



# CITY OF PALO ALTO OFFICE OF THE CITY ATTORNEY

June 7, 2016

The Honorable City Council  
Palo Alto, California

## **Recommendation to Adopt an Ordinance Amending Chapter 2.30 [Contracts and Purchasing Procedures] of the Palo Alto Municipal Code to Establish Contracting and Purchasing Procedures and to Define the Contracting Authority of City Officers and Employees**

### **Recommendation**

The City Attorney's Office, in support of the Administrative Services Department and the Utilities Department, recommends adoption of an ordinance amending Palo Alto Municipal Code Chapter 2.30 - Contracts and Purchasing Procedures (Attachment A).

### **Background**

Chapter 2.30 of the Municipal Code sets forth the City's purchasing and procurement procedures, including contract award authority and competitive solicitation requirements. This chapter was overhauled in 2004 following a multi-year effort to streamline, clarify, and simplify purchasing procedures. In 2014, staff engaged the National Institute of Government Procurement (NIGP) consulting to evaluate the City's procurement process and provide recommendations on improving performance and efficiency.

The 2014 NIGP report made recommendations to enhance the operational efficiency of the City's procurement function with a focus on transitioning the Purchasing and Contracts Administration (Purchasing) Division of the Administrative Services Department (ASD) into a strategic-focused administrative body. The consultant found that the Purchasing Division was spending a significant amount of time on day-to-day transactional processes and recommended a shift to focus on value added strategic procurement activities. Over the past three years, ASD/Purchasing has been implementing the consultant's recommendations to deliver more efficient and streamlined services to City departments. For example, the City has recently adopted a paperless office environment, including an electronic signature service (DocuSign), an e-document management service, and an e-Procurement service (PlanetBids). Moreover, the City has implemented automation improvements to SAP processing, integration between these systems, and streamlining of procurement work processes and procedures.

As a result of these initiatives, Contracts and Purchasing Administration staff has realized increased performance in turn-around times, as well as improved customer satisfaction ratings as rated by City departments in surveys over the last few years. For example, average turn-around time has dropped from 25 days in 2015 to 20 days so far in 2016. While this improvement is welcome, the volume of critical City initiatives and projects continues at a high

rate, requiring even more streamlining to keep up with the pace to ensure that contracts are turned out quickly so City departments can proceed with work.

The 2014 NIGP report also made several recommendations to revise certain sections of the Palo Alto Municipal Code (the Purchasing Ordinance) to enable greater flexibility for the Purchasing Manager to delegate authority to City departments. The team also recommended an increase to the informal and formal solicitation threshold for goods and general services. The ultimate goal of the recommended Code changes was increased efficiency and effectiveness of procurement processes and to enable the shift of limited authority to the City departments. Having implemented many of the consultant's recommendations that did not require changes to the municipal code, staff now seeks to amend several areas of the Code that may limit flexibility for Purchasing in meeting the needs of City Departments in the modern market place. The proposed ordinance incorporates many of the consultant's recommendations to offer increased streamlining in the processing of contracts.

Along with the above improvements and municipal code changes, if approved by Council, Contracts and Purchasing Administration staff plans to roll out a procurement academy, an online knowledge training center, and an online Civic Shopping Mall to enable cooperative purchasing, in the effort of increasing efficiency and effectiveness.

## **Discussion**

The substantive changes proposed for Chapter 2.30 fall into three categories: 1) changes to enable all City departments to more efficiently meet business requirements for general goods and services and allow Purchasing and Contracts Administration staff to provide more strategic assistance; 2) changes specifically streamlining the purchase and sale of wholesale utility commodities and services; and 3) the establishment of local procedures for design-build contracts, should the City wish to pursue this project-delivery model in the future. In addition, the proposed ordinance contains a number of clarifications and clerical updates, which are not specifically addressed in this report.

### **1) Changes to increase efficiency in procurement Citywide:**

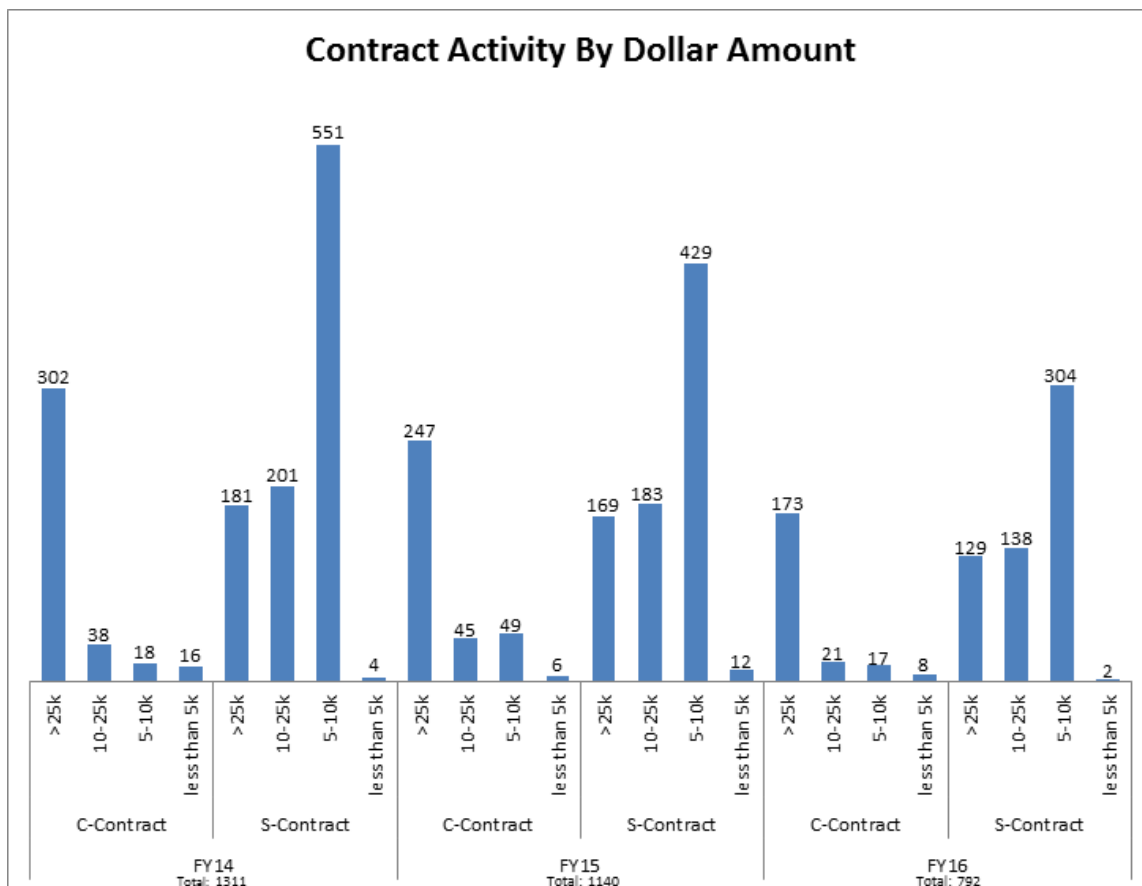
With increased flexibility and departmental purchasing authority for simple and low risk contracts, Purchasing and Contracts Administration staff will be able to focus on improving turn-around performance, training, strategic procurement, and other valued areas.

Key recommendations include:

- Increasing flexibility in the use of master contracts, cooperative purchasing arrangements, shared services agreements, and "piggyback" purchasing opportunities where such agreements are similar to Palo Alto's. (Sections 2.30.360(j) and (k).)
- Increasing departmental purchasing authority for small contracts from \$5K to \$10K. (Section 2.30.230.)

- Increasing the competitive solicitation exemption for professional services contracts from \$25K to \$50K and for small contracts from \$5K to \$10K. (Sections 2.30.360(i) and (r).)
- Increasing the monetary threshold at which formal rather than informal solicitation procedures are required. (Sections 2.30.300 through 2.30.330.)
- Shifting to electronic publication of solicitation documents via the City’s website (and eliminate newspaper publication requirement). (Sections 2.30.410 and 2.30.420.)

With these updates, City departments will have improved turn-around times for many small and medium sized contracts. In turn, staff will be able to shift time to the larger, more complex contracts in an effort to further reduce turn-around time. In addition, department will experience improved project management oversight by having greater immediate control and knowledge of their smaller contracts. This will be supported with training from the Procurement Academy, an online self-help Knowledge Training Center, and the oversight of Purchasing and Contracts Administration in its strategic procurement function.



While the procurement data above (FY2014, FY2015, FY2016 through April) indicates a gradual decrease in the volume of contract activity, there has been a gradual increase in the

sophistication of requested procurements, as with capital projects, IT, and professional services. In the graph above “C-Contracts” are typically contracts that go to Council for approval and “S-Contracts” are typically contracts that don’t require Council approval. If a C-Contract is lower dollar, but still going to Council it is likely an amendment that’s increase the value of a contract that was previously approved by Council, thus requiring Council action to amend.

The data also shows the large number of contracts between \$5,000 and \$10,000. By allowing these contracts to be established without solicitation, as proposed in the municipal code changes, greater time would be available to handle the more complex contracts. This change would also allow for a greater number of contracts to shift to the Master Card purchase card (PCard) system, which further streamlines purchasing activity. With greater efficiency more purchasing staff time can be made available to identify and manage cooperative purchasing arrangements so the City can take advantage of large scale contracts shared across numerous government entities. This requires adopting category management practices of the Purchasing Office which demands a higher level of procurement authority, as proposed in the attached ordinance.

## **2) Changes in wholesale utility commodities and services transactions:**

Palo Alto Municipal Code Section 2.30.340 (Contracts for Wholesale Utility Commodities) allows for the use of master agreements to buy and/or sell electricity, gas and related services through various preapproved (“enabled”) suppliers. Contracts or transactions executed under the Council approved master agreements must be done in accordance with the City’s Energy Risk Management Policy, Guidelines and Procedures. Historically, the process for contracting with wholesale utility suppliers has been to: issue a request for proposals; select multiple creditworthy suppliers; negotiate terms and conditions with the set of potential suppliers; and seek Council approval and authority to transact. As currently implemented, this process can take upwards of one year.

The proposed modifications to Section 2.30.140 clarifies the process to enable suppliers by specifically allowing the use of a standard form master agreement that contains the City’s minimum contract terms and conditions. Negotiations will be carried out with qualified suppliers on an ongoing basis without the need to issue successive formal requests for proposals or invitations for bids. Execution of master agreements and delegation of authority to transact under the master agreement specific suppliers will remain subject to Council approval. The proposed change will help ensure the City always has a competitive set of creditworthy enabled suppliers to carry out transactions to meet the City’s electric and gas needs in a timely and efficient manner.

Staff also proposes to eliminate the default creditworthiness waiver for suppliers participating in the City’s “feed-in tariff” energy program. The program threshold limit is intended to limit credit risk to the City by only waiving credit requirements up to a certain amount of energy per supplier. Given the size and types of projects which may participate the City’s feed-in-energy

tariff, the credit risk to the City is minimal, thus staff requests a default waiver of credit requirements for any supplier participating in the City's feed-in tariff energy program.

### **3) Design-build procedures**

Design-build is a method of project delivery that combines professional design services and construction services into a single contract. Design-build differs from the traditional design-bid-build method, in which the design and construction phases of project delivery are separately bid and awarded. Design-build contracts are commonly used in the private sector, and have become increasingly popular for public agencies in the past several years. In 2014, the State legislature adopted SB 785, revamping design-build authority for California public agencies.

The proposed ordinance adds section 2.30.490 to the Municipal Code, exercising Palo Alto's charter authority to supersede the provisions of SB 785 and set forth local procedures for the solicitation and award of design-build contracts. In short, the proposed ordinance provides Palo Alto with expanded flexibility in the types and sizes of projects eligible for design-build, and the criteria on which contracts are awarded.

For design-bid-build projects, PAMC section 2.30.610 prohibits a person or entity from submitting a bid for the construction phase of a project in which they have prepared or assisted in preparing plans and specifications. For design-build projects, the proposed ordinance both requires a licensed professional to prepare bridging documents and prohibits that professional from bidding on the design-build project. Any proposed design build contracts would come to the Council for approval before proceeding. This language merely offers the City the flexibility to use design build in the future should it be warranted and approved by the Council.

### **Resource Impact**

The proposed changes to the municipal code do not have a direct impact on the City budget. However, as highlighted above, the changes will improve efficiency and decrease turn-around times for contracts and procurements. This will help departments meet critical City initiatives and projects quicker. Without these streamlining efforts it may not be possible to have the same impact without adding staffing resources. The Purchasing Division has not increased staff in recent times.

### **Policy Implications**

The procurement section of the municipal code serves as the framework for the procurement manual and procurement policy, both of which are used on a daily basis by the Purchasing staff. The proposed changes in the municipal code, if approved, will be reflected in the procurement manual and procurement policy.

### **Environmental Review**

Adoption of the proposed ordinance is not a project under to the California Environmental Review Act (CEQA) and therefore no environmental review is required.

**ATTACHMENTS:**

- Attachment A: Ordinance Amending Chapter 2.30 [Contracts and Purchasing Procedures] of the Palo Alto Municipal Code to Establish Contracting and Purchasing Procedures (PDF)

Department Head: Molly Stump, City Attorney



NOT YET APPROVED

Ordinance No. \_\_\_\_\_

Ordinance of the Council of the City of Palo Alto Amending Chapter 2.30 of the Palo Alto Municipal Code [Contracts and Purchasing Procedures] to Establish Contracting and Purchasing Procedures and to Define the Contracting Authority of City Officers and Employees

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Chapter 2.30 of the Palo Alto Municipal Code is hereby amended in its entirety to read, as follows:

**PART 1 GENERAL**

**2.30.010 Purposes.**

This chapter defines the contract procurement ~~policies,~~ procedures and requirements for public works construction, general services, professional services, wholesale utility commodities and ~~goods, services, and contracts, the performance for which the city receives substantial value.~~ This chapter establishes the contracting authority of the ~~manager of purchasing and contract administration ("purchasing manager~~ City Manager, the Chief Procurement Officer ("Procurement Officer"), designated employees, ~~the city manager, the city attorney~~ City Manager, City Attorney, and ~~the council~~ City Council. The purpose of this chapter is: to foster and encourage the use of best management practices in contracting; to ensure quality and efficiency ~~while obtaining~~ in the procurement of goods, services, equipment, materials and supplies at the lowest cost commensurate with the quality needed; to provide for a fair and equitable procurement process utilizing standardized solicitation procedures; and to maintain honesty and integrity ~~within~~ in the procurement process.

**2.30.020 Scope.**

~~(a) Contracting Authority. Part three of this chapter establishes the authority of certain officers and employees of the city to award and sign contracts.~~

~~(1) The city manager, purchasing manager, and their authorized delegates and certain designated employees may award and sign contracts within the limits of their authority for: public works construction, general services, professional services, wholesale utility commodities and other energy and energy related contracts, and contracts or purchase orders for goods, materials, equipment and supplies.~~

~~(2) The city attorney and authorized delegates may enter into and sign contracts with the limits of their authority for legal services.~~



~~(3) The city manager may also award or approve, and sign, contracts within the limits of his or her authority to: rent, lease, license, acquire or purchase interests in real property from other parties; rent, lease or license city property; provide municipal services to other public entities; provide for indemnity or risk of loss; and any other contract involving city expenditure of an amount of \$85,000.00 or less.~~

~~(a) Contracts for public works construction, general services and professional services, information technology services, wholesale utility commodities and services and other energy related contracts, and contracts, price quotations or purchase orders for goods, materials, equipment and supplies shall be solicited and awarded pursuant to the procedures contained in this chapter.~~

~~(b) Solicitation and Award Procedures and Requirements. Contracts for public works construction, general services and professional services, wholesale utility commodities and other energy and energy-related contracts, and contracts or purchase orders for goods, materials, equipment and supplies shall be awarded pursuant to the procedures contained in this chapter. The solicitation and award procedures and requirements contained in this chapter shall not apply to the following:~~

~~(b) Neither the solicitation nor award policies, procedures and requirements contained in this chapter shall not apply to the following:~~

(1) Subdivision agreements, improvement agreements, deferred parking agreements, development agreements and other land use contracts entered into between the city and property owners or developers pursuant to other parts of this municipal code;

(2) Franchises and franchise agreements;

(3) Contracts between the city and other public entities and public utilities for ~~city~~the city's provision of services to the other entities and utilities;

(4) Transactions involving the acquisition, assignment and disposal of interests in real property; and

(5) Agreements to provide funds pursuant to the human services resource allocation process or community development block grant program.

### **2.30.030 Council contract policies adopted by resolution.**

The ~~council~~Council may from time to time adopt by resolution policies related to contract solicitation and award procedures and requirements. The policies may include, ~~but shall not be limited to~~without limitation, policies addressing local boycotts, protest procedures, and price preferences for use of recycled or sustainable goods and for local businesses. The policies shall not conflict with, but may be in addition to, any provisions of this chapter. All ~~council~~Council

policies shall be considered and implemented in the solicitation and award of contracts made under this chapter.

### **2.30.040 Centralized purchasing.**

~~Purchasing to be centralized.~~ All acquisitions and purchases shall be made by and through the ~~purchasing manager~~Procurement Officer, except:

- (a) Purchases of goods and services made from petty cash funds pursuant to control procedures approved by the ~~city manager~~City Manager and contained in the administrative policies and procedures manual maintained by the ~~city manager~~City Manager;
- (b) Emergency purchases made in conformance with Federal Emergency Management Agency ("FEMA") Public Assistance Program's procurement orders, or other similar rules, regulations, guidelines and control procedures for cost reimbursement purposes approved by the ~~city manager~~City Manager and contained in the purchasing manual;
- (c) Contracts for legal services;
- (d) Purchases of goods and services and in payment of public works services by city procurement card ("P-card") or other credit card, made in conformance with control procedures approved by the ~~city manager~~City Manager and contained in the purchasing manual;
- (e) Purchases, where the total expenditure by the city does not exceed \$510,000.00, made in conformance with control procedures approved by the ~~city manager~~City Manager and contained in the purchasing manual;~~and~~
- (f) Transactions negotiated under master contracts for wholesale utility commodities and services, as ~~defined~~described in Section 2.30.140 and made in conformance with Section 2.30.340~~;~~;
- (g) Mutual aid agreements; and
- (h) Delegations made according to Section 2.30.230.

### **2.30.050 Purchasing manual.**

The ~~purchasing manager~~Procurement Officer shall prepare a written purchasing manual that implements the requirements of this chapter. The purchasing manual shall establish and describe in detail the contract solicitation and award procedures and requirements that must be followed in making acquisitions, purchases and licenses on behalf of the city. The purchasing manual shall include, among other things, control procedures established under the

authority of this chapter. The ~~city manager~~City Manager shall approve the purchasing manual and any modifications made to the manual from time to time.

**2.30.060 Validity of contracts and purchase orders.**

The city shall not be and is not bound by any contract, price quotation, purchase order, document, or any other ~~agreement~~agreement, unless it is made, in a writing ~~which, and~~ is ~~both~~:

- (a) Approved by the ~~council~~Council and signed by the mayor, vice mayor or other duly authorized officer or employee on behalf of the city as provided in this chapter; and
- (b) Approved as to form by the ~~city attorney~~City Attorney, as ~~provided~~described in Section 2.30.070.

The foregoing requirements shall not apply to authorized purchases with a city P-card or other credit card.

**2.30.070 Approval as to form by the ~~city attorney~~City Attorney.**

The ~~city attorney~~City Attorney shall approve as to form all contracts, price quotations, purchase orders, documents and other agreements. The ~~city attorney~~City Attorney's approval as to form may be performed on a general basis (~~standardized by standard~~ form contract) or on ~~an individual~~a case-by-case basis. No city office or department other than the ~~city attorney~~Office of the City Attorney is authorized to create, modify or approve for use ~~standardized~~standard form contracts.

Each contract, price quotation, purchase order, document or other agreement that is subject to individual review and approval by the City Attorney shall be signed by the ~~city attorney~~City Attorney or designee to signify that it is approved as to form. A ~~standardized~~standard form contract that has been approved by the ~~city attorney~~City Attorney for general use may be used without further approval or signature by the ~~city attorney~~so long as City Attorney, provided the form of contract is not modified.

The ~~purchasing manager~~Procurement Officer in consultation with the ~~city attorney~~City Attorney and the ~~city auditor~~City Auditor shall be responsible for creating a control system for the creation and use of standard form contracts, price quotations, purchase orders, documents and other agreements to be included in the purchasing manual.

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**2.30.080 Interpretive authority.**

The ~~city attorney~~City Attorney shall ~~have~~exercise the sole authority to interpret the provisions of this chapter and to issue ~~rulings or, in writing, interpretive~~ opinions concerning the meaning and application of the provisions of this chapter.

**2.30.90 No conflicting policies or procedures.**

No city ~~committee, office,~~ department, ~~board,~~ commission or other division or body may adopt or create an internal ~~procurement~~ policy or procedure that conflicts with or is ~~not consistent~~ ~~inconsistent~~ with any provision of this chapter.

**PART 2 CONTRACT TYPES**

**2.30.100 Public works contract.**

A public works contract ~~is~~includes a contract paid for, in whole or in part, out of public funds for the construction, alteration, repair, improvement, reconstruction or demolition of any public building, ~~facility,~~ street, sidewalk, utility, park or open space improvement, or other public improvement.

**2.30.110 Contract for goods.**

A contract for goods ~~is~~includes a contract ~~or purchase order~~ for the purchase of supplies, materials or equipment, including, ~~but not limited to~~without limitation, office supplies, janitorial supplies, furnishings, ~~equipment,~~ machinery, tools, vehicles, computer hardware and ~~software and~~ other personal property, materials or goods. A contract for goods includes ~~a~~ blanket purchase order ~~contracts~~contract, where ~~no particular~~a specified quantity of units to be purchased is ~~not~~ established at the time the contract is executed. A blanket purchase order contract must establish a maximum dollar amount ~~of expenditure~~ for the contract and set forth pricing terms for the items to be purchased. A contract for goods may include labor incidental to the purchase of goods, ~~such as~~including any set-up, installation, and testing ~~services.~~

**2.30.120 General services contract.**

A general services contract ~~is~~includes a contract, ~~providing for work, labor or services not requiring specialized experience, knowledge or training~~ with or without the furnishing of ~~goods, materials,~~ supplies or equipment, ~~for work, labor or services~~ including, ~~but not limited to~~without limitation:

- (a) Maintenance of public buildings, streets, parks and playgrounds and other public improvements;
- (b) Repair, modification and maintenance of equipment ~~or other goods~~;

- (c) Licensing, installation and maintenance of or relating to information technology property, goods and services, including, without limitation, computer hardware and software, and including the provision of data storage services, unless the information technology services that would require specialized certification, expertise, knowledge, or training are needed and provided;
- (d) Janitorial services, uniform cleaning, tree trimming, street sweeping, power washing and landscape maintenance;~~and~~
- (e) Leasing ~~of~~for licensing of goods and other personal property for use by the city; ~~and~~
- (f) General class instruction, including, without limitation, recreation class instruction services.

**2.30.130 Professional services contract.**

A professional services contract ~~is~~includes a contract for services which ~~involve~~involves the exercise of professional discretion and independent judgment based on specialized certification, knowledge, expertise or training. These services may include, ~~but are not limited to~~without limitation, those provided by accountants, actuaries, auditors, appraisers, architects, attorneys, engineers, financial advisors, information technology experts, instructors, and environmental and land use planners.

**2.30.140 Contracts for wholesale utility commodities ~~and services.~~**

A contract for wholesale utility commodities ~~is~~and services includes a contract with a private or public supplier ~~of utility commodities and services or other~~ counterparty (in the case of gas or electricity) for the purchase or sale-incidental-to-purchase of water, gas or electricity and all related supplemental or ancillary services, and any other energy ~~or energy~~-related contract, including, without limitation: transmission; renewable energy credits; offsets; allowances; energy procured via a “feed in tariff,” and regulatory compliance instruments. A contract for wholesale utility commodities and services further includes, ~~but is not limited to~~without limitation, a master agreement containing general terms and conditions that provide for the execution of one or more purchase or sale-incidental-to-purchase transactions under the terms of a standard form contract and any exhibit ~~or~~, addendum ~~thereto or confirmation.~~

**2.30.150 Contracts for dark fiber optics licensing services.**

A contract for dark fiber optics licensing services ~~is~~includes a contract with any person, including, without limitation, a telecommunications or non-telecommunications carrier, an internet services provider, a distributed antenna system services provider, or a small cell technology services provider for the licensing of city-owned, ~~city~~-installed and ~~city~~-maintained dark fiber optics and related facilities, if any, located in the public ~~right~~rights-of-way and public

utility easements. A telecommunications carrier includes any person subject to the Telecommunications Act of 1996, as amended. ~~A non-telecommunications carrier includes any person that is not a telecommunications carrier, or other federal law now or hereinafter in effect.~~

### **2.30.160      Emergency contracts.**

A contract for goods or services necessary to protect the public health, safety, and welfare in the event of an emergency. An emergency means and includes an urgent unforeseen event that threatens life, property, or the general public health, safety and welfare, including, without limitation, an emergency declared by the Federal Emergency Management Agency. The City Manager is authorized to conclude an emergency exists without further declaration by the Council.

## **PART 3            CONTRACTING AUTHORITY**

### **2.30.200      Purchasing manager**Procurement officer** contract award authority.**

The ~~purchasing manager~~Procurement Officer may award and sign the following contracts:

(a)      Public works contracts. Public works contracts, where the term does not exceed three years, and the contract price, ~~plus and~~ any price contingency established for change orders, ~~does not exceed \$85,000.00 but excluding sales tax or use tax, do not exceed \$85,000.00 in the first contract year, and do not exceed the sum of \$85,000.00 and any unexpended monies carried forward from a prior contract year, in any subsequent contract year.~~

(b)      Contracts for goods. Contracts to purchase goods, where the term does not exceed three years, and the contract price, ~~plus and~~ any price contingency established for change orders ~~or additional services~~, but excluding sales tax or use tax, ~~does do~~ not exceed \$85,000.00 in the first year, and ~~does do~~ not exceed the sum of \$85,000.00, ~~plus and~~ any unexpended monies carried forward from a prior ~~fiscal~~contract year, in any subsequent contract year.

(c)      General services contracts. General services contracts, where the term does not exceed three years, and the contract price, ~~plus and~~ any price contingency established for change orders or additional services, but excluding sales tax or use tax, ~~does~~ not exceed \$85,000.00 in the first contract year, and ~~es~~ not exceed \$85,000.00 ~~plus and~~ any unexpended monies carried forward from a prior contract year, in any subsequent contract year.

(d)      Professional services contracts. Professional services contracts, where the term does not exceed three years, and the contract price, ~~plus and~~ any price contingency established for ~~change orders or~~ additional services, but excluding sales tax or use tax, ~~does do~~ not exceed the sum of \$85,000.00 in the first contract year, and ~~does do~~ not exceed the sum of \$85,000.00, ~~plus and~~ any unexpended monies carried forward from a prior contract year, in any subsequent contract year.

(e) Software ~~and hardware purchase, licensing and~~ Maintenance Contracts. Notwithstanding ~~subsection~~Subsection 2.30.200(c), the ~~purchasing manager~~Procurement Officer may award and sign contracts other than general services agreements, including, without limitation, vendor-based standard form hardware and software purchase and licensing contracts, for the purchase of hardware and software, the licensing of software, and the maintenance of licensed computer software for any period of time during which the city maintains licenses for the hardware and software, where the term of licensing or maintenance services does not exceed five years and the contract price, excluding sales ~~tax~~ or use tax, does not exceed \$85,000.00 per year in the first contract year and does not exceed the sum of \$85,000.00, ~~plus and~~ any unexpended monies carried forward from a prior ~~year, in any subsequent contract year.~~contract year, in any subsequent contract year. The contracts referred to herein may include contracts for data storage services, which shall be subject to the city's information security policies, terms, conditions and other requirements established by the chief information officer.

### **2.30.210 City manager contract award authority.**

The ~~city manager~~City Manager may award and sign the following contracts:

(a) Public Works Contracts. Public works contracts, where the term does not exceed three years, and the contract price, ~~plus and~~ any price contingency established for change orders, ~~is greater than \$85,000.00, but does not exceed excluding sales tax or use tax, do not exceed~~ \$250,000.00 in the first contract year, and do not exceed the sum of \$250,000.00 and any unexpended monies carried forward from a prior contract year, in any subsequent contract year.

(b) Contracts for Goods. Contracts to purchase goods, where the term does not exceed three years and the contract price, ~~plus and~~ any contingency established for change orders ~~or additional services,~~ but excluding sales ~~tax~~ or use tax, ~~is greater than \$85,000.00 but does do~~ not exceed \$250,000.00 in the first contract year, and ~~does do~~ not exceed the sum of \$250,000.00 ~~plus and~~ any unexpended monies carried forward from a prior contract year, in any subsequent contract year.

(c) General Services Contracts. Contracts ~~to lease~~for services associated with the leasing or licensing of personal property other than hardware or software, where the term ~~is greater than three years but does~~ not ~~more than exceed~~ seven years, and the contract price ~~does and~~ any price contingency established for change orders, but excluding sales tax or use tax, do not exceed \$85,000.00 in the first contract year, and ~~does do~~ not exceed the sum of \$85,000.00 plus any unexpended monies carried forward from a prior contract year, in any subsequent contract year.

(d) Contracts for Studies and Services Related to Private Development. Professional services contracts for: (1) the preparation of environmental assessments or other studies

deemed necessary by the director of planning and community environment for the processing of applications for private development projects, or (2) inspection and plan review services deemed necessary by the director of planning and community environment to evaluate conformity of private development projects with applicable building codes, regardless of the cost or term thereof, provided the applicant for the private development project agrees, in writing, to bear responsibility for the entire contract cost, and the contract does not require the expenditure of city funds in any amount.

(e) Rewards. The ~~city manager~~City Manager may offer and pay rewards, where the amount of the reward does not exceed \$25,000.00, in accordance with the procedures of Section 2.30.800.

(f) Emergency Contracts. ~~An emergency is an urgent unforeseen situation that threatens life, property, or the general public health, safety and welfare. In emergency situations the city manager~~The City Manager is authorized to expend city funds for emergency contracts, as defined in Section 2.30.160, without limitation on the contract cost or amount and without following the contract solicitation and award procedures otherwise required by this chapter. ~~The city manager is authorized to conclude, provided that any procurement of goods and services obtained during an emergency exists without further declaration declared by the council.~~Federal Emergency Management Agency shall comply with applicable FEMA Public Assistance Program's procurement orders, rules, regulations, guidelines and control procedures for cost reimbursement purposes. Expenditures made during an emergency must be reported to the ~~council~~Council at the next regular meeting if approval for such expenditures would otherwise have been made by the ~~council~~Council. The City Manager may issue a verbal report to the Council before a written report is delivered.

(g) Contracts to Rent, lease, License, Acquire, Transfer or Purchase Interests in Real Property from Other Parties. Contracts ~~to rent, lease, license~~for the rental, leasing, licensing, or purchase by installment interests in real property from other parties for a term of seven years or less, where the contract price does not exceed \$85,000.00 per year, ~~or to encumber or transfer any interest in real property from other parties for any term of years.~~ The ~~city manager~~City Manager may enter into and sign ~~contracts~~a contract to acquire or ~~purchases interests~~purchase an interest in real property, where the contract price does not exceed \$85,000.00.

(h) Contracts to ~~R~~rent, ~~L~~lease, or ~~L~~license ~~e~~City Real pProperty to ~~e~~Other ~~p~~Parties. The authority granted under this ~~section~~Section is distinct from the authority of the director of community services to grant individuals and groups permits for the exclusive temporary use of buildings, and facilities located in, and the areas of, city parks and open spaces, as described in Title Chapter 22.04 of this municipal code. ~~or in the park and open space regulations.~~ The ~~city manager~~City Manager may award and sign contracts to rent, lease or license city real property to other parties regardless of the price for a term not exceeding three years. Notwithstanding the preceding sentence, the ~~city manager~~City Manager may enter into and sign contracts ~~to~~



~~rent for the rental~~, lease or ~~license~~licensing of real property at the Cubberley ~~site~~Community Center for terms of up to five years.

(i) Contracts to Provide Municipal Services to other Public Entities. ~~Contracts or Utilities.~~ A contract to provide municipal services and functions to any other ~~local~~ public agency, public utility or other public entity in any amount for a term not exceeding three years; ~~;~~ provided the contract is in compliance with ~~the city council~~ all Council-adopted ~~policy~~policies covering such contracts. The authority granted herein does not include the authority of the City Manager to add permanent employee positions.

(j) Contracts Providing for Indemnity or Risk of Loss. The ~~city manager~~City Manager, with the concurrence and approval of the ~~city attorney~~City Attorney and the insurance risk manager, may enter into and sign contracts, otherwise within the limits of his or her authority under Section 2.08.140 of this municipal code, that provide for the city or its officers or employees to defend, indemnify, or assume the risk of damage, loss, or liability for, or subrogate to any other contracting party respecting claims, demands, actions, losses or liabilities arising from the city's performance or non-performance under the contract.

~~(k) Wholesale Utility Commodities and Services Contracts. Wholesale utility commodities and services contracts, where the term does not exceed five years and the contract price does not exceed \$250,000.00 in any contract year.~~

~~(l) Software and Hardware Purchase, Licensing and Maintenance Contracts. Notwithstanding Subsection 2.30.210(c), the City Manager may award and sign contracts other than general services agreements, including, without limitation, vendor-based standard form hardware and software purchase and licensing contracts, for the purchase of hardware and software, the licensing of software, and the maintenance of hardware and software, where the term of licensing or maintenance services does not exceed seven years and the contract price, excluding sales tax or use tax, does not exceed \$85,000.00 per year in the first contract or fiscal year and does not exceed the sum of \$85,000.00 and any unexpended monies carried forward from a prior fiscal year, in any subsequent contract or fiscal year. The contracts referred to herein may include contracts for data storage services, which shall be subject to the city's information security policies, terms, conditions and other requirements established by the chief information officer.~~

~~(k)(m) Other Contracts. All other types of contracts for which the contract term does not exceed three years and the total expenditure by the city does not exceed \$85,000.00 in the first contract or fiscal year, and does not exceed the sum of \$85,000.00, plus and any unexpended monies carried forward from a prior fiscal year, in any subsequent contract or fiscal year.~~

~~(l) Wholesale utility commodity contracts. Wholesale utility commodity contracts where the term does not exceed three years and the contract price does not exceed \$250,000.00 in any year, including but not limited to gas transportation contracts and power transmission~~

~~contracts with Pacific Gas and Electric Company and any public agency contract as defined in Section 2.30.340(d).~~

### **2.30.220 City attorney contract award authority.**

The ~~city attorney~~City Attorney may award and sign contracts for legal services, including, ~~without limitation, services provided by~~ outside counsel, ~~investigators, consultants~~ and ~~other~~ experts ~~needed~~ for litigation or other administrative and legal proceedings, to be provided to the city for any time period, where the contract price, ~~plus and~~ any contingency established for ~~change orders or~~ additional services, but excluding sales ~~tax~~ or use tax, ~~does do~~ not exceed ~~\$65~~the sum of \$85,000.00 in the first ~~contract or fiscal~~ year, and ~~does do~~ not exceed ~~\$65~~the sum of \$85,000.00, ~~plus and~~ any unexpended monies carried forward from a prior ~~fiscal~~ year, in any subsequent contract ~~or fiscal~~ year. ~~The city attorney~~In addition to the authority described herein, the City Attorney may sign contracts, where the contract price exceeds the amounts set forth above, provided the ~~council~~Council has first approved the use of such services.

### **2.30.225 Wholesale utility commodity transactions.**

The ~~city manager~~City Manager, the director of utilities and ~~their~~ designated employees may enter into and execute transactions for wholesale utilities commodities ~~and services~~ in accordance with the authority, limits and procedures set forth in the Energy Risk Management Policies Guidelines and Procedures Manual, as amended from time to time.

### **2.30.230 Designated employee purchases of \$510,000.00 or less.**

Employees authorized, in writing, by their department ~~head~~heads may award and sign contracts for ~~the purchase of~~ goods and ~~contracts for the procurement of~~ general services, where the contract price does not exceed \$510,000.00 and the ~~contract~~ term ~~is~~does not exceed one year ~~or less~~. All ~~such~~ purchases ~~and procurements~~ shall be ~~made~~ in accordance with the ~~contract~~contracting procedures and requirements contained in the purchasing manual. ~~All department head~~The written authorizations ~~of department~~ heads shall be kept on file ~~in~~by the ~~office of the purchasing manager~~Procurement Officer.

### **2.30.240 Designated ~~employees~~employees' use of petty cash and city credit card.**

Employees authorized in writing by their department ~~head~~heads, including by completed P-card authorization request form, may make purchases ~~by~~ using petty cash or ~~make payments by using~~ a city ~~P-card or other~~ credit card. All ~~such~~ purchases shall be ~~made~~ in accordance with the ~~contract~~contracting procedures and requirements contained in the purchasing manual. ~~All department head~~The written authorizations ~~of department~~ heads shall be kept on file ~~in the office of~~ by the ~~purchasing manager~~Procurement Officer or other designated employee.

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**2.30.250 Council approval ~~/or~~ award of contracts.**

The ~~council~~Council shall approve ~~and~~/or award and the mayor or vice-mayor shall sign all contracts for which no contracting or signature authority has been established under this chapter, ~~except to unless~~ the ~~extent the council~~Council has ~~previously~~ authorized a city officer or employee to negotiate and execute a contract on the city's behalf without the further approval of the ~~council~~Council.

**2.30.260 Contracts with terms exceeding one year - appropriation.**

~~Contracts~~Any contract with a term exceeding one year shall not be approved by any ~~person~~city employee with contracting authority under this chapter or the ~~council~~Council, unless the total amount due and payable by the city over the life of the contract is appropriated at the time the city assumes the obligation to pay, or the total amount due and payable during the first full or partial fiscal year of a multi-fiscal year contract is appropriated and the contract is subject to annual appropriation by the ~~council~~Council of amounts to become due and payable in subsequent fiscal years. The requirements of this ~~section~~Section do not apply to contracts not subject to the debt limit requirements of Article XVI, Section 18 of the California Constitution, as determined by the ~~city attorney~~City Attorney or designee.

**2.30.270 Delegations of authority to contract.**

This ~~section~~Section establishes the exclusive source of authority to delegate any authority to contract granted by this chapter. The authority to delegate contracting authority shall not be implied from any other provision ~~in~~of this municipal code.

(a) ~~Purchasing Manager~~Procurement Officer Delegations. The ~~purchasing manager~~Procurement Officer may delegate the authority granted under Section 2.30.200, as follows: ~~Persons~~a city employee holding the position of contract manager or senior buyer may be authorized to award and sign ~~contracts~~any contract in an amount of \$50,000.00 or less per year with a term not to exceed three years; and a city employee holding the position of buyer may be authorized to award and sign any contract in an amount of \$25,000.00 or less per year with a term not to exceed three years; ~~persons holding the position of buyer may be authorized to award and sign contracts in an amount of \$10,000.00 or less per year with a term not to exceed three years.~~

(b) City Manager Delegations. The ~~city manager~~City Manager may delegate ~~any~~the authority to contract granted to the ~~city manager~~City Manager by this chapter or Section 2.08.140(a)(3) and (5) of this municipal code to ~~the assistant city manager~~an Assistant City Manager and to the ~~director of administrative services~~Director of Administrative Services, and, as to wholesale utility commodities and services contracts and transactions issued thereto ~~and other utility related transaction,~~ the City Manager may delegate to the ~~director~~Director of ~~utilities~~Utilities. If ~~the assistant city manager~~an Assistant City Manager, the ~~director of administrative services~~Director of Administrative Services, or the ~~director~~Director of

~~utilities~~Utilities is unable to exercise the authority delegated to him or her due to legal or physical incapacity, constraint, or unavailability, the ~~city manager~~City Manager may, with the prior concurrence of the ~~city attorney~~City Attorney, delegate the authority to ~~another person any other city employee.~~

(c) City Attorney Delegations. The ~~city attorney~~City Attorney may delegate any authority to contract granted to the ~~city attorney~~City Attorney by this chapter to a ~~person~~city employee holding the position of principal attorney or, if the principal attorney is unavailable, senior assistant city attorney.

(d) Delegations to be Written. All delegations of authority shall be in writing, be dated, and describe the limits of the authority delegated, including but not limited to, without limitation, the type, dollar amount, quantity of goods ~~or,~~ the scope of services or authority, and ~~duration~~the term of the contracts that may be executed under the delegation. All delegations of authority shall be kept on file in by the ~~office of the purchasing manager~~Procurement Officer.

### **2.30.280 Authority to modify and terminate contracts not approved or awarded by the ~~council~~Council.**

(a) Each ~~person~~employee with contracting authority under conferred by this chapter may authorize and sign amendments or change orders to contracts they have he or she awarded under the authority granted in this chapter subject to the following:

(a1) All modifications to contracts, including, but not limited to without limitation, changes to the scope of work, quantity of goods, price or term shall be made in writing, ~~and~~ accomplished in accordance with the terms of the original contract; ~~and~~

(b2) The amendment or change ~~orders~~order to a contract shall not cause the contract, as modified, to exceed the monetary or term limits of that ~~person's~~city employee's contracting authority, as ~~defined~~described in this chapter. ~~Each person, except that the city employee may extend the term of a contract, with no increase in the compensation payable, for a period not to exceed six consecutive months beyond the term limits of his or her contracting authority granted under; and~~

(3) For contracts awarded under an exemption from competitive solicitation pursuant to Section 2.30.360 or Council action, the amendment or change order to a contract shall not cause the contract, as modified, to exceed the scope of the exemption from competitive solicitation.

(b) Each city employee with contacting authority conferred by this chapter ~~to award and sign a contract also has~~shall have the authority to terminate the contract in accordance with the ~~contract~~contract's terms and conditions.

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**2.30.290 Authority to modify contracts awarded by the ~~council~~Council.**

(a) The ~~council~~Council, at the time it awards a contract or authorizes a city ~~official~~officer or employee to award a contract, may also authorize the city ~~official~~officer or employee to execute an amendment or change order to a contract in an amount exceeding the monetary ~~and/or~~ term limits of the ~~official's~~officer or employee's ~~contract~~contracting authority ~~set forth,~~ ~~as described~~ in this chapter. Amendments or change orders made under ~~the~~ authority granted by the ~~council~~Council shall be ~~in writing,~~ accomplished in accordance with the terms of the original contract ~~or the original contract, as amended,~~ and shall not cause the contract, ~~as modified,~~ to exceed the limits of the ~~contracting~~ authority granted by the ~~council~~Council.

(b) The ~~city manager~~City Manager is authorized to enter into and execute ~~for and~~ on behalf of the city, without the prior approval of the ~~council~~Council, any amendment or change order to a contract, ~~previously approved by the council~~Council, that does not increase the compensation ~~for payable under~~ the contract ~~or~~ to accomplish the following:

- (1) To extend the term of the contract for a period not to exceed six consecutive months from the last ~~council~~Council-approved ~~contract~~ expiration date; ~~or~~
- (2) To make minor revisions to the scope of services or ~~delivery~~ schedule; or
- (3) To make clerical corrections.

~~In addition, the city manager~~(c) The City Manager may approve and sign assignments of contracts, ~~including, without limitation, leases and licenses,~~ previously approved by the ~~council~~Council when he or she has determined that the proposed assignee has the ability, capacity, experience and skill and is otherwise qualified to perform the contract.

**2.30.295 Limitations on contract authority; authority otherwise conferred.**

(a) This chapter does not authorize a city officer or employee to award or sign any contract ~~which such that the~~ officer or employee is otherwise prohibited from awarding or signing under the provisions of the city charter, this municipal code, or any other applicable law, or ~~by any ordinance, resolution, minute order or~~ other official action of the ~~council~~Council.

(b) Nothing ~~is in~~ this chapter shall limit any authority conferred by the ~~city council through a resolution delegating authority~~Council to a city officer or employee to negotiate and execute ~~contracts any contract~~ on the ~~city council's~~Council's behalf without the further approval of the ~~city council~~Council.

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## PART 4 COMPETITIVE SOLICITATION REQUIREMENTS

### 2.30.300 Public works contracts.

Public ~~Works Contracts~~ works contracts that are not exempt from ~~thesethe~~ competitive solicitation requirements under Section 2.30.360 or by ~~resolution of the city~~ council action shall be solicited, as follows:

- (a) Public works contracts, providing for an estimated expenditure of \$~~6585~~,000.00 or less, and not otherwise required to be formally bid by the charter, shall be solicited by informal bid in accordance with ~~the provisions of~~ Section 2.30.400.
- (b) Public works contracts, providing for an estimated expenditure exceeding \$~~6585~~,000.00, shall be solicited by formal bid in accordance with ~~the provisions of~~ Section 2.30.420.
- (c) Article VII, Section 6 of the City Charter requires formal bidding ~~only~~ for public works contracts funded by bonded indebtedness of the city or by assessment against particular property in ~~the city. However, the intent of this~~ Palo Alto. Section 2.30.300 ~~is to require~~ requires the formal bidding ~~for of~~ all public works contracts exceeding \$~~6585~~,000.00, unless ~~exempt as an exemption is~~ provided ~~in by~~ Section 2.30.360 or ~~is otherwise authorized by Council~~ Section 2.30.300(d), by resolution of the council as provided in this Section 2.30.300. ~~The council may determine by resolution that a particular public works project may be solicited and contracted for using alternate project delivery methods, including but not limited to design build, construction manager at risk, or competitive negotiation. Any such resolution shall set forth the reasons supporting the use of the alternate project delivery method for the project and describe the solicitation method to be used and the criteria for determining the party to whom the contract should be awarded.~~
- (d) Design-build contracts, to the extent debt financing limitations do not apply, that provide for an expenditure of more than \$85,000.00 shall be solicited by requests for proposals in accordance with Section 2.30.490. Despite any law to the contrary, the design-build method of delivery may be used for any public works contract, including, without limitation, any design-build-operate contracts, where the City Manager determines, in writing, the delivery method will best fulfill the requirements of the public works project.
- (e) The Council may determine that a particular public works project may be solicited and contracted for by using alternate project delivery methods, including, without limitation, construction manager at risk or competitive negotiation. Any Council action authorizing an alternate project delivery method shall set forth the reasons and factual basis supporting the use of the alternate project delivery method for the project and describe the solicitation method to be used and the criteria for determining the successful bidder, to whom the public works contract should be awarded.

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### **2.30.310 Contracts for goods.**

Contracts for goods, not exempt from the competitive solicitation requirements ~~under Section~~under Section 2.30.360 or by Council action, shall be solicited, as follows:

- (a) Contracts for goods, providing for an estimated expenditure by the city of ~~\$2550,000~~ or less, shall be solicited by informal bid in accordance with the provisions of Section 2.30.400; and
- (b) Contracts for goods, providing for an estimated expenditure by the city exceeding ~~\$2550,000~~, shall be solicited by formal bid in accordance with the provision of Section 2.30.420.

### **2.30.320 General services contracts.**

General services contracts, not exempt from the competitive solicitation requirements under Section 2.30.360 or by Council action, shall be solicited, as follows:

- (a) General services contracts, providing for an estimated expenditure by the city ~~of \$25~~not exceeding \$50,000.00 ~~or less~~, shall be solicited by informal bid or informal proposal in accordance with ~~the provisions of~~ Section 2.30.400.
- (b) General services contracts, providing for an estimated expenditure by the city exceeding ~~\$2550,000.00~~ shall be solicited by formal bid in accordance with ~~the provisions of~~ Section 2.30.420 or by formal request for proposal in accordance with ~~the provisions of~~ Section 2.30.410.
- (c) ~~It is expected that most general services contracts will be solicited using the informal or formal bid procedures. However, where the city has defined a situation for which it seeks a solution,~~The Procurement Officer shall determine, after consideration of whether the needs of the city or the circumstances require that a contract ~~awards should~~ be awarded based on significant factors in addition to price, ~~the purchasing manager may determine that a whether the services subject to a general services contract shall be solicited by bid or~~ request for ~~formal or informal~~ proposals ~~shall be used to solicit the contract.~~

### **2.30.330 Professional services contracts.**

Professional services contracts, not exempt from the competitive solicitation requirements under ~~section~~Section 2.30.360 or by Council action, shall be solicited, as follows:

- (a) Professional services contracts, providing for an estimated expenditure by the city ~~greater than \$25~~not exceeding \$85,000.00 ~~and up to and including \$65,000.00~~, shall be solicited by informal request for proposal in accordance with ~~section~~Section 2.30.400.



(b) Professional services contracts, providing for an estimated expenditure by the city exceeding \$~~65~~85,000, shall be solicited by formal request for proposal in accordance with ~~the provisions of section~~Section 2.30.410.

(c) In lieu of the solicitation requirements set forth in ~~subsections~~Subsections (a) and (b), professional services contracts in any amount may be awarded from a list of qualified professionals to be created and maintained by the ~~Purchasing Manager~~Procurement Officer, so long as the list is created and the award of contract to an entity on the list is in compliance with procedures contained in the purchasing manual.

### **2.30.340 Contracts for wholesale utility commodities and services.**

#### (a) Solicitation of Contracts

(1) Contracts for the purchase or sale-incidental-to-purchase of wholesale utility commodities and services, providing for an estimated expenditure ~~of \$65~~not exceeding \$85,000.00 ~~or less~~, shall be solicited by informal bid or informal request for proposal in accordance with ~~the provisions of~~ Section 2.30.400. Contracts for ~~at~~the purchase or sale-incidental-to-purchase of wholesale utility commodities and services, providing for an estimated expenditure ~~of \$65~~exceeding \$85,000.00 ~~or more~~, shall be solicited by formal bid, formal request for proposal or combination thereof, in accordance with ~~the provisions of Sections~~Section 2.30.410, 2.30.420 or 2.30.430 or through solicitation of counterparties enabled to transact under a Council-approved master agreement in accordance with Section 2.30.340(a)(3).

~~(2) — Master contracts containing general terms and conditions for wholesale utility commodities that provide for the execution of one or more individual water, gas or electricity purchase and sale incidental to purchase transactions under the terms of the master contract, shall be solicited by formal bid, formal request for proposals, or combination thereof, in accordance with the provisions of Sections 2.30.420, 2.30.430 or 2.30.440.~~

~~It is expected that the city will enter into several~~(2) Council shall pre-approve standard form master contracts with different counterparties for the purchase agreement templates for wholesale utility commodities and services and sale incidental to purchase of gas and electricity utility commodities at wholesale. such agreement shall be made publicly available.

~~(3) — Whenever the city desires to execute an individual purchase or sale incidental to purchase transaction~~award a contract under a Council-approved master agreement for gas or electricitywholesale utility commodities at wholesale and services, any counterparty ~~who executes~~which has executed a Council-approved master ~~contract~~agreement with the city, and ~~who~~ is otherwise eligible to bid for or propose in regard to the particular transaction in accordance with the ~~city's~~ Energy Risk Management ~~Policies~~Policy, Guidelines, and Procedures Manual ~~shall, may~~ be solicited, in writing ~~(by mail, facsimile or electronic mail), and shall be eligible to tender a bid or proposal on the transaction.~~ The counterparty offering the price and



other required product and performance terms and conditions for wholesale utility commodities and services deemed to be the most advantageous to the city shall be eligible for an award of ~~a~~ contract ~~for~~ respecting the transaction.

(b) Basic Delegation of Master Agreement Terms and Conditions. For ~~contracts~~ master agreements and other contracts for wholesale utility commodities and services not otherwise within the ~~city manager's~~ City Manager's authority to award, the ~~council~~ Council may ~~by resolution~~ authorize the ~~city manager~~ City Manager to award and sign ~~a contract~~ contracts with a qualified, eligible ~~counter party for the purchase and incidental sale of wholesale utility commodities~~ counterparties. This authority shall extend to ~~contracts awarded under a city "feed-in tariff" energy program entitled "Clean Local Energy Accessible Now Program" or any similarly entitled program.~~ The ~~resolution~~ Council authorization shall specify the limits of the authority delegated, including the maximum ~~dollar amount~~ expenditure limit of the authority and the ~~duration~~ terms of the contracts and/or transactions that may be executed under the delegation of authority.

(1) Electricity master agreements. Any ~~resolution~~ Council action delegating authority to the ~~city manager~~ City Manager to contract for electricity commodities and services shall specify generally at least the following terms and conditions: quantity and the description of energy and energy services to be procured, including, ~~but not limited to, without limitation:~~ on-peak and off-peak energy and ancillary services; term, specifying a not-to-exceed period of time; period of delivery denoted in years or months or years and months; and point of delivery ~~or the locus on the interstate transmission system at which transfer of title is made.~~

(2) Gas master agreements. Any ~~resolution~~ Council action delegating ~~the~~ authority to contract for gas commodities and services shall specify generally at least the following terms and conditions: quantity and the description of gas services to be procured, including, ~~but not limited to, without limitation:~~ scheduled gas and gas transportation services; term, specifying a not-to-exceed period of time); ~~;~~ period of delivery denoted in years or months or years and months; and point of delivery of the locus on the interstate transmission system at which transfer of title is made.

(c) Required Contract Terms for Gas Wholesale Utilities Commodities and Electric procurement Services Contracts. The city shall use ~~standardized~~ standard form contracts ~~for the procurement of gas and electricity~~, as practicable, including, ~~but not limited to~~ without limitation, form contracts ~~created and~~ copyrighted by the Edison Electric Institute, the Western States Power Pool Inc., ~~and Inc.~~, the North American Energy Standards Board, Inc., and contracts used by ~~the~~ city's "feed-in tariff" energy program. Unless waived by ~~resolution of the council~~ Council action, a contract for ~~procurement of~~ gas or electricity ~~and wholesale utility commodities and services, and~~ any amendment to ~~the~~ that contract, shall not be awarded by the city and executed by the duly authorized representatives of the city, unless the following terms and conditions are required: (1) governing law shall be the laws of the state of California; (2) choice of venue shall be the county of Santa Clara; and (3) a counterparty shall obtain and maintain during the term of the contract the minimum credit rating established as of the date

of award of contract of not less than a BBB- credit rating established by Standard & Poors and a Baa3 credit rating established by Moody's Investors Services, ~~but the minimum credit rating requirement shall apply to a counterparty which is awarded a contract under a city "feed-in tariff" energy program only to the extent the counterparty sells a quantity of energy in excess of the threshold established by that program.~~

(d) Public Agency Contracts. The city may procure and make sales-incidental-to-purchase of wholesale utility commodities and services from energy ~~counter parties~~counterparties through public agencies, including ~~but not limited to,~~ without limitation, the Northern California Power Agency and the federal Western Area Power Administration.

(1) The city may engage the public agency to act as the agent of the ~~City~~city to procure wholesale utility commodities and services, provided that the public agency conducts a competitive selection process and awards one or more contracts in substantial compliance with the contract procurement procedures and requirements of this chapter, ~~—,~~ unless such substantial compliance is waived by the Council action accompanied by findings in support of the waiver.

(2) The ~~city attorney~~City Attorney shall determine whether the contract procurement process of the public agency substantially complies with the provisions of this chapter. For the purposes of this Section 2.30.340, the public ~~agency~~agency's competitive selection process, if any, shall be deemed to substantially comply if the public agency ~~(1)~~:

a. \_\_\_\_\_ conducts a formal or an informal bidding or proposal process to solicit bids or proposals for the provision of wholesale utility commodities, ~~(2) and services;~~

b. \_\_\_\_\_ executes a ~~standardized~~standard form contract, including, without limitation, a form contract ~~created and~~ copyrighted by the Edison Electric Institute ~~and,~~ the Western States Power Pool, Inc. Inc., or ~~equivalent, as determined by the city attorney, and (3) North American Energy Standards Board, Inc.; and~~

c. \_\_\_\_\_ unless waived by ~~resolution of the city council~~Council, the ~~standardized~~standard form contract requires or specifies ~~(a)~~:

1. \_\_\_\_\_ the governing law shall be the ~~laws~~law of the state of California, ~~(b)~~;

2. \_\_\_\_\_ the choice of venue shall be identified according to either the county in which such public agency does business, or the preference for federal or ~~sate~~state court jurisdiction over the public agency ~~and,~~ the energy counter-~~party,~~ and the contract; and (c)

3. \_\_\_\_\_ the energy ~~counterparty~~counterparty shall obtain and maintain during the term of the contract the minimum credit rating established as of the date of award of contract of not less than a BBB- credit rating established by Standard & Poors and a Baa3 credit rating established by Moody's Investors Services.

(e) Energy Risk Management ~~Policies~~Policy, Guidelines and Procedures Manual. All procurement of ~~gas and electricity by contract for~~ wholesale utility commodities and services,

shall conform to the requirements of the Energy Risk Management ~~Policies~~Policy, Guidelines and Procedures Manual.

### **2.30.350 Contract splitting prohibited.**

It is unlawful to ~~split~~'split' or separate into smaller portions, work orders, projects, purchases, contracts, or public works projects for the purpose of evading the competitive solicitation requirements or contract authority limitations of this chapter, including, without limitation, the ~~splitting~~'splitting' or division of work or services between or among offices, departments or divisions or other organizational units of the city.

### **2.30.360 Exemptions from competitive solicitation requirements.**

The following are exemptions from the informal and formal competitive solicitation requirements of this chapter. ~~It is expected that the, except as otherwise provided. These~~ exemptions will be narrowly interpreted and applied. The department requesting an exemption shall provide all relevant information supporting the application of the exemption to the ~~purchasing manager~~Procurement Officer. Based ~~on~~upon this information, the ~~purchasing manager~~Procurement Officer shall make a recommendation to the ~~city manager~~City Manager and the ~~city manager~~City Manager shall determine whether an exemption from the competitive solicitation requirements applies. Nothing herein is intended to preclude the use of competitive solicitations ~~where possible, as practicable~~.

~~(a) — Emergency contracts as defined in section 2.30.210(f).~~

~~(a) — Emergency Contracts, provided that any procurement of goods and services obtained during an emergency declared by the Federal Emergency Management Agency shall comply with applicable FEMA Public Assistance Program's orders, rules, regulations, guidelines and control procedures for cost reimbursement purposes.~~

~~(b) — Situations where~~Whenever solicitations of bids or proposals would for any reason be ~~impractical~~impracticable, unavailing or impossible, provided that in the case of a public works project, the project is not otherwise required by the charter to be formally bid. These situations are those where solicitations of bids or proposals would not be useful or produce any operational or financial advantage for the city. Situations where solicitations of bids or proposals would be ~~impractical~~impracticable, unavailing or impossible, include, ~~but are not limited to~~without limitation, the following:

(1) ~~Specifications~~Contract specifications cannot be drawn in a way that would enable more than one vendor, consultant or contractor to meet them;

(2) Due to circumstances beyond the control of the city, the time necessary to use the competitive solicitation process, procedures and requirements would result in a substantial economic loss to the city, or the substantial interference with a required city operation; ~~and~~or

(3) Special conditions attached to a grant, donation or gift requires the use of particular goods and/or services.

All requests for exemptions under this subsection shall be supported by written documentation (facsimile or electronic mail may be used), approved by the department head and ~~forwarded to purchasing~~ the Procurement Officer.

(c) Where competitive bids or requests for proposals have been solicited and no bid or proposal has been received, ~~or~~ where no bid or proposal meeting the requirements of the invitation to bid or request for proposal has been received, provided that, in the case of a public works project, the project is not otherwise required by the charter to be formally bid.

(d) Contracts for goods, wholesale commodities and ~~related~~ services, general services or professional services available from only one source, ~~where~~ the Procurement Officer has determined, in writing, there is no adequate substitute or equivalent provider. Examples of acceptable sole source acquisitions or purchases ~~are~~ may include, without limitation: equipment or services for equipment, for which there is no comparable competitive product, ~~or service~~ except that provided by the equipment manufacturer, distributor or dealer; proprietary products sold directly ~~from~~ by the manufacturer; ~~a~~ a component or replacement part, for which there is no commercially available substitute and which can be obtained only from the manufacturer, ~~items; goods~~ where there is only one authorized distributor in the area; ~~and~~ items/goods where compatibility with items/goods in use by the city is an overriding consideration. All requests for sole source acquisitions or purchases shall be supported by written documentation (facsimile or electronic mail may be used), approved by the office or department head, ~~and~~ and forwarded to ~~purchasing~~ the Procurement Officer.

(e) Contracts for goods where, pursuant to Section 2.30.900, the ~~city manager~~ City Manager has determined that standardization of the supplies, materials or equipment is permissible.

(f) Placement of insurance coverage and surety bonds.

(g) Legal services contracts, including ~~-,~~ without limitation, the services of outside counsel, consultants and other experts needed for ~~litigation or~~ litigation, administrative or other legal proceedings.

(h) Professional services contracts for private development-~~related~~ studies and services ~~when~~ whenever the services are funded wholly by private developers.

(i) Professional services contracts, ~~where~~ where the estimated total expenditure by the city, regardless of term, does not exceed \$~~2550~~ 2550,000.00.

(j) Cooperative purchases ~~where the city participates,~~ with one or more other ~~governmental or~~ public agencies ~~in~~ or through a cooperative ~~agreement~~ purchasing agency,

provided ~~the solicitation process used is~~ the services are solicited using methods substantially similar to those required by this chapter, as determined by the Procurement Officer; ~~or~~.

(k) The use of another governmental or public agency's contract or substantially the same contract terms provided: (i) the agency ~~used~~ uses a solicitation method substantially similar to the method required by this chapter; (ii) the contract ~~allows other agencies to utilize or the vendor authorizes the city to utilize;~~ (iii) ~~the contract~~ is consistent with the requirements specified in this municipal code; and ~~(iv) there is an~~ (iii) the Procurement Officer determines that the city will realize overall value to ~~the city's~~ utilizing the other agency's contract or contract ~~versus~~ terms compared to the city performing ~~it's~~ its own solicitation.

(l) Contracts with , or solicited on the city's behalf by, Northern California Power Agency, Transmission Agency of Northern California, and Western Area Power Administration to procure wholesale utility commodities and ~~related~~ services that meet the requirements of Section 2.30.340 (d) or 2.30.340(k).

(m) Contracts with Pacific Gas and Electric Company and the California Independent System Operator Corporation for energy transmission services to the extent necessary and expedient to provide for the general health, safety and welfare of ~~its citizens~~ the city's utility customers.

(n) Contracts with any public agency or governmental body to construct a public work, where the Procurement Officer determines the public agency or governmental body has used methods similar to those required by this chapter to contract for the public work.

(o) Contracts with any public utility holding a certificate of public convenience and necessity or any entity holding a cable communications system service or video service franchise pursuant to chapter 2.10 of this municipal code to construct a public ~~work~~ works, where such ~~work~~ works involves property of such public utility or cable communications system service or video service franchisee and is otherwise of direct concern to both the city and such public utility or cable communications system service or video service franchisee, provided that the project is not otherwise required by the charter to be formally bid.

(p) Contracts with private developers to construct public improvements in connection with their development ~~project~~ projects, even if the city contributes funds to the improvement project, provided that the ~~project is~~ projects are not otherwise required by the charter to be formally bid.

(q) Projects, where the public work is performed by the city with its own employees.

(r) Contracts, where the estimated total expenditure by the ~~City~~ city does not exceed \$510,000.00.

(s) Contracts with entities to procure at wholesale prices utility commodities and ~~related~~ services under a city “feed-in tariff” energy program that meets the requirements of Section 2.30.340(c).

## **PART 5 COMPETITIVE SOLICITATION PROCEDURES**

### **2.30.400 Informal bids or proposals.**

(a) Informal bids or proposals may be solicited by any reasonable means, including, ~~but not limited to without limitation~~, mail, telephone, ~~fax~~facsimile transmission, e-mail or posting to the city’s web site. Quotations shall be solicited from a minimum of three bidders or proposers; ~~however~~, if quotations from three bidders or proposers cannot be obtained by the exercise of due diligence, quotations shall be solicited from ~~as many under~~less than three ~~as can be obtained bidders or proposers, as practicable~~. The ~~purchasing manager~~Procurement Officer shall maintain a record of all informal bids and informal proposals received by the city for a period of time in compliance with ~~state~~California law and the city's records retention schedule.

(b) Informal bids shall be awarded to the lowest responsive and responsible ~~bidder~~bidders, as ~~defined~~described in Section 2.30.440.

(c) Informal proposals shall be awarded on the basis of ~~proposal deemed most advantageous to the city. The~~the proposal deemed most advantageous to the city ~~shall be determined~~ based on the factors set forth in Section 2.30.410(e).

(d) If a contract, price quotation, or purchase order is made or awarded to other than the consultant or contractor submitting the lowest price in its quotation, bid or proposal, ~~written reasons for the award decision~~Procurement Officer shall ~~be prepared and shall be kept as part of~~prepare the record of the transaction, in writing, containing the reasons or grounds for the decision to award the contract.

### **2.30.410 Formal request for proposals.**

(a) Advertising. Contracts, that ~~may~~must be solicited by formal request for proposals shall be solicited by ~~posting at the civic center or~~notice requesting proposals by advertising ~~at least once in a daily newspaper of general circulation in~~the notices requesting proposals on the ~~city, not less~~City’s website for no fewer than five days prior to the date set for ~~receiving proposals. In addition to posting or advertising, contracts may be solicited by posting~~ the city web site. Wheresubmission of proposals. As practicable, proposals shall be solicited from a minimum of three proposers.

(b) Proposal submittal. The request for proposals shall specify the date, time and place for submitting proposals and describe the scope and time frame for the delivery of ~~what is the~~proposed solution requested, the information to be submitted by the proposer, and the criteria for evaluating the proposal.

- (c) Proposal opening. Proposals received after the specified date and time shall not be accepted and shall be returned unopened unless opening is necessary for identification purposes.
- (d) Award. The contract shall be ~~made or~~ awarded on the basis of the proposal deemed most advantageous to the city.
- (e) The following factors shall be considered in determining the proposal deemed most advantageous to the city:
- (1) Quality of the proposal;
  - (2) Quality, performance and effectiveness of the solution, goods and/or services to be provided by the consultant or the contractor;
  - (3) ~~Contractor's~~Consultant or contractor's experience, including the experience of staff to be assigned to the project, with engagements of similar scope and complexity;
  - (4) Cost to the city;
  - (5) ~~Contractor's~~ Consultant or contractor's financial condition and stability;
  - (6) ~~Contractor's~~Consultant or contractor's ability to perform the contract within the time specified;
  - (7) ~~Contractor's~~Consultant or contractor's prior record of performance with the city or ~~others~~other local, county or state agency;
  - (8) ~~Contractor's~~Consultant or contractor's ability to provide in the future any maintenance, repairs, parts and/or services;
  - (9) ~~Contractor's~~Consultant or contractor's compliance with applicable laws, regulations, policies (including city ~~council~~Council policies), guidelines and orders governing prior or existing contracts performed by the consultant or contractor; and
  - (10) Any other factor the city deems relevant as specified in the request for proposals.

### **2.30.420 Formal bids – notice, submittal, opening.**

- (a) ~~Advertisement.~~Advertising. Contracts ~~required to that must~~ be solicited by formal bid shall be solicited by ~~posting~~ notices inviting bids ~~at the civic center or~~ by advertising the notices inviting bids ~~at least once in a daily newspaper of general circulation in the city, not less on the City's website for no fewer~~ than five days prior to the date set for receiving bids. ~~In addition to~~



~~posting or advertising, contracts may be solicited by posting on the city web site. Where~~As practicable, bids shall be solicited from a minimum of three bidders.

(b) Notice. The notices inviting bids shall generally describe the ~~things goods and/or~~ services to be purchased or ~~acquired or~~ the public ~~workworks~~ to be constructed, identify the place where the bid proposal form, specifications and other contract documents may be obtained, ~~and~~ specify the date ~~and~~ time ~~and place~~ when and ~~place~~ where bids will be opened.

(c) Bid submittal. All bids shall be sealed. All bids shall be submitted at the place, ~~and~~ at or before the date and time, ~~and~~ specified in the notice inviting bids. Bids received after the specified date and time shall not be accepted and shall be returned to the bidder unopened unless ~~the~~ opening is necessary for identification purposes.

(d) Bid opening. Bids timely received shall be opened in public, at the ~~date,~~ time and place specified in the notice inviting bids, and the aggregate bid of each bidder ~~declared shall be~~ announced.

#### **2.30.430 Combined proposals and bids.**

(a) Nothing in Part ~~five~~5 of this chapter shall prohibit the city from conducting a competitive solicitation process which combines the elements of the request for proposals and invitation for bids processes in a single process in order to award a contract for wholesale utility commodities ~~purchases~~ and ~~sales~~ services or design-build contracts.

#### **2.30.440 Determination of lowest responsive/responsible bidder.**

The awarding authority shall award contracts required to be formally bid to the lowest responsive and responsible bidder. As used in this chapter “awarding authority” means the city officer or employee with ~~the~~ authority to award and sign the particular contract, as provided in part three of this chapter, or the ~~council~~ Council.

(a) Low bid. The low bid shall be the bid offering the lowest total cost to the city.

(1) The determination of lowest total cost shall be made after applying relevant policies adopted by resolution of the ~~council~~ Council that may provide for a price preference.

(2) Where ‘add ~~alternate~~ alternate’ or ‘deduct ~~alternate~~ alternate’ items are included in the specifications, ~~the~~ the determination of lowest total cost shall be made in accordance with the procedure for considering the ‘add ~~alternate~~ alternate’ and ‘deduct ~~alternate~~ alternate’ items as set forth in the bid specifications.

(3) The determination of lowest total cost may include the effect of factors such as trade discounts, delivery costs and life cycle costs, ~~when~~ these are included in the specifications.



(b) Responsive bidder. A responsive bidder is a bidder determined by the awarding authority to have submitted a bid that conforms in all material respects to the requirements of the bid documents.

(c) Responsible bidder. A responsible bidder is a bidder determined by the awarding authority:

(1) To have the ability, capacity, experience, and skill to perform the work, or provide the goods and/or services in accordance with the bid specifications;

(2) To have the ability to perform the contract within the time specified;

(3) To have the equipment, facilities and resources of such capacity and location to enable the bidder to perform the contract;

(4) To have the ability to provide, as required, future maintenance, repair, parts and service for the use of goods purchased;

(5) To have a record of satisfactory or better performance under prior contracts with the city or others; and

(6) To have complied with applicable laws, regulations, policies (including city ~~council~~Council policies), guidelines and orders governing prior or existing contracts performed by the bidder.

### **2.30.450 Tie bids.**

If an identical price is received from two or more responsive and responsible bidders, the awarding authority may determine the successful bidder by the casting of lots ~~within public and in the presence of the~~ tie bidders ~~in public on and~~, at a date, time and place set by the awarding authority. The awarding authority shall ~~notify~~provide notice to the tie bidders of the date, time and place for casting lots by e-mail, phone or facsimile transmission.

### **2.30.460 Correction or withdrawal of bids or proposals.**

(a) Before date and time for receipt of bids or proposals. Bids or proposals that contain mistakes discovered by a bidder or proposer before the date and time for receipt of bids or proposals may be modified or withdrawn by written notice to the ~~person~~employee designated for the receipt of bids or proposals received prior to the deadline for receipt of bids or proposals. Any modification shall be ~~submitted~~filed under seal with the employee designated for receipt of bids and proposals.

(b) After date and time for receipt of bids or proposals. A bidder or proposer may not change its bid or proposal after the date and time set for the receipt of bids or proposals,

except that the bidder or proposer may seek the city's consent to the substitution of a subcontractor where the bidder can demonstrate in accordance with ~~applicable provisions of state law~~ California law, including Section 4107.5 of the California Public Contract Code, that the name of the a substituted subcontractor was listed as a result of an inadvertent clerical error.

(c) Withdrawal of bids or proposals. A bidder or proposer alleging a mistake in a bid ~~or proposal~~ proposal may be permitted to withdraw its bid or proposal only in conformance with ~~applicable state~~ California law, including Section 5100, et seq., of the California Public Contract Code.

### **2.30.470 Cancellation of solicitations – Rejections of bids/proposals.**

(a) Cancellation of solicitations. The ~~purchasing manager~~ Procurement Officer may cancel ~~the~~ solicitations for proposals or bids ~~process~~ process before the date and time set for ~~the~~ receipt of proposals or bids upon a written determination at the time the notice of cancelation is provided that such action is in the city's best interest for reasons, including, ~~but not limited to~~ without limitation, any of the following:

(1) The city ~~no longer requires~~ does not then require the construction of the public works project, ~~or the provision of~~ goods and/or services;

(2) The city ~~no longer can reasonably expect to~~ will not then appropriate fund for the public works project, goods and/or services; or

(3) Proposed amendments to the solicitation document would ~~be of such magnitude that make~~ a new solicitation ~~is~~ desirable and necessary.

(b) Rejection of bids ~~or proposals~~. The awarding authority may reject any or all bids or proposals. If all bids or proposals are rejected, the awarding authority ~~has~~ may exercise the discretion to resolicit for bids or proposals. In the case of a bid, if the awarding ~~body~~ authority is the ~~city council~~ Council and all bids ~~are to~~ would be rejected due to ~~excessive cost, prices or costs that exceed~~ the ~~purchasing manager shall have~~ city's costs estimate, the Procurement Officer may exercise the discretion to reject all bids and to ~~resolicit~~ re-solicit bids.

### **2.30.480 Waiver of minor irregularities, defects and informalities.**

The awarding authority may exercise its discretion to waive, minor irregularities, defects or informalities in the bids or proposals, ~~so long as provided~~ the waiver would not affect the amount of the bid or proposal or proposal or give a competitive advantage upon the bidder or proposer an advantage over others.

### 2.30.490 Design-build contract procurement procedures

This Section establishes the exclusive procedures for the award of wholly or partially city-funded design-build contracts, to the extent debt financing limitations do not apply, and

supersedes in their entirety all statutory provisions pertaining to local agency design-build construction, as set forth in chapter 4 of part 3 of division 2 of the California Public Contract Code, Section 22160 et seq., as amended from time to time.

(a) Bridging documents shall be prepared by a qualified, licensed design professional, identifying the scope and estimated price or costs of the public works project and including additional requirements or information necessary to adequately describe the city's needs for the project. These may include, without limitation, the size, type, and desired design character of the project, the performance specifications covering the quality of supplies, materials, equipment, and workmanship, or preliminary plans or building layout plans. The design professional, which prepares the bridging documents, may not subsequently submit or participate in the proposal submitted for an award of design-build contract, or have any financial interest in any design-build entity or team which submits a design-build contract construction proposal or which provides the design-build services.

(b) A formal request for proposals may be posted and advertised in manner provided for in Section 2.30.410(a), or by targeted distribution to three or more design-build entities or teams which the Procurement Officer determines possesses demonstrated skills, experience, and financial qualifications to provide the required design-build services.

(c) A formal request for proposals shall comply with the requirements of Section 2.30.140(a) and shall include: the bridging documents prepared according to Section 2.30.490(a); a request for qualifications; and the design-build contract documents approved by the City Attorney as required by this chapter.

(d) Design-build entities and teams may be required to pre-qualify in order to be eligible to submit a proposal for the design-build project by responding to the request for qualifications in advance of the date set for the submission of proposals. The Procurement Officer may determine and will provide notice that the statement of qualifications may be submitted concurrently with the proposals.

(e) The design-build contract may be awarded to the responsive, responsible design-build entity or team on the basis of either the lowest lump-sum price or the 'best value' provided, as defined in the formal request for proposals. A design-build contract that is awarded on the 'best value' basis will be evaluated based solely on the selection criteria and procedures set forth in the formal request for proposals.

(f) The design-build contract shall require the design-build entity or team and its subcontractors of every tier to comply with the requirements of Section 22164(c) of the California Public Contract Code, as amended.

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## PART 6 CONTRACT TERMS AND CONDITIONS

### 2.30.500 Bid security, bonds and insurance.

(a) When required. The ~~purchasing manager shall have the authority~~ Procurement Officer is authorized to require bid security, ~~and surety bonds, including~~ payment ~~(labor and materials)~~ and performance ~~bonds~~ bonds, as well as specific types and amounts of insurance coverage in connection with contracts for public works, goods, general services, professional services, and wholesale utility commodities and services to the extent required by ~~state~~ California or federal law, or this chapter, or upon a determination that it is in the best interest of the city to do so by the City Manager or, if the City Manager does not make a determination, by the Procurement Officer in consultation with the City Attorney.

(b) Bid security. Bid security shall be submitted with the bid and shall be in the form of a certified check, cashier's check or surety bond. Any surety bond shall be issued by an admitted surety authorized to conduct business in the state of California and shall be in a form acceptable to the ~~city attorney~~ City Attorney and as specified in the solicitation for bids document. If a bidder fails to submit the required bid security with the bid, the bid shall be deemed nonresponsive. After bids are opened, bid security ~~is~~ shall be irrevocable for the period specified in the invitation for bids. If the successful bidder fails to execute the contract within the time specified, the total amount of the bid security shall be forfeited to the city. The bid security of an unsuccessful bidder shall be returned to the bidder by no later than sixty ~~calendar~~ days from the date of contract award. Bids for public works projects ~~greater than~~ \$65,000.00 costing in excess of \$85,000.00 shall require the submission of bid security in an amount equal to at least ten percent of the bid. On public works projects costing \$85,000.00 or less than or equal to \$65,000.00, and all other procurements of goods and services ~~the purchasing officer~~ without regard to price, the Procurement Officer is authorized to determine if whether any bid security ~~is needed~~ in any amount shall be required on a project-by-project basis.

(c) ~~Payment and performance security. Surety bonds.~~ Payment and performance security shall be ~~in required of contractors and take~~ the form of surety bonds acceptable to the ~~city attorney~~ City Attorney and issued by an admitted surety authorized to conduct business in the state of California. Invitations for bids for public works projects ~~greater than costing in excess of~~ \$25,000.00 shall require the submission of payment bond and performance ~~bonds~~ bond, each in an amount equal to one hundred percent of the contract price at the time the contract is executed. Where the contract is with a governmental agency or a public utility the requirement for performance and payment security may be waived, in writing, by the ~~purchasing manager~~ Procurement Officer if the contracting governmental agency or public utility agrees, in writing, that, to the extent all work is not to be done by its own employees, it will require any and all contractors it awards contracts for the performance of any of the work to provide, before commencement of the work, the payment bond and performance ~~bonds~~ bond, on terms and conditions it establishes, which is satisfactory to the ~~city~~ Procurement Officer and complying with the provisions of ~~the applicable~~ California Civil Code law. Payment bond and

performance ~~bonds~~bond for public works projects shall be extended in the full amount of the contract for a one-year warranty period beyond the date of acceptance of the ~~work~~public works project by the city. On public work projects costing \$25,000.00 or less than or equal to \$25,000.00, and on all acquisitions of goods and services without regard to price, the ~~purchasing manager~~Procurement Officer is authorized to determine ~~if whether any~~ payment and performance security ~~is needed~~in any amount shall be required on a case-by-case basis.

(d) Form of bonds. The only bonds acceptable to the city shall be those executed on forms approved by the ~~city attorney~~City Attorney and as specified in the ~~solicitation~~invitation for bids or request for proposals.

(e) Insurance. The insurance risk manager acting on behalf of the City Manager by the authority conferred by Section 2.28.170 of this municipal code shall determine the insurance requirements to be imposed upon any third party doing business with the city pursuant to this chapter. The successful bidder or proposer shall submit certificates of insurance and endorsement forms, as applicable, as evidence that it has ~~the type~~obtained and ~~amount~~will maintain the types and amounts of insurance ~~coverage~~coverages required by the bid or proposal solicitation documents. Such evidence shall be submitted to the ~~purchasing manager~~Procurement Officer promptly upon request and shall be issued by an admitted insurer authorized to ~~operate~~conduct business in the state of California and is acceptable to the city. The insurance risk manager may waive the insurance requirement ~~when~~where the contract is an intergovernmental agency contract or a city-public utility contract, and the governmental, public or quasi-public agency or the public utility, to whom the contract is awarded, agrees, in writing, that it will ~~have all the work~~ obtain and maintain and provide evidence of the required insurance coverage before the commencement of ~~the work~~, naming the city, its officials, officers, ~~agents and~~ employees and agents as additional insureds to such policy.

### **2.30.510 Nondiscrimination.**

All contracts costing in excess of \$~~50~~10,000.00 shall include a certification of nondiscrimination that in the performance of the contract, with the city, the consultant or the contractor will not discriminate in the employment of any person ~~because of~~due to that person's race, skin color, gender, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, pregnancy, genetic information or condition, housing status, marital status, familial status, weight or height of such person.

Any consultant or contractor who is found in violation of ~~the nondiscrimination provisions of the State of California Fair Employment Practices Act or similar provisions of any~~ federal, state or local nondiscrimination law ~~or executive order~~ in the performance of any contract with the city, thereby shall be found in material breach of such contract and thereupon the city shall have the power to cancel or suspend the contract, in whole or in part, or to deduct from the amount payable to such contractor the sum of ~~\$25,000~~1,000 for each person for each calendar day during which the City Manager determines such person was ~~discriminated against~~subject to discriminatory conduct or action by the consultant or the contractor or any officer, employee,

agent or representative of the consultant or the contractor, as damages for ~~said~~ breach of contract, or both. Only a finding of the U.S. Department of Labor, the U.S. Equal Employment Opportunity Commission, State of California Fair Employment Practices Commission, or the equivalent federal agency or ~~officer~~office shall constitute evidence of a violation of contract under this ~~section~~Section.

## **PART 7 ETHICS IN CONTRACTING**

### **2.30.600 Ethics.**

(a) Statement of Policy. City employees shall discharge their duties impartially so as to assure fair competitive access to city contracting opportunities by responsible consultants and contractors. Moreover, they shall conduct themselves in a manner as will foster public confidence in the integrity of city contracting policies, procedures and activities.

(b) Conflict of Interest. No city employee shall participate directly or indirectly in a city contract when the employee knows that:

(1) The employee or any member of the employee's immediate family has a financial interest pertaining to the contract; or

(2) The employee or any member of the employee's immediate family is negotiating or has an employment arrangement which is contingent upon or will be affected by the contract.

(c) Withdrawal from Participation. Upon the discovery of an actual or potential conflict of interest, an employee shall promptly withdraw from further participation in the contract procurement process.

(d) Gratuities. No person shall offer, give or agree to give any city employee any gratuity, discount or offer of employment in connection with the award of a contract by the city. No city employee shall solicit, demand, accept or agree to accept from any other person a gratuity, discount or an offer of employment in connection with a city contract.

### **2.30.610 Preparation of bid or proposal documents.**

Any ~~or~~ person ~~or~~ entity or team, with whom the city has ~~contracted~~a contract to prepare, advise or assist in the preparation of plans and /or specifications that will be included as part of the contract terms and conditions in bid or proposal documents, ~~is~~shall be ineligible to submit a bid or proposal for that contract ~~or be a named consultant or contractor or sub-consultant or sub-contractor in that bid or proposal, if the contract with the city was in effect for a period of one year prior to, or is or will be in effect at the time of, the contract that is the subject of the bid or proposal.~~ This ineligibility shall not preclude the award of a contract, calling for the design and construction of a public works project, to the consultant or the contractor pursuant to a design-build contract or other alternative procurement method-based contract.

**PART 8 RECORDS AND REPORTS**

**2.30.700 Records, public inspection.**

(a) Records maintenance. The ~~purchasing manager~~Procurement Officer shall maintain written records ~~(in hard copy or electronic format)~~ for each contract, price quotation, purchase order, document or other agreement awarded or entered into by the city, which shall include, at a minimum: the request from the department; the bid or proposal documents received for the contract, if any; all bids or proposals received; the basis on which the contract award was made; and a copy of any and all contracts awarded. The ~~purchasing manager~~Procurement Officer shall maintain and retain written records of ~~his or her~~any determination to cancel ~~solicitations~~solicitation documents and of an awarding authority's decision to reject bids or proposals. Such records shall be ~~maintained~~retained for a period of time in compliance with stateCalifornia law and the city's records retention schedule, and the records shall be made available for public inspection during normal city business hours. The foregoing provisions shall not apply to records of wholesale utility ~~commodity~~commodities and services transactions retained under ~~a~~ master ~~contract~~agreements referred to in Section 2.30.140, which shall be maintained by the department of utilities.

(b) Public inspection. Bids shall be available for public inspection following the date and time set for receipt of bids. Proposals shall be available for public inspection following the public announcement of the selection of a proposer for award of contract ~~award~~. This ~~section~~Section shall not be construed to require the disclosure of records ~~not that are~~ otherwise ~~required~~exempt from inspection and copying by law ~~to be disclosed~~.

**2.30.710 City manager ~~report~~reports.**

~~Report to council. The city manager~~

(a) ~~City Manager~~ shall make a biannual report to the ~~council~~Council of all contracts ~~awarded by the purchasing manager or the city manager~~ for ~~general services and~~ professional services or general services awarded by the City Manager, the Procurement Officer or other designated employees, the ~~cost~~costs of which exceed \$25,000.00, and of all contracts awarded by the ~~city manager~~City Manager for public works and goods, the costs of which exceed ~~\$6585~~6585,000.00.

(b) ~~The city manager~~City Manager shall ~~also make~~prepare and deliver an annual report to the ~~council~~Council of all leases, licenses and rentals of city real property with third parties, approved by the ~~city manager~~City Manager.

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**PART 9            REWARDS**

**2.30.800        Rewards relating to arrest and conviction.**

~~Rewards for information~~ The authority to offer and pay a reward leading to the arrest and conviction of ~~criminals~~. ~~Although the payment of rewards a criminal is not a purchase in the strict sense of the definition, the authority to offer and pay rewards is contained in~~ reasonably contemplated by this chapter ~~because it involves~~ to the extent an expenditure of city funds in return for valuable information.

~~(a) — The can be considered payment for the rendering of services to the city manager, as contemplated by Section 2.30.010.~~

~~(a) — The City Manager~~ is authorized to offer and pay a reward of up to \$25,000.00 for information leading to the arrest and conviction of any person or persons whose willful conduct causes unlawful injury or death to another person, or whose willful misconduct results in unlawful damage or destruction of personal property of the city or another person. The ~~city manager~~ City Manager shall cause the reward offer to be publicized and reported to the city ~~council~~ Council.

(b)     A reward shall not be paid unless the information is received by the Palo Alto Police Department within ~~90~~ ninety days of publication of the reward offer.

(c)     Conviction of the person or persons found responsible for the crime shall be required for payment of a reward unless the ~~city manager~~ City Manager makes a written finding that the conviction, determination of guilt, or finding of responsibility was impossible due to the death of the criminal.

(d)     Reward claims shall be made, in writing, and the claimant shall provide ~~the~~ his or her name, address and telephone number ~~of the claimant~~. Unless disclosure is authorized by the claimant, this information shall be deemed confidential and protected from public disclosure to the maximum extent permitted by California law.

(e)     Each reward offer shall be made, in writing, and shall be valid only if approved in advance as to form and in compliance with this ~~section~~ Section by the ~~city attorney~~ City Attorney.

**PART 10         STANDARDIZATION**

**2.30.900        Standardization.**

Where the ~~city manager~~ City Manager has determined that it is required by the health, safety or welfare of the people or employees of the city, or that significant costs savings have been demonstrated, the standardization of supplies, materials or equipment, including, without



limitation, information ~~and communication~~ technology property, for purchase or to be used in a public works project is permitted and the supplies, materials or equipment specifications may specify a single brand or trade name. ~~Among the factors that~~The City Manager or the Procurement Officer may be considered the following factors in determining to standardize on a single brand or trade name ~~are that~~:

- (a) Repair and maintenance costs would be minimized;
- (b) User personnel training would be facilitated thereby;
- (c) Supplies or spare parts would be minimized;
- (d) Modifications to existing equipment would not be necessary;
- (e) Training of repair and maintenance personnel would be minimized; and
- (f) Matching existing supplies, materials or equipment is required for proper operation of a function or program.

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SECTION 3. The Council finds that the adoption of this ordinance is exempt from the application of the California Environmental Quality Act pursuant to Section 15061(b)(3) of the California Environmental Quality Act Guidelines, as it can be established with certainty there is no possibility of any significant environmental effect occurring by the adoption of this ordinance.

SECTION 4. This ordinance shall become effective upon the commencement of the thirty-first day after the date of its adoption.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

APPROVED:

\_\_\_\_\_  
Senior Deputy City Attorney

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Director of Administrative  
Services