing commensurate with the time and effort expended.
  - 1.1.3 Obtain single bid/proposal/quote from vendor of choice.
  - 1.1.4 Assess whether the informal or formal purchase process will offer savings to justify time and resources in comparison to the price. Past bid results and similar services can be utilized in this assessment and should be documented by the Department.
2. **Informal Purchase Process** – Formal competitive bids/proposals are not required for procurements expected to be less than or equal to \$60,000. Formal competitive bids/proposals should be sought if there is a reasonable possibility of obtaining better prices commensurate with the time and effort expended. Purchases and contracts shall not knowingly be staged or separated into smaller units or segments solely for the purpose of circumventing the competitive formal or informal purchasing process requirements as defined in this Policy.
- 2.1 Bids or proposals will be solicited by the division designee or Finance using the following methods:
    - 2.1.1 Determine dollar value of purchase is greater than \$10,000 and less than or equal to \$60,000 including shipping, taxes, etc.
    - 2.1.2 Reasonable effort shall be made to obtain three (3) or more bids/proposals.
    - 2.1.3 Bids/proposals may be solicited by written or oral means.
    - 2.1.4 City staff conducting the Informal Purchase Process must inform suppliers that they are to offer a “last and final offer.” No negotiation or price matching can be conducted with any of the suppliers.
    - 2.1.5 All recommended purchases made under the Informal Purchase Process are subject to Finance review and approval prior to award.
    - 2.1.6 Finance retains the authority for source selection on all procurement and is authorized to make awards to the lowest responsible bidder.



## PROCUREMENT POLICY AND PROCEDURE

### PROCUREMENT OF SUPPLIES, MATERIALS AND EQUIPMENT

2.1.7 All contracts made and/or bids/proposals/quotes received are open to public inspection for a period of at least one (1) year after the award.

3. **Formal Purchase Process** – Formal bid/proposal procedures shall be followed for all procurements in excess of \$60,000, for all public purchases required by State or Federal law or when formal bid/proposal procedures best serve the public interest, as determined by the City Manager or designee. Finance shall evaluate departmental requests for specific equipment, materials, and supplies.

3.1 The following criteria shall be considered before using the Formal Purchase Process.

3.1.1 Determine dollar value of purchase is in excess of \$60,000 including shipping, taxes, etc.

3.1.2 Availability of clear specifications.

3.1.3 Adequacy of number of sellers in the marketplace.

3.1.4 Market conditions would ensure adequate participation in the Formal Purchase Process.

3.1.5 Availability is sufficient to use the Formal Purchase Process.

If the above criteria warrant the use of the Formal Purchase Process, all analytical planning to determine specifications shall be completed by the requesting department before competitive bids/proposals are sought.

3.2 **Bid Notice** – The “Notice Inviting Bids” or “Request for Proposals” shall include a general description of the supplies, materials or equipment to be procured, and shall state:

3.2.1 Where bid/proposal forms and specifications may be secured.

3.2.2 Time, date, and place for the submission and opening of bids/proposals.

3.2.3 Whether a performance bond is required, and if so, the amount and form of bidder’s security.





## PROCUREMENT POLICY AND PROCEDURE

### PROCUREMENT OF SUPPLIES, MATERIALS AND EQUIPMENT

3.2.4 At its discretion, the City reserves the right to reject any and all bids/proposals or waive any formality presented.

3.3 **Published Notice** – The “Notice Inviting Bids” or “Request for Proposals” should be published by the Requesting Department in the local newspaper or posted to the online bid management system, at least ten (10) days before date of bid/proposal opening.

3.4 **Bidder’s Security** – When Bidder’s Security is required, it will be announced in the public “Notice Inviting Bids” or “Request for Proposals” and the amount shall be determined at time of preparation.

3.4.1 Bidder’s Security shall be in the form of:

(a) Certified or cashier’s check made payable to the City of San Clemente. The City Clerk will hold the check until the formal award of the bid/proposal. Checks will be returned by the City Clerk to the unsuccessful bidders by certified mail, return receipt requested. Release of the check before the formal award of the bid/proposal will constitute a withdrawal of the bid/proposal by the supplier.

(b) Bidder’s bond in a form and amount acceptable to the City made payable to the City of San Clemente. A bid/proposal shall not be considered unless one of the forms of security mentioned accompanies the bid/proposal when required.

3.4.2 Bidders shall be entitled to return of bid security with the following EXCEPTION:

(a) A successful bidder shall forfeit their bid/proposal security upon refusal or failure to execute the contract within ten (10) days after the notice of award of contract has been mailed.

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



## PROCUREMENT POLICY AND PROCEDURE

### PROCUREMENT OF SUPPLIES, MATERIALS AND EQUIPMENT

- 3.5 **Performance and Payment Bonds** – The City Council or City Manager or designee shall each have authority to waive or require performance or payment bonds before issuing a Notice Inviting Bids or Request for Proposals. The amount shall be set at a level deemed necessary to protect the best interest of the City.
- 3.6 **Sealed Bids**
- 3.6.1 Sealed bids shall be submitted electronically through the online bid management system or in a clearly identified sealed envelope to the City Clerk or designee in accordance with the bid/proposal instructions.
- 3.6.2 Bids shall be opened in public at the time and place stated in the public notice. In cases where bids are submitted and tabulated electronically, bid openings will be considered public as long as the individual bids are electronically accessible after the bids close.
- 3.6.3 The City Clerk, or their designee, is required to be present at the opening. All bids received shall be recorded.
- 3.6.4 All bids received shall be available for inspection during regular business hours for a period of 31 days after the bid opening date.
- 3.7 **Rejection of Bids/Proposal** – The City reserves the right to reject any and all bids/proposals, to accept or reject any one or more items of a bid/proposal, or to waive any irregularities or informalities in the bids/proposals or the procurement process. This process will be documented by staff after review of the bids/proposals.
- 3.8 **Late Bids/Proposals** – Any bid received after the time specified in the notice shall be returned pursuant to Government Code section 53068.
- 3.9 **Tie Bids/Proposals** –
- 3.9.1 If tie low bids/proposals are received, quality and service being equal, the contract shall be awarded to a local bidder; or
- 3.9.2 If the above condition is not applicable, the City may, at its discretion





## PROCUREMENT POLICY AND PROCEDURE

### PROCUREMENT OF SUPPLIES, MATERIALS AND EQUIPMENT

3.9.3 accept either one or accept the lowest bid made by negotiation with the tie bidders; or

3.9.4 Award the bid to any one of the low tie bidders by public drawing.

3.10 **Determining Lowest Responsive and Responsible Bidder** – All valid responsible bids/proposals shall be considered in determining the lowest bid/proposal. Finance and the requesting division will take into consideration:

3.10.1 Price of supplies, material, and equipment.

3.10.2 Terms and conditions including delivery, discounts, local vendor preference, and all other conditions submitted in the bid.

3.10.3 The quality, suitability and efficiency of the item or service offered and its conformity with the specifications.

3.10.4 The reputation of the supplies, material and equipment, the service reputation of the seller and all information and data required to prove responsibility of the supplier.

3.10.5 The aggregate purchase cost including auxiliary equipment or services as part of the project scope including but not limited to warranties, maintenance, upgrades, etc.

If the lowest bidder has not contracted with the City before, proof of responsibility should be documented and verified prior to award.

3.11 **Award of Bids/Proposals** – Award of bid shall be to the lowest responsible bidder, except as otherwise provided herein. Contracts may be awarded when the formal bid process is followed and funds are available within the fiscal year budget.

3.11.1 If the bid amount exceeds the budgeted amount, Finance shall make a recommendation of award to the City Manager or designee for approval. If the contract amount is within the purchasing authority the City Manager or designee may approve the award or at their discretion or refer the item to the City Council for action.

4. **Exemptions to the Informal and Formal Purchasing Process** Exemptions to the bidding/proposal process are documented in Article (XI)(A)(1) herein and defined



## PROCUREMENT POLICY AND PROCEDURE

### PROCUREMENT OF SUPPLIES, MATERIALS AND EQUIPMENT

in the San Clemente Municipal Code Chapter 3.40. All Exemptions must be submitted to Finance for approval prior to award.

5. **Procurement of Fleet** –Fleet replacements are presented to Council within the budget for the estimated cost, type and quantity of vehicles requiring replacement thereby authorizing staff to bid and award vehicles purchases within those levels. The City Manager or designee shall have the authority to purchase vehicles up to \$60,000 above the estimated replacement cost from available fleet replacement funds due to changing cost, availability, and state regulations related to vehicles. If the amount exceeds this threshold, an Agenda Report will be prepared to seek City Council approval.
6. **Approval and Award of Contract** — Authority for approval and award of supplies, materials, equipment will be:

Division Manager	Up to \$10,000
Department Head	\$10,000.01 to \$25,000
City Manager	\$25,000.01 to \$60,000
City Council	\$60,000.01 and over



## PROCUREMENT POLICIES & PROCEDURES

### PUBLIC CONSTRUCTION PROJECTS

#### VII. PUBLIC CONSTRUCTION PROJECTS

##### A. Policy

1. Public Construction Projects procurement policies and procedures are established to provide a common understanding of the procurement methods for Public Construction Projects; to ensure that all related procurements are made in accordance with the Purchasing Ordinance as well as other legal requirements; and to provide a system to track that supplies, materials, equipment or services for Public Projects have been ordered, received, approved for payment and above all, to ensure that City purchasing is conducted in a business-like and ethical manner.

##### B. Purchasing Cycle

1. **Methods of Procurement** - The method chosen will be determined by the dollar amount of the purchase or contract as identified in the Public Contract Code and Chapter 3.40 of the San Clemente Municipal Code. Methods available are:
  - 1.1.1 Force Account
  - 1.1.2 Negotiated Contract
  - 1.1.3 Contract following competitive bid
  - 1.1.4 Purchase Order
2. **Authorization of Purchases** - Each requisition for consultant services or construction contracts must be authorized by a Department Head, division manager or designee. Finance will maintain a current authorization list and update it on an as-needed basis. The list will be kept on file in Finance. It is the division manager and department head's responsibility to notify Finance of any changes or temporary assignment of authorization.
3. **Bid Process for Public Construction Projects** - The San Clemente Municipal Code Chapter 3.40 incorporates the California Uniform Public Construction Cost Accounting Act ("CUPCCAA") Procedures as set forth in Public Contract Code sections 22030-22045. The Act establishes bid procedures for "Public Projects." This section shall be superseded by any amendments made to CUPCCAA or other applicable law.



## PROCUREMENT POLICIES & PROCEDURES

### PUBLIC CONSTRUCTION PROJECTS

Project Cost	Procurement Process	Public Contract Code Section
\$5,001- \$60,000	1. Force Account 2. Negotiated Contract or Purchase Order	PCC 22032
>\$60,000-\$200,000	Informal bidding	PCC 22034
>\$200,000	Formal bidding	PCC 22037

- 3.1 The City provides for the construction of Public Projects for amounts of \$60,000 or less through the use of City employees, by negotiated contract, or by purchase order.
- 3.1.1 Projects in excess of \$5,000 and equal to \$60,000 or less, reasonable efforts shall be made to solicit from three (3) qualified contractors and let to contract by informal procedures set forth in Public Contract Code Section 22034. Terms may be negotiated and the project may be awarded to the lowest responsible bidder.
- 3.2 Public Projects for amounts in excess of \$60,000 and less than \$200,000 may be awarded by following the "Informal Bid Procedures" contained in Public Contract Code Section 22034 or at the discretion of the City Engineer, Department Head or designee, the "Formal Bid Procedures" contained in Public Contract Code Section 22037.
- 3.3 Public Projects for amounts in excess of \$200,000 shall be contracted by use of the "Formal Bid Procedures" contained in Public Contract Code Section 22037.
- 3.4 Public construction contracts shall be issued in accordance with the provisions of the Public Contracts Code Sections 22000 - 22045, otherwise known as CUPCCAA. The provisions of CUPCCAA relative to bidding procedures shall supersede the individual procedures contained in this Purchasing Policy and City Municipal Code. Amendments or revisions to any state code sections affecting this Policy and resulting in procedure changes may be directly incorporated into this Policy when enacted by the



## PROCUREMENT POLICIES & PROCEDURES

### PUBLIC CONSTRUCTION PROJECTS

California Legislature without further action of the City Council or City Manager.

4. **Change Orders for Construction Projects** - Change Orders for construction projects that were awarded by the City Council can be executed by the City Engineer, Department Head, City Manager or designee.
  - 4.1 Change Orders in the aggregate cannot exceed the contingency amount for the project as approved by the City Council.
  - 4.2 City Council approval is required on Change Orders exceeding the total contingency amount of the project.
  - 4.3 Change Orders in the aggregate cannot exceed 19% of the contract price nor constitute a cardinal change to the contract.

#### C. Definitions

1. **Public Construction Projects** – Public construction pertain to the construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind, including but not limited to: demolitions, and the construction and installation of drainage systems, lighting and signaling systems, sewer and water systems, and park and recreational facilities. Service contracts encompass all contracts for services either with or without the furnishing of materials. Maintenance required to preserve a public improvement is not considered a public construction project.
2. **Public Project** - Any of the following constitute a Public Project as defined in Public Contract Code Section 22002: Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility. Painting or repainting of any publicly owned, leased or operated facility. In the case of a publicly owned utility system, “public project” shall include only the construction, erection, improvement, or repair of dams, reservoirs, power plants and electrical transmission lines of 230,000 volts or higher. Applicable law regarding what constitutes a public project shall automatically supersede this definition.
3. **Maintenance Work** - Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes, minor repainting, resurfacing of streets and highways at less than one inch; landscape maintenance, including mowing, watering, trimming, pruning, planting, and servicing of irrigation and sprinkler systems; work performed to keep,



## PROCUREMENT POLICIES & PROCEDURES

### PUBLIC CONSTRUCTION PROJECTS

operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts and higher. Applicable law regarding what constitutes maintenance shall automatically supersede this definition.

4. **Facility** – Any plant, building, structure, ground facility, and utility system, subject to the limitations defined under maintenance work, real property, streets and highways or other public work improvement.
5. **Force Account** – Public construction projects performed by using internal City resources, including, but not limited to, labor, equipment, materials, supplies and subcontracts of the City.

#### D. Procedure

1. **Purchasing Documentation** – Every purchase for supplies, materials, equipment, or services for a public construction project or Public Project will be documented with records and written statements of the kind and in the detail necessary to show that consideration was given to the factors pertinent to good buying and applicable legal requirements. These include such items as authorization, quality, service, and price. Public Projects are required to be awarded to the lowest responsive and responsible bidder. The basis for the selection of the source for the final award must be clearly documented. All documents will be kept for a period of three years before destruction.
2. **Bid Procedures for Public Projects** - Professional Services for Public Projects are obtained in accordance with the Public Contract Code by the following methods:
  - 2.1 **Projects Estimated at \$60,000 or Less.** Reasonable efforts shall be made to solicit and obtain proposals from three (3) qualified firms for Public Projects estimated at \$60,000 or less. Solicitation may be done by telephone, email, Request for Quotation, Request for Proposal or Notice Inviting Bids. Terms may be negotiated and the project must be awarded to the lowest responsible bidder.
  - 2.2 **Projects Estimated in Excess of \$60,000 and less than \$200,000.** The City is required to maintain a list of qualified contractors that are identified according to the categories of work which they perform. When the City desires to contract a public improvement costing in excess of \$60,000 and less than \$200,000, the City is required to issue a notice inviting bids to those contractors whose names appear on the list for the category of work being bid. This notice shall be sent not less than 10 calendar days before the



## PROCUREMENT POLICIES & PROCEDURES

### PUBLIC CONSTRUCTION PROJECTS

bid due date. The notice shall describe the project in general terms, how proposed bidders obtain more detailed information about the project, and the time and place for submission of bids. Responsible local contractors shall be included on such list unless they have indicated to the City that they do not wish to be on such list.

- 2.3 **Projects in excess of \$200,000.** When the City desires to construct a public improvement costing in excess of \$200,000, the City shall circulate a Notice Inviting Formal Bids that describes the project and states the time and place for receiving and opening sealed bids. The notice is to be published at least 10 calendar days before the date for opening the bids in the City's newspaper of general circulation. Notices are required to be published twice with at least five calendar days between publications. The notice shall also be sent to all construction trade journals referenced in the Public Contract Code section 22037.
- 2.4 **Award or Rejection of Bids.** After opening the bids, the division/department may recommend that City Council award the Contract to the lowest responsible bidder, reject all bids and either abandon the project or reject all bids and re-advertise the project (if permitted by applicable law) or by passage of a resolution of a 4/5th vote of the City Council, declare that the project be performed by force account.
- 2.5 **Exemptions to the Procurement Process** - Chapter 3.40.040 of the San Clemente Municipal Code has exemptions for professional and other contractual services that are in their nature unique or other service for which by law another officer or body is specifically charged with obtaining. These exemptions are further documented in Article (XI), Emergency Purchases & Contracting and Article (XII) herein. Exemptions to the procurement process are limited by the Public Contracts Code Sections 1100-22355.
- 2.6 **Award of Public Projects** - Projects that are bid according to the established bid procedures can be awarded by:

Division Manager	Up to \$10,000
Department Heads	\$10,000.01 to \$25,000
City Manager	\$25,000.01 to \$60,000
City Council	\$60,000.01 and above





## PROCUREMENT POLICIES & PROCEDURES

### PUBLIC CONSTRUCTION PROJECTS

3. **Bidder's Security** – A Bidder's Security shall be required for bids submitted on all Public Project contracts greater than \$10,000. When bidder's security is required, it will be announced in the public Notice Inviting Bids or Request for Proposals and the amount shall be equal to at least 10% of the bid amount.
  - 3.1 Bidder's Security shall be in the form of:
    - 3.1.1 Certified or cashier's check made payable to the City of San Clemente. The City will hold the check until the formal award of the bid. Checks will be returned by the City to the unsuccessful bidders by certified mail, return receipt requested. Release of the check before the formal award of the bid will constitute a withdrawal of the bid by the bidder.
    - 3.1.2 Bidder's bond made payable to the City of San Clemente. A bid shall not be considered unless one of the forms of security mentioned accompanies the bid when required.
  - 3.2 Bidders shall be entitled to return of bid security with the following EXCEPTION:
    - 3.2.1 A successful bidder shall forfeit their bid security upon refusal or failure to execute the contract within ten (10) days after the notice of award of contract has been mailed.
  - 3.3 The City may, upon refusal or failure of the successful bidder to execute the contract, award contract to the next lowest bidder. In this case, the amount of the lowest bidder's security shall be applied to the difference between the low bid and next successful bidder, including any cost incurred by the City, any remainder shall be refunded.
4. **Payment Bonds** – A payment bond shall be required for all Public Projects in excess of \$25,000. The bond shall be executed by an admitted surety insurer, and the amount shall be not less than 100% of the total amount payable pursuant to the contract. The form and amount of the bond shall be described in the Notice Inviting Bids.
5. **Performance Bonds** - The City Council, City Manager or Public Works Director/City Engineer shall each have authority to waive or require a performance bond before issuing a Notice Inviting Bids to the extent that the law and award authority allows. The amount shall be set at a level deemed necessary to protect the





## PROCUREMENT POLICIES & PROCEDURES

### PUBLIC CONSTRUCTION PROJECTS

best interests of the City. The form and amount of the bond shall be described in the Notice Inviting Bids.

#### 6. **Sealed Bid Procedure**

6.1 Sealed bids shall be submitted to the City Clerk or designee and shall be identified as bids on the envelope or receive electronically through the online bid management system, when allowed.

6.2 Bids shall be opened in public at the time and place stated in the public notice. In cases where bids are submitted and tabulated electronically, bid openings will be considered public as long as the individual bids are electronically accessible after the bids close.

6.3 The City Engineer, the City Clerk, or their designee, are required to be present at the opening and shall record all bids received.

6.4 All bids received shall be available for inspection during regular business hours in the office of the City Engineer for a period of 31 days after the bid opening.

7. **Rejection of Bids** - 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.

8. **Late Bids** - Any bid received after the time specified in the notice shall be returned unopened pursuant to Section 53068 of the Government Code.

#### 9. **Tie Bids**

9.1 If tie low bids are received, quality and service being equal, the contract shall be awarded to a local bidder; or

9.2 If the above condition (1) is not applicable, the City may accept either one or accept the lowest bid made by negotiation with the tie bidders; or

9.3 Award the bid to any one of the **low tie bidders** by public drawing.

#### 10. **Agreements for Construction of Public Projects**

10.1 The template Agreement for Construction of Public Projects is contained within the City's word processing system and shall be used for Public Projects. The template Agreement for Construction of Public Projects may



## PROCUREMENT POLICIES & PROCEDURES

### PUBLIC CONSTRUCTION PROJECTS

also be used, as appropriate, for all other projects that qualify as a “public construction” project as it is defined in Labor Code Section 1720 and California Code of Regulations, Title 8, Section 16000.

- 10.2 The template Short Form Construction Contract is contained within the City’s word processing system and may be used for Public Projects that did not go through the formal bidding process if appropriate. This template may also be used for other projects that qualify as a “public construction” project as it is defined in Labor Code Section 1720 and California Code of Regulations, Title 8, Section 16000 if appropriate.
- 10.3 When projects are receiving proceeds that are derived from federal funding, certain federally required contractual provisions are required to be included in the agreements. City staff should consult with legal counsel to ensure that the necessary provisions are included in any projects that are federally funded.



## PROCUREMENT POLICIES & PROCEDURES

### SELECTION OF PROFESSIONAL SERVICE CONSULTANTS AND CONTRACTORS

#### VIII. SELECTION OF PROFESSIONAL SERVICES CONSULTANTS AND CONTRACTORS

##### A. Policy

1. Policies & Procedures for Selection of Professional Service Consultants and Contractors is established to provide a common understanding of the methods for selection of professional services consultants or contractors for the design, review, advisory, field engineering, environmental, personnel and related services in connection with public improvement projects, development processing and governmental operations of the City; and to ensure that the City will obtain the most qualified and competent professional services consultant or contractor at a fair and reasonable cost consistent with quality facilities and/or services.
2. Selection of Professional Services Consultants and Contractor — Professional consultants and contractors must be individually selected for a specific project with due regard for the experience of the consultant or contractor, special knowledge of the subject matter, ability to perform the services in the time allowed, record of success on similar work, and ability to participate in discussions and presentations related to the project.
3. Professional consultant and contractor services differ from other services as they do not readily fall within the competitive bidding process. Professional consultants/contractors should be individually selected through a qualifications-based selection process for a specific project or service based on demonstrated competence and qualifications for types of services to be performed and with the objective of selecting the most qualified consultant/contractor at a fair, reasonable and verifiable appropriate cost.

##### B. Definitions

1. **Professional Consultant/Contractor Services** – Services provided by licensed and/or technically trained professionals with or without the furnishing of materials, including but not limited to:
  - 1.1 **Personnel or employee-related services** – Services that provide benefit or assistance directly to employees, including services for human resources, temporary employment, supplemental staffing, etc.



## PROCUREMENT POLICIES & PROCEDURES

### SELECTION OF PROFESSIONAL SERVICE CONSULTANTS AND CONTRACTORS

- 1.2 **Consultant Services** – Advisory services that provide a recommended course of action or personal expertise/advice, and provide an end product transmitting or that reports information. Consultant services are required in order to obtain professional technical advice or expertise that will supplement departmental expertise or advice or where an independent opinion or audit is required such as financial and economic feasibility study. All consultant service contracts shall contain a provision that prohibits “follow-on” projects where prohibited by law that prevent the consultant from performing work related to any recommendations formulated as a result of the consulting work. Examples of these services can include: community planning, accounting, legal, medical, auditing, and related services.
- 1.3 **Revenue Generating Contracts** – A contract for contractor-provided services in which the City does not pay a fee, but instead receives a portion of the revenues generated from the services such as the operation of a City facility, concessions, etc.
- 1.4 **Information Technology Services (IT)** – rendered services that may or may not include: software or hardware installation, implementation, integration, creation, development, customization, optimization, design, project management and other advanced technical services in support of the City’s Information Technology programs.
- 1.5 **Software and Hardware Maintenance and Support** – Software and hardware maintenance includes ongoing support, troubleshooting, problem resolution, functional improvements, security updates, and other optimizations to systems and is not included with the initial purchase price of the software/hardware. Software/Hardware maintenance and support service includes person-to-person communications regardless of the medium used to communicate: telephone support, on-line technical support, customized support, and/or technical expertise, as well as electronic software delivery and equipment repair/replacement.

Typically upgrades to existing software platforms or providers can qualify for a sole source or cooperative purchasing exemption. The City Manager or designee may approve the upgrade to the applicable award authorization level.

Any actions above the City Manager approval level requires an Agenda Report presented directly to City Council. The award of the contract, with any bargaining, would be identified and disclosed in the Agenda Report



## PROCUREMENT POLICIES & PROCEDURES

### SELECTION OF PROFESSIONAL SERVICE CONSULTANTS AND CONTRACTORS

process.

- 1.6 **Architect-Engineer (“A/E”) Plan Review/Inspection Consultant Services** – Services including but not limited to civil, mechanical, structural, electrical, traffic engineering and certified plan review and inspection. Services may include but are not necessarily limited to: investigations, report preparation, cost estimating, shop drawing review, CEQA documentation preparation, regulatory permit application and acquisition, geological and soils analysis, biology, material testing and inspection, real estate appraisal, and property acquisition services. This includes studies addressing engineering, architecture, landscape architecture, facilities management, and environmental issues.
2. For City procurement purposes, Professional service contracts do not include contracts for Public Construction.

#### C. Procedure

1. **List of Qualified Consultants or Contractors** — Department Heads are authorized to maintain a file of names and brochures of the various technical consultants and contractors that expressed a general interest in doing work for the City of San Clemente, and to use such file for the purpose of soliciting proposals from these consultants and contractors. The Department Head has discretion to select and limit the number of firms who shall be maintained in the file and who shall receive Requests for Proposals from the City. Department Head shall seek out local professional consultants and contractors to maintain in their file.
2. **Micro-Purchase Selection Process for Projects \$10,000 or Less, as set by federal regulation** – Staff may request a proposal from a qualified firm of their choice and negotiate a contract. The proposals may be verbal or written. Finance has the authority to determine if solicitation of additional proposals will better serve the City’s best interest.
3. **Selection Process for Projects in Excess of \$10,000 and less than or equal to \$60,000** — Reasonable efforts shall be made to obtain three (3) or more proposals from qualified firms, but staff need not interview more than two (2) consultants or contractors. The solicitation and proposals may be verbal or written. Finance has the authority to determine if formal solicitation of proposals will better serve the City’s best interest.



## PROCUREMENT POLICIES & PROCEDURES

### SELECTION OF PROFESSIONAL SERVICE CONSULTANTS AND CONTRACTORS

4. **Selection Process for Projects in Excess of \$60,000** — Reasonable efforts shall be made to request proposals in writing from at least five (5) consultants or contractors by the City's Department Head or designee and approved by the City Manager. Staff will make every effort to interview at least three (3) consultants or contractors (which may be limited by number of proposals received). Contract award, if made, shall be made to the consultant or contractor whose price is fair and reasonable and who serves the City's best interests taking into account the evaluation criteria set forth in the Request for Proposals.
  
5. **Criteria for Selection** — If applicable, the following factors shall be considered and evaluated in selecting a professional services consultant or contractor for a particular study or project using the Request for Proposal Method and detailed therein:
  - 5.1 Cost of project or service.
  - 5.2 Educational background.
  - 5.3 Previous experience.
  - 5.4 Demonstrated record of success on work previously performed for the City or similar work performed for others.
  - 5.5 Project lead.
  - 5.6 Staff to perform work within the specified time.
  - 5.7 Methodology proposed to accomplish the work.
  - 5.8 Ability to make effective public presentations of the report and/or design required.
  - 5.9 Ability to work effectively with City staff, other public agencies and related parties as directed during the design, study, or other services.
  - 5.10 Pertinent new ideas that may be presented during the course of the selection process.
  - 5.11 Adequate knowledge of local conditions.
  - 5.12 Availability, experience and knowledge of any subcontractors hired to complete the job or study.



## PROCUREMENT POLICIES & PROCEDURES

### SELECTION OF PROFESSIONAL SERVICE CONSULTANTS AND CONTRACTORS

- 5.13 Additional work performed by the contractor that may have a direct and substantial physical relationship or conflict to the proposed project.
- 5.14 Previous history of completing projects within budget and design estimates.
- 5.15 Ability to furnish adequate and effective construction supervision.
- 5.16 Consideration for consultants or contractors currently working with a major developer in the City for work within or adjacent to the major development project.
- 5.17 Whether the consultant or contractor is local.
6. **Interview Process for Projects** — The interview and selection process shall be conducted by the Department Head or designee responsible for the project. If the contract exceeds \$60,000, the interview and selection process shall be conducted by at least two (2) individuals.
7. **Consultant or Contractor Fees** — After a consultant or contractor is selected, but before a recommendation is made, the fee for the professional services shall be negotiated and it must be fair and reasonable. If a mutually satisfactory fee cannot be agreed upon, negotiations shall be terminated and another consultant or contractor shall be selected.
8. **Contract** — The award of a contract shall be made only when sufficient funds are appropriated in the departmental and/or project account. Exemptions are granted for those professional services that relate to the processing of development plans funded through a developer deposit.
9. **Supplemental or Contingency Award on Contracts** — The City Manager has the authority to approve supplemental amounts as a result of changes to a project's scope up to an aggregate of \$60,000 provided that such changes do not violate applicable law or result in a cardinal change to the contract or an increase of more than 19% to the contract amount. Changes greater than \$60,000 or outside of the City Council approved contingency must be approved by City Council. The agenda report must contain verbiage explaining what types of duties or situations might require supplemental funding and separate action must be taken on the contract award and the supplemental award. If a supplement will result in a cardinal change to the contract or increase the contract amount more than 19%, it must be treated as a separate contract.





## PROCUREMENT POLICIES & PROCEDURES

### SELECTION OF PROFESSIONAL SERVICE CONSULTANTS AND CONTRACTORS

10. **Professional Consultant/Contractor Services Agreement (PCSA)** – PCSAs are required for all services as prescribed herein. The template Professional Services Consultant/Contractor Agreement is contained within the City’s word processing system and shall be used for all contracts that pertain to professional services.

10.1 When agreements are being funded, in whole or in part, through federal resources, certain federally required contractual provisions are required to be included in the agreements. City staff should consult with legal counsel to ensure that the necessary federal provisions are included in these agreements.

11. **Exemptions to the Informal and Formal Bidding Process** – Procurement may be exempt from the bidding process (Informal/Formal) as defined in Article (XI) and Article (XII) herein.

12. **Approval and Award of Contract** — Approval and award of PCSAs will be:

Division Manager	Up to \$10,000
Department Head	\$10,000.01 to \$25,000
City Manager	Over \$25,000.01 to \$60,000
City Council	\$60,000.01 and above





## PROCUREMENT POLICIES & PROCEDURES

### SELECTION OF GENERAL SERVICE CONSULTANTS AND CONTRACTORS

#### IX. SELECTION OF GENERAL SERVICES CONSULTANTS AND CONTRACTORS

##### A. Policy

1. General Service Consultants and Contractors policies and procedures are established to provide a common understanding of the methods for selection of general services consultants or contractors; and to ensure that the City will obtain the most qualified and competent general services consultant or contractor at a reasonable cost consistent with quality facilities and/or services.
2. **Selection of General Services Consultants and Contractor** — General services consultants and contractors must be individually selected for a specific project with due regard for the experience of the consultant or contractor, special knowledge of the subject matter, ability to perform the services in the time allowed, record of success performing similar services and price.

##### B. Definitions

1. **General Services Contractor/Consultant** – A general services contractor or consultant generally consists of a contractor or consultant performing a service that typically does not require a high degree of professional certification or specialized expertise either with or without the furnishing of materials. Included in the definition of service contracts covered in this section are the following:
2. General services can include, but are not limited to, the following fields:
  - a. Maintenance Services, as defined in Article IX(B)(3) herein
  - b. Security Services
  - c. Janitorial Services
  - d. Fleet Maintenance
  - e. Uniform Laundry Services
3. **Maintenance Services** — Maintenance Services can include, but are not limited to, the following:
  - a. Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes
  - b. Minor repainting.
  - c. Resurfacing of streets and highways at less than one inch.
  - d. Landscape maintenance, including mowing, watering, tree and other plant trimming, pruning, minor planting, minor replacement of plants, and servicing



## PROCUREMENT POLICIES & PROCEDURES

### SELECTION OF GENERAL SERVICE CONSULTANTS AND CONTRACTORS

of irrigation and sprinkler systems.

#### C. Procedure

1. **List of Qualified Consultants or Contractors** — The Department Heads are authorized to maintain a file of names and brochures of the various general services consultants and contractors who have expressed a general interest in doing work for the City of San Clemente, and to use such file for the purpose of soliciting proposals from these consultants and contractors. The Department Head has the discretion to select and limit the number of firms who shall be maintained in the file and who shall receive Requests for Proposals from the City. Department Heads shall seek out local professional consultants and contractors to maintain in their file.
2. **Micro-Purchase Selection Process for Projects \$10,000 or Less, as set by federal regulation** – Staff may request a proposal from a qualified firm of their choice and negotiate a contract. The proposals may be verbal or written. Finance has the authority to determine if solicitation of additional proposals will better serve the City's best interest.
3. **Selection Process for Projects in Excess of \$10,000 and less than or equal to \$60,000**— Reasonable efforts shall be made to obtain three (3) or more proposals from qualified firms, but staff need not interview more than two (2) consultants or contractors. The solicitation and proposals may be verbal or written. Finance has the authority to determine if formal solicitation of written proposals will better serve the City's best interest.
4. **Selection Process for Projects in Excess of \$60,000** — Reasonable efforts shall be made to request proposals from at least five (5) consultants or contractors by the City's Department Head or designee and approved by the City Manager. Staff will make every effort to interview at least three (3) consultants or contractors, which may be limited by number of proposals received. Contract award, if made, shall be made to the consultant or contractor who serves the City's best interests taking into account the evaluation criteria set forth in the Request for Proposals.
5. **Criteria for Selection** — If applicable, the following factors may be considered and evaluated in selecting a consultant or contractor to perform general services using the Request for Proposal method:
  - 5.1 Price.
  - 5.2 Educational background.



## PROCUREMENT POLICIES & PROCEDURES

### SELECTION OF GENERAL SERVICE CONSULTANTS AND CONTRACTORS

- 5.3 Previous experience.
  - 5.4 Demonstrated record of success on work previously performed for the City or similar work performed for others.
  - 5.5 Project lead.
  - 5.6 Staff to perform work within the specified time.
  - 5.7 Methodology proposed to accomplish the work.
  - 5.8 Ability to work effectively with City staff, other public agencies and related parties as directed during the course of the services.
  - 5.9 Pertinent new ideas which may be presented during the course of the selection process.
  - 5.10 Adequate knowledge of local conditions.
  - 5.11 Availability, experience, and knowledge of any subcontractors hired to complete the services.
  - 5.12 Additional work performed by the contractor which may have a direct and substantial physical relationship or conflict to the proposed services.
  - 5.13 Previous history of completing services within budget.
6. **Interview Process** — The interview, if any, and selection process shall be conducted by the Department Head or designee responsible for the project or services. If the contract exceeds \$60,000, the interview, if any, and selection process shall be conducted by at least two individuals.
  7. **Consultant or Contractor Fees** — After a consultant or contractor is selected through the Request for Proposals process, but before a recommendation is made, the fee for the services may be negotiated in the City's sole discretion. If a mutually satisfactory agreement cannot be agreed upon, negotiations shall be terminated and negotiations with the next highest ranked consultant or contractor shall be conducted until a consultant or contractor is selected or the City chooses to reject all proposals.
  8. **Contract** — The award of a contract shall be made only when sufficient funds are appropriated in the departmental and/or project account and appropriate findings under the California Environmental Quality Act are made and documented.



## PROCUREMENT POLICIES & PROCEDURES

### SELECTION OF GENERAL SERVICE CONSULTANTS AND CONTRACTORS

9. **Supplemental or Contingency Award of Contracts** — The City Manager has the authority to approve annual supplemental amounts up to \$60,000 in the aggregate. If the annual supplemental amounts make the contract total greater than \$60,000, City Council must approve the supplemental amounts or a separate contract may be entered into. The agenda report must contain verbiage explaining what types of duties or situations might require supplemental funding and separate action must be taken on the contract award and the supplemental award.
10. **General Consultant and Contractors Services Agreement (GCSA)** – GCSAs are required for all services as prescribed herein. The templates for General Consultant and Contractor Service Agreements are contained within the City’s word processing system and shall be used to draft all City contracts that pertain to general services.
  - 10.1 When agreements are being funded, in whole or in part, with proceeds that are derived from federal funding, certain federally required contractual provisions are required to be included in the agreements. City staff should consult with legal counsel to ensure that the necessary provisions are included in any agreements that are federally funded.
11. **Exemptions to the Informal and Formal Bidding Process** – Procurement may be exempt from the bidding process (Informal/Formal) as defined in Article (XI) and Article (XII) herein.
12. **Approval and Award of Contract** — Approval and award of GCSAs will be:

Division Manager	Up to \$10,000
Department Head	\$10,000.01 to \$25,000
City Manager	Over \$25,000.01 to \$60,000
City Council	\$60,000.01 and over



## PROCUREMENT POLICIES & PROCEDURES

### SELECTION OF OTHER PURCHASING RELATED ACTIVITIES FOR SERVICES, ITEMS, LICENSES, COMMODITIES AND UNSOLICITED PROPOSALS

#### X. SELECTION OF OTHER PURCHASING RELATED ACTIVITIES FOR SERVICES, ITEMS, LICENSES, COMMODITIES AND UNSOLICITED PROPOSALS

##### A. Policy

1. Other Purchasing Related Activities for items, services, licenses, commodities, and unsolicited proposals are established to provide a common understanding of the methods for selection of other purchasing related activities; and to ensure that the City will obtain the most qualified and competent consultant or contractor at a reasonable cost consistent with quality facilities and/or services.

##### B. Definitions

1. **Other Purchasing Related Activities** – any service, commodity, tangible, or intangible property purchased by the City and not addressed in any other section in the Purchasing Policy. These types of purchases may or may not be required to use the City's standard contract templates. The following describes purchases considered to be other purchasing related activities including but not limited to:
  - 1.1 **Software/Licenses (Retail – Perpetual and Subscription)** – Contracts for proprietary software licenses where the software publisher grants the use of the software under the end-user license contract (EULA), but ownership of the software remains with the software publisher. These types of purchases typically include terms that define the uses of the software and number of users allowed.
    - 1.1.1 **Perpetual License** – The right to use a software program indefinitely with payment of a single fee. License may or may not include a limited Software Maintenance period and/or the option to purchase ongoing Software Maintenance at the time of purchase or at a later date.
    - 1.1.2 **Subscription License** – The right to use a software as designed without customization for a determined fee, which includes general technical support, updates and upgrades to new versions or releases of the software (e.g., Software as a Service (SaaS) or Commercial Off the Shelf (COTS) software) irrespective of where the software is hosted. It may also include other no charge support that is included



## PROCUREMENT POLICIES & PROCEDURES

### SELECTION OF OTHER PURCHASING RELATED ACTIVITIES FOR SERVICES, ITEMS, LICENSES, COMMODITIES AND UNSOLICITED PROPOSALS

in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for users' self-diagnostics.

- 1.2 **Subscriptions/Databases/Cloud Computing** – Contracts for access to on-line information, databases or remote servers to be used to enhance or support a City program, project or technology initiative. Contracts of this type involve no on-site visits or work by a vendor and are limited to the digital exchange of information for a predetermined fee.
  - 1.3 **Software Maintenance** – Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that is included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for users' self-diagnostics. Software Maintenance as a product is billed at the time of purchase or on an annual basis.
  - 1.4 **Commodities**- purchase of raw materials or primary products in current or future markets.
  - 1.5 **Wholesale Energy** – Purchase of energy or related using spot or futures contracts.
  - 1.6 **Unsolicited Proposals** – Unsolicited proposals present an opportunity for companies to bring forward innovation and solutions to the City. The unsolicited proposal process is subject to competitive solicitation at the discretion of the Finance Department.
- C. **Determination of Purchasing Procedure** – Departments will coordinate with Finance to determine the best method for procurement of other purchasing related activities. These methods may be used in combination with various sections of this Policy or may require other facets to facilitate at the discretion of the Finance Department in coordination with



## PROCUREMENT POLICIES & PROCEDURES

### SELECTION OF OTHER PURCHASING RELATED ACTIVITIES FOR SERVICES, ITEMS, LICENSES, COMMODITIES AND UNSOLICITED PROPOSALS

the City Attorney. It is the intent of this section to ensure all purchasing is done in a competitive and ethical manner while meeting unique procurement needs.





## PROCUREMENT POLICIES & PROCEDURES

### EXEMPTIONS TO THE FORMAL & INFORMAL SOLICITATION PROCESS

#### XI. EXEMPTIONS TO THE FORMAL & INFORMAL SOLICITATION PROCESS

##### A. Policy

1. Competitive bids/proposals should be sought if there is a reasonable possibility of obtaining better prices commensurate with the time and effort expended. This Policy is further limited by local, state, and federal law and is not be used for the sole purpose of circumventing purchasing procedures. Exemptions for public construction is limited as defined by the Public Construction Code. The purpose of this section is to use these Exemptions for the benefit of the City and public interest in an ethical and legal manner. Exemptions, as noted in the following listing, shall be authorized by Finance and subject to Department Head, City Manager, or City Council consent in accordance with approval thresholds as documented in the Purchasing Policy. Procurement may be exempt from the bidding/request for proposal process (Informal/Formal) under the following conditions:
  - 1.1 Bona fide "Emergency" as defined in the San Clemente Municipal Code Section 3.40.070 and Article (XII) herein.
  - 1.2 When the City Council determines by minute action or resolution, that compliance with the bidding requirements and procedures is inefficient, impractical, or not in the best interest of the City, based on specifically identified conditions and supported by substantial evidence in the record.
  - 1.3 Procurement does not exceed the micro-purchase threshold as set by federal regulation.
  - 1.4 When participating in a cooperative purchasing agreement or program, or using a competitively awarded agreement of another local, state, or federal government agency or joint powers authority made up of government agencies to obtain the same supplies, equipment or services at the same or lower prices (commonly referred to as "piggybacking") that utilized competitive bidding procedures that accomplish the purpose and intent of competitive bidding requirements under City Policy and state law and that are not inconsistent or in conflict with any City Policy or applicable law. In deciding whether to utilize a cooperative purchase agreement, the following considerations must be addressed:
    - 1.4.1 Finance review and approval is required prior to award.



## PROCUREMENT POLICIES & PROCEDURES

### EXEMPTIONS TO THE FORMAL & INFORMAL SOLICITATION PROCESS

- 1.4.2 The extent to which the bid process or contract followed applicable bidding procedures guidelines outlined within this Policy should be considered.
- 1.4.3 The City is not required to have joined a public agency in a cooperative purchase to participate in the cooperative agreement or piggyback contract.
- (a) The City has the authority to join with other public agencies in cooperative purchasing plans or programs including, but not limited to, the California Department of General Services (CADGS), the California Multiple Award Schedule (CMAS), the U.S. General Services Administration ("GSA") Multiple Award Schedule program, the National Association of Counties (NACo), National Association of State Procurement Officials (NASPO), and the California Network and Telecommunications (CALNET) Program.
  - (b) Sourcewell, OMNIA Partners, U.S. Communities Government Purchasing Alliance or similar arrangements or programs as determined by the purchasing agent may also be authorized if in the City's best interest. These generally require the City to enter into a separate contract with the vendor that follows approval thresholds set forth in this Policy.
- 1.5 Services and/or supplies obtained from or through agreement with any governmental, public or quasi-public entity.
- 1.6 Procurements funded by grants, donations or gifts when the special conditions attached to the grants, donations or gifts require the procurement of particular goods and/services.
- 1.7 Clearly established "Sole Source" suppliers or service providers, *i.e.*, a single supplier who is the sole distributor, manufacturer or provider of a product or service such that there is not an acceptable substitute within a specific geographical area, *i.e.*, Southern California or California. This exclusiveness must be verified in writing by the manufacturer or company, with confirmation on file with Finance. Examples of acceptable sole source procurement include:



## PROCUREMENT POLICIES & PROCEDURES

### EXEMPTIONS TO THE FORMAL & INFORMAL SOLICITATION PROCESS

- a. Only one known source exists (City's preference for a company, brand or manufacturer does not justify sole source).
  - b. Good or service is unique or special in nature.
  - c. No other reasonable alternative source exists that meets the City's requirements.
  - d. Compatibility of good or service (e.g., department requires a specific piece of equipment, software or replacement part to be compatible with an existing equipment system).
  - e. Only one source meets the business needs of the City (e.g., compatibility, unique feature to meet City's business need, etc.).
  - f. Limited or proprietary systems (i.e., additional licenses, updates, specialized replacement parts, etc.);
- 1.8 The proposed professional service provider has unique familiarity with the project, subject area, or possesses other attributes that make the provider uniquely qualified to provide the services and utilizing that service provider will not violate Government Code section 1090 or other applicable law.
  - 1.9 The costs involved in complying with the Policy greatly exceed the potential savings that the Policy might create.
  - 1.10 The good, service, or project is of a critical nature and, due to time constraints, compliance with the Policy requirements would jeopardize timely completion.
  - 1.11 Procurement of public utility services.
  - 1.12 Procurement of energy, various components of energy, or derivatives in a deregulated energy market.
  - 1.13 When solicitation jeopardizes the safety of the City, including, but not limited to, cyber security or security programs.
  - 1.14 When purchasing from, joining in a cooperative purchase with or selling to any other governmental agency or joint powers authority when the action is beneficial to the interests of the City of San Clemente.



## PROCUREMENT POLICIES & PROCEDURES

### EXEMPTIONS TO THE FORMAL & INFORMAL SOLICITATION PROCESS

- 1.15 Credit card interchange fees are considered a cost of transacting and will be recovered through fee adjustments or convenience fee based on the transaction amount. An informal process will be allowed with comparisons to other providers' rates.



## PROCUREMENT POLICIES & PROCEDURES

### EMERGENCY PURCHASING & CONTRACTING

#### XII. EMERGENCY PURCHASES & CONTRACTING

##### A. Policy

1. Emergency Purchases & Contracting Policies & Procedures are established to provide common methods for securing goods, services and public construction needed in the event of an Emergency and to ensure that all requests are in accordance with the Purchasing Ordinance as well as other applicable legal requirements.
2. While the need for occasional Emergency purchases and contracting is recognized, the practice shall be curtailed as much as possible by anticipating needs in time for the use of the regular purchasing procedure.
  - 2.1 Emergency purchases and contracting may be made by the City Manager, Incident Commander or designee only in an Emergency when essential to prevent serious delays that vitally affect the preservation of life, health, safety, or property.
  - 2.2 Authorized verbal orders may be permitted for Emergency purchases of mechanical parts and supplies needed to expedite the return to service of public safety vehicles.

##### B. Definitions

1. **Emergency** – A sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

##### C. Procedure

1. **Exemptions to the Informal and Formal Bidding Process** – Procurement may be exempt from the bidding process (Informal/Formal) under the following conditions:
  - 1.1 Bona fide “Emergency” as defined in the San Clemente Municipal Code Section 3.40.070 and this Policy.
2. **Emergency Purchases and Contracting**
  - 2.1 In the case of an Emergency, the City, pursuant to a four-fifths vote of the City Council, may repair or replace a public facility, take any action directly related to and immediate action required by that Emergency, and procure



## PROCUREMENT POLICIES & PROCEDURES

### EMERGENCY PURCHASING & CONTRACTING

the necessary goods, services, and public construction for those purposes, without giving notice for bids/proposals, to let contracts in accordance with Public Contract Code Section 22050.

2.2 The goal of the Purchasing program is to save funds on procurement by reducing Emergency purchases and contracting to provide dollar savings.

2.2.1 For Emergency purchases and contracting, the user department shall contact the City Manager or their designee, advising of the Emergency that has arisen, and shall request approval.

2.2.2 If an Emergency should arise during a time when Finance is normally closed, the requesting department may select a vendor and a purchase order number will not be assigned at the time of the transaction. However, the obligation and responsibility of the requesting department is to inform Finance of the details of the transaction at the earliest possible time on the first normally scheduled work day following the Emergency.

2.2.3 The requesting department shall obtain the requested material or service and a delivery slip from the vendor with an explanation justifying the Emergency purchase. All invoices shall be sent directly to the requesting department for review.

2.2.4 Requisitions covering Emergency purchases should be entered into the financial system within one working week of the order being placed.

2.2.5 A memorandum of explanation justifying the need and/or circumstances for the Emergency purchase and contract must accompany all Emergency requisitions. Any Emergency requisition not accompanied by a memo of justification will be returned to originating department and not be processed for payment.

2.2.6 Emergency purchases and contracts shall be approved by the City Manager or their designee.

A written report from the requesting department head detailing the circumstances of all Emergency purchases and contracts in excess of \$60,000 shall be filed with the City Council at the Council's next regular meeting (Section 3.40.070 San Clemente Municipal Code).



## **PROCUREMENT POLICIES & PROCEDURES**

### **EMERGENCY PURCHASING & CONTRACTING**

- 2.2.7 The Emergency purchase of unbudgeted capital outlay items must be approved by the City Manager and City Council at the ensuing meeting date.





## PROCUREMENT POLICIES & PROCEDURES

### ENVIRONMENTALLY PREFERABLE PROCUREMENT

#### XIII. ENVIRONMENTALLY PREFERABLE PROCUREMENT

##### A. Policy

1. Procurement Policies & Procedures are established to support markets for recycled and other environmentally preferable products by encouraging City Departments and contractors to buy such products whenever practicable and in the City's best interests. The California Integrated Waste Management Board makes on-going efforts to reduce the landfill solid waste streams by encouraging the use of environmentally preferable products.
2. This Policy establishes procedures and programs to encourage and facilitate the procurement of recycled and other environmentally preferable product by the City of San Clemente and its contractors. This Policy calls upon the City and its contractors to use recycled and other environmentally preferable products whenever practical, while recognizing that their principal requirements must be product performance and fiscal responsibility.
3. To the extent of any conflict, this Policy shall automatically be superseded by SB 1383 or any other local, state and federal laws pertaining to environmental initiatives currently existing or as amended or enacted from time to time.

##### B. Definitions

The following terms shall have the assigned definitions for all purposes under this Policy.

1. **"City"** - means the City of San Clemente.
2. **"Compost Products"** - means mulch, soil amendments, ground cover, or other landscaping material derived from the biological or mechanical conversion of cellulose-containing waste material.
3. **"Environmentally Preferable Products"** - means products that have a lesser or reduced effect on human health and the environment when compared with competing products that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance or disposal of the product.
4. **"Post-Consumer Recycled Material"** - means only those products generated by a business or consumer which have served their intended end uses, and which have



## PROCUREMENT POLICIES & PROCEDURES

### ENVIRONMENTALLY PREFERABLE PROCUREMENT

been separated or diverted from the solid waste stream for the purposes of collection, recycling and disposition.

5. **“Practicable”** - means sufficient in performance and available at a reasonable price (Final determination of the practicability of any given product must lie with the users of the product, since it is they who understand their performance and budgetary requirements. Evaluation should consider life-cycle and replacement costs.)
6. **“Price Preference”** - means a percentage by which offered prices for recycled products are reduced for purposes of bid evaluation. For example, under a 5% price preference, if a bid of \$1.00 per unit is received for a recycled product meeting specification, the bid price will be reduced by \$0.05 (5%) and evaluated as though it had been \$0.95. If this bid results in a contract award, the price actually contracted will be the bid price of \$1.00 per unit.
7. **“Recyclable Product”** - means a product which, after its intended end use, can demonstrably be diverted from the solid waste stream for use as a raw material in the manufacture of another product.
8. **“Recycled Material”** - means material and byproducts that have been recovered or diverted from solid waste and that can be utilized in place of raw or virgin materials in manufacturing a product. It is derived from post-consumer recycled material, manufacturing waste, industrial scrap, agricultural waste, and other waste material, but does not include material or byproducts generated from, and commonly reused within, an original manufacturing process.
9. **“Recycled Product”** - means a product containing recycled material.

#### C. Procedure

##### 1. Responsibilities of Lead Agency

- 1.1 The Public Works Department and Utilities Solid Waste Division shall be the lead agency for implementation of this Policy and shall perform the following:
  - 1.1.1 Develop and maintain information about environmentally preferable products and recycled products containing the maximum practicable amount of recycled materials to be purchased by the City whenever possible.



## PROCUREMENT POLICIES & PROCEDURES

### ENVIRONMENTALLY PREFERABLE PROCUREMENT

- 1.1.2 Inform City Departments and Divisions of their responsibilities under this Policy and provide implementation assistance.
  - 1.1.3 Disseminate information on recycled and environmentally preferable product procurement opportunities, specifications, and performance to the other City Departments and Divisions.
  - 1.1.4 Communicate with Departments and Divisions to review Policy requirements and new procurement opportunities and to monitor the status of Policy implementation product research results.
  - 1.1.5 Publicize the progress of Policy implementation.
  - 1.1.6 Submit reports to the City Council reflecting the procurement program actions considering the following information:
    - (a) A compilation of procurement data collected from all City Departments and Divisions.
    - (b) A status of product or service evaluations conducted by the City's Departments and Divisions.
    - (c) An assessment of procurement program effectiveness, an evaluation of program goals and projections of future procurement opportunities.
    - (d) Recommendations for changes in the Procurement Policy.
2. **Responsibilities of all City Departments and Divisions**
- 2.1 Each City Department and Division shall be responsible for the following:
    - 2.1.1 Evaluate each recycled or environmentally preferable product to determine the extent to which the Department or Division and its contractors may practicably use the product.
    - 2.1.2 Purchase recycled products with the maximum amount of recycled material practicable.
    - 2.1.3 Ensure contracts issued by the Department or Division require recycled and environmentally preferable products wherever practicable.



## PROCUREMENT POLICIES & PROCEDURES

### ENVIRONMENTALLY PREFERABLE PROCUREMENT

- 2.1.4 Ensure contracts issued by the agency for recycled products require the maximum practicable amount of recycled material contractors and provide certification of this content or report amounts used.
  - 2.1.5 Ensure that all printing by all City Departments and Divisions use recycled paper that bears the "chasing arrow" logo or other imprint identifying it as such when practicable.
  - 2.1.6 Use both sides of paper sheets whenever practicable in printing and copying.
  - 2.1.7 Ensure that requests for bids and proposals issued by all City Departments and Divisions require that, whenever practicable, contractors and consultants use recycled paper and both sides of paper sheets or facilitate paperless practices.
  - 2.1.8 Report the progress of Policy implementation by the Department or Divisions to the Solid Waste Section, including the status of product evaluations conducted by the Solid Waste Section and types of environmentally preferable products purchased by the Department or Division and its contractors.
  - 2.1.9 Report total purchases of environmentally preferable, recycled and non-recycled products by the Department or Division and its contractors annually to the Solid Waste Division.
3. **Price Preference**
- 3.1 All environmentally preferable products will be given a five percent (5%) price preference when evaluating bids/proposals.
4. **Environmentally Preferable Products**
- 4.1 Environmentally preferable products are listed below. The Solid Waste Division may modify this list from time to time.
    - 4.1.1 Paper and paper products.
    - 4.1.2 Compost products.
    - 4.1.3 Horticultural mulch made with recycled land clearing and other wood debris.



## PROCUREMENT POLICIES & PROCEDURES

### ENVIRONMENTALLY PREFERABLE PROCUREMENT

- 4.1.4 Construction aggregates made with recycled cement concrete, glass or asphalt.
- 4.1.5 Cement and asphalt concrete containing glass cullet, recycled fiber or plastic, tire rubber or fly ash.
- 4.1.6 Lubricating oil and hydraulic oil with re-refined oil content.
- 4.1.7 Antifreeze.
- 4.1.8 Recycled plastic products.
- 4.1.9 Remanufactured tires and products made from recycled tire rubber, including rubber mats and play field surfaces.
- 4.1.10 Insulation Products.
- 4.1.11 Paint.
- 4.1.12 Remanufactured laser printer toner cartridges.
- 4.1.13 Other products as designated by the Solid Waste Section.

### 5. Exemptions

- 5.1 Nothing contained in this Policy shall preclude City Departments and Divisions from requiring recycled material content as a bid specification.
- 5.2 Nothing in this Policy shall be construed as requiring a City Department or Division or its contractors to procure products that do not perform adequately for their intended use or are not available at a reasonable price in a reasonable period of time.



## PROCUREMENT POLICIES & PROCEDURES

### CONTRACT ADMINISTRATION

#### XIV. CONTRACT ADMINISTRATION

##### A. Policy

It shall be the Policy of the City of San Clemente to ensure that all contracts to which the City is a party are prepared and processed according to a systematic procedure in order to ensure that contract documents are legally enforceable and that all necessary securities and protections are in place prior to the commencement of work.

##### B. Contract and Agreement Determination

1. Other than petty cash, all procurements require the use of a contract or agreement as prescribed in this section.
  - 1.1 Requisitions are required for purchases in excess of \$5,000 or a lesser amount determined by finance based on the inherent procurement risk.
  - 1.2 Appropriate use of contracts and purchase orders are further described in Article (V)(C).

##### C. Definitions

For purposes of this Policy, the following definitions shall apply:

1. **Contract:** A promise in writing or set of promises in writing signed by the parties the breach of which the law gives a remedy or the performance of which the law in some way recognizes as a duty, including without limitation, Purchase of Supplies, Materials and Equipment, Professional/General Services Agreements, Agreements for Construction of Public Projects, Subdivision Improvement Agreements, accepted Purchases Orders, and leases.
2. **Agreement:** Same as "Contract."
3. **Purchase Contract:** A contract that procures supplies, materials and equipment. (see Article VI, *Procurement of Supplies Materials and Equipment*)
4. **Purchase Order:** A contractual agreement for goods, services and public construction projects for an approved amount. These instruments have less detailed or incorporated terms and conditions as compared to a standard City contract and should only be used independently for minimal risk procurements. City practice is to use purchase orders in conjunction with standard City agreements whenever feasible.



## PROCUREMENT POLICIES & PROCEDURES

### CONTRACT ADMINISTRATION

5. **Agreement for Construction of Public Projects:** A contract that procures services that will directly result in the physical construction of a public improvement. (See Article VII, *Public Construction Projects*)
6. **Professional Services Agreement:** A contract that procures professional, technical and/or clerical services and that will not directly result in the physical construction of a public improvement. (See Article VIII, *Selection of Professional Services Consultants and Contractors*)
7. **General Services Agreement:** A contract that procures services which typically do not require a high degree of professional certification or specialized expertise either with or without the furnishing of materials. (See Article IX, *Selection of General Service Consultant and Contractors*)
8. **Other Agreements:** A contract that is not appropriate for the use of the City's standard purchasing templates used for Construction of Public Projects, Professional Services, General Services, Supplies, Materials and Equipment. These types of agreements must be sent to the City Attorney in advance for approval. Other agreements include but not limited to the following:
  - 8.1 **Information Technology Agreements:** A contract that procures information technology related services or license agreements for use of technology.
  - 8.2 **Third Party Energy Supplier Contracts:** A contract that procures energy, various components of energy, or derivatives in a deregulated energy market.
9. **Insurance:** A contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils.
10. **Certificate of Insurance:** Evidence of insurance provided in lieu of an actual copy of the insurance Policy and which contains statements or words to the following effect: "This certificate or verification of insurance is not an insurance Policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies." (California Insurance Code Section 384.)





## PROCUREMENT POLICIES & PROCEDURES

### CONTRACT ADMINISTRATION

11. **Insurance Endorsement:** A statement issued by a duly authorized representative of an insurance company that guarantees the validity of a Certificate of Insurance and names the City of San Clemente, its, officials, officers, employees, agents, and volunteers and if determined appropriate, Caltrans (California Department of Transportation), Federal Highway Administration, and any other public agencies, as additional insureds.
12. **Security Instrument:** A bond, letter of credit, or other security acceptable to the City at City's sole and absolute discretion which guarantees or secures the fulfillment of an act, such as faithful performance, payment to subcontractors and other persons furnishing labor, materials, or equipment, and/or warranting the accepted works of improvement.
13. **Local Bidder:** A bidder that is a small business with a physical business location is in the boundaries of the City of San Clemente as indicated on an approved active business license. Prices, fitness, quality, delivery and service being equal, a seven percent (7%) "local preference" may be given to the local bidders as provided by law and further defined in SCMC section 3.40.030.

#### D. Procedure

1. All City departments shall be responsible for drafting agreements that pertain to their operations. Standard forms for Purchase of Goods, Professional Services Agreements, General Services Agreements, and Agreements for Construction of Public Projects are contained within the City's word processing system and shall be used to draft all City contracts/agreements that pertain to goods, general/professional services or construction projects. No modifications to the standard forms for contracts/agreements shall be made without prior City Attorney approval.
  - 1.1 Access the standard Contract Template, utilize Word to create a new document, open the shared templates, choose Purchasing and double click on the Template Filename as listed in the following table.

Contract Type	Template Filename
Supplies, Materials & Equipment	Purchase Contract Template
Professional Services Agreement	Professional Consultant/Contractor Services Agreement



## PROCUREMENT POLICIES & PROCEDURES

### CONTRACT ADMINISTRATION

General Services Agreement	-General Services Agreement -Maintenance Services Agreement
Construction of Public Projects	Construction Contract
Short Form Construction Contract	Short Form Construction Contract

- 1.2 Software license agreements may use agreements provided by software provider due to the technical nature, if acceptable to the City Attorney.
- 1.3 Other agreements not listed must receive approval by Finance and the City Attorney's office before execution.
2. After a draft contract/agreement has been prepared, the originating department shall include the contract document in the bid package to ensure that prospective bidders are provided with all requirements prior to submitting bids/proposals.
3. The originating department in coordination with the City Clerk's Office shall determine the number of original contracts needed and shall ensure that sufficient original contracts are processed and distributed. If applicable, the original contract shall be returned to the originating department for its retention only if an additional contract has been processed specifically for this purpose.
  - 3.1 Electronic Signatures. Whenever possible agreement should be signed electronically. Electronic signatures have with the same force and effect as original ink signatures when a provision to that effect is included in the contract language.
4. The originating department shall obtain and attach all necessary exhibits, such as scope of work, schedule of performance, maps and legal descriptions to all original or electronic copies of the contract.
5. Originating departments are encouraged to submit all word version copies of the draft contract, complete with all attachments (with the exception of Certificates of Insurance/Endorsement and Security Instruments) to the City Attorney for approval as to form in advance of submission to the contractor/consultant. The City Attorney shall sign the original contracts when acceptable from a legal standpoint.
6. The originating department shall obtain the signature(s) of the party(ies) with whom the City proposes to contract on all originals of the contract document. It is critical



## PROCUREMENT POLICIES & PROCEDURES

### CONTRACT ADMINISTRATION

that representatives from the opposite party(ies), who are authorized to execute binding agreements on behalf of their company, as verified by the originating department, sign all originals of proposed Professional Services Agreements prior to City Council consideration of same.

The City shall execute agreements in advance of execution by the opposite party(ies), only in cases where the City proposes to contract with a higher agency, such as the County of Orange or State of California. Some contracts, particularly those which involve land conveyance and/or recordation with the County Recorder (e.g., easements and development agreements), require that signatures be notarized. In these cases, the originating department shall ensure that the party with whom the City proposes to contract submits a notarized signature on all originals of the contract document. The City Clerk or Deputy City Clerk shall notarize the City's signatories.

7. The originating department shall ensure, and verify with Finance, if necessary, that sufficient funds are budgeted to cover the cost of the contract/agreement.
8. Unless City Council approval is required by State or local statute, contracts that involve expenditures of up to \$10,000 may be signed by Division Managers, \$25,000 or less may be signed by Department Heads; contracts that involve expenditures less than or equal to \$60,000 may be signed by the City Manager; and all contracts that involve expenditures greater than \$60,000 shall be submitted to the City Council for approval and shall be executed by the City Manager or their designee following City Council approval.
9. A Certificate of Insurance and insurance endorsement shall be obtained from all Contractors/Consultants, which evidence minimum insurance coverage consistent with the text of the contract. A new Certificate of Insurance and endorsement need not be obtained from professional services consultants provided they have a "blanket" coverage insurance certificate already on file with the City that will remain in effect during the duration of the project. In such cases, it is incumbent upon the originating department to attach a copy of the existing insurance certificate and endorsement to the contract document. "Blanket" coverage is defined as liability insurance that meets the requirements of the contract and does not contain a provision that limits its application to a specific project. Public construction project contractors must provide a new insurance certificate and endorsement with each contract.
10. A business license shall be obtained from all Contractors/Consultants prior to the commencement of the agreement.



## PROCUREMENT POLICIES & PROCEDURES

### CONTRACT ADMINISTRATION

11. Security Instruments, which conform to the requirements of Agreements for Construction of Public Projects, shall be obtained from all Public Project contractors. Following approval of the Security Instruments by the City Manager or designee, the Security Instruments shall be attached to the City's original of the contract document. The words "City Copy" shall be clearly labeled on the first page of the contract which contains the Security Instruments as well as the Certificate of Insurance and endorsement.
12. After all applicable requirements in this section have been completed, the originating department shall obtain the signature of the Department Head on all original copies of Agreements for which the Department Head is authorized to execute.
13. After all applicable requirements in this section have been completed, the original contracts shall be submitted to the City Clerk's Office for processing. Contracts shall not be provided to the City Clerk's Office until all applicable exhibits, signed Workers Compensation Insurance Certification, Certificate of Insurance/endorsement, and bonds (if applicable) which have been approved and initialed by the City Manager or designee, applicable Security Instruments have been attached to the contract document and approval from the City Attorney's office has been obtained.
14. The City Clerk's Office shall obtain the signature of the City Manager on all original contracts which he/she is authorized to execute pursuant to this Policy.
15. The City Clerk's Office shall obtain the signature of the Mayor on all original contracts that have been approved by the City Council where the Council has not specifically delegated signature authority to another City representative.
16. The City Clerk's Office shall not release executed contracts to the originating department, consultant or contractor until, and unless, all of the following have been verified:
  - 16.1 The contract has been approved as to form by the City Attorney.
  - 16.2 The contract has been approved as to funding availability by Finance.
  - 16.3 The contract has been executed by the consultant or contractor.



## PROCUREMENT POLICIES & PROCEDURES

### CONTRACT ADMINISTRATION

- 16.4 When applicable, the contract has been executed by the appropriate City representative pursuant to this Policy. In the case of contracts which require City Council approval, the approval shall be verified.
  - 16.5 When applicable, the contract contains a Workers Compensation Insurance Certification that has been executed by the Consultant or Contractor.
  - 16.6 When applicable, the Certificate of Insurance and insurance endorsement have been approved and initialed by the City Manager or designee.
  - 16.7 Any required Security Instruments required by the contract have been approved by the City Manager or designee.
  - 16.8 All exhibits to the contract, including but not limited to, scope of work, schedule of performance, maps, legal descriptions, Certificates of Insurance/Endorsements, and Security Instruments have been included or appended.
17. After the City Clerk's Office has verified that all requirements set forth in Article (XIV)(D)(16) have been fulfilled, the City Clerk's Office shall coordinate the receipt of the executed agreement to all parties. The City Clerk shall maintain a copy of the original agreement or equivalent electronic version, along with the successful bid proposal (if applicable).
  18. The originating department may not issue a Notice to Proceed until the City Clerk's Office has verified that the contract is complete.
  19. The City Clerk's Office is responsible for maintaining custody of all official original contracts to which the City is a party.

#### **E. Purpose**

Article XIV of the City Procurement Policies & Procedures for Contract Administration is established to ensure the systematic and consistent preparation, content, and processing of City contracts/agreements clearly defining individual departmental roles from the drafting of the contract through approval and execution of the contract and authorizing work to commence. Contracts/agreements shall be prepared to protect the City's interests. Contract disputes can be expensive to the City, both in terms of legal costs, liabilities, and delays. The intent of this Article XIV is to itemize the proper contract-processing procedure to ensure that all contract documents are legally defensible and that all necessary securities and protections are in place prior to the commencement of work.



## PROCUREMENT POLICIES & PROCEDURES

### CONTRACT ADMINISTRATION

#### F. References

Public Contracts Code Section 20160 et seq. and 22000 et seq. Contracts are also addressed in a significant number of locations within the Government Code. Either consult with the City Attorney or refer to the portion of the Government Code that pertains to the topic of a specific contract to determine whether particular statutory requirements exist that are applicable to the contract.

