

ORDINANCE NO. 4276

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POMONA AMENDING CHAPTER 2, ARTICLE VII OF THE POMONA CITY CODE PERTAINING TO THE REQUIREMENTS AND PROCEDURES FOR PROCURING SUPPLIES, SERVICES, EQUIPMENT AND CAPITAL IMPROVEMENT CONTRACTS, AND SALE OF SURPLUS PROPERTY

WHEREAS, the City of Pomona as a charter city has previously established its own Municipal Code, including various sections of the Pomona Municipal Code that address the purchase of supplies, services and equipment, and capital improvement contracts, and sale of surplus property pursuant to municipal operations (collectively known as the “Purchasing Ordinance”);

WHEREAS, in establishing the Purchasing Ordinance it was and is the intent of the City Council to provide for the effective and efficient purchase of goods and services, while maintaining fiscal control and oversight;

WHEREAS, in order to process the procurement of goods and services in the most efficient manner while still maintaining fiscal control and oversight, the City routinely reviews the Purchasing Ordinance for possible updates;

WHEREAS, after reviewing the current Purchasing Ordinance in light of changes in existing state law, current purchasing and bidding best practices and standards, and the City’s experience in operating under the existing ordinance provisions, certain recommended amendments to the Purchasing Ordinance are hereby proposed; and

WHEREAS, it is the purpose of the recommended amendments to improve the ability of the City to provide effective, efficient, timely and fiscally prudent customer service to all residents of the City of Pomona.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Pomona as follows:

SECTION 1. The recitals above are true and correct and are hereby incorporated herein by this reference.

SECTION 2. This Ordinance is exempt from the requirements of the California Environmental Quality Act (“CEQA”) pursuant to State CEQA Guidelines, as it is not a “project” and has no potential to result in a direct or reasonably foreseeable indirect physical change to the environment. 14 Cal. Code Regs. § 15378(a). Further, this Ordinance is exempt from CEQA as there is no possibility that this Ordinance or its implementation would have a significant negative effect on the environment. 14 Cal. Code Regs. § 15061(b)(3).

SECTION 3. The Pomona City Code Chapter 2, Article VII, “Purchasing” shall be amended as follows:

ARTICLE I. GENERAL PROVISIONS

Sec. 2-961. – Purpose

The purpose of this chapter is to define a uniform system for the procurement of materials and services, to provide for the fair and equitable treatment of all persons involved in the procurement process, to obtain the highest possible value in exchange for public funds and to safeguard the quality and integrity of the procurement system.

Sec. 2-961.1. Confidential information.

All bids, proposals, offers, specifications, protests, or correspondences submitted to the City are subject to public inspection and disclosure under the California Public Records Act (Government Code Section 6250 et seq.). If a person believes that any portion of its bid, proposal, offer, specifications, protest, or correspondence is exempt from public disclosure, such portion may be marked “Confidential,” “Proprietary”, or “Trade Secret.” Except as required by law or court order, the City will use reasonable means to ensure that such confidential information is safeguarded.

ARTICLE II. PROCUREMENT ORGANIZATION

Sec. 2-962. – Centralized Procurement System.

Centralized procurement shall provide for efficient procedures for the purchase of goods, services, professional services, equipment and other personal property and services at the lowest possible cost commensurate with quality needed; to exercise positive financial control over purchases as provided by Charter § 1202. Centralized procurement shall operate as a division of the finance department.

(Ord. No. 4107, § 1, 9-8-2008)

Sec. 2-963. – Procurement Guidelines.

In addition to the provisions of this ordinance, the Finance Director shall prepare and implement a guideline of procurement policies and procedures. Said procedures may be amended as needed upon recommendation of the Finance Director with the approval of the City Manager to address operational issues as they arise. *Supplementary information, i.e. definitions, process, exceptions, requirements and signature authority, etc., is outlined in corresponding Sections within the Procurement Policies and Procedure Manual.*

Sec. 2-964. – Procurement Officer.

The Finance Director may assign/designate an individual(s) to function as the City's Procurement Officer. An individual(s) assigned/designated by the Finance Director to function in this capacity will have the authority to procure goods and services, professional services and equipment required by the City in accordance with the procurement

procedures prescribed by the City charter and as authorized by the Finance Director and the City's policies and procedures.

The Finance Director or Procurement Officer may designate individuals to function as Procurement Staff to assist in the procurement of goods and services, professional services, and equipment required by the City in accordance with the procedures prescribed by the City Charter and as authorized by the Finance Director or Procurement Officer and the City's policies and procedures.

(Ord. No. 4107, § 1, 9-8-2008)

Sec. 2-965. – Required Restrictive Procedures.

Nothing herein contained shall preclude the City from utilizing more restrictive procedures if, and when required by federal or state law, where federal or state funds are involved in the contract to be awarded or when the Procurement Officer determines it is in the best interest of the City to do so.

Sec. 2-966. – Unauthorized Purchases.

Except for emergencies, or other authorized exemptions, no purchase can be made without an authorized purchase order number issued by the City of Pomona. Such purchases are void and not considered an obligation by the City. Invoices without a valid purchase order number may be returned to the supplier unpaid. The City is not responsible for any unauthorized purchase, or any purchase that does not comply with the City's Procurement Policies and Procedures.

Secs. 2-967. – 2-969. - Reserved.

ARTICLE III. ETHICS IN PUBLIC CONTRACTING

The Procurement Officer, as well as those involved in City of Pomona procurement shall discharge their duties in accordance with high ethical standards by practicing their profession with integrity, honesty, truthfulness and adherence to the absolute obligation to safeguard the public trust.

Sec. 2-970 – Gratuities and Kickbacks.

- 1) *Gratuities.* The Procurement Officer and all other officers and employees of the City are prohibited from accepting or receiving directly or indirectly from any person to which any purchase order or contract is or might be awarded, any rebate, gift or money, including any rebate or discount in the price of anything of value, or any promise, obligation or contract for future reward or compensation, unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. The offer of such gratuity to an official or employee by any supplier or contractor shall

be cause for declaring such individual to be an irresponsible bidder and for preventing supplier from bidding on any open market purchase or service. Exceptions to this provision are outlined in City of Pomona Administrative Policy #10.

- 2) *Kickbacks*. It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(Ord. No. 4107, § 1, 9-8-2008; Ord. No. 4145, § 1, 7-11-2011)

Sec. 2-971 – Conflict of Interest.

- 1) No officer or employee of the City may contract with any person related to any officer or employee of the City by blood or marriage for materials, supplies, services and equipment unless the purchase is by competitive bid and the person so related submits the lowest responsible bid therein. No officer or principal of the supplier, nor any subcontractor may be employed or have been employed, either full or part time, by the City of Pomona either currently or within the last two years. An exception to this section may be granted by approval of the City Council. All successful construction or service bidders must sign and adhere to the City's statement of non-collusion.
- 2) Any unauthorized contact by the bidder during the bid or proposal process with an official or City employee, other than those shown on the RFP or bid, the Finance Director, or Procurement Officer, shall cause the bidder to be immediately disqualified from consideration of award.
- 3) City employees and officials shall be prohibited from engaging in and/or awarding procurements when:
 - (a) Having a financial or personal beneficial interest (directly or indirectly) in any contract or purchase order for materials, supplies, equipment, services, or projects furnished to the City.
 - (b) Using information available to officials and employees, solely because of their City position, for personal profit, gain or advantage.
 - (c) Directly or indirectly furnishing or withholding services or information not available to all prospective bidders, or who may reasonably be expected to bid on, a contract with the City.
 - (d) Using a position or status in the City to solicit (directly or indirectly)

business of any kind; or to purchase products at special discounts or upon special concessions for personal private use from any person or firm who sells or solicits sales to the City.

- (e) Serving the interest of any organization which transacts or attempts to transact business with the City for profit when such employee holds a City position of review or control over such business transactions.

(Ord. No. 4107, § 1, 9-8-2008; Ord. No. 4145, § 1, 7-11-20-11)

Secs. 2-972.—2-979. - Reserved.

ARTICLE IV. CONTRACT FORMATION AND SOURCE SELECTION

Part A – General Provisions

Sec. 2-980. – Purchase Requisitions (PR).

The Department making the request for goods and services, professional services, and equipment shall submit requests to the Purchasing Division using the automated purchasing system.

(Ord. No. 4107, § 1, 9-8-2008)

Sec. 2-981. – Purchase Order (PO).

Purchase of goods and services, professional services and equipment shall be made by purchase order issued by the Procurement Officer, subject to the provisions of this article. Except in an emergency, as authorized in this article, no officer or employee of the City shall request a supplier to deliver goods and services, professional services or equipment to the City, or begin work on any assignment, without prior authorization by the Procurement Officer. The Finance Director shall have the authority to set a minimum dollar threshold for which a purchase order is required, however said threshold shall not exceed the minimum bid limit as provided in section 2-993. No procurement of materials or services of over \$5,000 shall be made without a purchase order.

(Ord. No. 4107, § 1, 9-8-2008; Ord. No. 4145, § 1, 7-11-2011)

Sec. 2-982. – Open Purchase Orders.

Notwithstanding other sections of this article, the Procurement Officer may issue open purchase orders for goods and services, professional services and equipment as needed to support ongoing City operations and support various City departmental functions. Open purchase orders are only valid for one fiscal year and will be closed at the end of each fiscal year.

Purchasing may establish citywide blanket purchase orders for citywide goods and services.

(Ord. No. 4107, § 1, 9-8-2008; Ord. No. 4145, § 1, 7-11-2011)

Sec. 2-983. – Encumbrance of Funds.

Except in an emergency, or in cases where specific authority has been first obtained from the City Manager, the Procurement Officer shall not issue any purchase order for materials, supplies, services or equipment unless the Finance Director has determined there exists an unencumbered appropriation in the fund account against which the purchase is to be charged. All purchases, regardless of encumbrances, shall be made in conformance with the policies established by this code.

(Ord. No. 4107, § 1, 9-8-2008)

Sec. 2-984. – Contracts.

Term

The duration of a contract will depend upon the City's need, prevailing market conditions, contract start-up costs, and the City's best economic interest. The initial term of a contract shall not exceed three (3) years, unless otherwise approved by the City Council. In no case shall a contract exceed five (5) years in duration unless the contract is specifically approved by the City Council, or is extended from the original contract term by one (1) year.

Contingency Amounts

When requesting approval for award of a service contract from the City Council, a contingency amount may also be requested.

Amendments

- 1) *Contract Decreases.* The Procurement Officer may decrease the amount of contracts.
- 2) *Contract Increases.* A contract's total expenditure may not increase by more than twenty-five percent (25%) of the original contract amount or will not cause the total cost to exceed the informal threshold amount, whichever is less and it is demonstrated to be in the best interest of the City and reflective of good purchasing practices and approved by the Finance Director or Procurement Officer. Increases that exceed the informal threshold shall be approved by the City Council.
- 3) *Renewals:* Prior to recommending renewal or extension of an existing contract, the using department will document that performance of the contractor has been satisfactory.
- 4) *Contract Extensions.* Contracts of less than five (5) years may be extended for up to six (6) months from the Original Contract Term without approval

by the City Council; in no event shall the contract term exceed five (5) years. The extension may be issued by the Procurement Officer, without the City Council's approval provided there are no monetary increases above average semi-annual value of the previous year and if it is determined to be in the best interest of the City.

Retroactive Contract/Amendments/Changes, excluding Public Works Contracts

- 1) In general, retroactive contracts or contract overruns are not permitted, and if they occur they are invalid unless ratified by the City Council, or unless one or more of the following exemptions applies:
 - a) Contracts with a total value <\$500.
 - b) Contracts with a total value between \$500 and \$2,499 that have the approval of the Procurement Officer and Finance Director.
 - c) Contracts with a total value between \$2,500 and \$5,000 shall require approval by the City Manager.
 - d) Contracts with a total value exceeding \$5,000 and above shall require approval by the City Council.

(Ord. No. 4107, § 1, 9-8-2008)

Sec. 2-984.1. – Contract Management.

Department directors shall be responsible for managing supplies and service contracts under the authority of their respective departments. Contract management shall include, but not be limited to, ensuring that suppliers and service providers are in compliance with local, State and Federal laws and requirements, comply with the terms of the agreements, contracts, purchase orders, including insurance, pricing and maximum dollar limits.

(Ord. No. 4107, § 1, 9-8-2008)

Sec. 2-985. – Responsibility.

Every employee involved in any aspect of purchasing goods or services is responsible for following current purchase practices, policies, and procedures as established by the Finance Department and as may be amended from time to time.

(Ord. No. 4145, § 1, 7-11-2011)

Sec. 2-986. – Local Preference.

In order to promote the economic health of the City and to encourage local participation in the procurement process, the City, in determining the lowest responsible

bidder, may take into consideration the sales tax which would be returned to the City as a result of the award. Procurements funded by federal, state or county grants may prohibit local preference considerations; therefore, shall default to the most restrictive requirements for contract award.

(Ord. No. 4107, § 1, 9-8-2008)

Sec. 2-987. – Environmentally Preferred Procurement.

Whenever possible and reasonably practical, the Procurement Officer shall include environmental consideration in purchasing decisions and attempt to purchase products manufactured from the maximum recycled content practicable.

The City of Pomona recognizes the positive impact it can make on the environment through the purchasing decisions it makes. The City of Pomona is a large consumer of goods and services, and the purchasing decisions of its employees and contractors can positively or negatively affect the environment. By including environmental considerations in procurement decisions, along with the City's traditional concerns with price, performance, and availability, the City will remain fiscally responsible while promoting practices that will improve public health and safety, reduce pollution, and conserve natural resources.

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

(Ord. No. 4107, § 1, 9-8-2008)

Sec. 2-988. – Inspection and Testing.

The Procurement Officer or Department designee shall inspect materials, supplies and equipment delivered and contractual services performed to determine their conformance with the specifications set forth in the order or contract. The Procurement Officer shall have authority to require chemical and physical tests of samples submitted with bids and samples of deliverables which are necessary to determine their quality and conformance with specifications.

(Ord. No. 4107, § 1, 9-8-2008)

Sec. 2-989. – Federal and State Requirements.

- 1) If any section, subsection, subdivision, sentence, clause or phrase of this division conflicts with any federal and or state requirements mandated for any

grant funded procurement, the applicable federal and or state requirements shall apply to that procurement.

- 2) The City, as grantee, will not provide federal or state funds to any party (subgrantee, subrecipient, supplier and/or contractor) that is debarred or suspended or otherwise excluded from or ineligible for participation in federal or state assistance programs.

(Ord. No. 4107, § 1, 9-8-2008)

Sec. 2-990. – Protest Process Generally.

- 1) Right to Protest. Prior to making the award, any responsible bidder in connection with the award of a contract may protest the award to the Procurement Officer. A subcontractor of a bidder or proposer may not submit a protest. The protest shall be submitted in writing within five (5) calendar days prior to the date of the award and shall identify and explain the factual and legal grounds for the protest. Any grounds not raised in the written protest are deemed waived by the protesting bidder. The Procurement Officer shall review the request and provide the protester with a written reply regarding the protest within three (3) days prior to the final award. Protests received after five (5) calendar days prior to the date of the award will not be considered.
- 2) Authority to Resolve Protests. The Procurement Officer shall have the authority, prior to award, to settle, resolve, or reject a protest of a responsible bidder concerning the award of a contract.
- 3) Effect of Failure to Comply with Protest Procedures. The procedures set forth in this article are mandatory and are the sole and exclusive remedy of a bidder or proposer to dispute the award of a contract. A protest that does not comply with these procedures may be summarily rejected.

Part B – Methods of Source Selection

Sec. 2-991. – Authorized Selection Methods.

Any supplier desiring to conduct business with the City must have a valid City business license. Procurements for materials, goods and services, professional, services, equipment or construction must be made by one of the methods described in this article unless otherwise authorized by law. With the exception of design-build procurements, contractors that develop or draft specifications, requirements, statements of work, invitations for bids or requests for proposals are prohibited from competing for and being awarded the subsequent contract for work.

Sec. 2-992. – Micro Purchases.

An acquisition of supplies or services using simplified acquisition procedures in the aggregate amount less than the micro-purchase threshold of \$5,000.

Sec. 2-993. – Open Market - Informal Procurement Procedure.

The procurement of goods and services, equipment and professional service with an estimated annual value of \$5,000 and up to \$100,000 to one supplier inclusive of taxes, licenses, freight charges, installation charges, fees, and other considerations, may be made by the Procurement Officer in the open market. Procurement requirements shall not be artificially split/divided so as to constitute an informal purchase under this Section.

- 1) *Informal bid or proposal requirement.* The open market Informal Procedure criteria shall include:
 - a) *Minimum number of bids or proposals.* Informal procurements of \$5,000 and up to \$100,000 shall be based on at least three bids or proposals.
 - b) *Inviting bid or proposals.* The Procurement Officer may solicit informal bids or proposals by written request, email and through other electronic media to prospective sources.
 - c) *Responses.* Informal bids or proposals will be submitted to the Procurement Officer, who shall keep a record of all open market orders and responses in accordance with the City's records retention policy. This record, while so kept, shall be open to public inspection.
 - d) *Determining responsiveness and responsibility.* The Finance Director or Procurement Officer may waive minor defects in informal bid or proposal documents, provided the defect has no effect on the bid price or published selection criteria in a request for proposal or qualifications. The Procurement Officer may exercise the authority to declare a bidder, proposer or respondent as non-responsible; and shall have the authority to suspend the bidder, proposer or respondent from participating in future bid or proposal opportunities upon the discovery of violations to any applicable laws, policies and procedures for a specified period of time or until such violations are corrected.
 - e) *Award.* Informal procurements shall be approved by the using Department Director or authorized designee dependent upon signature authority, and awarded by the Procurement Officer by way of a purchase order and other applicable agreements as may be required, to the lowest, most responsive and responsible bidder, or to the most qualified proposer or respondent at fair and reasonable prices.
 - f) *Transparency.* All informal procurements exceeding \$50,000 and up to \$100,000 will be published on the City's website on a quarterly basis for public inspection.

Sec. 2-993.1. - Formal Procurement Procedure.

- 1) *Generally.* Except as otherwise provided in this ordinance, the Procurement Officer shall procure materials, supplies, services, professional services (non CIP) and equipment in excess \$100,000 pursuant to the formal procedure described in this section subject to the exceptions set forth in subsection 2-993.1 The Finance Director or Procurement Officer may waive minor defects in bid documents, provided the defect has no effect on the bid price recommended for award.
- 2) *Splitting purchases.* It shall be expressly forbidden to split or separate into smaller projects or procurements any request for supplies, service and/or equipment for the purpose of evading the requirements of this section.
- 3) *Exceptions.* Criteria for exceptions is set forth in Sec. 2-993.2
- 4) *Invitation for bids, request for proposals or qualifications.* An invitation shall be issued to all interested parties and shall include a description of the materials, supplies, services or equipment to be procured.
 - a) *Public notice inviting bids.* The notice inviting bids shall be publicly advertised in the manner directed by the Procurement Officer pursuant to the procurement policies and procedures manual. The notice shall state where bid or proposal documents may be secured and the date, time and place submittal and for opening bids. The City will utilize electronic methods for all noticing requirements of the procurement process whenever feasible.
 - b) *Bidders' list.* The Procurement Officer may use an electronic bid list and any other available list to notify interested parties of the bid opportunity.
 - c) *Bidders' security.* When deemed necessary by the Procurement Officer, bidders' security may be prescribed in the public notices inviting bids. Bidders shall be entitled to a return of bid security, provided that a successful bidder shall forfeit his/her bid security upon refusal or failure to execute the contract within ten days after being notified of award, unless the City is responsible for the delay. The City Council may, on refusal or failure of the successful bidder to execute the contract, award the contract to the next lowest bidder; the amount of the lowest bidder's security shall be applied by the City to the difference between the low bid and the second lowest bid; and the surplus, if any, shall be returned to the lowest bidder.
 - d) *Bid opening procedure.* The method of submittal, as determined by the Procurement Officer, shall be electronically through the electronic bidding system or submitted in hardcopy format. Bids shall be opened in public in accordance with the date, time and place stated in the public notice. Bids

submitted electronically through a bid management system will be opened electronically. The functionality of the electronic bidding system shall ensure that bid submissions remain unopened until the closing date and time of said submissions and that said submissions cannot be viewed by the public or city staff until the closing date and time. Sealed paper bids shall be delivered to the Procurement Officer or City Clerk as specified in the bid document. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than 30 calendar days after the bid opening. Proposals will not be opened publicly. Proposals may be open for public view after award by the City Council.

- e) *Determination of lowest responsive and responsible bidder, or most qualified proposer or respondent.* Upon opening and tabulation of received bids, or conducting an evaluation received proposals, the Procurement Officer shall thereafter determine the lowest, responsive and responsible bidder providing the best value, or the most qualified proposer or respondent by applying the criteria as set forth in the procurement policies and procedure manual. Whenever the Procurement Officer determines that a bidder or proposer is non-responsive or non-responsible, the Procurement Officer shall notify the bidder or proposer of said determination by way of an electronic method. The bidder or proposer shall be entitled to submit a protest in accordance with Section 2-990.
- f) *Rejection of bids or proposals.* In its discretion, the City may reject any and all bids or proposals. The right to reject any and/or all bids or proposals is expressly reserved to the City and said decision shall be final.
- g) *Award.* Formal bids or proposals over \$100,000 and less than \$150,000.00 shall be awarded by the City Manager to the bidder or proposer determined to be the lowest, responsive and responsible bidder, or the most qualified proposer, except as otherwise provided in this section. Formal bids or proposals in the amount of \$150,000 or more shall be awarded by City Council to the bidder or proposer determined to be the lowest, responsive and responsible bidder, or the most qualified proposer, except as otherwise provided in this section.
- h) *Single bid or proposal.* If a single bid is received in response to a solicitation, an award may be issued based on the qualifying process as set forth in the procurement policies and procedures manual.
- i) *Tie bids.* If two or more bids received are the same total amount or unit price, quality and service being equal, the City shall award the contract by drawing lots.
- j) *Performance bonds.* The Procurement Officer Agent shall have authority to require a performance bond before entering into a contract in such amount as reasonably necessary to protect the best interests of the City. If a performance bond, the form and amount of the bond shall be described

in the notice inviting bids or proposals.

(Ord. No. 4107, § 1, 9-8-2008; Ord. No. 4145, § 1, 7-11-2011)

Sec. 2-993.2 – Exceptions to the Informal and Formal Procedures.

Exceptions to the informal and formal procedures (Sec. 2-993. and 2-993.1) maybe waived in the following instances:

- 1) ***Sole and Single Source.*** (Sec.2-994. Sole and Single Source Procurement)
- 2) ***Cooperative Purchasing*** (Sec. 2-997.) Cooperative Purchasing).
- 3) ***Emergency*** (See Section 2-998.)
- 4) ***Motor vehicle Fuels and Oil products:*** Motor vehicle and oil products may be made in the most efficient method available consistent with the intent of this ordinance and in the best interest of the City.
- 5) ***Equipment maintenance and software agreements.*** The City Manager or designee shall have the authority to approve maintenance and software agreements exceeding \$50,000 for equipment and software procurements approved by the City Council, provided the agreements are awarded to the same company for the same equipment or software as approved by the City Council. Any other maintenance and software agreements shall be subject to the provisions of Section 2-993.
- 6) ***Specialty Exclusion: Library:*** Books, journals, and publications specific to the operation library, durable medical equipment or physician prescribe supplies and services necessitated under workers compensation law are excluded from the solicitation procedure.
- 7) ***Specialized Legal Services.*** The City Manager or designee shall have the authority to approve, as recommended by the City Attorney, specialized legal services agreements relating to current or probable litigation.
- 8) ***Fiscal and/or Personnel Services.*** The City Manager or designee shall have the authority to approve specialty services related to fiscal and/or personnel related matters.

Sec. 2-994. – Sole and Single Source Procurement.

A contract may be awarded as a sole or single source without competition upon review and verification, and determined to be in the City's best interest. Sole or single source requests between \$5,000 and up to \$50,000 will be approved by the Finance Director and Procurement Officer. Sole source requests exceeding \$50,000 shall be reviewed by the Procurement Officer and Finance Director and approved by the City Manager. Sole or single source requests over \$100,000 shall be reviewed by

the Procurement Officer, Finance Director, and the City Manager and approved by the City Council.

Sec. 2-995. – Special Procurements.

Notwithstanding any other provision of this Code, the Procurement Officer may dispense of the informal and formal procedure where the Procurement Officer determines that extenuating circumstance exists outside the normal City needs that makes the application of all requirements of competitive solicitations contrary to the public interest. Any special procurement under this Section shall be made with such competition as practicable under the circumstances and up to the limit approved by the City Council. A written determination of the basis for the procurement and for the selection of the particular contractor shall be included by the Procurement Officer in the contract file.

Sec. 2-996. – Formal Bid Procedure for Revenue Producing Procurements.

Except as otherwise provided in section 2-993.1, this section shall apply to all procurements in which the bidder generates revenue in the amount \$10,000 or greater payable to the City. Procurement shall be by written bid with award by the City Council to the highest revenue-generating bidder. Contracts that generate revenue or savings are subject to the informal bid process as outlined in Sec. 2-993.

(Ord. No. 4145, § 1, 7-11-2011)

Sec. 2-997 – Cooperative Purchasing.

The Procurement Officer shall be authorized to join with other units of government in cooperative purchasing plans so that the best interest of the City shall be served thereby. The Procurement Officer is authorized to recommend a cooperative or "piggyback" purchase on an awarded contract for services or equipment, entered into by other governmental agencies (municipality, county, state, or other agencies who conduct volume procurements on behalf of government agencies) through a competitive bid process, provided all products or equipment requested meet the technical specifications of the awarded bid.

(Ord. No. 4107, § 1, 9-8-2008; Ord. No. 4145, § 1, 7-11-2011)

Sec. 2-998. – Emergency Purchases.

The Procurement Officer may authorize emergency purchases free of all sections of this division upon showing by any agency or officer that the purchase required is for the immediate preservation of health, safety and welfare of the people; the purchase is for the immediate repair to existing City equipment which impacts ongoing City operations; or the purchase is for the protection of property; and that there is a present, immediate and existing emergency which could not reasonably be foreseen. The City Manager, Public Works Director, Finance Director, Police Chief, Water Resources Director or Procurement Officer may authorize emergency purchases free of all sections of this division upon a local emergency being declared pursuant to section 14-76 of this Code. Expenditures over

\$50,000 made under this section will be ratified by the City Council at the earliest opportunity after the conclusion of the emergency. Every attempt should be made to obtain three quotes as outlined in the Procurement Policies and Procedures Manual.

(Ord. No. 4107, § 1, 9-8-2008)

Sec 2-999. – Renewable Energy and Energy Efficiency Projects.

The provisions of Government Code Section 4217.10 et. seq., authorizing renewable energy and energy efficient public works projects to be sole-sourced or procured through either formal or informal request for proposals following a public hearing process, including the adoption of specific findings concerning the projected energy cost savings, are hereby adopted and incorporated by reference as if fully set forth herein

ARTICLE V. PUBLIC WORKS PROJECTS

DIVISION 2. - PUBLIC WORKS PROJECTS

Sec. 2-1001. - Public Works.

This article responds to the provisions of California Public Contract Code Section 1100.7 by affirmatively exempting the City from the requirements of the Public Contract Code, except to the extent the City has expressly adopted one or more provisions of the Public Contract Code pursuant to the City Charter, this code, Council resolution or other Council action, or express terms of a City contract. Performance of city public works projects in accordance with the procedures referenced in this division to article 3 of the Public Contracts Code (Public Contracts Code § 22030 et seq.) is for the sole purpose of establishing project thresholds, which are consistent with the amounts set forth in such article and as may be amended. Such reference to article 3 of the Public Contracts Code (Public Contracts Code § 22030 et seq.) shall not constitute an election by the City because, subject to either the uniform construction cost accounting procedures or the bidding procedures set forth in such article.

Sec. 2-1002. - Informal Bidding Procedure—Public Works.

- 1) Public projects for the amount defined in Public Contracts Code § 22032(a) or less may be performed by the employees of a public agency, by negotiated contract, or by purchase order.
- 2) Public projects for the amount defined in Public Contracts Code § 22032(b) or less may be let to contract by informal procedures as set forth in this Article.
- 3) If all bids received are in excess of the amount defined under Public Contracts Code § 22032(c), the governing body of the public agency may, by adoption of a resolution by a four - fifths vote, award the contract, up to the amount defined under Public Contracts Code § 22034(f), to the lowest responsible bidder, if it determines the cost estimate of the public agency was reasonable.

- 4) The aggregate of all change orders for a project awarded by informal procedures set forth in this section shall not exceed twenty five percent of the total value of the project as outlined in the Capital Improvement Program plan nor cause it to exceed the informal limit as defined in Public Contracts Code § 22032(b).
 - a) *Authority of Public Works Director and Water Resources Director for plans, specifications and working details.* The City Council hereby delegates to the Public Works Director and Water Resources Director authority to prepare and adopt plans, specifications and working details for all informal contracts and directs the Public Works Director to develop plans, specifications and working details necessary to enable a qualified contractor to perform the work required for each informal contract awarded.
 - b) *Maintenance and use of list of qualified contractors.* The Public Works Director shall develop a list of qualified contractors eligible to submit bids on informal contracts awarded by the City.
 - c) *Procedure for award of contracts.* At the time provided in the notice inviting informal bids, the Public Works Director shall open all bids. Electronic submittals shall be opened electronically. If two or more bids are the same and lowest, the contract will be awarded by the equal bidders drawing lots. If no bids are received, the Public Works Director may solicit informal bids again or perform the work with City forces as the Director determines to be in the best interest of the City.
 - d) *City Manager authority to award contracts.* The City Council hereby delegates the authority to award informal contracts, in accordance with this Division, to the City Manager or designee.

Sec. 2-1003. – Formal Procedure.

This Article shall apply to procurements estimated in excess of the amount provided under the Public Contracts Code § 22032(c), which may be amended from time to time for public works projects.

- 1) The City Manager shall designate the Public Works Director and the Water Resources Director, as City Contracting Officer who shall function as the Contracting Agent for all public works projects to be let through public bidding in accordance with the following formal procedure:
 - a) *Specifications.* All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage open competition in satisfying the City's needs. Specifications shall not be unduly restrictive.
 - b) *Bid splitting.* It shall be expressly forbidden to split or separate into small projects any public works project for the purpose of evading this section.

- c) *Notice inviting formal bids.* The notice inviting bids shall set a date, time, and place for the opening of bids and distinctly state the nature and scope of the project. The notice shall be posted on the City's website and electronic bid board(s) and in at least one public place in the City that has been designated for the posting of public notices at least ten days before the date of opening the bids.
- d) *Bidders' list.* The contracting officer shall electronically notify bidders who have shown interest in City solicitations.
- e) *Bidders' security.* All public project bids shall be presented to the designated contracting officer under sealed cover and accompanied by one of the following forms of bidders' security of an amount not less than ten percent of the amount bid or such other amount as may be set forth in Public Contract Code Section 20171, as may be amended from time to time:
 - i) Cashier's check made payable to the City;
 - ii) Certified check made payable to the City; or
 - iii) A bidder's bond, executed by an admitted surety insurer, made payable to the City. If the successful bidder fails to execute the contract, the amount of bidder's security shall be forfeited to the City.
- f) *Bid opening procedure.* The method of submittal shall be electronic or paper. Bids shall be opened in public at the time and place stated in the public notice. Bids submitted electronically through a bid management system will be opened electronically. Sealed paper bids shall be delivered to the Procurement Department. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than 30 calendar days after the bid opening.
- g) *Award of contract.* Bids shall be awarded by the City Council to the lowest responsive and responsible bidder except as otherwise provided in this code. Bids containing a base bid and one or more additive alternates shall be totaled and awarded to the lowest responsive and responsible bidder for the base bid and any additive alternate recommended.
- h) *Award to next lowest bidder.* The City Council may, on refusal or failure of the successful bidder to execute the full terms of the contract, award it to the next lowest responsible bidder. If the City Council awards the contract to the second lowest responsive and responsible bidder, the amount of the lowest bidder's security shall be applied by the City to the difference between the low bid and the second lowest bid, and the surplus, if any, shall be returned to the lowest bidder if cash or a check is used or to the surety on the bidder's bond if a bond is used.

- i) *Rejection of bids.* In its discretion, the City Council may reject any and all bids, accept or reject any one or more items of a bid, or waive any irregularities or informalities in the bids or the bidding process if to do so is deemed to best serve the interests of the City. Upon rejection of the bids, the City may elect to re-advertise for bids pursuant to the procedure described in this article.
- j) *Record of bids.* The City Clerk shall keep a record of all public works projects bid submittals in accordance with the City's Records Retention Schedule.
- k) *Insurance and bonds.* The contractor shall not commence work until they have procured and given satisfactory proof of insurance and bonds as specified in the Procurement Policies and Procedures Manual.
- l) *Change Orders.* Provided the funding for a public project contract has been previously approved and the expenditure of funds authorized by the City Council, the City Manager shall have the authority to execute change orders for any contract in an amount not to exceed twenty five percent (25%) of the amount of the original contract.

(Ord. No. 4107, § 1, 9-8-2008; Ord. No. 4145, § 1, 7-11-2011)

Sec. 2-1004. - Design-build Contracts for Capital Improvements.

Purpose and intent. Design build means a procurement process in which both the design and construction of a project are procured from a single entity. Design-build also includes projects where in addition to design and construction, other functions may be added including, but not limited to, construction management, inspection, soils/materials testing financing, operating and/or maintenance.

Sec. 2-1005. - Professional Services for All Capital Improvement Plan (CIP) Projects.

- 1) *Procurement of Professional Services for all CIP Projects set forth in the City's Capital Improvement plan including technology and software projects.* Procurements for professional services for CIP projects shall follow the thresholds as set forth in the Public Contract Code (PCC) for informal and formal procedures.
- 2) *Selection.* Professional services related to CIPs shall be on the basis of demonstrated competence on the professional qualifications necessary for the satisfactory performance of the services required. Upon compiling a list of pre-qualified consultants, projects may be awarded on a rotating basis so as to best serve the needs of the City, with the intent to ensure that all pre-qualified consultants on the approved list are provided a fair opportunity to earn City business. The process for consultant selection shall be set forth in the procurement policies and procedures manual.

- 3) *Award.* The City Manager shall have the authority to approve, award and execute informal agreements; the City Council shall approve and award formal agreements, and may delegate authority to the City Manager to execute formal agreements after City Council award.
- 4) *Amendments.* Amendments to informal agreements that will not cause the total cost to exceed the informal amount as set forth in the PCC § 22032(b), shall be approved and executed by the City Manager. Amendments that exceed the threshold of the PCC require approval of the City Council, and may delegate authority to the City Manager to execute the amendment after City Council approval.

(Ord. No. 4107, § 1, 9-8-2008; Ord. No. 4129, § 1, 4-19-2010; Ord. No. 4145, § 1, 7-11-2011)

Section 2-1006. Prevailing Wages; Public Works Projects.

In order for the City to receive State funds or financial assistance for a public works project it must comply with State prevailing wage requirements on local construction projects.

Sec. 2-1007. - Reserved.

Sec. 2-1008. - Calamity or Emergency Work.

In case of any great public calamity, such as an extraordinary fire, flood, storm, epidemic, or other disaster, the City Council may, by resolution passed by a four-fifths vote of all its members declare and determine that public interest and necessity demand the immediate expenditure of public money to safeguard life, health, or property, and thereupon proceed to expend or enter into a contract involving the expenditure of any sum needed in such emergency without observance of the provisions requiring contracts, bids, or notice. The contracting officer shall comply with the requirements set forth in Section 22050 of the Public Contracts Code.

Sec. 2-1009. – City Federal Emergency Management Agency (FEMA) Procurements.

In the aftermath of a disaster resulting in a disaster declaration by the President of the United States, The Federal Emergency Management Agency (FEMA) provides grant funding to local government entities to assist them with recovering from an event. Local governments are generally referred to as “Subrecipients” because they receive grant funds through the State. Subrecipients must comply with the Federal procurement standards to ensure their procurements are eligible for federal grant funding.

Secs. 2-1010—2-1040. - Reserved.

ARTICLE VI. SALE OR DISPOSITION OF CITY PROPERTY

DIVISION 1. - GENERALLY

Sec. 2-1041. - Sale of Surplus Real Property Excluding Redevelopment Agency (RDA) property.

The City Manager shall be authorized to execute an agreement for the sale and transfer of surplus real property if the property meets the following criteria:

- 1) The property is less than 5,000 square feet in area and as such is exempt from legal notice of sale requirements as set forth in [Section 2-1060](#).
- 2) The property must be sold to an owner of contiguous property.
- 3) The fair market value is calculated by using the real estate appraisal formulas.
- 4) The vacant, unused lot is to be used for improvement purposes. (Ord. No. 3981, § 6, 4-21-2003)

Secs. 2-1042—2-1060. - Reserved.

DIVISION 2. - SALE OF SURPLUS PERSONAL PROPERTY

Sec. 2-1060. - Sale of Surplus Property and Unserviceable Junk or Scrap.

The sale of surplus property inclusive of unserviceable junk and scrape may be handled by a qualified auction house as designated by the Procurement Officer.

Sec. 2-1061. - Conveyance of Property to Charitable, Nonprofit Organizations.

Notwithstanding the other sections of this division, the City Council may convey to charitable, nonprofit organizations surplus personal property as it is determined by the City Council that the use to which the personal property will be put will be for the benefit of the general welfare of the community in matters such as recreation, education, aid to the destitute, City beautification, or any other activity in which the City government may legitimately participate. The maximum estimated value for such personal property shall not exceed \$5,000.

(Code 1959, § 2.5-30; Ord. No. 3151, § 1 (part))

Sec. 2-1062. - Conveyance to Other Public Agencies.

Notwithstanding the other sections of this division, the City Council may convey or sell, without recourse to sealed bid or auction, surplus personal property to other public agencies, including cities, counties, school districts, special districts and joint powers agencies as may be determined by the City Council.

(Code 1959, § 2.5-31; Ord. No. 3151, § 1 (part))

Sec. 2-1063. - Disposal of Unclaimed Property.

Notwithstanding other sections of this division, unclaimed property in the possession of the police department held by the department for at least 90 days. If the owner of the property appears within 90 days of receipt of the property by the police department, proves ownership of the property and pays all reasonable charges, the police department shall restore the property to the owner. If the true owner does not make claim for the return of the property within 90 days of receipt of the property by the police department, in accordance with the provisions of California Civil Code Section 2080.4, the property may be either retained by the City upon finding that the property is needed for public use or may be disposed of by the police department by auction. In the event the property is deemed to be of no value, it shall be disposed of in a manner determined to be in the best interests of the City.

(Code 1959, § 2.5-32; Ord. No. 3151, § 1 (part)); Ord. No 4218, § 1-3-7-2016

Sec. 2-1069. – Sale of Property Fully Purchased by Redevelopment Authority or with Grant Funding.

Sale of property purchased by the Redevelopment Agency or with grant funds shall be made in accordance with respective guidelines and legal requirements for the disposal of this property.

Secs. 2-1070—2-1100. - Reserved.

SECTION 4. If any part of this Ordinance is determined by a court of law to be invalid, the other provisions of this Ordinance survive and have full effect.

SECTION 5. The City Clerk shall attest to the passage and adoption of this Ordinance and shall cause same to be posted as required by law, and this Ordinance shall take effect thirty (30) days after its final adoption.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2019.

ATTEST:

CITY OF POMONA:

Rosalia A. Butler, MMC, City Clerk

Tim Sandoval, Mayor

APPROVED AS TO FORM:

Sonia Carvalho, City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)
CITY OF POMONA)

I, ROSALIA A. BUTLER, MMC, CITY CLERK of the City of Pomona do hereby certify that the foregoing Ordinance was duly introduced at a regular meeting of the City Council of the City of Pomona held on DECEMBER 16, 2019, and was adopted at the regular meeting of the City Council of the City of Pomona held on JANUARY 6, 2020 by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:

Rosalia A. Butler, MMC, City Clerk