



Meeting Date: 11/16/10

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input checked="" type="checkbox"/> Other: City Council Bussiness

Prepared By: Alan Holmberg, City Attorney *AH* Agenda Item No. N-1  
 Reviewed By: City Manager *[Signature]* City Attorney *[Signature]* Finance *[Signature]* Other (Specify)

**DATE:** October 28, 2010

**TO:** City Council

**FROM:** Alan Holmberg, City Attorney *AH*

**SUBJECT:** Amendment of General Purchasing Procedures and Public Contract Purchasing Procedures

**RECOMMENDATION**

That City Council:

1. Adopt a resolution amending purchasing procedures for professional services, trade services, equipment and supplies;
2. Approve the first reading by title only and subsequent adoption of an ordinance amending public contract purchasing procedures;

**DISCUSSION**

Pursuant to City Council direction at the Council Meeting of October 26, 2010, the City Attorney's Office has prepared a Resolution amending purchasing procedures for trade services, equipment and supplies, and for professional services. The City Attorney's Office has also prepared an ordinance amending purchasing procedures for public projects contract procurements. In both instances, contracts which are greater than \$25,000 in amount must be brought to the City Council for approval. If an amendment increases the contract amount to over \$25,000, City Council approval is required. Changes within a contract that change the scope of services by increasing or decreasing or adjusting services between line items in an amount greater than \$25,000 require City Council approval.

With respect to public projects contracts, the provisions concerning informal bidding procedures for amounts from \$25,000 to \$100,000 remain intact, however, City Council must award the contract. Change orders in sums greater than \$25,000 or which result in an adjustment of line items greater than \$25,000, must be approved by City Council. Contracts in excess of \$100,000, are subject to formal bidding procedures. City Council must adopt plans and specs. City Council must approve the contract and change orders that adjust line items more than \$25,000.

The attached ordinance and resolution do not address issues of local preference. Although whether local preferences are legally permissible in trade service, public works, or equipment purchase projects is not entirely clear, a number of jurisdictions, including the City of Los Angeles, have adopted local preferences for small businesses under the authority of Public Contract Code section 2002, which specifically provides for preferences for "small businesses." The maximum extent of the preference for a public project is a credit to the local small business of 5% of the lowest responsible bid. The preference can only be granted to a "small business." The City Council must determine what it considers to be a "small business." The maximum dollar amount of the preference is also set forth in several ordinances and resolutions of other jurisdictions. Finally what qualifies as a "local business" is an issue which needs to be determined.

Staff will return to City Council with proposals concerning definitions of small and local business, as well as appropriate maximum preference amounts.

## **FINANCIAL IMPACT**

There is no immediate financial impact associated with this action.

Attachment #1 – Resolution Establishing Purchasing Procedures

#2 – Ordinance Amending Sections 4-9 and 4-10 of the Oxnard City Code

CITY COUNCIL OF THE CITY OF OXNARD

RESOLUTION NO. \_\_\_\_\_

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
OXNARD ESTABLISHING PURCHASING PROCEDURES

WHEREAS, on March 8, 1994, the City Council adopted Resolution No. 10,696, adopting purchasing procedures to implement the City's purchasing ordinance; and

WHEREAS, on February 14, 1995, the City Council adopted Resolution No. 10,854, amending the purchasing procedures; and

WHEREAS, on May 2, 2000, the City Council adopted Resolution No. 11,716 amending the purchasing procedures; and

WHEREAS, on March 7, 2006, the City Council adopted Resolution No. 13,014, amending the purchasing procedures; and

WHEREAS, the City Council wishes to further amend the purchasing procedures in their entirety.

NOW, THEREFORE, the City Council of the City of Oxnard resolves:

1. The purchasing procedures attached hereto as Exhibit A and incorporated herein by reference are adopted.
2. Resolution Nos. 10,696 and 10,854, 11,716, and 13,014 are repealed.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2010 by the following vote:

AYES:

NOES:

ABSENT:

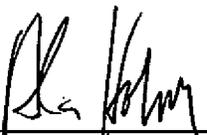
\_\_\_\_\_  
Dr. Thomas E. Holden, Mayor

ATTACHMENT NO. 1  
PAGE 1 OF 5

ATTEST:

\_\_\_\_\_  
Daniel Martinez, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Alan Holmberg, City Attorney

## EXHIBIT A

### PURCHASING PROCEDURES

#### Supplies, Equipment and Trade Services

#### 1. Definitions

Definitions of "purchasing agent," "trade services," "professional services," "services" and "certain professional services" are contained in sections 4-1(B), 4-30(A), 4-30(B) and 4-41 of the city code, respectively. For purposes of this resolution, the following additional definition shall apply:

- a. "Purchase" includes acquisition by the city or transfer to the city by purchase, lease, lease-purchase, trade or any other method involving the expenditure of money, the relinquishment of property or the creation of debt.
- b. "Supplies" and "equipment" are personal property bought, sold or used for and by the city.

#### 2. Purchase of supplies, equipment and trade services

- a. City staff may purchase supplies, equipment and trade services costing \$2,500 or less and need not obtain bids therefore.
- b. After obtaining price quotations from three vendors, city staff may request the purchasing agent to purchase supplies, equipment and trade services costing from \$2,500.01 to \$25,000.
- c. Without complying with the foregoing subsections (a) through (e) of this section 2, city staff and the purchasing agent, as designated by subsections (a) through (e) of this section 2, may purchase supplies, equipment and trade services in cooperation with other public entities by entering into contracts made available through the auspices of another public entity that has complied with its own procedures for making such purchase; provided, however, that if the amount of the purchase exceeds \$25,000, the purchasing agent shall first obtain City Council approval of the purchase.
- d. If the supplies, equipment or trade services to be purchased can be obtained from only one source, bids or price quotations are not required.
- e. City staff and the purchasing agent shall not split or separate purchases into smaller purchases in order to evade the provisions of this resolution.

- f. All purchases of supplies, equipment or trade services shall be made by written purchase order, contract or lease, in a form approved by the city attorney, and any amendments thereto or termination thereof shall be in writing in a form approved by the city attorney. Amendments and terminations of purchase orders, contracts and leases may be executed by the persons authorized to execute the purchase orders, contracts and leases; provided, however that such purchase orders, contracts and leases may not be amended to extend the term for more than three years, including the original term.
- g. The purchasing agent is authorized to execute purchase orders, contracts and leases for supplies and equipment and contracts for trade services if the amount of the purchase order, contract or lease does not exceed \$25,000. The purchasing agent is authorized to execute amendments to purchase orders, contracts and leases for supplies authorized to execute amendments to purchase orders, contracts and leases for supplies and equipment or trade services if the combined amount of the purchase order, contract or lease and the amendment and all previous amendments thereto does not exceed \$25,000.
- h. Purchase orders, contracts and leases for supplies and equipment and contracts for trade services in an amount over \$25,000, and amendments thereto for which the combined amount of the purchase order, contract or lease and the amendment and all previous amendments thereto exceeds \$25,000, shall be placed on a city council agenda for approval and execution. In addition, if an executed contract contains a scope of services or line items detailing the cost of particular supplies, equipment or services and any change in such scope of services or line items exceeding \$25,000 shall be placed on a City Council agenda for approval.
- i. If the city council is not in session and there is an immediate need for execution of a purchase order, contract or lease or amendment thereto referred to in subsection h above, the purchase order, contract or lease or amendment thereto may be executed jointly by the city manager and the highest-ranking available member of the city council. The city manager shall place the jointly executed document on the agenda for ratification at the next regular city council meeting occurring more than five days after execution. All purchase orders, contracts or leases or amendments thereto that are executed jointly shall contain a provision that the document will automatically terminate on the date that ratification is denied.

Professional Services and Certain Professional Services

- a. On the request of city staff, the purchasing agent may purchase professional services and certain professional services and execute contracts therefore and amendments thereto and terminations thereof. Contracts for professional

services and certain professional services in an amount over \$25,000, and amendments thereto for which the combined amount of the contract and the amendment and all previous amendments thereto exceeds \$25,000, shall be placed on a city council agenda for approval and execution. If an executed contract contains a scope of services or line of items detailing the cost of particular services, any change in such services or line items exceeding \$25,000 shall be placed on a city council agenda for approval. If the city council is not in session and there is an immediate need for execution of such a contract or amendment, the contract or amendment may be executed jointly by the city manager and the highest-ranking available member of the city council. The city manager shall place the jointly executed document on the agenda for ratification at the next regular city council meeting occurring more than five days after execution. All contracts or amendments thereto that are executed jointly shall contain a provision that the document will automatically terminated on the date that ratification is denied.

- b. Every purchase of professional services or certain professional services shall be by written contract in a form approved by the city attorney, and every amendment thereto and termination thereof shall be in writing in a form approved by the city attorney.

Compliance with Procedures

Failure of city staff of the purchasing agent to comply with the procedures established by this resolution shall be grounds for disciplinary action and for loss of the privilege to make purchases on behalf of the City.

CITY COUNCIL OF THE CITY OF OXNARD

ORDINANCE NO. \_\_\_\_\_

ORDINANCE OF THE CITY OF OXNARD, CALIFORNIA, AMENDING SECTIONS 4-9 AND 4-10 OF THE OXNARD CITY CODE GOVERNING PURCHASING PROCEDURES FOR PUBLIC PROJECTS

WHEREAS, the City Council desires to amend certain sections of the Oxnard City Code concerning purchasing procedures to be followed in connection with public projects;

NOW, THEREFORE, the City Council of the City of Oxnard does ordain as follows:

Part1. Section 4-9 of the Oxnard City Code is amended in its entirety to read as follows:

**SEC. 4-9. INFORMAL BIDDING PROCEDURES.**

(A) When the city intends to contract for a public project from \$25,000.01 to \$125,000, or such informal bid limit amount as may from time to time be set forth in the California Public Contract Code for agencies which subscribe to the uniform construction cost accounting procedures set forth therein, the purchasing agent shall mail a notice inviting informal bids to all contractors on the list for the category of work being bid, to all construction trade journals on the list, and to such other contractors and trade journals as may be requested by the city staff in charge of the project. However, if a project or service essential to the project is proprietary and can be obtained only from a certain contractor or contractors, the notice inviting informal bids may be sent only to such contractor or contractors.

(B) All mailing of notices inviting informal bids shall be completed not less than ten calendar days before bids are due.

(C) The notice inviting informal bids shall describe the project in general terms and how to obtain more detailed information about the project, and shall state the time and place for the submittal of bids.

(D) The city council shall award the contract to the lowest responsible and responsive bidder and the purchasing agent may execute the contract.

(E) The purchasing agent and the director of the department in charge of the project are each authorized to reject or to execute any change order to such a contract if the total contract amount after the change order does not exceed \$25,000. Any change orders causing a contract to exceed such amount shall be submitted for approval by the city council. A contract adjustment, whether or not labeled a change order, which changes the scope of work by reducing time, material or equipment devoted to one aspect of scope of work or contract line item

and increasing time, material and equipment devoted to another aspect or contract line item in an amount greater than \$25,000 shall be submitted for approval to the city council. If the city council is not in session or if there exists in the view of the city manager an immediate need to do so, a change order in an amount greater than \$25,000 may be approved jointly by the city manager and the most senior available member of the city council. The city manager shall place the jointly executed change order on the agenda for ratification at the next regular city council meeting occurring more than five (5) days after execution. All change orders that are jointly approved shall contain a provision that the authority to perform work under the change order will automatically terminate on the date that ratification is denied.

(F) If all bids received are in excess of \$125,000 contract or such informal bid limit amount as may from time to time be set forth in the California Public Contract Code for agencies which subscribe to the uniform construction cost accounting procedures set forth therein, the city council may, by adoption of a resolution by a four-fifths vote, award the for an amount up to 10% greater than such sum to the lowest responsible bidder, if the city council determines that the city's cost estimate was reasonable.

(G) If no bids are received, the project may be performed by negotiated contract approved by the City Council and executed by the purchasing agent or by city employees by force account. "No bids" means that no bids at all were received or that no bids that conform to the city's specifications were received or that no bids that conform to the city's specifications were submitted by a responsible bidder.

(H) All contracts and change orders governed by this article shall be in a form approved by the city attorney.  
(64 Code, Sec. 2-98) (Ord. No. 2332, 2520, 2533, 2584)

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Part 2. Section 4-10 of the Oxnard City Code is amended in its entirety to read as follows:

#### **SEC. 4-10. FORMAL BIDDING PROCEDURES.**

(A) The city council shall adopt plans, specifications and working details for all public projects of more than \$125,000 or such other informal bid limit amount as may from time to time be provided in the Public Contact Code for agencies which subscribe to the uniform construction cost accounting procedures set forth therein.

(B) When the city is to contract for a public project of more than \$125,000 or such informal bid limit amount as may from time to time be set forth in the California Public Contract Code for agencies which subscribe to the uniform construction cost accounting procedures set forth therein, the purchasing agent shall prepare a notice inviting formal bids, which shall distinctly describe the project and state the time and place for receiving and opening sealed bids.

(C) At least 14 days before the date of opening the bids, the purchasing agent shall publish the notice in a newspaper of general circulation, printed and published in the city. At least 30 days before the date of opening the bids, the purchasing agent shall mail the notice to all construction trade journals on the list referred to in subsection (B) of section 4-8. The purchasing agent may also give such other notice as the purchasing agent deems proper.

(D) The purchasing agent may reject any bids received. If, after the first invitation for bids, all bids are rejected, the purchasing agent may, after reevaluating the cost estimates for the project:

(1) Abandon the project;

(2) Readvertise for bids; or

(3) Request that the city council adopt a resolution by a four-fifths vote, declaring that the project can be performed more economically by city employees. If such a resolution is adopted, the purchasing agent may have the project completed by force account.

(E) The city council shall award any contract to the lowest responsible and responsive bidder and the purchasing agent is authorized to execute such contract.

(F) If no bids are received, the project may be performed by negotiated contract approved by the city council or by city employees by force account. "No bids" means that no bids at all were received or that no bids that conform to the city's specifications were received or that no bids that conform to the city's specifications were submitted by a responsible bidder.

(G) The purchasing agent is authorized to execute any change order to a contract awarded pursuant to subsections (E) or (F) of this section; provided, however, that the purchasing agent shall submit to the city council for approval any change order exceeding \$25,000. In addition, a contract adjustment, whether or not labeled a change order, which changes the scope of work by reducing time, material or equipment devoted to one aspect of scope of work or contract line item and increase time, in material or equipment devoted to another aspect or contract line item, whether or not deemed a change order, shall, if greater than \$25,000, be submitted for approval to the city council. If the city council is not in session or if there exists in the view of the city manager an immediate need to do so, a change order in an amount greater than \$25,000 may be approved jointly by the city manager and the most senior available member of the city council.

The city manager shall place a jointly approved change order on the agenda for ratification at the next regular city council meeting occurring more than five (5) days after execution. All change orders that are jointly executed shall contain a provision that the authority to perform work under the change order will automatically terminate on the date that ratification is denied.

(H) In the event of an emergency or if exigent circumstances exist or in the view of the project manager delay would result in a significant cost to the City, the project manager may direct work to the extent necessary to address the emergency or exigent circumstance or avoid the cost to the City. The project manager shall at the earliest opportunity notify the city manager who shall then contact the senior member of the City Council and follow the procedure set forth in subsection G.

('64 Code, Sec. 2-99) (Ord. No. 2332, 2520, 2533, 2584)  
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Part 3. Within fifteen (15) days after passage, the City Clerk shall cause this ordinance to be published one time in a newspaper of general circulation with the City. Ordinance No. \_\_\_\_\_ was first read on October 19, 2010, and finally adopted on \_\_\_\_\_, 2010,

to become effective thirty (30) days thereafter.

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
Dr. Thomas E. Holden, Mayor

ATTEST:

\_\_\_\_\_  
Daniel Martinez, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Alan Holmberg, City Attorney