

**ORDINANCE NO. 14-20 N.S.**

**ORDINANCE OF THE CITY OF RICHMOND AMENDING PORTIONS OF CHAPTER  
2.52 OF THE MUNICIPAL CODE OF THE CITY OF RICHMOND RELATED TO  
CONTRACTING AND PURCHASING PROCEDURES**

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**WHEREAS**, Richmond Municipal Code Chapter 2.52 establishes procedures for the purchase of supplies, services and equipment including formal and informal bidding procedures; and

**WHEREAS**, Chapter 2.52 (Contracting and Purchasing Procedures) of the Richmond Municipal Code was last reviewed in July 2006; and

**WHEREAS**, Staff has reviewed the Purchasing Ordinance to streamline the existing procurement process and also adhere to the best practice of periodic updates to municipal ordinances; and

**WHEREAS**, the City is committed to an open, transparent and efficient competitive bidding and procurement process; and

**WHEREAS**, the City desires to increase the purchasing limits for formal bids and proposals to increase flexibility and efficiency in obtaining products and services; and

**WHEREAS**, the City believes that accepting electronic bids via a secured portal would provide a more efficient, and effective method to seek and receive competitive bids and proposals; and

**WHEREAS**, The City currently has a system that ensures the identification, security and confidentiality of electronic bids or proposals and ensures that the electronic bids or proposals remain effectively unopened until the proper time; and

**WHEREAS**, the City Council finds that the best interests of the City and its residents will be served by amending said code sections to account for inflation, changes in the law and to more clearly and accurately state the legal requirements by which the City shall conduct activities and operations pertaining to purchasing, contracting, competitive bidding and the securing and opening of bids; and

**WHEREAS**, Staff has identified proposed amendments to the Richmond Purchasing Ordinance; and

**WHEREAS**, the exact text amendments are shown in Section 1 of this Ordinance; and

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Richmond does ordain as follows:

**Section I. Amendment of Chapter 2.52.**

**Chapter 2.52 of the Municipal Code of the City of Richmond is hereby amended to read as follows:**

## Chapter 2.52

### CONTRACTING AND PURCHASING PROCEDURES

#### Sections:

- 2.52.100 Scope, Purpose, and Rules of Construction.**
- 2.52.200 Position of the Finance Director.**
- 2.52.300 Definition of Terms Used in This Section.**
- 2.52.305 Methods of Source Selection.**
- 2.52.335 Competitive Negotiation for Master Development Projects.**
- 2.52.310 Competitive Sealed Bids.**
- 2.52.315 Competitive Sealed Proposals.**
- 2.52.320 Contracting for Designated Professional Services.**
- 2.52.324 Unsealed Quotes and Small Purchases.**
- 2.52.326 Sole Source Procurement.**
- 2.52.328 Cooperative Procurement.**
- 2.52.330 Piggyback Procurement.**
- 2.52.332 Standardization.**
- 2.52.334 Emergency Procurement.**
- 2.52.336 Cancellation of Solicitation.**
- 2.52.338 Security and Performance Bonds.**
- 2.52.340 Certificate of Non-Collusion.**
- 2.52.344 Award of Contracts**
- 2.52.346 Rejection of Bids and Waiver of Irregularities.**
- 2.52.350 Responsibility of Bidders and Offerors.**
- 2.52.355 Pre-Qualification of Suppliers and Contractors.**
- 2.52.360 Substantiation of Offered Prices.**
- 2.52.365 Types of Contracts.**
- 2.52.370 Multi-Year Contracts.**
- 2.52.375 Inspection of Plant.**
- 2.52.380 Right to Audit Records.**
- 2.52.385 Finality of Determinations.**
- 2.52.390 Reporting of Anticompetitive Practices.**

- 2.52.392 Record of Procurement Actions Taken Under Sole Source Procurement And Emergency Procurement.**
- 2.52.394 Retention of Procurement Records.**
- 2.52.400 Definition of Specification.**
- 2.52.410 Maximum Practicable Competition.**
- 2.52.420 Qualified Products List.**
- 2.52.430 Bid Security.**
- 2.52.440 Performance and Payment Bonds.**
- 2.52.500 Contract Clauses and Their Administration**
- 2.52.600 Definitions of Terms Used in This Section.**
- 2.52.610 Supply Management Regulations Required.**
- 2.52.620 Sale, Exchange, or Disposal of Surplus Supplies and Fixed Assets.**
- 2.52.700 Protests.**
- 2.52.710 Authority to Debar or Suspend.**
- 2.52.720 Decision to Debar or Suspend.**
- 2.52.730 Notice of Decision to Debar or Suspend.**
- 2.52.740 Finality of Decision to Debar or Suspend.**
- 2.52.750 Authority to Resolve Contract and Breach of Contract Controversies.**
- 2.52.760 Remedy Before Award.**
- 2.52.770 Remedy After Award.**
- 2.52.780 Procurement Appeals Board.**
- 2.52.790 Waiver of Sovereign Immunity in Connection with Contracts.**
- 2.52.800 Adoption of Code of Ethics.**
- 2.52.900 Delegation.**
- 2.52.910 Additional Public Works Construction Definitions.**
- 2.52.920 Project Delivery Methods Authorized.**
- 2.52.930 Source Selection Methods Assigned to Project Delivery Methods.**
- 2.52.940 Choice of Project Delivery Methods.**
- 2.52.950 Additional Procedures for Certain Project Delivery Methods.**

**2.52.960 Architectural and Engineering Services.**

**2.52.970 Bid Security.**

**2.52.980 Contract Performance and Payment Bonds.**

**2.52.990 Fiscal Responsibility.**

**GENERAL PROVISIONS**

**2.52.100 Scope, purpose, and rules of construction.**

- (a) The provisions of this chapter shall apply to all contracts funded by the City of Richmond for the procurement of goods and services, except that this chapter shall not apply to such contracts for the services of physicians or attorneys, or to leases, sales, or purchases of real property.
- (b) Interpretation. This chapter shall be construed and applied to promote its underlying purposes and policies. The underlying purposes and policies of this chapter are:
  - (1) To simplify, clarify, and modernize the laws governing procurement by the City;
  - (2) To obtain in a cost-effective and responsive manner, the materials and services required by the City in order for the City to better serve its businesses and residents;
  - (3) To provide increased economy in City procurement activities and to maximize as fully as practical the purchasing value of public funds of the City;
  - (4) To ensure the fair and equitable treatment of all persons who deal with the procurement system of this City;
  - (5) To provide safeguards for maintaining a procurement system of quality and integrity;
  - (6) To provide for increased public confidence in the procedures followed in public procurement;
  - (7) To clearly define authority for procurement functions; and
  - (8) To foster effective, broad-based competition within the free enterprise system.
- (c) Supplementary General Principles of Law. Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the Uniform Commercial Code of this State, and law relative to capacity to contract, agency, fraud, misrepresentations, duress, coercion, mistake, or bankruptcy shall supplement the provisions of this chapter.
- (d) Requirement of Good Faith. This chapter requires all parties involved in the negotiation, performance, or administration of City contracts to act in good faith.
- (e) Effective Date. This chapter shall become effective immediately upon adoption by the City Council. No regulation shall change any commitment, right, or obligation of the City or of a contractor under a contract in existence on the effective date of such regulation.

- (f) Public Access to Procurement Information. Procurement information shall be a public record to the extent provided in the California Public Records Act, Government Code Section 6250, et seq., and shall be available to the public as provided in such statute.
- (g) Determinations. Written determinations required by this chapter shall be retained in the appropriate official contract file of the Finance Director or the Procurement Services Division.
- (h) Definitions. The words defined in this section shall have the meanings set forth below whenever they appear in this chapter, unless the context in which they are used clearly requires a different meaning; or, a different definition is prescribed for a particular section or provision.
  - (1) “Business” means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
  - (2) “Change order” means a written order signed by the City Manager, directing the contractor to make changes that the changes clause of the contract authorizes the City Manager to order without the consent of the contractor.
  - (3) “City” means any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official, officers, agents, and employees of the City of Richmond.
  - (4) “Construction (or public works)” means the process of building, altering, repairing, improving, or demolishing any public building, or other public improvement of any kind to real property. It includes the routine operation or routine maintenance of any existing public infrastructure facility, including structures, buildings, or real property.
  - (5) “Contract” means all types of City contracts or agreements, regardless of what they may be called, for the procurement or disposal of supplies and services.
  - (6) “Contract modification” means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
  - (7) “Contractor” means any person having a contract with a governmental body.
  - (8) “Data” means recorded information, regardless of form or characteristic.
  - (9) “Designee” means a duly authorized representative of a person holding a superior position.
  - (10) “Electronic” means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.
  - (11) “Electronic Procurement” means the use of computer technology and the Internet for the advertising and submission of public bids, providing notice of revisions or addenda to advertisements or bid documents, the receipt of proposals and quotations, competitive contracting, the use of reserve

auctions, and related practices to assist in determining the lowest responsible bidder or proposer who is most advantageous, price and other factors considered, as appropriate, for goods and services, the sale of personal property, and other public procurement-related activities and services as may be determined appropriate by the Finance Director.

- (12) "Employee" means an individual drawing a salary from the City, whether elected or not, and any noncompensated individual performing personal services for the City.
- (13) "Finance Director" means the Finance Director of the City of Richmond.
- (14) "Grant" means the furnishing of funds by an outside agency or other organization to support a program authorized by law.
- (15) "Master Development Project" means a project being undertaken by the City for development on City-owned property consisting of multiple public buildings or facilities, to be constructed, rehabilitated, remodeled or refurbished over a period of time for which the City Council has determined it is in the best interests of the City to contract with a Contractor pursuant to Section 2.52.335. A Master Development Project may include portions of city-owned property which will be sold or leased to the Contractor for private purposes; provided that the development of such properties is part of an integrated plan for the overall project and the City will apply the proceeds of such sale or lease to defray the costs of the public portion of the Master Development Project.
- (16) "May" denotes the permissive.
- (17) "Person" means any business, individual, union, committee, club, other organization, or group of individuals.
- (18) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services. It also includes all functions that pertain to the obtaining of any supply or service, including descriptions of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- (19) "Procurement Services Division" means the governmental body that is authorized by this chapter and its implementing regulations, or by way of delegation from the City Council or City Manager as the central procurement office authorized to procure materials and services for the City.
- (20) "Public notice" means the distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods shall often include, but are not limited to, publication in newspapers of general circulation, posting in public places, electronic or paper notices to prospective bidders, and posting on web pages designated by the City for that purpose.
- (21) "Regulation" means a governmental body's statement, having general or particular applicability and future effect, designed to implement, interpret, or prescribe law or policy, or describing

organization, procedure, or practice requirements, which has been promulgated in accordance with the Charter or Municipal Code of the City of Richmond.

- (22) “Service” means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific product other than reports. This term shall not include employment agreements or collective bargaining agreements.
- (23) “Shall” denotes the imperative.
- (24) “Signature” shall be as defined in Government Code Section 16.5.
- (25) “Supply” means all property, including but not limited to, equipment, materials, vehicles, printing, insurance, and leases of personal property, excluding land or a permanent interest in land.
- (26) “Using department” means any governmental body of the City of Richmond that utilizes any supplies or services procured under this chapter.
- (27) “Writing” or “in writing” means the product of any method of forming characters on paper, or other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.
- (28) Authorization for the Use of Electronic Transmissions. The use of electronic media, including acceptance of electronic signatures, is authorized consistent with California’s applicable statutory, regulatory, or other guidance for use of such media, so long as such guidance provides for:
  - (i) Appropriate security to prevent unauthorized access to the bidding, approval, and award processes; and
  - (ii) Accurate retrieval or conversion of electronic forms of such information into a medium that permits inspection and copying.

## **POSITION OF THE FINANCE DIRECTOR**

### **2.52.200 Position of the Finance Director.**

#### **(a) Principal Public Procurement Official.**

Except as otherwise provided herein, the Finance Director shall serve as the principal public procurement official 1 for the City, and shall be responsible for the procurement of supplies and services as defined herein, and the management and disposal of inventories and surplus supplies in accordance with this Ordinance.

- (1) The Finance Director shall have the duties and powers prescribed by the laws of the State of California relating to City purchasing agents, the City Charter, this ordinance, and the resolutions of the City Council. The Finance Director may appoint such deputies, assistants, and other employees as may be authorized by the City Council.
- (2) The Finance Director may appoint such special deputies or Procurement Partners, as he/she deems reasonably necessary to the performance of his/her job- related responsibilities. All such

special deputies shall act without additional compensation. The Finance Director may revoke such appointments at any time as he/she may see fit. The Finance Director shall furnish the City Manager with such reports and information as the City Manager may from time to time request.

(b) Duties.

Except as otherwise specifically provided in this Ordinance, the Finance Director shall, in accordance with regulations, use his/her best efforts to:

- (1) Procure, or delegate the procurement, rental, or lease of supplies, services, and other personal property of whatever nature needed by the City
- (2) Negotiate as agent for the City, equipment services contracts and lease-purchase agreements of personal property;
- (3) Exercise general supervision and control over inventories of supplies belonging to the City;
- (4) Recommend the sale, trade, lease, exchange, or disposal of surplus supplies, equipment, vehicles, and any other surplus personal property belonging to the City;
- (5) Solicit and recommend advantageous trade-in allowances for City property that the Finance Director has previously determined is no longer required for public use;
- (6) Solicit or recommend independent contractors to perform services for the City and its office, with or without the furnishing of materials;
- (7) Establish and maintain programs for the inspection, testing, and acceptance of supplies and services;
- (8) Ensure compliance with this Ordinance and implementing regulations, by reviewing and monitoring procurements conducted by any designee, department, agency, or official delegated authority by the Finance Director; and
- (9) Perform such other services as the City Council or the City Manager may direct.

(d) Power to Adopt Operational Procedures and Regulations. The Finance Director may adopt operational procedures, governing the internal functions of Purchasing Services Division, and other regulations consistent with the Ordinance, governing the procurement, management, control, and disposal of any supplies and services procured by the City.

(e) Delegation of Authority by the Purchasing Manager. Subject to regulations, the Finance Director may delegate authority to designees or to any department, agency, or official to purchase certain supplies, equipment, or services if such delegation is deemed necessary for the effective procurement of those items.

(f) Source Selection Database.

The Finance Director shall establish and maintain a central database of suppliers and contractors, categorized by the goods and services they provide. Suppliers and contractors may be added to the database upon request. When practicable, the City shall invite all suppliers and contractors in the appropriate categories to participate in solicitations described in Sections 2.52.310 (Competitive Sealed

Bids), and 2.52.315 (Competitive Sealed Proposals.) The City shall not place unnecessary restrictions on qualifications for the Source Selection Database. Nothing in this Ordinance shall prohibit the City from notifying suppliers and contractors of solicitations solely by electronic means, and nothing in this Ordinance shall prohibit the City from notifying suppliers and contractors who are not in the City's Source Selection Database.

(g) Purchasing Procedure.

Except as otherwise provided by City Charter or Ordinance, the Finance Director shall make purchases, leases, rentals, and contracts only upon properly authorized requisitions. No purchase order shall be issued until the Finance Director has certified that sufficient money is available in the proper budget appropriation to pay for such purchase, rental, or contract. If the cost of any purchase cannot be readily ascertained, the Finance Director may estimate such cost and the Finance Director may make the previously mentioned certification based upon such estimated cost. The head of any City office, agency, or department is hereby authorized to submit requisitions for purchases, leases, rentals, and contracts for such office, agency, or department, and to delegate such authority to one or more of his/her deputies or assistants by filing written authorization therefore with the Finance Director.

(h) Authority to Contract for Legal Services.

No contract for the services of legal counsel may be awarded without the approval of the City Attorney.

(i) Exception.

Unless otherwise ordered by regulation, with approval of the City Council, the following supplies need not be procured by the Finance Director or subject to the requirements of this Ordinance and the regulations:

- (1) Works of art for museum and public display;
- (2) Published books, maps, and technical pamphlets for Library use.

## **SOURCE SELECTION AND CONTRACT FORMATION**

### **2.52.300 Definition of Terms Used in This Section.**

(a) ESTABLISHED CATALOGUE PRICE means the price included in a catalogue, price list, schedule, or other format that:

- (1) Is regularly maintained by a manufacturer or supplier;
- (2) Is either published or otherwise available for inspection by customers; and
- (3) States prices at which sales are currently or were last made to a significant number of any categories of buyers, or buyers constituting the general buying public, for the supplies or services involved.

(b) INVITATION FOR BIDS means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

(c) PURCHASE DESCRIPTION means the words used in a solicitation to describe the supplies or services to be purchased, and includes specifications attached to, or made a part of the solicitation.

(d) REQUEST FOR PROPOSALS means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(e) RESPONSIBLE BIDDER OR OFFEROR means a person who has the capability in all respect to perform fully the contract requirements, and the integrity and reliability that shall assure good faith performance.

(f) RESPONSIVE BIDDER OR OFFEROR means a person who has submitted a bid or proposal that conforms in all material respects to the Invitation For Bids or Request For Proposals.

### **2.52.305 Methods of source selection.**

(a) Unless otherwise authorized by law, all City contracts governed by this chapter shall be awarded by one of the following methods:

- (1) Section 2.52.310, Competitive sealed bids;
- (2) Section 2.52.315, Competitive sealed proposals;
- (3) Section 2.52.320, Contracting for designated professional services;
- (4) Section 2.52.324, Unsealed quotes and small purchases;
- (5) Section 2.52.326, Sole Source Procurement
- (6) Section 2.52.328, Cooperative Procurement
- (7) Section 2.52.330, Piggyback Procurement
- (8) Section 2.52.332, Standardization;
- (9) Section 2.52.334, Emergency procurement; or
- (10) Section 2.52.335, Competitive Negotiation for Master Development Projects

### **2.52.310 Competitive Sealed Bids.**

(a) Conditions For Use.

Contracts for the purchase of supplies and services of an aggregate annual value of \$50,000 or more shall be awarded by compliance with the competitive sealed bidding procedures contained in this Section, except when waived by the City Council as in the best interest of the City.

(b) Evasion of Ordinance is Prohibited.

Orders for supplies and services shall not be split into smaller orders or projects, artificially aggregated into larger orders or projects, or willfully mischaracterized or misclassified for purposes of evading the provisions of this Ordinance.

(c) Letters of Intent Prohibited.

For procurements exceeding \$3,000, Letters of Intent shall not be issued before competitive quotes, bids, or proposals have been solicited and awarded in accordance with the provisions of this Ordinance.

(d) Competitive Sealed Bidding Process.

(1) Invitation For Bids and Notice To Contractors.

An Invitation For Bids or Notice To Contractors shall be issued and shall include adequate specifications and all contractual terms and conditions applicable to the procurement.

(2) Adequate Number of Bidders Solicited.

Invitation For Bids or Notice To Contractors shall be distributed to

a large enough group of potential suppliers and contractors, consistent with the size and nature of the purchase to obtain adequate competition. Where practicable, the Finance Director shall notify all suppliers and contractors on the City's centralized Source Selection Database for the commodity or service to be purchased, and post a notification of the solicitation on the City's website.

(3) Public Notice.

Adequate public notice of the solicitation shall be given at least 15 calendar days before the date set forth therein for the opening of bids. Such notice may include, but shall not be limited to, publication in a newspaper of general circulation, posting in a public place, and/or publication in electronic form including, but not limited to, publication on the City's website or other appropriate site on the Internet. Publication shall be made at least once not less than 15 calendar days before the date of the bid opening, unless otherwise prescribed by law. The public notice shall state the method of submission, either paper bids to the City Clerk's office or electronic bids through the City's electronic bidding system. The notice shall also state the place, date, and time of bid opening, provide a general description of the supplies or services to be purchased. Nothing in this Ordinance shall prohibit the use of electronic Invitations for Bids.

(4) Bid Opening.

Paper Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation For Bids or Notice To Contractors. Electronic Bid submission will remain unopened until the closing date and time. Said submission shall not be viewed by the public or City staff until the closing date and time. The amount of each bid, and such other relevant information as the City deems appropriate, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection in accordance with State law.

(5) Timely Submission.

No bid shall be considered which has not been received at the place and by the time stated in the Invitation For Bids or Notice To Contractors.

(6) Electronic Bids.

The City shall provide a secure electronic interactive system to receive bids through electronic transmission that ensures the identification, security and confidentiality of electronic bids and ensure that the electronic bids remain effectively unopened until the proper time.

(7) No Bids Received.

If no bids are received, procurement may proceed without further compliance with competitive bidding requirements.

(8) Bid Acceptance.

Bids received at or before the time set for bid opening shall be unconditionally accepted without alteration or correction, except as authorized in this Ordinance.

(9) Bid Evaluation.

Bids shall be evaluated based on the requirements set forth in the Invitation For Bids or Notice To Contractors, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that shall affect the bid price and be considered in evaluation for award, such as discounts, transportation costs, and total or

life cycle costs, shall be objectively measurable. The Invitation or Notice shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the Invitation or Notice.

(10) Correction of Bids.

Subject to any provisions of federal or state granting authorities to the contrary, correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, shall be in accordance with this section. Mistakes discovered before bid opening may be modified or withdrawn by written notice received in the office designated in the solicitation before the time set for bid opening. No corrections to bid prices or provisions prejudicial to the interest of the City or fair competition shall be permitted when mistakes are discovered after bid opening.

(11) Withdrawal of Bids.

In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or the bidder submits evidence that clearly and convincingly demonstrates that a mistake was made.

(12) Written Determination Required.

Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts, based on bid mistakes shall be supported by a written determination made by the Finance Director.

(13) Award.

The contract shall be awarded in accordance with Section 2.52.344 (Award of Contracts) by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation For Bids.

(14) Two-Step Sealed Bidding.

When it is considered impractical to prepare initially a purchase description to support an award based on price, a two-step bidding process may be used. A Request For Information may be issued requesting the submission of un-priced offers to be followed by an Invitation For Bids that is limited to those bidders whose offers were determined to be technically acceptable under the criteria set forth in the Request For Information. In addition, the first step may be used to pre-qualify suppliers or contractors for step two, in accordance with Section 2.52.355 (Pre-Qualification of Suppliers and Contractors).

### **2.52.315 Competitive Sealed Proposals.**

(a) Conditions for Use.

Contracts for the purchase of supplies and services of an aggregate annual value exceeding \$50,000 that are not awarded by compliance with the competitive sealed bidding procedures contained in Section 2.52.310 (Competitive Sealed Bids), or for which the City Council has not waived competitive sealed solicitations as in the best interest of the City, shall be awarded by compliance with the competitive sealed proposal procedures contained in this Section, when the Finance Director determines that the use of competitive sealed bidding is either not practicable or not advantageous to the City.

(b) Evasion of Ordinance Prohibited.

Orders for supplies and services shall not be split into smaller orders or projects or willfully mischaracterized or misclassified for purposes of evading the provisions of this Section.

(c) Request for Proposals. (1)

Public Notice.

Adequate public notice of the Request For Proposals shall be given in the same manner as provided in Section 2.52.310(d)(3) (Competitive Sealed Bids; Competitive Sealed Bidding Process; Public Notice); provided, the minimum time shall be 15 calendar days..

(2) Receipt of Proposals.

Proposals shall be handled in a manner to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared containing the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item or service offered. The register of proposals shall be open for public inspection only after contract award.

(3) Evaluation Factors.

The Request For Proposals shall state all factors to be used in evaluation of the proposals. No other factors or criteria shall be used in the evaluation.

(4) Discussion with Responsible Offerors and Revisions to Proposals.

As provided in the Request For Proposals, interviews may be conducted with responsible offerors whose proposals are responsive to the Request For Proposals, and determined to be reasonably susceptible of being selected for award, for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors who are interviewed shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and before award for obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(5) Award.

Award shall be made in accordance with Section 2.52.344 (Award of Contracts) to the responsible offeror whose proposal is determined in writing to be the most advantageous to the City, taking into consideration price and the evaluation facts set forth in the Request For Proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. Written notice of the award of a contract to the successful offeror shall be promptly given to all offerors.

(6) Correction or Withdrawal of Proposals.

Correction or withdrawal of inadvertently erroneous proposals before or after award may be permitted as provided in Section 2.52.760 (Remedy Before Award) and Section 2.52.770 (Remedy After Award).

(7) Two-Step Sealed Proposals.

When it is considered impractical to prepare initially a purchase description to support an award, a two-step solicitation process may be used. A Request For Information may be issued requesting the

submission of un-priced offers to be followed by a Request For Proposals

that is limited to those bidders whose offers were determined to be technically acceptable under the criteria set forth in the Request For Information. In addition, the first step may be used to pre-qualify suppliers or contractors for step two, in accordance with Section 2.52.355 (Pre-Qualification of Suppliers and Contractors).

**2.52.320 Contracting for Designated Professional Services.**

(a) Procurement of Certain Professional Services.

The services of certain professions that involve extended analysis, the exercise of discretion and independent judgment in their performance, and an advanced, specialized type of knowledge, expertise, or training customarily acquired either by a prolonged course of study or equivalent experience in the field such as accountants, architects, engineers and other licensed professionals, shall be procured in accordance with the selection procedures specified in this Section. No contract for the services of legal counsel may be awarded without the approval of City Attorney, in accordance with Section 2.52.344 (Award of Contracts) of this Ordinance.

(b) Selection Procedure.

(1) Conditions for Use.

Any contract for designated professional services exceeding the amount fixed by the City Charter for City Council approval shall be made in accordance with the procedures authorized in this Section. Services provided under Section 2.52.326 (Sole Source Procurement), or Section 2.52.334 (Emergency Procurement) are exceptions to the requirements of this Section.

(2) Request for Qualifications and Notice.

Adequate notice of the need for the desired professional services shall be given by the City through a Request For Qualifications. The Request For Qualifications shall describe the services required, list the types of information and data required of each offeror, and state the relative importance of particular qualifications.

(3) Statement of Qualifications.

Persons engaged in providing the designated types of professional services may submit statements of qualifications and expressions of interest in providing such professional services. The City Finance Director may specify a uniform format for statements of qualifications. Persons may amend these statements at any time by filing a new statement.

(4) Public Announcement and Form of Request For Proposals.

Through a Request For Proposals, the Department Director or the Finance Director shall give adequate notice of the need for such services.

(5) Interviews.

The Department Director requiring the professional services may conduct interviews with any offeror who has submitted a statement of qualifications for the purpose of ranking the qualifications of the offerors, based on the evaluation factors set forth in the Request For

Qualifications. Interviews shall not disclose any information derived from statements submitted by other offerors.

(6) Award.

Award shall be made to the offeror determined to be best qualified based on the evaluation factors set forth in the Request For Qualifications, and negotiation of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best qualified offeror, then negotiations shall be terminated with that offeror. If statements were submitted by other offerors determined to be qualified, negotiations may be conducted in the order of their respective qualification ranking, and the contract may be awarded to the offeror then ranked best qualified if the amount of compensation is determined to be fair and reasonable.

**2.52.324 Unsealed Quotes and Small Purchases.**

(a) Conditions for Use.

(1) General.

Any contract less than \$50,000 may be made in accordance with the procedures authorized in this Section. Contract requirements shall not be artificially divided to constitute a small purchase under this Section. Nothing in this Ordinance shall prohibit the City Manager from delegating authority to City departments for soliciting unsealed quotes and making small purchases.

(2) \$5,000 to \$49,999.99 – Three Unsealed Quotes.

At least three written quotes shall be obtained for procurements costing from \$5,000 to \$49,999.99. Where only two written quotes could be obtained, the Department soliciting the quotes must ensure that at least five businesses were solicited. All quotes must be submitted to the Finance Director with the names and telephone numbers of the businesses solicited, a Bid Summary of the names of the businesses that submitted quotes, and the date and amount of each quote. In addition, the original quotes shall be submitted to and maintained by the Finance Director as a public record.

(3) \$3,000 to 4,999.99 – Two Unsealed Quotes.

At least two written quotes shall be obtained for procurements costing from \$3,000 to \$4,999.99. All quotes shall be submitted to the Finance Director with a summary of the names of the businesses solicited, the businesses submitting quotations, and the date and amount of each quotation. In addition, the original quotes shall be submitted to and maintained by the Finance Director as a public record.

(4) Less than \$3,000 – Small Purchases.

At least one written quote shall be obtained for procurements costing less than \$3,000. Small purchases may be made without competition and by any methods determined by the Finance Director to be reasonable

and cost effective methods for making such purchases. The Finance Director shall adopt operational regulations and procedures for making small purchases. Such operational procedures shall provide for maintaining adequate records of all small purchases, properly account for the funds expended, and facilitate an audit of the small purchases made.

(b) Definition of Written Quote.

As used in this Section, in addition to a typed or handwritten paper document, a "written quote" may mean a quote submitted by facsimile or electronic transmission via the Internet and printed on an office printer.

(c) Award.

Quotes shall be awarded in accordance with Section 2.52.344 (Award of Contracts). Small purchases may be made by procedures established by the Finance Director.

**2.52.326 Sole Source Procurement.**

A contract may be awarded without competition when the City determines in writing, after conducting a good faith review of available sources, that there is only one source for the required goods or service. In the case of contracts less than \$10,000, this determination shall be made by the City Manager and, in the case of contracts in the amount of \$10,000 or more, this determination shall be made by the City Council. The City Manager shall conduct negotiations, as appropriate, as to price, delivery, and terms. A written statement of the basis for the sole source determination shall be placed in the contract file. A record of sole source procurements shall be maintained as a public record for purchases of supplies or services exceeding the amount fixed for solicitation of Unsealed Quotes.

**2.52.328 Cooperative Procurement.**

(a) General.

The Finance Director may arrange for the City to enter an agreement with one or more local, city, county, State, Federal, or other public entity, school district, League of California Cities, California Communities Program, or other non-profit association or group consisting of governmental entities, in order to cooperatively purchase supplies and services, including but not limited to materials, equipment, vehicles, and apparatus provided that:

- (1) The purchase contract with the supplier(s) is the result of negotiation or competitive bidding and is made in compliance with the competitive bid or proposal requirements of any participating entity or organization; and
- (2) The purchase conforms to the City's specifications for the item or service; and
- (3) The estimated price of the purchase is lower than that estimated for the purchase if made directly by the City pursuant to this Ordinance; and
- (4) The Purchasing Manager determines that participation in a cooperative agreement is in the City's

best interest because an unusual or unique situation exists that makes a cooperative agreement more advantageous than the application of the City's requirements of competitive sealed bidding and competitive sealed proposals.

(b) Contract Approval.

The City Council shall approval contracts in excess of \$10,000, and the City manager shall approve contracts of \$10,000 or less.

**2.52.330 Piggyback Procurement.**

(a) Scope.

The Finance Director may arrange for the City to enter purchase contracts with a supplier or contractor for the purchase of supplies and services, including but not limited to materials, equipment, vehicles, and apparatus, the pricing and terms of which have been previously established by another public agency (city, state, federal, school district, or other public entity, League of California Cities, California Communities Program, or other non-profit association or group consisting of governmental entities), provided that:

- (1) The Purchasing Manager determines that a "piggyback" purchase is in the City's best interest because an unusual or unique situation exists that makes the application of the City's requirements of competitive sealed bidding and competitive sealed proposals contrary to the public interest.
- (2) The purchase request has been reviewed by the Finance Director and it has been determined there are no local suppliers or contractors who could provide the product or service at competitive rates;
- (3) A copy of the solicitation has been obtained from the originating agency and reviewed for compliance with the City's purchasing ordinance;
- (4) A written documentation has been made of a thorough investigation of the *current* market and determination that the originating agency's solicitation is the most advantageous;
- (5) The specifications of the item or service required by the City are not materially different from those originally specified in the originating agency's solicitation;
- (6) The price of the purchase is lower than that estimated for the purchase if made directly by the City pursuant to this ordinance;
- (7) The price of the purchase is within fifteen percent (15%) or \$2,500 of the originating agency's solicitation;
- (8) The contract resulting from the original solicitation is current or the solicitation is within thirty six (36) months

from the date of the City's order, or written justification is provided justifying use of an older solicitation, and

(9) The City enters a separate contract with the vendor selected by the originating agency, and incorporates by reference the original solicitation, terms, conditions, and prices.

(b) Contract Approval.

The City Council shall approve contracts in excess of \$10,000, and the City manager shall approve contracts of \$10,000 or less.

**2.52.332 Standardization.**

(a) Uniform Adoption of Standards.

When supplies or services have been uniformly adopted or otherwise standardized, or when an item is designated to match others in use by the City, the provisions of this Section apply.

(b) Standards Committee.

The Purchasing Manager may organize "Standards Committees" as needed to establish standards with respect to the type, design, quality, or brand of a certain article or group of related articles or services purchased by the City. The membership of the committee shall be the Finance Director, who shall be chairperson, the heads of each City office, agency, or department that is a primary user of the item or group of items for which the committee was appointed. Any members may appoint representatives who shall be authorized to act in their place for purposes of this Section. Any member of the committee may act through a representative appointed by him/her.

(c) Available Competition.

When there is more than one distributor or contractor for the standardized supply or service, competition may be limited to known suppliers, provided that such competition is made by the Finance Director in accordance with Sections 2.52.310 (Competitive Sealed Bids), 2.52.315 (Competitive Sealed Proposals), and 2.52.324 (Unsealed Quotes and Small Purchases).

(d) Approval.

The Standards Committee shall submit its recommendations to standardize particular supplies or services to the authority that would ultimately approve the purchase of such supplies and services, in accordance with Section 2.52.332 (Standardization) of this Ordinance.

(e) Negotiations.

A contract may be awarded without competition when the Finance Director determines in writing after conducting a good faith review of available sources that there is only one source for the standardized required supply or service. The Finance Director should conduct negotiations, as appropriate, as to price, delivery, and terms.

(f) Award.

Award shall be made in accordance with Section 2.52.344 (Award of Contracts).

(g) Records.

The Finance Director shall maintain a record of standardized procurements for purchases of supplies or services exceeding the amount fixed by City Council for solicitation of Unsealed Quotes.

**2.52.334 Emergency Procurement.**

Notwithstanding any other provisions of this chapter, the City Manager may make or authorize others to make emergency procurements of supplies and services when there exists a threat to public health, welfare, or safety; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The City Council shall approval contracts in excess of \$10,000, and the City Manager shall approve contracts of \$10,000 or less.

**2.52.335 Competitive Negotiation for Master Development Projects**

(a) Notwithstanding any other provisions of this chapter, the City Council may enter into Contracts in connection with a Master Development Project without complying with the other provisions of this Chapter and on any basis the City Council approves; provided, that the City Council, prior to entering into any final Contract for all or any portion of the Master Development Project which binds the City to pay the Contractor for the Project (other than for preliminary design or feasibility studies or similar work necessary to complete negotiations on the contract), makes the following finding findings by resolution:

(i) the project is a Master Development Project within the meaning of Section 2.52.100;

(ii) the City will achieve cost savings (including without limitation savings in City staff time) and savings in the time required to implement the project by proceeding under this Section and by entering into Contracts with a single Contractor pursuant to direct negotiations with such Contractor rather than through a sealed-bid or similar process otherwise proscribed by this chapter;

(iii) the City, after adequate public notice, has conducted a competitive selection process with respect to the Master Development Project, prior to commencing negotiations of the contract, including without limitation a solicitation of requests for proposals or requests for qualifications, which was open to any qualified firm or group of firms, and which was publicly advertised in a manner designed to attract the attention of qualified firms or groups of firms, including firms or groups of firms located in Richmond; and

(iv) the City Council approved the selection of the parties to the Contract after evaluating the results of the competitive selection process.

The findings of the City Council pursuant to this Section shall be final and conclusive.

**2.52.336 Cancellation of Solicitation.**

(a) An Invitation for Bids, a Request For Proposals, or other solicitation may be canceled, or any and all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is for good cause and in the best interests of the City. The reasons therefore shall be made part of the contract file.

(b) Each solicitation issued by the City shall state that the solicitation may be cancelled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the City. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation,

explain the reason for cancellation, and, where appropriate, explain that an opportunity shall be given to compete on any re-solicitation or any future procurement of similar items.

#### **2.52.338 Security and Performance Bonds.**

Security and performance bonds or other such security may be requested for supply or service solicitations and contracts as the City Attorney deems advisable to protect the City's interests. All bond requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder's or an offeror's responsibility.

#### **2.52.340 Certificate of Non-Collusion.**

Each solicitation issued by the City shall require that a signed certificate of non-collusion be submitted with each sealed bid or proposal. The City shall have the authority to seek criminal and civil penalties, debarment, and other remedies for unlawful collusive bidding.

#### **2.52.344 Award of Contracts**

(a) General.

All contracts resulting from Sections 2.52.310 (Competitive Sealed Bids), 2.52.315 (Competitive Sealed Proposals), 2.52.320 (Contracting for Designated Professional Services), 2.52.324 (Unsealed Quotes and Small Purchases), 2.52.326 (Sole Source Procurement), 2.52.328 (Cooperative Procurement), 2.52.330 (Piggyback Procurement), 2.52.332 (Standardization), and 2.52.334 (Emergency Procurement), shall be awarded as follows:

(1) Award by City Council.

Pursuant to City Charter §7, purchases exceeding \$10,000 shall be awarded by the City Council. The Finance Director or responsible Department Head shall make the recommendations for award. The Mayor shall execute contracts awarded by the City Council.

(2) Award by City Manager.

Pursuant to City Charter §7, purchases of \$10,000 or less may be awarded by the City Manager, who may execute contracts and other necessary related documents on behalf of the City for purchases within his or her awarding authority.

3) Authorization to Negotiate Low Bid to Within Available Funds.

In the event the lowest responsive and responsible bid for a project exceeds available funds as certified by the Finance Director, and such bid does not exceed such funds by more than ten percent, the Finance Director is authorized, when time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the lowest responsive and responsible bidder, in order to bring the bid within the amount of available funds. Any such negotiated adjustment shall be based only upon eliminating independent deductive items specified in the Invitation For Bids or Request For Proposals.

(b) Preference for recycled products.

The City shall consider the following preferences in determining the lowest price(s) for products containing recycled materials; these preferences are not cumulative:

(1) Total aggregate purchase of \$10,000 or less.  
The City shall consider a 8% preference for products containing 30% or more post-consumer recycled content.

(2) Total aggregate purchase of \$5,000 or less.  
The City shall consider a 10% preference for products containing 30% or more post-consumer recycled content.

(3) Total aggregate purchase of \$1,000 or less.  
The City shall consider a 10% preference for products containing 30% or more post-consumer recycled content.

(4) Exemptions.  
Procurements made with federal or state grant funds; and procurements made in accordance with Sections 2.52.320 (Contracting for Designated Professional Services), 2.52.326 (Sole Source Procurement), 2.52.328 (Cooperative Procurement), 2.52.334 (Emergency Procurement), 2.52.330 (Piggyback Procurement), and 2.52.332 (Standardization) are exempt from the requirements of this section.

(c) Award of tie bids.

If two or more bids are the same and the lowest, the City shall accept that of the local bidder, if there is one; otherwise, it may accept the one it chooses.

(d) No bids received.

If no bids are received through the sealed or unsealed procedure, the project may be performed by the employees of the public agency by force account, or negotiated contract without further complying with these procedures.

#### **2.52.346 Rejection of Bids and Waiver of Irregularities.**

(a) Rejection of bids.

In its discretion, the City may reject any bids presented. If after the first Invitation For Bids, all are rejected, after reevaluating its cost estimates of the project the City shall have the option of either of the following:

(1) Abandon the Project.

Abandoning the project or re-advertising for bids in the manner described in this Ordinance.

(2) Perform Project by Force Account.

By passage of a resolution by a four-fifths vote of the City Council declaring that the employees of the City can perform the project more economically, the City may have the project done by force account.

(b) Waiver of irregularities and mistakes.

The City shall have the authority to waive minor irregularities and mistakes in bids.

#### **2.52.350 Responsibility of Bidders and Offerors.**

(a) Determination of Non-Responsibility.

If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, the Finance Director shall prepare a written determination of non-responsibility, setting forth the basis of the finding. The unreasonable failure of a bidder or offeror to supply promptly information in connection with an inquiry with respect to such bidder or offeror may be grounds for a determination of non-responsibility with respect to such bidder or offeror.

A copy of the determination shall be sent promptly to the non-responsible bidder or offeror. The final determination shall be made part of the contract file and be made a public record.

(b) Right of Nondisclosure.

Proprietary or confidential information furnished by a bidder or offeror pursuant to this Section and appropriately labeled, shall not be disclosed by the City outside of the office of the Finance Director without prior written consent by the bidder or offeror.

**2.52.355 Pre-Qualification of Suppliers and Contractors.**

Prospective suppliers and contractors may be pre-qualified for particular types of supplies or services. The method of submitting pre-qualification information and the information required in order to be pre-qualified shall be determined by the Finance Director and disclosed to potential bidders or offerors in the solicitation. Pre-qualification may be accomplished as Step 1 of a two-step solicitation.

**2.52.360 Substantiation of Offered Prices.**

(a) General.

The Finance Director may request information reasonably available to the bidders or offerors to substantiate that the prices or costs offered, or some portion of them, is reasonable if the prices are not:

- (1) Based on adequate price competition, or
- (2) Based on established catalogue or market prices, or
- (3) Set by law or regulation; or
- (4) If the price or cost exceeds an amount established by regulation.

The Finance Director may request factual information reasonably available to the bidder or offeror to substantiate that the price or cost offered, or some portion of it, is reasonable for any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract when the change or modification involves aggregate increases or aggregate decreases in costs, plus applicable profits, that are expected to exceed

\$100,000. Anytime one or more change orders or contract modifications increase or decrease the total aggregate amount of the order by \$10,000 or more, the change shall require the approval of City Council.

(b) Certification Required.

The Finance Director may require contractors, actual or prospective, to submit cost or pricing data in accordance with this Section, and certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete and current as of a mutually specified date prior to the award of contract or the pricing of the change order or contract modification.

**2.52.365 Types of Contracts.**

(a) General.

Subject to the limitations of this Section, any type of contract which is appropriate to the procurement and which shall promote the best interests of the City may be used; with the exception of the cost-plus-percentage-of-cost contract which is prohibited. A cost reimbursement contract may be used only

when a determination is made in writing that such contract is likely to be less costly to the City than any other type or that it is impracticable to obtain the supplies or services required except under such a contract.

(b) Approval of Accounting System.

Regulations may be issued by the Finance Director requiring that contractors submit appropriate documentation prior to the award of contracts in which the City agrees to reimburse costs, confirming that:

(1) The proposed contractor's accounting system shall permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and

(2) The proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

**2.52.370 Multi-Year Contracts.**

(a) Conditions for Use.

A multi-year contract is authorized where:

(1) Estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(2) Such a contract shall serve the best interests of the City by encouraging effective competition or otherwise promoting economies in City procurement.

(3) The City should be able to obtain favorable price decreases due to quantity discounts, long-term contracts, and/or discounts from identifiable market indexes.

(4) There are clearly identifiable starting and completion dates of the contract.

(b) Specified Period.

Unless otherwise provided by law, a contract for supplies or services may be entered for a range of one (1) to three (3) years, with up to two (2) additional one (1) year extensions at the mutual option of the parties if it is deemed to be in the best interests of the City, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore.

(c) Extension Prices Approved With Original Contract. Contract extension pricing parameters shall be included and evaluated during the original contractor selection to ensure a competitive price.

(d) Conditions for Extension.

Contract extensions shall be evaluated during contract selection, and allowed only when:

(1) Authorized by the awarding authority of the original contract

(2) Written justification indicates it is more advantageous to the City to extend the contract than to solicit new bids or proposals, and

(3) The extension contains a provision for 30-day termination by the City without cause.

(e) Cancellation due to unavailability of funds in succeeding fiscal periods.

When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriation available for such purposes.

**2.52.375 Inspection of Plant.**

The City, may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor that is related to the performance of any contract awarded or to be awarded by the City.

**2.52.380 Right to Audit Records.**

(a) Audit of Cost or Pricing Data.

The City may, at reasonable times and places, audit the books and records of any person who has submitted data in substantiation of offered prices pursuant to Section 2.52.360 (Substantiation of Offered Prices) to the extent that such books and records relate to that data. Any person who receives a contract, change order, or contract modification for which such data is required, shall maintain such books and records that relate to such cost or pricing data for three years from the date of final payment under the contract, unless a shelter period is otherwise authorized in writing.

(b) Contract Audit.

The City shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. The contractor shall maintain such books and records for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of [three] years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

**2.52.385 Finality of Determinations.**

**2.52.385 Finality of determinations.**

All contracts resulting from the sections listed below are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

- 2.52.310 Competitive sealed bids
- 2.52.315 Competitive sealed proposals
- 2.52.320 Contracting for designated professional services
- 2.52.324 Unsealed quotes and small purchases
- 2.52.326 Sole source procurement
- 2.52.328 Cooperative procurement
- 2.52.330 Piggyback procurement
- 2.52.332 Standardization

- 2.52.334 Emergency procurement
- 2.52.335 Competitive Master Development Projects

**2.52.390 Reporting of Anticompetitive Practices.**

When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, the Finance Director or City Attorney shall notify the City Manager of the relevant facts.

**2.52.392 Record of Procurement Actions Taken Under Sole Source Procurement And Emergency Procurement.**

(a) Content of Record.

The Finance Director shall maintain written records of all contracts made under Sections 2.52.326 (Sole Source Procurement) and 2.52.334 (Emergency Procurement) for a minimum of five years. The records shall contain:

- (1) Each supplier's or contractor's name;
- (2) The amount and type of each contract; and
- (3) A listing of the supplies or services procured under each contract.

**2.52.394 Retention of Procurement Records.**

All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the City Attorney. The Finance Director shall file such records with their corresponding procurement documents.

**SPECIFICATIONS**

**2.52.400 Definition of Specification.**

SPECIFICATION means any description of the physical or functional characteristics, or of the nature of a supply or service. It may include a description of any requirement for inspecting, testing, or preparing a supply or service for delivery.

**2.52.410 Maximum Practicable Competition.**

All specifications shall be drafted to promote overall economy for the purposes intended and encourage competition in satisfying the City's needs, and shall not be unduly restrictive. The policy enunciated in this Section applies to all specifications, including but not limited to, those prepared for the City by architects, engineers, designers, and other independent-contractor consultants.

**2.52.420 Qualified Products List.**

When in its best interest, the City may establish a list of pre-qualified products. Suppliers that wish to have their products considered may be required to submit them for evaluation and pre-qualification before being permitted to offer them in response to a competitive solicitation.

**2.52.430 Bid Security.**

(a) Bid Security May Be Required.

Bid security may be required for all solicitations for supplies and services when

the price is estimated to exceed \$50,000. Bid security shall be a bond provided by a surety company authorized to do business in the State of California, or the equivalent in cash, or otherwise, supplied in a form satisfactory to the City. Nothing herein shall prevent the requirement of such bonds on contracts under \$50,000, when the City Council, City Manager, or Finance Director determine it to be in the best interests of the City.

(b) Amount of Bid Security.

Bid security shall be in an amount equal to at least ten percent (10%) of the amount of the bid, unless otherwise specified in the solicitation.

(c) Rejection of Bids for Noncompliance with Bid Security Requirements.

When the Invitation For Bids or Requests for Proposals requires security, noncompliance requires that the bid be rejected unless it is determined that the bid fails to comply only in a nonmaterial manner with the security requirements.

(d) Withdrawal of Bids.

If a bidder is permitted to withdraw its bid before award as provided in Section 2.52.310(d)(11) (Competitive Sealed Bids; Competitive Sealed Bidding Process; Withdrawal of Bids), no action shall be had against the bidder or the bid security.

**2.52.440 Performance and Payment Bonds.**

(a) Performance Bond May Be Required.

(1) Requirement and Amount of Performance Bond. When a supply or service contract is awarded in excess of \$50,000 the original contractor may be required to submit a performance bond satisfactory to the City, executed by a surety company authorized to do business in the State of California, and approved by the City Attorney, or otherwise secured in a manner satisfactory to the City, in an amount equal to 100% of the price specified in the contract. The bond shall be delivered to the City and shall become binding on the parties upon execution of the contract. Nothing herein shall prevent the requirement of such bonds on contracts under \$50,000 when the City Council, City Manager, or Finance Director determine it to be in the best interests of the City.

(2) Reduction of Amount of Performance Bond. With the approval of the City Attorney, the Finance Director may reduce the amount of the performance bond to 50% of the contract price when a written determination is made that it is in the best interests of the City to do so.

(b) Payment Bond.

(1) Requirement and Amount of Payment Bond. When a supply or service contract is awarded in excess of \$50,000, the original contractor may be required to submit a payment bond satisfactory to the City, executed by a surety company authorized to do business in the State of California, and approved by the City Attorney, or otherwise secured in a manner satisfactory to the City, in an amount equal to 100% of the price specified in the contract. The bond shall be delivered to the City and shall become binding on the parties upon execution of the contract. Contractors shall be allowed to substitute securities for retained funds pursuant to State law.

(2) Reduction of Amount of Payment Bond.  
Unless otherwise authorized by law, after notice to the City Manager, the Finance Director may reduce the amount of the payment bond to 50% of the contract price when a written determination is made that it is in the best interests of the City to do so.

(3) Authority to Require Additional Bonds.  
Nothing in this section shall be construed to limit the authority of the City to require other security in addition to those bonds, or in circumstances other than specified in this section.

## **MODIFICATION AND TERMINATION OF CONTRACTS FOR SUPPLIES AND SERVICES**

### **2.52.500 Contract Clauses and Their Administration**

The Finance Director may promulgate regulations permitting or requiring the inclusion of clauses providing for adjustment in prices, time of performance, or other contract provisions as appropriate covering the following subjects:

(1) The unilateral right of the City to order in writing: (a)

Changes in the work within the scope of the contract; (b) Temporary stopping of the work or delaying performance; or

(c) Variations occurring between estimated quantities of work in a contract and actual quantities.

(2) Price adjustments.

Adjustments in price pursuant to clauses promulgated under this Section must be computed in one or more of the following ways:

(a) By agreement on a fixed-price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(b) By unit prices specified in the contract or subsequently agreed upon;

(c) By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

(d) In such other manner as the contracting parties mutually agree;

or

(e) In the absence of agreement by the parties, by a unilateral determination by the City of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the City and subject to the provisions of Section 8 (Legal and Contractual Remedies.)

(3) Temporary stopping of the work or delaying performance.

A contractor may be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section 2.52.360 (Substantiation of Offered Prices.)

(4) Additional Contract Clauses.

The Finance Director may promulgate regulations including, but not limited to, regulations permitting or requiring inclusion in City contracts of clauses providing for appropriate remedies and

covering the following subjects:

- (a) Liquidated damages as appropriate;
- (b) Specified excuses for delay or nonperformance; (c)  
Termination of the contract for default; or

(d) Termination of the contract in whole or in part for the convenience of the City.

## **SUPPLY MANAGEMENT**

### **2.52.600 Definitions of Terms Used in This Section.**

(a) EXCESS SUPPLIES means any supplies other than expendable supplies having a remaining useful life but which are no longer required by the using Department in possession of the supplies.

(b) EXPENDABLE SUPPLIES means all tangible supplies other than nonexpendable supplies.

(c) FIXED ASSET means all tangible supplies having an original acquisition cost of over \$5,000 per unit and a probably useful life of more than one year.

(d) SUPPLIES means, for the purpose of this Section, supplies owned by the City.

(e) SURPLUS SUPPLIES means any supplies other than expendable supplies no longer having any use to the City. This includes obsolete supplies, scrap materials, and nonexpendable supplies that have completed their useful life cycle.

### **2.52.610 Supply Management Regulations Required.**

- (a) The Finance Director may promulgate regulations governing:
  - (1) The management of supplies during their entire life cycle;
  - (2) The sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate method designated by regulation, provided that no employee of the owning or disposing Department shall be entitled to purchase any such supplies; and
  - (3) The transfer of excess supplies and fixed assets.

### **2.52.620 Sale, Exchange, or Disposal of Surplus Supplies and Fixed Assets**

(a) Declaration of Surplus Property.  
Whenever the head of any City office, agency, or department shall determine that any item of City personal property in his/her possession or under his/her control is no longer needed for the use of his/her office, agency, or department, he/she shall report this to the Purchasing Division who shall make a finding as to whether such item is still required for public use.

(b) Transfer of Surplus Property.  
If found to be not required for public use, the Finance Director shall sell, lease, dispose of or exchange such item in the manner provided in this ordinance;

provided that, where the Finance Director has reason to believe that some other City office, agency, or department needs any such item, he/she shall first determine if such item is so needed, and, if it is needed, he/she shall cause such item to be delivered into the possession or place under the control of the head of such other office and cause proper entries to be made in the inventory accounts of the City to record such change of possession.

(c) Surplus Property of No Value.

In the event any item of City personal property found by the Finance Director to be no longer required for public use, is also found to have no resale value, or the sale proceeds would not cover the cost of a sale, the Finance Director may direct that such item be destroyed or disposed of in any manner he/she may see fit.

(d) Notice of Sale.

When personal property has been found to be no longer required for public use and has a value that exceeds the cost of a sale, notices of sales shall be posted by the Purchasing Manager in designated locations or electronically on the City's web site. Such posting shall be for a period of not less than five business days.

(e) Advertising Sale.

In the disposition of any surplus personal property pursuant to Government Code Section 25504, the Finance Director may purchase advertising space and may advertise the proposed sale or other disposition of the personal property in any media in his/her judgment shall best publicize the proposed sale or other disposition to those persons most likely to bid for or purchase the personal property. The Finance Director shall determine the amount, nature, makeup, and content of such advertising. Nothing in this ordinance shall preclude electronic advertising on the World Wide Web.

(f) Allocation of Sale Proceeds.

Unless otherwise provided by law, the City Manager shall be empowered, pursuant to regulations, to allocate proceeds from the sale, lease, or disposal of surplus supplies exceeding \$500 to be deposited in the appropriate account of the disposing City Department.

## **LEGAL AND CONTRACTUAL REMEDIES**

### **2.52.700 Protests.**

(a) Right to Protest.

Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the City Council. Protestors are urged to seek resolution of their complaints initially with the Finance Director. The protest shall be submitted in writing within 10 calendar days after such aggrieved person knows or should have known of the facts giving rise thereto.

(b) Authority to Resolve Protests.

The Finance Director shall have the authority, before the commencement of an action in court concerning the controversy, to settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract. This authority shall be exercised in accordance with regulations promulgated by the Finance Director.

(c) Decision.

If the protest is not resolved by mutual agreement, the Purchasing Manager shall promptly issue a decision in writing. The decision shall: (1)

State the reason for the action being taken; and

(2) Inform the protestant of its right to review as provided in this Section.

(d) Notice of Decision.

A copy of the decision under Subsection (c) of this Section shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.

(e) Finality of Decision.

A decision under this Section shall be final and conclusive, unless fraudulent, or any person adversely affected by the decision commences an action in court.

(f) Stay of Procurement During Protests.

In the event of a timely protest under Subsection (2) of this Section, the Finance Director shall not proceed further with the solicitation or with the award of the contract until the Finance Director, after consultation with the head of the using Department, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the City.

(g) Entitlement to Costs.

In addition to any other relief, when a protest is sustained and the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, then the protesting bidder or offeror shall be entitled to the reasonable costs incurred in connection with the solicitation, including bid preparation costs other than attorney's fees.

#### **2.52.710 Authority to Debar or Suspend.**

After reasonable notice to the person or firm involved, and reasonable opportunity for that person or firm to be heard, upon written recommendation by the Finance Director, the City Council shall have the authority to debar a person for cause from consideration of award of contracts. The debarment shall be for a period of not more than three years. The City Council may suspend a person or firm from consideration for award of contracts if there is probable cause for debarment. The suspension shall be for a period not to exceed three months. The authority to debar or suspend shall be exercised in accordance with regulations.

(a) Causes for Debarment or Suspension.

The causes for debarment or suspension include the following:

(1) Conviction of a Criminal Offense.

Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(2) Conviction of a Crime Affecting Responsibility.

Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a City contractor or supplier;

(3) Conviction of Violation of Anti-Trust Statutes. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(4) Serious Violation of Contract Provisions.

Violation of contract provisions, as set forth below, of a character which is regarded by the City Council to be so serious as to justify

debarment action;

(5) Failure to Perform.

Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;

(6) Recent Record of Poor Performance.

A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor or supplier shall not be considered to be a basis for debarment;

(7) Other Causes.

Any other cause the City Council determines to be so serious and compelling as to affect responsibility as a City contractor or supplier, including debarment by another governmental entity for any cause listed in regulations; or

(8) Violation of Ethical Standards.

For violation of the ethical standards set forth in Section 9, Ethics in Public Contracting, of this Ordinance.

**2.52.720 Decision to Debar or Suspend.**

The City Council shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of its rights concerning judicial review.

**2.52.730 Notice of Decision to Debar or Suspend.**

A copy of the decision required by Section 2.52.720 (Decision to Debar or Suspend), shall be mailed, or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

**2.52.740 Finality of Decision to Debar or Suspend.**

A decision under Section 2.52.720 (Decision to Debar or Suspend), shall be final and conclusive, unless fraudulent, or the debarred or suspended person or firm commences an action in court in accordance with applicable law.

**2.52.750 Authority to Resolve Contract and Breach of Contract Controversies.**

(a) Applicability.

This Section applies to controversies between the City and a supplier or contractor and which arise under, or by virtue of, a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

(b) Authority.

The Purchasing Manager is authorized, before commencement of an action in a court concerning the controversy, to settle and resolve a controversy described in this Section.

(c) Decision.

If such a controversy is not resolved by mutual agreement, the Purchasing Manager shall promptly issue a decision in writing. The decision shall: (1)

State the reasons for the action taken; and

(2) Inform the contractor of its right to judicial review.

(d) Notice of Decision.

A copy of the decision shall be mailed or otherwise furnished immediately to the supplier or contractor.

(e) Finality of Decision.

The decision of this Section shall be final and conclusive, unless the contractor commences an action in court.

(f) Failure to Render Timely Decision.

If the Finance Director does not issue a written decision as required by this Section within 120 days after written request for a final decision or within such longer period as may be agreed upon by the parties, then the contractor may proceed.

#### **2.52.760 Remedy Before Award.**

If before award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be:

- (a) Cancelled; or
- (b) Revised to comply with the law.

#### **2.52.770 Remedy After Award.**

If after an award it is determined that a solicitation or award of a contract is in violation of law, then:

- (a) If the person awarded the contract has not acted fraudulently or in bad faith:
  - (1) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the City; or
  - (2) The contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, before the termination.
- (b) If the person awarded the contract has acted fraudulently or in bad faith:
  - (1) The contract may be declared null and void; or
  - (2) The contract may be ratified and affirmed if such action is in the best interests of the City, without prejudice to the City's rights to such damages as may be appropriate.

#### **2.52.780 Procurement Appeals Board.**

The Purchasing Manager may appoint either an ad hoc or permanent Procurement Appeals Board to be composed of a chairperson and at least two other members for the resolution of procurement disputes.

#### **2.52.790 Waiver of Sovereign Immunity in Connection with Contracts.**

(a) Solicitation and Award of Contracts.

The courts of Contra Costa County shall have jurisdiction over an action

between the City and a bidder, offeror, or contractor, prospective or actual, to determine whether a solicitation or award of a contract is in accordance with the Constitution, statutes, regulations, and the terms and conditions of the solicitation. The courts of Contra Costa County shall have such jurisdiction, whether the actions are at law or in equity, and whether the actions are for monetary damages or for declaratory, injunctive, or other equitable relief.

(b) Time Limitation on Actions.

Any action under this Section shall be initiated as follows:

- (1) Within thirty days after the aggrieved person knows or should have known of the facts giving rise to the action; or
- (2) Within fourteen days after receipt of a final administrative decision pursuant to Section 2.52.750(b) Authority to Resolve Contract and Breach of Contract Controversies.

(c) Debarment or Suspension.

The courts of Contra Costa County shall have jurisdiction over an action between the City and a person who is subject to a suspension or debarment proceeding, to determine whether the debarment or suspension is in accordance with the Constitution, statutes, and regulations. The courts of Contra Costa County shall have such jurisdiction, whether the actions are at law or in equity, and whether the actions are for declarative, injunctive, or other equitable relief.

(d) Time Limitation on Actions.

Any action under this Section shall be commenced within six months after receipt of the decision of the Finance Director.

(e) Actions Under Contracts for Breach of Contract.

The courts of Contra Costa County shall have jurisdiction over an action between the City and a contractor, for any cause of action which arises under, or by virtue of, the contract, whether the action is at law or in equity, whether the action is on the contract or for a breach of the contract, and whether the action is for monetary damages or declaratory, injunctive, or other equitable relief.

(f) Time Limitation on Actions.

The statutory limitations on an action between private persons on a contract or for breach of contract shall apply to any action commenced pursuant to this Section concerning actions on a contract or for breach of contract shall be filed within twelve months after the date of the Finance Director's decision:

- (1) Within thirty days after the aggrieved person knows or should have known of the facts giving rise to the action; or
- (2) Within fourteen days after receipt of a final administrative decision pursuant to Section 2.52.750 (Authority to Resolve Contract and Breach of Contract Controversies.)
- (3) Limited Finality for Administrative Determinations. In any judicial action under this Section, factual or legal determinations by employees, agents, or other persons appointed by the City shall have no finality and shall not be conclusive, notwithstanding any contract provision, regulation or rule of law to the contrary, except to the extent provided in Section 2.52.750(e) (Authority to Resolve Contract and Breach of Contract Controversies; Finality of Decision).

## **ETHICS IN PUBLIC CONTRACTING**

## **2.52.800 Adoption of Code of Ethics.**

### **(a) Adoption.**

By adoption of this Ordinance, the City Council hereby adopts the following Code of Ethics. Every employee participating in the procurement, management, storage, and use of supplies or services purchased by the City for its benefit shall adhere to the following principles:

- (1) City employees shall not obligate the City of Richmond, financially or otherwise, by any means, including but not limited to purchase orders and contracts, when the employee has a personal, material, financial, or other interest in the obligation.
- (2) City employees shall not accept any form of gratuities. For this section only, employee is defined as an individual drawing a salary or wages from the City, whether elected or not; any non-compensated individual performing personal services for the City or any department, agency, commission, council, board, or any other entity established by the executive or legislative branch of the City; and any non-compensated individual serving as an elected official of the City.
- (3) City employees shall not purchase item(s) for personal use while on duty or in uniform. Employee may *not* accept discounts, sales, reduced prices, or other benefits offered by Suppliers because of employee's relationship with the City.
- (4) City employees shall not incur costs to the City for personal purposes, such as making personal long-distance phone calls, copies, or facsimiles, mailing personal bills, letters, or packages, or otherwise committing the City to pay for an employee's personal expenses.
- (5) City employees shall not borrow, loan, or take home City equipment or supplies for personal use.
- (6) City employees should avoid any implied or actual infraction of City rules and regulations, such as receiving personal mail at City offices, using the City address or telephone number on personal checks, or any other indication that the employee might stand to gain at cost to the City.

## **“PUBLIC WORKS CONSTRUCTION**

### **2.52.900 Delegation**

The responsibility and authority for the management of public works construction contracts is delegated to the Public Works Director.

### **2.52.910 Additional Public Works Construction Definitions**

For the purpose of the management of public works construction contracts, the following terms shall have the meanings set forth below:

#### **(a) *Architectural and Engineering Services* means:**

- (1) Professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such

services as described in this Section;

- (2) Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and
- (3) Such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including: studies, investigations, surveying, mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

(b) *Design-bid-build* means a project delivery method in which the City sequentially awards separate contracts, the first for architectural and engineering services to design the project and the second for construction of the project according to the design.

(c) *Design-build* means a project delivery method in which the City enters into a single contract for design and construction of an infrastructure facility.

(d) *Design-build-finance-operate-maintain* means a project delivery method in which the City enters into a single contract for design, construction, finance, maintenance, and operation of an infrastructure facility over a contractually defined period. No City funds are appropriated to pay for any part of the services provided by the contractor during the contract period.

(e) *Design-build-operate-maintain* means a project delivery method in which the City enters into a single contract for design, construction, maintenance, and operation of any infrastructure facility over a contractually defined period. All or a portion of the funds required to pay for the services by the contractor during the contract period are either appropriated by the City before award of the contract or secured by the City through fare, toll, or user charges.

(f) *Design requirements* means the written description of the infrastructure facility or service to be procured under this Section, including:

- (1) Required features, functions, characteristics, qualities, and properties that are required by the City,
- (2) The anticipated schedule, including start, duration, and completion, and;
- (3) Estimated budgets (as applicable to the specific procurement) for design, construction, operation, and maintenance.

The design requirements may, but need not, include drawings and other documents illustrating the scale and relationship of the features, functions, and characteristics of the project.

(g) *Independent Peer Reviewer Services* are additional architectural and engineering services provided to the City in design-build-operate-maintain or design-build-finance-operate-maintain procurements. The function of the independent peer review is to confirm that the key elements of the professional engineering and architectural design provided by the contractor are in conformance with the applicable standard of care.

(h) *Infrastructure Facility* means a building; structure; or networks of buildings, structures, pipes, controls, and equipment that provide transportation, utilities, public education, or public safety services. Included are government office buildings; public schools; courthouses, jails; prisons; water treatment plants, distribution systems, and pumping stations; solid waste disposal plants, incinerators, landfills, and related facilities; public roads and streets; highways; public parking facilities; public transportation systems, terminals, and rolling stock; rail, air, and water port structures, terminals, and equipment.

(i) *Operations and Maintenance* means a project delivery method whereby the City enters into a single contract for the routine operation, routine repair, and routine maintenance of an infrastructure facility.

(j) *Proposal development documents* means drawing and other design-related documents that are sufficient to fix and describe the size and character of an infrastructure facility as to architectural, structural, mechanical and electrical systems, materials, and such other elements as may be appropriate to the applicable project delivery method.

### **2.52.920 Project Delivery Methods Authorized**

(a) The following project delivery methods are authorized for procurements relating to infrastructure facilities and services in the City:

- (1) Design-bid-build
- (2) Operations and maintenance
- (3) Design-build
- (4) Design-build-operate-maintain
- (5) Design-build-finance-operate-maintain.

(b) Participation in a report or study that is subsequently used in the preparation of design requirements for a project will not disqualify a firm from participating as a member of a proposing team in a design-build, design-build-operate-maintain, or design-build-finance-operate-maintain procurement unless such participation would provide the firm with a substantial competitive advantage.

### **2.52.930 Source Selection Methods Assigned to Project Delivery Methods**

(a) Scope.

This section specifies the source selection methods applicable to procurements for the project delivery methods identified in Section 2.52.310 (Competitive Sealed Bids), except as provided in Section 2.52.324 (Unsealed Quotes and Small Purchases), 2.52.326 (Sole Source Procurement), and 2.52.334 (Emergency Procurements).

(b) Design-bid-build.

- (1) Design – Architectural and Engineering Services.

The qualifications-based selection process set forth in Section 2.52.960 (Architectural and Engineering Services) will be used to procure architectural and engineering services in design-bid-build procurements.

- (2) Construction.

Competitive sealed bidding, as set forth in Section 2.52.310 (Competitive Sealed Bids), will be used to procure construction in design-bid-build procurements, except where regulations authorize the use of competitive

sealed proposals, as set forth in Section 2.52.315 (Competitive Sealed Proposals), for contracts for construction management at-risk.

(c) Operations and Maintenance.

Sources for contracts for operations and maintenance must be procured as set forth in Section 2.52.200 (f) (Source Selection Database).

(d) Design-Build.

Contracts for design-build must be procured by competitive sealed proposals, as set forth in Section 2.52.315 (Competitive Sealed Proposals), except that the regulations may describe the circumstances under which particular design-build procurements will not require the submission of proposal development documents.

(e) Design-build-operate-maintain.

Contracts for design-build-operate-maintain must be procured by competitive sealed proposals as set forth in Section 2.52.315 (Competitive Sealed Proposals).

(f) Design-build-finance-operate-maintain.

Contracts for design-build-finance-operate-maintain must be procured by competitive sealed proposals, as set forth in Section 2.52.315 (Competitive Sealed Proposals).

#### **2.52.940 Choice of Project Delivery Methods**

(a) Establishment of regulations.

The Public Works Director will establish regulations describing project delivery methods. These regulations will:

- (1) Set forth criteria to be used in determining which project delivery method is to be used for a particular project;
- (2) Grant to the Public Works Director, or the head of the Department responsible for carrying out the project, the discretion to select an appropriate project delivery method for a particular project;
- (3) Describe the bond, insurance, and other security provisions contained in Section 2.52.980 of this Ordinance;
- (4) Describe the appropriate contract clauses and fiscal responsibility requirements that apply to each project; and
- (5) Require the Public Works Director to include in the contract file a written statement setting forth the facts that led to the selection of a particular project delivery method for each project.

#### **2.52.950 Additional Procedures for Certain Project Delivery Methods**

(a) Each Request for Proposals for design-build, design-build-operate-maintain, or design-build-finance-operate-maintain must:

- (1) Include design requirements;
- (2) Solicit proposal development documents;
- (3) Pre-qualify offerors by issuing a Request for Qualifications in advance of the Request For Proposals, when the Public Works Director determines that the cost

of preparing proposals is high in view of the size, estimated price, and complexity of the procurement;

(4) Select a short list of responsible offerors before discussions and evaluations under Section 2.52.315, if the number of proposals that will be short-listed is stated in the Request For Proposals, and prompt public notice is given to all offerors as to which proposals have been short-listed;

(b) Each Request for Proposals for design-build, design-build-operate-maintain, or design-build-finance-operate-maintain must state the relative importance of:

(1) Demonstrated compliance with the design requirements; (2)

Offeror qualifications;

(3) Financial capacity; (4)

Project schedule;

(5) Price (or life-cycle price for design-build-operate-maintain and design-build-finance-operate maintain procurements);

(6) Other factors, if any; and

(7) Must require each offeror, when the contract price is estimated to exceed \$10,000,000 or when the contract period of operations and maintenance is ten years or longer [in circumstances established by regulation], to identify an Independent Peer Reviewer whose competence and qualifications to provide such services will be an additional evaluation factor in the award of the contract.

#### **2.52.960 Architectural and Engineering Services**

(a) Policy.

It is the policy of this City to publicly announce all requirements for Architectural and Engineering Services that are estimated to exceed a total cost of \$50,000, and to negotiate contracts for Architectural and Engineering Services based on demonstrated competence and qualification for the type of services required, and at fair and reasonable prices.

(b) Selection Committee.

(1) In the procurement of Architectural and Engineering Services, the Public Works Director will encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The Public Works Director will assemble an Architect-Engineer Selection Committee for each Architectural and Engineering Services contract over \$25,000. The Selection committee contracts under this amount must be established in accordance with regulations published by the Public Works Director. The Selection Committee must evaluate current statements of qualifications and performance data on file with the City, together with those that may be submitted by other firms regarding the proposed contract.

(2) The Selection Committee must conduct discussions with no less than three firms regarding the contract and the relative utility of alternative methods of approach for furnishing the required services. The Committee must then select order of preference, based upon criteria established and published by the Selection Committee, no less than three firms deemed to be the highest qualified to provide the services required.

(c) Negotiations.

(1) The Director of the department requiring the services (hereafter referred to as Director) will negotiate a contract with the highest qualified firm for Architectural and Engineering Services at compensation that the Director determines in writing to be fair and reasonable to the City. In making this decision, the Director must take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. Should the Director be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price the Director determines to be fair and reasonable to the City, negotiations with that firm will be formally terminated.

(2) The Director must then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the Director will formally terminate negotiations. The Director must then undertake negotiations with the third most qualified firm. Should the Director be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, the Director will select additional firms in order of their competence and qualifications, and the Director will continue negotiations in accordance with this Section until an agreement is reached.

### **2.52.970 Bid Security**

(a) *Requirement for Bid Security.* Bid security must be required for all competitive sealed bidding for construction contracts in a design-bid-build procurement when the price is estimated to exceed \$50,000. Bid security must be a bond provided by a surety company authorized to do business in this State, or the equivalent in cash, or otherwise supplied in a form satisfactory to the City. Nothing herein prevents the requirement of such bonds on such contracts under \$50,000 when the circumstances warrant.

(b) *Amount of Security.* Bid security must be in an amount equal to at least 10% of the amount of the bid.

(c) *Rejection of Bids for Noncompliance with Bid Security.* When the Invitation for Bids or Notice to Contractors requires security, noncompliance requires that the bid be rejected unless, pursuant to regulations, it is determined that the bid fails to comply in a non-substantial manner with the security requirements.

(d) *Withdrawal of Bids.* After bids are opened, they must be irrevocable for the period specified in the Invitation for Bids, except as provided for bids in Section 2.52.310 (Competitive Sealed Bids). If a bidder is permitted to withdraw its bid or proposal before award, or is excluded from competition before award, no action will be had against the bidder or the bid security.

### **2.52.980 Contract Performance and Payment Bonds**

(a) Requirements

(1) When a construction, design-build, design-build-operate-maintain, or design-build-finance-operate-maintain contract is awarded in excess of the amount set forth in California Civil Code 3247, the following bonds or security must be delivered to the City and will become binding on the parties upon the execution of the contract:

(2) A performance bond satisfactory to the City, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the City, in an amount equal to 100% of the portion of the contract price that does not include the cost of operation, maintenance, and finance; and

(3) Pursuant to Civil Code Section 3247, a payment bond satisfactory to the City, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the City, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the construction work provided for in the contract.

(b) Reduction of Bond Amounts.

Regulations may authorize the Public Works Director to reduce the amount of performance and payment bonds to fifty percent [50%] of the amounts established herein.

(c) Authority to Require Additional Bonds.

Nothing in this Section will be construed to limit the authority of the City to require a performance bond or other security in addition to such bonds, or in circumstances other than specified herein.

(d) Bond Forms and Copies.

(1) *Bond Forms*. The Office of the City Attorney will promulgate by regulation the form of the bonds required by this section.

(2) *Certified Copies of Bonds*. Any person may request and obtain from the City a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond will be *prima facie* evidence of the contents, execution, and delivery of the original.

(e) Errors and Omissions Insurance.

Regulations may be promulgated that specify when the Public Works Director requires offerors to provide appropriate errors and omissions insurance to cover architectural and engineering services under the project delivery methods set forth in Section 2.52.920 (Project Delivery Methods Authorized.)

(f) Other Forms of Security.

Regulations may be promulgated authorizing the Finance Director to require a Request for Proposals to include one or more of the following forms of security to assure the timely, faithful, and uninterrupted provision of operations and maintenance services procured separately, or as one element of design-build- operate-maintain or design-build-finance-operate-maintain services:

(1) Operations period surety bonds that secure the performance of the contractor's operations and maintenance obligations under the project delivery methods set forth in Section 2.52.920 (Project Delivery Methods Authorized.)

(2) Letters of credit in an amount appropriate to cover the costs to the City of preventing infrastructure service interruptions for a period of up to twelve months under the project delivery methods set forth in Section 2.52.920 (Project Delivery Methods Authorized.)

(3) Appropriate written guarantees from the contractor, or depending upon the circumstances, from parent corporations, to secure the recovery of re-procurement costs to the City in the event of a default in performance by a contractor.

(g) Contract Clauses and Their Administration.

Regulations may be promulgated requiring the inclusion in City contracts providing for

adjustments in prices, time of performance, or other contract provisions, covering the following subjects:

(1) *The unilateral right of the City to order in writing:*

- a. Changes in the work within the scope of the contract;
- b. Changes in the time of performance of the contract that do not alter the scope of the contract work;
- c. Variations occurring between estimated quantities of work in a contract and actual quantities;
- d. Suspension of work ordered by the City;
- e. Site conditions differing from those indicated in the contract, or ordinarily encountered, except that differing site conditions clauses promulgated by the Public Works Director need not be included in a contract:
  - a. When the contract is negotiated;
  - b. When the contractor provides the site or design; or
  - c. When the parties have otherwise agreed with respect to the risk of differing site conditions.

(2) *Price Adjustments.* Adjustments in price pursuant to clauses promulgated under Subsection (1) of this Section will be computed in one or more of the following ways:

- (a) By agreement on a fixed-price adjustment commencement of the pertinent performance or as soon thereafter as practicable;
- (b) By unit prices specified in the contract or subsequently agreed upon;
- (c) By the costs attributable to the events or situations under such clauses with adjustment for profit or fee, all as specified in the contract or subsequently agreed upon;
- (d) In such other manner as the contracting parties may mutually agree; or
- (e) In the absence of agreement by the parties, by a unilateral determination by the City of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the City in accordance with the provisions of Section 8 (Legal and Contractual Remedies.)

(3) A contractor may be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section 2.52.360 (Substantiation of Offered Prices.) (4)

*Additional Contract Clauses.*

- (a) Regulations may be promulgated requiring the inclusion of clauses in City small construction contracts to provide for appropriate remedies and covering the following subjects:
- (b) Liquidated damages as appropriate;

(c) Specified excuses for delay or nonperformance; (d)

Termination of the contract for default; or

(e) Termination of the contract in whole or in part for the convenience of the City.

**2.52.990 Fiscal Responsibility**

(a) Every contract modification, change order, or contract priced adjustment under a construction contract with the City in excess of \$50,000, will be subject to prior written certification by the Finance Director of the City or the officer responsible for funding the project or the contract, or other official responsible for monitoring and reporting upon the status of the costs of the total project budget or contract budget, as to the effect of the contract modification, change order, or adjustment in contract price on the total project budget or the total contract budget.

(b) In the event that the certification of the Finance Director or other responsible official discloses a resulting increase in the total project budget and/or the total contract budget, the Public Works Director will not execute or make such contract modification, change order, or adjustment in contract price unless sufficient funds are available therefore, or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget and/or total contract budget as it existed prior to the contract modification, change order, or adjustment in contract price under consideration; provided, however, that with respect to the validity, as to the contractor, of any executed contract modification, change order, or adjustment in contract price which the contractor has reasonably relied upon, it will be presumed that there has been compliance with the provisions of this Section.

**Section II. Severability.**

If any provisions of this Ordinance or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this Ordinance that can be given effect without the invalid provisions or application, and to this end the provisions of this Ordinance are declared to be severable.

**Section III. Effective Date.**

This ordinance becomes effective thirty days after its final passage and adoption.

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First introduced at a regular meeting of the City Council of the City of Richmond held on June 23, 2020, and finally passed and adopted at a regular meeting held on June 30, 2020, by the following vote:

AYES: Councilmembers Choi, Johnson III, Martinez, Myrick, Willis, Vice Mayor Bates, and Mayor Butt.  
NOES: None.  
ABSTENTIONS: None.  
ABSENT: None.

**PAMELA CHRISTIAN**  
CLERK OF THE CITY OF RICHMOND  
(SEAL)

Approved:  
**TOM BUTT**  
Mayor

Approved as to form:  
**RACHEL SOMMOVILLA**  
City Attorney(Interim)

State of California        }  
County of Contra Costa        } : ss.  
City of Richmond        }

I certify that the foregoing is a true copy of Ordinance No. 14-20 N.S., passed and adopted by the City Council of the City of Richmond at a regular meeting held on June 30, 2020.



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Pamela Christian, City Clerk of the City of Richmond