

Glendora, California Municipal Code

Title 2 ADMINISTRATION AND PERSONNEL

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#### **2.40.010 Adoption of purchasing system and general policy statement.**

To establish policy and requirement for the procurement of Goods, Services and Construction by the City, whenever practicable and advantageous to the City, be based on Competitive Procurement, whether by Informal Procurement if permitted, or Formal Procurement if required, except as otherwise provided in this chapter. Goods, Services and Construction must be procured in compliance with this chapter.

As public employees, City staff shall use their best unbiased judgment every time money is expended, or action is taken on the City's behalf. These activities are guided through the application and adherence of the City Conflict of Interest Code, as amended from time to time, and by the following commonly shared values and ethical standards for dealing with vendors and clients:

- (a) Avoid unfair practices by granting **all** competitive Contractors equal consideration insofar as State, Federal and City regulations require;
- (b) Conduct business in good faith, demanding honesty and ethical practices from all participants in the purchasing process;
- (c) Decline personal gifts or gratuities from present or potential Contractors since this can influence or appear to influence procurement decisions;
- (d) Promote positive Contractor relationships by affording Contractor representatives courteous, fair and ethical treatment;
- (e) Make every reasonable effort to negotiate equitable and mutually agreeable settlements of controversies with a Contractor(s);
- (f) Avoid involvement in any transactions/activities that could be considered or even appear to be a conflict between personal interest and the interests of the City;
- (g) Know and obey the letter and spirit of laws governing the purchasing function and remain alert to the legal ramifications of purchasing decisions; and
- (h) Enhance proficiency by acquiring and maintaining current technical knowledge and pursuing related educational opportunities and professional growth.

These ethical standards are hereby adopted as policies of the City Council. All City staff engaged in the Procurement process shall adhere to these ethical standards. The Designee shall ensure that all Procurements are conducted in a manner consistent with these ethical standards.

#### **2.40.015 Definitions.**

As used in this chapter:

The words set forth hereinafter in this chapter shall have the following meanings whenever they appear in these rules and regulations, unless the context in which they are used clearly requires a different meaning:

(a) "Awarding Entity" means the City Council when referencing Procurement for the City or for any Using Agency of the City.

(b) "Bid" means an offer or proposal submitted by a Bidder setting forth the price for the Goods, Services, or Construction to be provided.

(c) "Bidder" means any individual, firm, entity, partnership, corporation, or combination thereof, submitting a Bid, acting directly or through a duly authorized representative of a Using Agency.

(d) "Change Order" means a City-issued document used to modify a Purchase Order to add, delete, or revise the quantity, price or scope of Goods, Services, Professional Services or Construction being provided.

(e) "City" means the City of Glendora.

(f) "Competitive Procurement" means a process involving the solicitation under the authority and supervision of the Designee by Formal Procurement or Informal Procurement (all as hereinafter defined) under procedures and circumstances intended to foster effective, broad-based competition within the private sector to provide Goods, Services or Construction to the City.

(g) "Construction" means the process of building, altering, repairing, improving or demolishing any public structure or building, or other public improvements of any kind; it does not include routine operation, maintenance or repair of existing structures, buildings or real property by the City's own forces. "Construction" shall also include "public project" as defined in Section 20161 of the California Public Contract Code.

(h) "Contract" means any type of legally recognized agreement to provide Goods, Services or Construction, no matter what it may be titled or how described, including executed Purchase Orders, for the Procurement or disposition of Goods, Services or Construction, but does not include any agreement for collective bargaining, utility extensions, subdivision improvements or any agreements whereby an owner of real property or his or her authorized representative agrees to construct improvements of a public nature on property to be dedicated to the City.

(i) "Contractor" means any Person (as hereinafter defined) who enters into a Contract with the City.

(j) "Cooperative Purchasing" means a purchasing method whereby the Procurement requirements of two or more governmental entities are combined in order to obtain the benefit of volume Procurement or reduction in administrative expenses. Cooperative Purchasing practices may include other agencies who conduct volume procurements on behalf of governmental agencies.

(k) "Designee" means the City's Purchasing Designee, who oversees and implements the City's Purchasing Municipal Code.

(l) "Emergency Procurement" means the Procurement of Goods, Services or Construction without utilizing Competitive Procurement in circumstances set forth in Section 2.40.050 hereof as constituting an "emergency".

(m) "Field Order" means in construction projects, a written order passed to the contractor from the City or architect which will effect a minor change in work, requiring no further adjustment to the contract sum or expected date of completion.

(n) "Formal Bid" means a written Bid which shall be (1) submitted in a sealed envelope, or electronically, in conformance with a City-prescribed format and procedure, (2) publicly opened, read and-recorded at a City-specified date, time and place, and (3) accepted only by an award made by the Awarding Entity.

(o) "Formal Procurement" means Procurement by written Notice Inviting Bids and Formal Bid, Request for Proposals, or Request for Qualifications and includes Procurement of Construction, Goods and Services subject to the bidding requirements of Section 2.40.080.

(p) "Goods" means supplies, materials, equipment and other things included within the definition of "Goods" in Section 2105 of the California Uniform Commercial Code.

(q) "Grant" means funding from State, Federal or other sources, which require specific use of the funding provided to the City.

(r) "Informal Bid" means an offer, which may be conveyed to the Designee by email, letter, memo, financial system or other means, to provide for stated prices, Goods, Services or Construction, which are not required to be Procured by Formal Procurement; Informal Bids shall be solicited only by City personnel from a Using Agency who are authorized to do so, and for each instance of Procurement by Informal Bid, the authorized personnel shall obtain Informal Bids from at least three different Persons, if possible.

(s) "Informal Procurement" means Competitive Procurement by Request For Bid, Request for Proposals or Request for Information submitted by Persons in the Open Market submitted to the Using Agency or Designee.

(t) "Life Cycle Cost" means the estimated total cost of Goods, Services or Construction Procured by the City over the useful life of the Goods, Services or Construction based upon their initial Procurement price as adjusted by projected operating, maintenance and related ownership expenses which the City will incur during their useful life.

(u) "Lowest Responsive Bidder" means the Bidder or Offeror who submits the lowest responsive Formal Bid, Informal Bid, or Offer in response to the City's invitation or request therefore, as determined by the City.

(v) "Negotiated Procurement" means the business marketplace in which a User Agency or the Designee, exercising prudent business practices and judgment, would Procure Goods, Services or Construction utilizing a negotiation procedure, subject to approval by the Designee, instead of Informal or Formal Procurement.

(w) "Open Market" means the private sector business marketplace in which private persons, exercising prudent business practices and judgement, would Procure Goods, Services, or Construction utilizing Informal Bid or Formal bid procedures.

(x) "Person" means any individual, partnership, limited partnership, association, corporation, labor union, committee, club, governmental entity or other entity recognized by California law.

(y) "Procure" and "Procurement" mean buying, purchasing, renting, leasing or otherwise acquiring or obtaining Goods, Services, or Construction; this also includes all functions and procedures pertaining thereto.

(z) "Professional Services" means advisory, consulting, architectural, information technology, engineering, financial, legal (including claims adjustment), surveying, research or developmental and any other Services which involve the exercise of professional discretion and independent judgment based on an advanced or specialized knowledge, expertise or training gained by formal studies or experience.

(aa) "Purchase Order" means a City-issued document with any necessary terms and conditions, which authorizes the delivery of Goods, the rendering of Services or the performance of Construction at a stated price and encumbers City funds for the payment therefore; when approved by the City Council through the biennial budget process or at another time during the start of any fiscal year, a Purchase Order shall be referred to as an "Annual Purchase Order."

(bb) "Purchase Requisition" means a written request prepared on the requisite City form prepared by the Designee, and submitted by a Using Agency to the Designee for Procurement of specified Goods, Services or Construction.

(cc) "Request for Proposals" means a written solicitation issued by the Purchasing Division, through the supervision of the Designee, which (1) generally describes the Goods or Services sought to be procured by the City, (2) sets forth minimum standards and criteria for evaluating proposals submitted in response to it, (3) generally describes the format and content of proposals to be submitted, (4) provides for negotiation of terms and conditions of the Procurement Contract and (5) may place emphasis on described factors other than price to be used in evaluating proposals.

(dd) "Request for Bids" or "Notice Inviting Bids" means a written or verbal solicitation issued under the authority and supervision of the Designee for Formal or Informal Bids for described Goods, Services or Construction, which may be Procured by Formal or Informal Procurement.

(ee) "Request for Qualifications" means a written solicitation issued by the Purchasing Division, through the supervision of the Designee, which (1) generally describes the Goods or Services sought to be Procured by the City, (2) sets forth in determining what qualified Persons can provide those Services by providing minimum standards and criteria for the Goods or Services sought, and (3) generally describes the format and content of proposals to be submitted, and (4) may provide for negotiation of the Procurement Contract.

(ff) "Request for Information" means a written solicitation issued by a Using Agency, through the supervision of the Designee, which (1) generally describes the Goods or Services sought to be Procured by the City, (2) sets forth in

determining what Persons can provide Goods or Services sought to be Procured by the City, and (3) does not provide for the negotiation of any Procurement Contract.

(gg) "Responsible Bidder" means a Bidder who is determined by the Designee or the Awarding Entity to be responsible based on the following criteria:

- (1) The Bidder's ability, capacity and skill to perform the Contract, and to provide post-performance maintenance and repair;
- (2) The Bidder's facilities and resources;
- (3) The Bidder's character, integrity, reputation, judgment, experience and efficiency;
- (4) The Bidder's record of performance of prior Contracts with the City and others; and
- (5) The Bidder's compliance with laws, regulations, guidelines and orders governing prior Contracts performed by the Bidder.

(hh) "Responsive Bid" means a Formal Bid or Informal Bid submitted in response to a City-issued Notice Inviting Bids or Request For Bids, which meets and conforms to the substantive requirements specified by the City without material qualification or exception, as determined by the City.

(ii) "Services" means all services which are described in City specifications or are in the nature of advertising, cleaning, gardening, insurance, janitorial, leasing of Goods, membership, postal, printing, security, subscriptions, travel, utilities (electric, gas, telegraph, telephone, transportation and water), weeding and discing, and the repairing, maintaining or servicing of Goods, but does not include Professional Services, real property transactions, Construction, nor employment and collective bargaining Contracts.

(jj) "Specifications" means a City-issued or referenced definite, detailed written description of the Goods to be furnished, the Services to be performed or the Construction work to be done and materials to be used under a Contract with the City, which specifies the composition, Construction, dimension, durability, efficiency, form, nature, performance characteristics and standards, quality, shape, texture, type and utility of Goods, Services or Construction sought by the City.

(kk) "Surplus Goods" means any Goods having a remaining useful life or salvage value but which are no longer used, needed for use or retained for potential use by the Using Agency which has care, custody or control of them.

(ll) "Using Agency" means all City departments, institutions, offices, boards, commissions, divisions, agencies and authorities which derive their support totally or in part from City funds and for which the Designee is directed to Procure Goods, Services, Professional Services, or Construction.

#### **2.40.020 Purchasing Designee.**

The Designee has the responsibility and authority for the procurement of Goods, Services and Construction. The City Manager, or such other person as the City Manager may delegate such authority, shall be the purchasing Designee of the City.

#### **2.40.030 Duties and authority of the purchasing Designee and contract execution.**

The duties and responsibilities of the purchasing Designee shall include, but not limited to the following:

(a) Negotiate, process the purchase of, and contract for all Goods, Services and Construction needed by any City department or agency which derives its support wholly or in part from the City; provided, however, that any single expenditure in excess of twenty-five thousand dollars shall require city council approval;

(b) Make procurements in accordance with the purchasing procedures prescribed by this chapter, relevant administrative regulations approved by the City Manager, and such rules and regulations as the purchasing Designee shall adopt for internal management and operations;

(c) Act to procure for the City the needed Goods, Services and Construction with the necessary quality, capacity, safety performance ability and overall cost, considering labor and maintenance costs and other applicable factors required to meet the service objectives of the using department or agency at the least expense to the city;

(d) Discourage collusion in bidding and discourage vendor uniform bidding; endeavor to obtain the most open competition possible on all purchases;

(e) Prepare and recommend administrative regulations, including revisions and amendments thereto, governing the procurement of Goods, Services and Construction for the city, which regulations shall be effective upon approval by the City Manager or designee;

(f) Keep informed of current developments in the field of purchasing, prices, market conditions and new products;

(g) Prescribe and maintain such forms as are reasonably necessary for the operation of this chapter and other rules and regulations;

(h) The purchasing Designee is authorized to transfer between departments or divisions with department head approval any unused goods and supplies with;

(i) The purchasing Designee is authorized from time to time to sell or exchange any and all equipment, materials, fixtures and other personal property of the City having a salvage value and which is obsolete or unserviceable, or is surplus to the City, or for which replacement is to be purchased. The purchasing Designee may sell the same for the best price obtainable in the open market or, when he or she deems it advisable, to the highest

bidder at public sale, or he or she may exchange the same for other property or for credit on other property. In the event the purchasing Designee determines that any such obsolete or surplus property has no salvage value, he or she may dispose of it as he or she deems advisable. Any employees involved in declaring property surplus, or in the sale of said property, are excluded from acquiring it in any way;

(j) Prescribe, design and issue forms needed for the operation of this chapter and other applicable rules and regulations;

(k) By written authorization, grant authority to any department head to purchase or contract for specified supplies and equipment; but shall require that such purchases or contracts be made in conformity with purchasing procedures established in this ordinance. At the discretion of the purchasing Designee, each department head shall perform the duties and exercise the authority of the purchasing Designee with a limit on purchases from the same vendor, purchased on the same day, to less than two thousand five hundred dollars in value, except to the extent that the City Manager reserves the duties and authority to him or herself;

The City Manager is authorized to approve, execute, and bind the City to:

(a) Contracts and purchase orders for Goods, Services, Professional Services, Construction of \$50,000 or less, entered into in accordance with the policies and procedures outlined in this chapter, and;

(b) Such other contracts as are expressly approved by the City Council and the Library Board of Trustees.

The City Manager is authorized to delegate such authority to his or her designees, including among others, Department Heads, when the City Manager deems it is in the best interests of the City to do so.

#### **2.40.040 Requisitions, purchase orders and encumbrance of funds.**

The purpose of the Requisition is to inform the Designee, in clear and explicit terms, of the Procurement needs and processes followed of the Using Agencies, thus enabling the Designee to oversee the Procurement of all Goods, Services, and Construction required by the City. Except as otherwise provided in this chapter, each using Agency shall prepare a Purchase Requisition and submit it to the Designee to provide documentation for the proper Procurement process followed. Goods shall not be ordered and/or received, and Services, Construction work shall not commence until a Requisition has been approved by the Designee or designee and a Purchase Order has been issued. No Requisition shall be broken into smaller units to evade any requirement of this chapter, except that unrelated items requisitioned by departments may be separated to provide different lists to vendors dealing in different types of Goods, Services, Construction.

All Procurement of Goods, Services, and Construction shall be made by Purchase Order. Certain procurements for Services and Construction may have terms and

conditions that govern those Procurements stated in Contracts and in such case the Purchase Order will be utilized to track and encumber funds. No Purchase Orders shall be required for petty cash purchases or purchase card program purchases less than an amount recommended from time to time by the Administrative Services Director and approved by the City Manager.

Except in cases of Emergency Procurement, no Purchase Order shall be issued unless there exists an unencumbered appropriation in the fund account against which the Procurement is to be charged. Except for Emergency Procurement, no Goods, Services, and Construction work shall be ordered, obtained or received without authorization by the Designee, which authorization shall be in the form of an executed or confirming Purchase Order. The Designee, or his designees, shall be authorized to issue and execute Purchase Orders in accordance with policies and procedures established by the City Manager from time to time, that are consistent with this chapter.

Change Orders. Modifications to a Purchase Order shall be made only by Change Order. Subject to the availability of funds, Change Orders may be utilized for purposes of (1) adding and/or deleting quantity of items being procured, (2) modifying unit prices, (3) modifying scope of work/services being provided, where the modification is reasonably related to the original scope of work/services, (4) changing funding source(s), (5) modifying contract completion time or the term of an Contract, or (6) any other change approved by the Designee. Unless otherwise specifically authorized by the Awarding Entity, Change Orders which cumulatively exceed the following will require Awarding Entity approval:

(a) 10% of the original contract price for Contracts and/or Purchase Orders up to \$50,000; additional percentage authority may be authorized by the Designee up to \$50,000 or as otherwise specified for in the Administrative Policy;

(b) Any Change Order which causes the contract price to exceed \$50,000, if the Contract and/or Purchase Order was not previously approved by the Awarding Entity;

(c) 10% of the original contract price for Contracts and/or Purchase Orders previously approved by the Awarding Entity and the total Change Order amount will not exceed \$50,000

(d) A Contract amendment which extends the term of the agreement beyond one year of the original expiration date.

(e) Any Change Order which extends the time of completion beyond one year of the original date.

Any Change Order involving the modification of the scope of work/services where the modification is not reasonably related to the original scope of work/services, as determined by the Designee, to the Contract is specifically prohibited. Except for Construction contracts and Purchase Orders, all Change Orders shall be by fully executed written amendment to the procuring Contract.

#### **2.40.050 Emergency procurement.**

While the need for Emergency Procurement is recognized, the practice shall be curtailed as much as possible by anticipating needs so that normal Competitive Procurement may be used.

An "emergency" shall be deemed to exist under any one or more of the following circumstances:

- (a) A great public calamity;
- (b) An immediate need to prepare for national or local defense;
- (c) A breakdown in machinery, facilities or essential services which requires the immediate Procurement of Goods, Services or Construction to protect the public health, welfare, safety, property, or personal/confidential information;
- (d) A Using Agency operation directly affecting the public health, welfare, safety, the property, or personal/confidential information, is so severely impacted by any cause that personal injury or property destruction appears to be imminent and probable unless Goods, Services or Construction designed or intended to mitigate the risks thereof are Procured immediately;  
or
- (e) A Using Agency is involved in a City project, which is of such a nature that the need for particular Goods, Services or Construction can only be ascertained as the project progresses and, when ascertained, must be satisfied immediately for the protection of public health, welfare, safety, property, or personal/confidential information.

Emergency Procurement may be initiated by the head of a using Agency or his or her duly authorized representative only as follows:

(a) During normal City business hours, the individual shall contact the purchasing Designee and explain to the Designee's satisfaction the reasons and justification for Emergency Procurement. If the nature of the emergency is such that Goods, Services or Construction must be Procured immediately and the Designee is satisfied with the explanation of reasons and justifications given therefor, the Designee shall authorize the Procurement and cause an emergency Purchase Order to be issued as soon as possible and in no event later than the following business day. A Requisition confirming the Procurement must be prepared by the individual and submitted to the Designee no later than the following business day. Items exceeding \$50,000 require City Council approval.

(b) After normal City business hours, the individual shall exercise his or her best judgment in ascertaining whether the actual circumstances necessitate Emergency Procurement, and if deemed necessary shall order it. As soon as possible and in no event later than the following business day, the individual shall prepare a Purchase Requisition confirming the Emergency Procurement and deliver it to the Designee, who shall then review and cause an emergency Purchase Order therefor to be prepared. Upon Designee concurrence, the word "confirmation" shall

be clearly imprinted on all Purchase Requisitions and Purchase Orders issued in confirmation of Emergency Procurement. Items exceeding \$50,000 require City Council approval.

#### **2.40.060 Exceptions.**

Competitive Procurement shall not be required in circumstances explicitly stated in this chapter; exceptions to Competitive Procurement will be included with each type of Procurement under Section 2.040.050 (Emergency Procurement), 2.40.090 (Procurement of Goods), Section 2.40.100 (Procurement of Services), Section 2.040.110 (Procurement of Construction).

Deposits. Contracting for professional services in which an applicant deposits one hundred percent of the costs of such service and agrees to replenish a deposit account for any additional costs incurred under the professional service agreement. The professional services to be contracted shall be contractually obligated to the city for purposes of oversight and supervision, not the applicant, and no public funds will be a source of any payment to the service provider under that specific contract. The city attorney shall obtain a contractual termination clause stipulating that should the applicant fail to replenish deposits that the city may terminate the contract for work done to that date in all such professional service related contracts.

#### **2.40.070 Informal purchasing procedures.**

For the acquisition of Goods, Services and Construction, Informal Procurement will be conducted by the Department, through the approval of the purchasing Designee and the Designee's duly authorized representatives in a manner and under circumstances intended to elicit competitive responses.

The process, forms and systems used to conduct Informal Procurement, as recommended by the Designee and approved by the City Manager, shall be included in the City's Administrative Policy.

Informal Procurement may be conducted under the supervision of the Designee if the Procurement expenditure is estimated to be Fifty Thousand Dollars (\$50,000.00) or less, does not fall within the Utility and Library Exception, and does not involve the Procurement of Construction or Goods of the type required to be acquired by Formal Procurement. However, Informal Competitive Bidding shall not be required for any purchase that has an estimated value of less than Two Thousand Five Hundred Dollars (\$2,500.00).

Competitive Procurement shall not be required for:

- Advertising and Publications
- City Utility Bills (e.g., water, electric, and gas)
- Contracted Recreation teachers

- Dues and Memberships
- Fuel Purchases and other commodities that are subject to market pricing
- Information Technology software maintenance and license renewals
- Insurance, insurance adjusting, legal, and related Services.
- Leases
- Postage
- Professional Development, Training, and continuing education classes
- Professional Recruitment Services
- Rebates
- Temporary staff Services to backfill vacant positions
- Travel and Conference expenses

The Water Utility has a need for compatibility within their respective systems for uniform operation, maintenance and replacement, and this need can be met by procuring certain supplies, equipment, and materials supplies through Informal Procurement or Negotiated Procurement.

If it appears to the Designee to be in the best interest of overall economy and efficiency of the City to do so, and it is within existing budget appropriation, the following supplies, equipment, and materials are determined to be peculiar to the needs of the Water Utility, and may be acquired by Informal Procurement or Negotiated Procurement, regardless of their estimated Procurement expenditure amounts, provided that the City Council shall have approved the proposed acquisition if required under the provisions of this chapter, either by approval of the procurement contract or approval of annual purchase orders:

- Chemicals
- Dewatering Equipment, Parts and Repairs
- Fire Hydrants
- Water Fittings, Parts and Supplies
- Meter, Metering Devices, Meter Parts and Repairs
- Pipe and Pipe Fittings
- Pumps and Repairs
- Road and Backfill Materials
- SCADA Equipment

- Tubing, Copper and Plastic
- Valves and Operators
- Well Equipment (including incidental labor to install, which labor shall not exceed the amount set by state law for which bids are required for public works projects of a general law city)
- Such other supplies and materials peculiar to the needs of the Water Utility Department, which are carried as inventory items.

The following supplies, materials and services are determined to be peculiar to the needs of the Library Department. If it appears to the Designee to be in the best interest of overall economy and efficiency of the City to do so and is within existing budget appropriation, be acquired by Informal Procurement or Negotiated Procurement, regardless of their estimated Procurement expenditure amounts, provided that the City's Board of Library Trustees or City Council shall have approved the proposed acquisition, either by approval of the procurement contract or approval of annual purchase orders:

- Books
- Journals
- Maps
- Office Supplies
- Publications
- Subscription Services
- Other designated content for the public
- Other Needs as determined by the Designee

The Designee or Department shall solicit Informal Bids by means of a written or verbal Request for Bids, accompanied by City specifications, if deemed necessary by the Designee. Where the Department seeks the procurement of Services or Professional Services, a Request for Proposal or Request for Qualifications, as appropriate, may be issued. Responses to the City's Request for Bids, Proposals, or Qualifications shall be in writing, and documentation of responses shall be submitted to the Designee prior to payment by the Administrative Services Department - Finance Division.

The Designee may reject any and all Informal Bids submitted in response to a Request for Bids and otherwise shall award all Informal Bids, insofar as practicable, to the Lowest Bidder. The Designee shall be authorized to administer Purchase Orders for Goods, Services, and Construction awarded by Informal Procurement. Where the Department seeks the procurement of Services or Professional Services through Request for Proposals or Request for Qualifications, the Informal Bid shall

be awarded in accordance with the evaluation criteria set forth in the Request for Proposals or Request for Qualifications.

The provisions of Section 2.040.070 shall also apply to all Contracts for Goods, Services or Construction awarded under Informal Procurement.

The Designee shall maintain and keep records of all Informal Procurements, including Informal Bids received, in accordance with the applicable City's Record Retention Schedule adopted by the City Council from time to time.

All communications from Bidders shall be directed only to the City representative and in the form as designated in the Request for Bids. Any communications, whether written or verbal with any City Councilmember or City staff other than the City representative designated in the Request for Bids, prior to the award of a contract, is strictly prohibited. Bidders violating this section shall be disqualified from consideration and rejected by the Designee.

#### **2.40.080 Formal contract procedure.**

For the acquisition of Goods, Services and Construction, Formal Procurement shall be conducted by the Designee and the Designee's duly authorized representatives in conjunction with a Department, or may be conducted by the Department, through the approval of the Designee and the Designee's duly authorized representatives in a manner and under circumstances intended to elicit competitive responses.

The process, forms and systems used to conduct Formal Procurement, as recommended by the Designee and approved by the City Manager, shall be included in the City's Administrative Policy.

Formal Procurement shall be conducted under the supervision of the Designee if the Procurement expenditure is estimated to be more than Fifty Thousand Dollars (\$50,000.00), except in those Procurement situations described in:

- (a) 2.40.050 (Emergency Procurement);
- (b) 2.40.060 (Exceptions)
- (c) 2.40.070 (Informal Procurement);
- (d) 2.40.090 (Procurement of Goods Exceptions);
- (e) 2.40.100 (Procurement of Services Exceptions);
- (f) 2.40.110 (Acquisition of Construction Exceptions);

When required by law, a Notice Inviting Bids shall be published at least once in a newspaper of general circulation in the City, the first publication of which shall be at least ten days before the time and date set by the Designee for opening the Formal Bids received. All other Notices Inviting Bids or Requests for Bids shall be published through the City bidding website for at least ten days before the time and date set by the Designee for opening the Bids received, unless otherwise exempted by the

Awarding Entity. The notice shall include a general description of the Goods, Services or Construction sought to be Procured by the City, shall state where Specifications therefor may be obtained and shall set forth the time and place for a public opening of Formal Bids received timely. The Designee shall, in addition and as practicable, solicit Formal Bids from a sufficient number of responsible prospective bidders whose names appear on the bidders' lists maintained pursuant to Public Contract Code hereof by causing to be sent to them notification that will acquaint them with the Procurement items sought by the City. A Notice Inviting Bids for the procurement of Services or Professional Services may be issued in the form of a Request for Proposals or Request for Qualifications as deemed appropriate by the Designee.

Bids and bid securities, which security shall guarantee the Bid and be forfeited to the City if the Bidder is awarded the Contract but fails or refuses to honor the Bid and execute the Contract documents timely, shall be submitted to the City in the following manner:

(a) For Formal Procurement subject to PCC, the Bids shall be (i) submitted in the manner required by the City as specified in the solicitation document, (ii) accompanied by the type and amount of Bid security prescribed by PCC, (iii) sealed as prescribed in the Notice Inviting Bids or the specifications referenced in the notice, and (iv) submitted to the City's City Clerk Department within the time and in the manner specified by the notice or Specifications.

(b) For Formal Procurement not subject to PCC, the Bid shall be submitted in the form required by the City, accompanied by the type and amount of Bid security specified, sealed, and submitted to the City Clerk Department within the time and manner specified in the notice inviting Bids or the Specifications referenced in the notice.

The Bids shall be opened and referenced as to Bidder identity and amounts Bid in public at the time and place specified in the published notice, and no Bid shall be received or recognized by the Finance Division, which has not been received prior to the time so specified. Bids submitted in response to a Request for Proposals or Request for Qualification shall be opened and evaluated in the manner provided in the Request for Proposals for the Request for Qualifications. If, upon the opening of Bids to provide Goods, Services or Construction not subject to the provisions of PCC, the Designee determines that the actual expenditure therefore would appear to be Twenty-Five Thousand Dollars (\$25,000.00) or less, the Designee may convert the Formal Procurement to Informal Procurement procedures for award of a Contract.

After the Bids have been opened and referenced, the Designee shall cause them to be tabulated or, in the case of a Request for Proposals or Request for Qualifications, evaluated in accordance with the criteria established therein.

The Designee may in their discretion reject any and all Bids, or any segregable portions thereof, for any one or more types of Goods, Services or Construction included in the Specifications when the public interest is served thereby, provided

specifically that any potential award does not otherwise require consideration by the Awarding Entity.

Contracts procured through Formal Procurement shall be awarded by the Awarding Entity to the Lowest Responsive and Responsible Bidder, except that:

(a) Contracts procured through Formal Procurement may be awarded by the Designee where the procurement is made using Cooperative Procurement methods and a supplemental appropriation is not otherwise required;

(b) A Contract for Goods may be awarded to a local Responsive Bidder who is not the Lowest Responsive Bidder pursuant to Section 2.40.090;

(c) Contracts procured through Formal Procurement for Services or Professional Services, where a Request for Proposals or Request for Qualifications was used to solicit Bids, shall be awarded by the Awarding Entity in accordance with the evaluation criteria set forth in the Request for Proposals or Request for Qualifications.

All Contracts procured through Formal Procurement shall be approved as to form by the City Attorney and City Council.

Contract bonds executed by good and sufficient sureties authorized to conduct surety business in the State of California and in such amounts as are required by law or deemed adequate to insure the faithful performance of a Contract in the time and manner prescribed therein shall be required of the successful Bidder for all Contracts over \$25,000 for Construction, where they are required by law, and in other instances as determined by the Designee. Contract bonds requirements shall be set out in the notice inviting bids or the specifications. "Contract bonds" means performance bonds (or functional equivalent such as supply bonds) to guarantee the Contractor's faithful performance of the awarded Contract in the time, manner and workmanship specified and payment bonds to guarantee the Contractor's payment of claims as prescribed in Section 9550 et seq. of the California Civil Code.

Contracts procured through Formal Procurement shall not be assigned by the Contractor without the written consent of the City Manager. In no event shall a Contract or any part thereof be assigned to a Bidder who was declared not to be Responsive Bidder during consideration of the Bids submitted in response to advertisement for that particular Procurement.

The Designee shall maintain and keep records of all Formal Procurements, including Formal Bids received, in accordance with the applicable City's Record Retention Schedule adopted by the City Council from time to time.

All communications from Bidders shall be directed only to the City representative and in the form as designated in the Notice Inviting Bids. Any communications, whether written or verbal with any City Councilmember or City staff other than the City representative designated in the Notice Inviting Bids, prior to the award of a contract,

is strictly prohibited. Bidders violating this section shall be disqualified from consideration and rejected by the Designee.

#### **2.40.090 Procurement of goods.**

Acquisition of Goods by a Department under the supervision of the Designee:

- (a) Of \$50,000 or less may follow the Informal Procurement process;
- (b) Anticipated to be more than \$50,000, shall follow the Formal Procurement process.

The process, forms and systems for the acquisition of Goods, as approved by the Designee and City Manager, shall be included in the City's Administrative Policy.

Competitive Procurement through the Informal Procurement and Formal Procurement process shall not be required in any of the following circumstances:

- (a) When an emergency arises and Emergency Procurement is undertaken pursuant to Section 2.40.050 hereof;
- (b) When the Procurement involved is less than \$2,500.00;
- (c) When the Procurement can only be obtained from a sole source and the Designee is satisfied that the best price, terms and conditions have been negotiated;
- (d) When the Procurement can only be obtained timely from a single source and the Designee is satisfied that the best price, terms and conditions for the Procurement thereof have been negotiated;
- (g) When the Procurement consists of replacement parts for the City's vehicles and other motorized Fleet related equipment;
- (h) When Cooperative Purchasing is available and undertaken or when Goods can be obtained through Federal, State and/or other public entity pricing contracts or price agreements;
- (i) Where payment for Goods is to be made to a Federal, State, and/or other public entity;
- (j) When Goods can be Procured from a Bidder who offers the same or better price, terms and conditions as the Bidder previously offered as the Lowest Responsive Bidder under Competitive Procurement conducted by the City or another public agency, provided that, in the opinion of the Designee, it is in the best interests of the City to do so;
  - (i) A copy of the solicitation has been obtained from the originating city or public agency and reviewed by the purchasing Designee for compliance with this Section; and

(ii) The purchasing Designee determines that the specifications of the Goods or Services required by the City are not materially different from those specified in the originating city's or public agency's solicitation; and

(iii) The selected bidder was selected in compliance with the competitive bidding or proposal process requirements of such city or other public agency; and

(iv) The purchasing Designee determines that the competitive bidding or proposal process utilized is at least the same as that contained in this Section; and

The purchasing Designee determines that the competitive bidding or proposal process utilized is at least the same as that contained in this Section; and

(v) The contract resulting from the original solicitation is current or the solicitation is within two (2) years from the date of the City's order, or written justification is provided justifying use of an older solicitation; and

(vi) The purchasing Designee determines that, as a result of piggyback purchasing, the price of the Goods or Services is lower than it would be if purchased directly by the City pursuant to this Chapter.

(k) When the Procurement is subject to Section 2.40.070 of this chapter;

(l) When the Procurement is subject to Section 2.40.070 (Utility Exception) of this chapter, which generally allows for items peculiar to the needs of the Water Utility to be made through Informal or Negotiated Procurement;

(m) When the Procurement is subject to Section 2.40.070 (Library Exception), which generally allows for books, journals, maps, publications and other supplies peculiar to the needs of the library to be made through Informal or Negotiated Procurement;

(n) When the Procurement is for wholesale water commodity, and water transmission purchases by or on behalf of the City's Water Utility Department;

(o) When approved by the Designee, the City requires Goods not subject to the PCC, which are of such a nature that suitable technical or performance specifications describing them are not readily available and cannot be developed in a timely manner to meet the needs of the City, in which case the Designee shall be authorized to negotiate with any Person or Persons for the Procurement thereof upon the price, terms and conditions deemed by the Designee to be in the best interest of the City and in doing so may utilize Informal Procurement or Negotiated Procurement process;

(p) When the Procurement is for the renewal of maintenance, license(s), support, or a similar need for existing technology systems, including hardware, and the items procured are from the owner/developer of the software/hardware or from a sole source provider, and the Designee is satisfied that the best price, terms and conditions have

been negotiated; and

(q) When the Procurement is for the renewal of maintenance, license(s), support, or a similar need for existing technology systems, including hardware, and the items are procured from a vendor/reseller that was originally selected based on the City's procurement standards, provided that 1) the contractor has been used continuously since such selection and 2) if there are not any non-substantive changes to the Procurement and 3) when it is determined by the Designee to be in the best interests of the City to do so;

When the Procurement for Goods are to be procured through the use of Federal or State grant funding, procurement shall be done in accordance with the procedures herein. If the receipt of grant funding is conditioned upon requirements and procedures more strict than as set forth herein, the procedures necessary for the receipt of the grant funding shall be followed. Certain federally funded Procurements are subject to sections 200.317 through 200.327 of Title 2 of the Code of Federal Regulations (CFR). Federally funded Procurements shall follow the applicable CFR provisions, except where this Section provides for a stricter procedure, then the provisions of this Section shall apply. The Department is responsible for compliance with all aspects of grant requirements and shall inform the Designee of any and all grant requirements which affect the expenditure of grant funds and the procurement of Goods, Services, or Construction with grant funds.

In the Designee's administration of Competitive Procurement pursuant to this chapter, the Designee shall be authorized to give such preferences for Goods, Services or Construction as required to give by applicable State or Federal law, or such preferences as are permitted by such law and specifically provided for from time to time by City Council resolution or ordinance.

Local Preference. In the Procurement of Goods for the City's requirements, five percent (5%) preference shall be given to those vendors who have a local presence in the City of Glendora, provided that price, quality, terms, delivery and service reputation are determined to be equal by the Designee under the criteria set forth in section 2.40.080 hereof. To qualify as a local vendor, the Bidder must certify to the following at the time of Bid submission:

- (a) It has fixed facilities with employees located within the City limits;
- (b) It has a business street address within the City limits (Post Office box or residential address shall not suffice to establish a local presence);
- (c) All sales tax returns for the Goods purchased must be reported to the State through a business within the geographic boundaries of the City and the City will receive a percentage of sales tax of Goods purchased as is allocable to the City from time to time under then existing state law; and
- (d) It has a current City business license.

False certifications shall be immediate grounds for rejection of any Bid or if the Bid is awarded, grounds for voiding the Bid, terminating any Contract, and seeking damages thereto. This local preference shall not be applicable where otherwise prohibited by law, including but not limited to Procurements funded by utility rates and subject to Proposition 218 and/or Proposition 26 and Procurements funded by federal grants.

Recycled Goods Preference. In the Procurement of Goods for the City's requirements, preference shall be given, as the City Council from time to time hereafter directs by resolution or ordinance, to recycled Goods as defined and provided for in such state legislation as the State Assistance for Recycling (STAR) Markets Act of 1989 (commencing at Section 12150 of the California Public Contract Code) and the California Integrated Waste Management Act of 1989 (commencing at Section 40000 of the California Public Resources Code).

#### **2.40.095 Purchase of used equipment.**

If opportunities arise to purchase used equipment, such equipment may be purchased without competitive bidding, provided all the following conditions are met:

(a) The equipment being sold is warranted or, in the case of an "as is, where-is" purchase, there is an inspection by a qualified party who certifies that the condition of the item is acceptable and adequate for efficient city use;

(b) The dealer of the equipment is a bona-fide and reputable dealer as verified through reference checks or the equipment is being purchased from another governmental entity;

(c) The selling price of the equipment is less than twenty-five thousand dollars, including tax, installation, freight, and any other additional acquisition costs;

(d) If no bids are received from the formal bidding process for the purchase of used equipment with a selling price of over twenty-five thousand dollars, a written request to commence negotiation with a vendor(s) must be submitted to the city manager for approval. Acceptance of the contract is subject to city council approval. Justification for the sole source purchase of used equipment must be documented and maintained as part of the procurement file.

It is not allowable to purchase used equipment when procedures for the acquisition of new equipment have been circumvented to avoid the competitive bidding process.

#### **2.40.100 Procurement of services**

Acquisition of Services by a Department under the supervision of the Designee:

(a) Of \$50,000 or less may follow the Informal Procurement process;

(b) Anticipated to be more than \$50,000, shall follow the Formal Procurement process.

The process, forms and systems used in the acquisition of Services as approved by the Designee and City Manager, shall be included in the City's Administrative Policy.

Competitive Procurement through the Informal Procurement and Formal Procurement process shall not be required in any of the following circumstances:

- (a) When an emergency arises and Emergency Procurement is undertaken pursuant to Section 2.40.050 hereof;
- (b) When the Procurement involved is less than \$2,500;
- (c) When the Procurement can only be obtained from a sole source and the Designee is satisfied that the best price, terms and conditions for the Procurement thereof have been negotiated;
- (d) When the Procurement can only be obtained timely from a single source and the Designee is satisfied that the best price, terms and conditions for the Procurement thereof have been negotiated;
- (e) When the Procurement consists of Services needed for the replacement parts for the City's vehicles and other motorized Fleet related equipment;
- (f) When Cooperative Purchasing is available and undertaken or when Services can be obtained through Federal, State and/or other public entity pricing contracts or price agreements;
- (i) Where payment for Services is to be made to a Federal, State, and/or other public entity;
- (j) When Services, except for Professional Services, can be Procured from a Contractor who offers the same or better price, terms and conditions as the Contractor previously offered as the Lowest Responsive Bidder under Competitive Procurement or negotiations conducted by the City or another public agency, provided that, in the opinion of the Designee, it is in the best interests of the City to do so;
  - (i) A copy of the solicitation has been obtained from the originating city or public agency and reviewed by the purchasing Designee for compliance with this Section; and
  - (ii) The purchasing Designee determines that the specifications of the Goods or Services required by the City are not materially different from those specified in the originating city's or public agency's solicitation; and
  - (iii) The selected bidder was selected in compliance with the competitive bidding or proposal process requirements of such city or other public agency; and
  - (iv) The purchasing Designee determines that the competitive bidding or proposal process utilized is at least the same as that contained in this Section; and

(v) The purchasing Designee determines that the competitive bidding or proposal process utilized is at least the same as that contained in this Section; and

(vi) The contract resulting from the original solicitation is current or the solicitation is within two (2) years from the date of the City's order, or written justification is provided justifying use of an older solicitation; and

(vii) The purchasing Designee determines that, as a result of piggyback purchasing, the price of the Goods or Services is lower than it would be if purchased directly by the City pursuant to this Chapter.

(k) When the Procurement is subject to section 2.40.070 of this chapter.

(l) When the Procurement is subject to Section 2.40.070 (Utility Exception) of this chapter, which generally allows for items peculiar to the needs of the Water Utility to be made through Informal or Negotiated Procurement;

(m) When the Procurement is subject to Section 2.40.070 (Library Exception), which generally allows for books, journals, maps, publications and other supplies peculiar to the needs of the library to be made through Informal or Negotiated Procurement;

(n) When approved by the Designee, the City requires Services not subject to the PCC, which are of such a nature that suitable technical or performance specifications describing them are not readily available and cannot be developed in a timely manner to meet the needs of the City, in which case the Designee shall be authorized to negotiate with any Person or Persons for the Procurement thereof upon the price, terms and conditions deemed by the Designee to be in the best interest of the City and in doing so may utilize Informal Procurement or Negotiated Procurement process;

(o) When the Procurement is for the retention of outside legal counsel and Services;

(p) When the Procurement is for the retention of Services associated with litigation and/or claims, or other such related matters, including but not limited to expert witnesses, arbitrators, mediators, court transcripts, court reporters, process servers, private investigators, court filing and messenger Services, and other legal support Services;

(q) When the Procurement is by the City Manager or designee for an interim Department Head, interim Assistant Department Head or an interim Senior Management employee;

(r) When approved by the Designee and the Procurement is for the hiring of special instructors/performers, including but not limited to classes offered by the Community Services departments.

(s) When the Procurement is for the annual maintenance, license(s), support, or similar need for current technology systems, including hardware, and the items procured are from the owner/developer of the software/hardware or from a sole source provider, and the Designee is satisfied that the best price, terms and conditions have been negotiated;

(t) When the Procurement is for the renewal of maintenance, license(s), support, or a similar need for existing technology systems, including hardware, and the items are procured from a vendor/reseller that was originally selected based on the City's procurement standards, provided that 1) the vendor has been used consecutively since then and 2) if there are any non-substantive changes to the procurement, the Designee is satisfied that the best price, terms and conditions have been negotiated;

(u) When the Competitive Procurement of less than \$50,000 for Professional Services is waived with the written approval of the City Manager; and by the Designee to be in the best interest of the City and in doing so may utilize Informal Procurement or Negotiated Procurement process.

When the Procurement of Services are to be procured through the use of Federal or State grant funding, procurement shall be done in accordance with the procedures herein. If the receipt of grant funding is conditioned upon requirements and procedures more strict than as set forth herein, the procedures necessary for the receipt of the grant funding shall be followed. Certain federally funded Procurements are subject to sections 200.317 through 200.327 of Title 2 of the Code of Federal Regulations (CFR). Federally funded Procurements shall follow the applicable CFR provisions, except where this Resolution provides for a stricter procedure, then the provisions of this Resolution shall apply. The Department is responsible for compliance with all aspects of grant requirements and shall inform the Designee of any and all grant requirements which affect the expenditure of grant funds and the procurement of Goods, Services, or Construction with grant funds

#### **2.40.110 Acquisition of construction services**

Acquisition of Construction Services shall be completed in conformance with the PCC code. Formal Procurement process and Awarding Entity approval shall be required for acquisition of all Services above \$50,000.

The process, forms and systems used to acquire Construction Services, as approved by the Designee and City Manager, shall be included in the City's Administrative Policy. Competitive Procurement through the Informal Procurement and Formal Procurement process shall not be required in any of the following circumstances:

(a) When an emergency arises and Emergency Procurement is undertaken pursuant to Article Three hereof;

(b) When the Procurement involved is less than \$2,500.00;

(c) When the Procurement can only be obtained from a sole source and the Designee is satisfied that the best price, terms and conditions for the Procurement thereof have been negotiated;

(d) When the Procurement can only be obtained timely from a single source and the Designee is satisfied that the best price, terms and conditions for the Procurement thereof have been negotiated;

- (e) When procurements are conducted by Consultants on behalf of the City;
- (f) When Construction Services can be Procured from a Contractor who offers the same or better price, terms and conditions as the Contractor previously offered as the Lowest Responsive Bidder under Competitive Procurement or negotiations conducted by the City or another public agency, provided that, in the opinion of the Designee, it is in the best interests of the City to do so;
  - (i) A copy of the solicitation has been obtained from the originating city or public agency and reviewed by the purchasing Designee for compliance with this Section; and
  - (ii) The purchasing Designee determines that the specifications of the Goods or Services required by the City are not materially different from those specified in the originating city's or public agency's solicitation; and
  - (iii) The selected bidder was selected in compliance with the competitive bidding or proposal process requirements of such city or other public agency; and
  - (iv) The purchasing Designee determines that the competitive bidding or proposal process utilized is at least the same as that contained in this Section; and
  - (v) The purchasing Designee determines that the competitive bidding or proposal process utilized is at least the same as that contained in this Section; and
  - (vi) The contract resulting from the original solicitation is current or the solicitation is within two (2) years from the date of the City's order, or written justification is provided justifying use of an older solicitation; and
  - (vii) The purchasing Designee determines that, as a result of piggyback purchasing, the price of the Goods or Services is lower than it would be if purchased directly by the City pursuant to this Chapter.
- (g) When Cooperative Purchasing is available and undertaken or when Services can be obtained through Federal, State and/or other public entity pricing contracts or price agreements;
- (h) Where payment for Construction Services is to be made to a Federal, State, and/or other public entity;
- (i) When the Awarding Entity waives bidding requirements when it is determined by the Designee to be in the best interests of the City to do so;
- (j) When approved by the Designee, the City requires Construction Services, which are of such a nature that suitable technical or performance specifications describing them are not readily available and cannot be developed in a timely manner to meet the needs of the City, in which case the Designee shall be authorized to negotiate with any Person or Persons for the Procurement thereof upon the price, terms and conditions deemed by the Designee to be in the best interest of the City and in doing so may utilize Informal Procurement.

When the Procurement for Construction Services are to be procured through the use of Federal or State grant funding, procurement shall be done in accordance with the procedures herein. If the receipt of grant funding is conditioned upon requirements and procedures more strict than as set forth herein, the procedures necessary for the receipt of the grant funding shall be followed. Certain federally funded Procurements are subject to sections 200.317 through 200.327 of Title 2 of the Code of Federal Regulations (CFR). Federally funded Procurements shall follow the applicable CFR provisions, except where this Resolution provides for a stricter procedure, then the provisions of this Resolution shall apply. The Using Agency is responsible for compliance with all aspects of grant requirements and shall inform the Designee of any and all grant requirements which affect the expenditure of grant funds and the procurement of Construction Services with grant funds.

#### **2.40.090 Inspection and testing.**

The purchasing Designee shall have the authority to supervise the inspection and testing of Goods delivered to determine their conformance with the specifications set forth in the purchase order or contract. The purchasing Designee shall have authority to require chemical and physical tests of samples submitted with bids and samples of deliveries, which are necessary to determine their quality and conformance with specifications. Before payment is authorized, the satisfactory receipt of goods shall be established as prescribed in the administrative regulations governing the processing of purchase orders.

#### **2.40.110 Gratuities.**

The offer of any gratuity to an official or employee by any vendor or contractor, or perspective vendor or contractor, shall be cause for declaring such individual or firm to be an irresponsible bidder as provided in Sections 2.40.070 and 2.40.080.

#### **2.40.130 Joint powers agreements.**

Goods, and Services may be procured from any other governmental agency with which the city has entered into a joint exercise of powers agreement for such purpose, pursuant to the provisions of Section 6502 of the Government Code, provided:

(a) The sales price of the item to be purchased has been obtained through the competitive bidding process conducted within a previous twelve month period, by the other agency; and

(b) The purchase can be made by the other governmental agency upon the same terms, conditions, and specifications at a lower price than can be obtained by the city through normal purchasing procedures;

(c) The city may combine its bidding or its purchases with those of another governmental entity when economically advantageous to do so. (Ord. 1688 § 2, 1998)

#### **2.40.160 Public works contracts.**

Public works contracts will abide by the provision of Section 20160 et. seq., of the Public Contract Code of the state.