

**CITY OF HERCULES**  
**PURCHASING GUIDELINES**

**Adopted \_\_\_\_\_, 20\_\_**

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## 1. PURPOSE AND SCOPE

These Purchasing Guidelines set forth the City's policies for procurement of goods and services in compliance with all applicable state and federal law. All City procurements must be made in compliance with applicable California law and these Purchasing Guidelines. City procurements which are subject to federal funding, in whole or in part, including FEMA disaster aid, must also comply with the applicable Federal Procurement Requirements, as defined below, and as further specified in Section 6, *Federal Procurement*, below. (See 2 CFR § 200.317.)

## 2. DEFINITIONS

The following definitions apply to terms used in these Purchasing Guidelines, whether or not capitalized:

**Blanket Purchase Order** - A form used to obtain goods and services from vendors, who agree to honor a price for a given product for a given period of time. It differs from a regular purchase order because it does not have a fixed amount or quantity, and is used when the City cannot predict the amount or quantity of goods or services that will be needed.

**CAL-Card Procurement Card** – A procurement card using the Visa Network. Contracted by the State of California with U.S. Bank, which is available to all public entities within the state.

**Change Order** - A change to an existing approved purchase order or written contract.

**Cooperative Purchasing Agreement** – A written agreement pursuant to which two or more public entities combine their purchase requirements to obtain lower prices through volume buying and to reduce administrative costs, and includes state or local intergovernmental agreements that are appropriate for procurement or use of common or shared goods or services.

**Design Professional Services** - Architectural, landscape architectural, environmental, engineering, land surveying, or construction project management services, which are subject to Article XXII of the California Constitution, and Government Code section 4529.10, et seq.

**DIR** – The California Department of Industrial Relations.

**Emergency** - An emergency is a sudden, unexpected occurrence that poses a clear and imminent danger and requires immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services, as declared by the City Manager.

**Federal Procurement Requirements** – The post federal award procurement requirements set forth in 2 CFR §§ 200.318 – 200.326, as may be amended from time to time, which apply to all federally funded procurements, and any additional federal requirements that apply to a particular procurement.

**FEMA** – The Federal Emergency Management Agency.

**Maintenance** – Routine, recurring, and usual work for the preservation, protection, and keeping of any City owned or operated facility for its intended purposes, as further defined in 8 CCR 16000.

**Post-Consumer Recycled Materials** - A finished material or product that has served its intended use and would not normally be disposed of as solid waste. Examples of post-consumer recycled materials include, but are not limited to old newspaper, office paper, yard waste, steel, glass, aluminum cans, plastic bottles, oil, asphalt, concrete and tires.

**Public Works Contract** - A public works contract subject to the procurement requirements in section 5.4, is a contract for a public project, which includes the construction, reconstruction, erection, alteration, renovation, improvement, demolition, repair work, painting or repainting involving any City owned, leased, or operated facility, but excluding maintenance. (See Public Contract Code section 22002(c).)

**Purchase Order** - A form used to authorize procurement of goods or services from vendors. The purchase order spells out the specific items to be delivered, price, quantity, and delivery requirements, as well as terms and conditions, if not contained in a separate written agreement.

**Purchase Requisition** - An in-house electronic form used by departments to request a purchase order.

**Relatively Permanent** - A useful life of ten (10) years or longer.

**RFP** - Request for proposals transmitted to qualified vendors or service providers to seek a proposal that best meets the City's needs.

**RFQ** - Request for qualifications transmitted to potentially qualified vendors or service providers to evaluate qualifications for providing required services.

**Single Purchase** - Item and/or items purchased as a single transaction.

**Sole Source** - A noncompetitive procurement method used when unique goods or services are available only from one source.

**Vendor** - A business or sole proprietor that may provide goods or services to the City of Hercules.

### **3. STANDARDS OF CONDUCT AND GENERAL REQUIREMENTS**

**3.1 Fair Competition.** City personnel must discharge their duties impartially to ensure full and open competition for City business by responsible vendors. (See 2 CFR § 200.319.) In addition, they must conduct themselves in a manner that will create confidence in the integrity of the City's purchasing operations. City personnel will treat all vendors equally and fairly, with equal information given to each vendor who participates in the procurement process. City personnel will ensure that all prequalified lists of persons, firms, or products used in acquiring goods or services are current and include enough qualified sources to ensure maximum open and free competition. City personnel may not place unreasonable restrictions on competition, including any of the following restrictions:

- (A) Placing unreasonable requirements on vendors to qualify for the procurement;
- (B) Requiring unnecessary experience and excessive bonding;
- (C) Noncompetitive pricing practices between vendors or affiliates;
- (D) Noncompetitive contracts to consultants that are on retainer contracts;
- (E) Organizational conflicts of interest;
- (F) Non-compliance with sole source restrictions, and "or equal" requirements, including Public Contract Code section 3400;
- (G) Precluding potential bidders from qualifying during the solicitation period; and
- (H) Any arbitrary action in the procurement process.

**3.2 Conflicts of Interest.** No employee, officer, or agent of the City may participate in the selection, award, or administration of a contract if he or she has a real or apparent conflict of interest.

- (A) A conflict of interest includes any circumstances under which the employee, officer, or agent, or any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of those parties, has a financial interest in or a tangible personal benefit from a vendor considered for a contract. No officer, employee, or agent of the City may solicit or accept gratuities, favors, or anything of

monetary value from vendors or parties to subcontracts. Disciplinary actions, up to and including termination for cause, will apply to any violation of these conflict of interest standards, in accordance with City policy, and/or, as applicable, a collective bargaining agreement, employment contract, or contract for services. (See 2 CFR § 200.318(c)(1).)

(B) City personnel may not accept gifts, rebates, kickbacks, personal services, or in any way incur personal gain from a vendor, or potential vendor, doing business with the City or otherwise violate laws pertaining to conflicts of interest, political contributions, or unlawful activities.

(C) A City employee may not participate in the vendor selection process if the employee has 1) a financial relationship, as set forth in Government Code section 87100 et seq., with the person or firm seeking a contract, or 2) a real or apparent conflict of interest under California Government Code § 1090 or pursuant to the Federal Procurement Requirements.

(D) All procurements must be made in compliance with the City's policy for Prevention of Nepotism and Cronyism in Employment and Contracting, as set forth in the Article 4 of Chapter 3 of Title 2 of the City's Municipal Code (section 2-3.401 et seq.).

(E) A vendor that develops or drafts specifications, requirements, statement of work, invitation for bids, RFQ, or RFP for a procurement must be excluded from competing for that procurement. (See 2 CFR § 200.319(a).)

**3.3 Economical Approach.** All procurements must be undertaken in a manner that will avoid acquisition of unnecessary or duplicative items, which may include consideration of consolidating or breaking out procurements, lease alternatives, and other appropriate analysis to determine the most economical approach, subject to the limits of applicable law, including prohibitions against bid-splitting. (See 2 CFR 200.318(d).)

**3.4 Oversight.** Each department must maintain oversight over its procurements to ensure that vendors perform in accordance with the terms, conditions, and specifications of the contracts or purchase orders, as further specified in Section 15, *Monitoring and Oversight*. (See 2 CFR § 200.318(b).)

**3.5 Procurement Records.** Records must be maintained for each procurement of goods or services documenting the history of a procurement, including (1) records of the rationale for procurement method, (2) selection of contract type, (3) contractor selection or rejection, and (4) the basis for the contract price. Procurement records must be maintained by each department. (See 2 CFR § 200.318(i).)

**3.6 Dispute Resolution.** Any and all protests, disputes, claims, and the like, arising from a procurement will be addressed promptly in accordance with good administrative practice and sound business judgment, and in compliance with all applicable legal or contractual requirements. (See 2 CFR § 200.318(k).)

**3.7 Specifications and Requirements.** All procurement solicitations should incorporate a clear and accurate description of the technical requirements or functions of the goods or services to be procured. However, such descriptions should not be drafted to unduly restrict competition among qualified vendors. (See 2 CFR § 200.319(c).)

**3.8 Business License.** Pursuant to Chapter 6 of Title 8 of the Hercules Municipal Code, Business License Tax, vendors are required to obtain a City of Hercules business license if the vendor is conducting business in the City whether or not they are located in the City limits.

**3.9 Prevailing Wages.** Public works projects and contracts for maintenance (excluding routine janitorial services) over \$1,000, are subject to prevailing wage requirements set forth in the California Labor Code, beginning at section 1720. This includes any construction, alteration, demolition, installation, repair work, carpet-laying, certain tree-removal work, and certain hauling and delivery of ready-mix concrete. For procurements subject to prevailing wage requirements, the procurement solicitation and contract documents must include information on prevailing wage requirements and compliance as specified in the Labor Code.

(A) *DIR Registration.* For each contract subject to prevailing wage requirements, the City may not accept a bid from or award a contract to any contractor or subcontractor that is not registered with the Division of Industrial Relations, as required under Labor Code section 1771.1. Contracts for construction, alteration, demolition, installation, or repair work for \$25,000 or less and maintenance contracts of \$15,000 or less are exempt from this requirement.

(B) *DIR Notification.* For contracts subject to DIR registration requirements, Department Directors must ensure that a PWC-100 form is filed online with the DIR within 30 days after the contract is awarded, but no later than the first day that workers are employed on the project. City personnel are encouraged to file the PWC-100 as soon as possible following award to avoid the penalties that may be imposed for late filing.

## **4. APPROVAL AUTHORITY**

**4.1 Over \$50,000.** All contracts in excess of \$50,000 must be approved or authorized by the City Council, including expenditures that have been appropriated in the approved budget, except to the extent the Council has expressly delegated its approval authority, or as specified for emergency contracts pursuant to Section 5.5, *Emergency Purchases*, below.

**4.2 Up to \$50,000.** All contracts up to \$50,000 must be approved or authorized by the City Manager, except as expressly delegated to Department Directors.

## **5. TYPES OF PURCHASES**

For the purpose of these Purchasing Guidelines, there are five types of purchases: 1) general purchase of goods, 2) general purchase of services, 3) design professional services, 4) public works contracts, and 5) emergency purchases. Guidelines for each of these five categories are set forth below. To the extent any of these procurements are federally funded, in whole or in part, in addition to the provisions set forth below, the procurement must also comply with the Federal Procurement Requirements. (See Section 6, *Federal Procurement*, below.)

### **5.1 General Purchase of Goods**

(A) *Goods up to \$10,000.* Procurement of goods costing up to and including \$10,000 (excluding tax, shipping and handling) per vendor, per fiscal year are subject to the following provisions:

- Requesting two quotes encouraged, but optional, for purchases up to \$5,000.
- Single purchases over \$5,000 (excluding tax, shipping, and handling) require the request of three written quotes, evidence of which must be submitted with the invoice, including the request for quote.
- Electronic quote submittals are acceptable.
- When goods are standardized or of uniform quality, the award will be given to the vendor with the lowest quote. If the goods are not standardized or not of uniform quality and the purchase is not awarded to the vendor with the lowest quote, an explanation of why as well as any documentation to support the decision must be maintained by the requesting department.



(B) *Goods \$10,000-\$50,000.* Procurement of goods costing over \$10,000 and up to and including \$50,000 (excluding tax, shipping and handling) per vendor, per fiscal year are subject to the following provisions:

- Request three written quotes, evidence of which must be submitted with the Purchase Requisition, including the request for quote.
- Electronic quote submittals are acceptable.
- When goods are standardized or of uniform quality, the award will be given to the vendor with the lowest quote. If the goods are not standardized or not of uniform quality and the purchase is not awarded to the vendor with the lowest quote an explanation of why as well as any documentation to support the decision must be submitted with the Purchase Requisition.
- Purchase Order is required prior to purchase made or commencing work unless otherwise authorized by the City Manager.

(C) *Goods over \$50,000.* Procurement of goods costing more than \$50,000 per vendor, per fiscal year:

- Request three written quotes, evidence of which must be submitted with the Purchase Requisition, including the request for quote.
- Electronic quote submittals are acceptable.
- The \$50,000 threshold applies to each separate project.
- City Council must approve all purchases over \$50,000 before a Purchase Order will be issued.
- Staff report submitted to City Council will include information regarding the quotes received, the recommended vendor selection, and the reasons for that recommendation.
- When vehicles and equipment are purchased with City Council approval, other parts and supplies that are purchased from the same vendor will be considered a separate purchase and will not require City Council approval until the total is over \$50,000.
- When goods are standardized or of uniform quality, the award will be given to the vendor with the lowest quote. If the goods are not standardized or not of uniform quality and the recommendation is that the purchase not be awarded to the vendor with the lowest quote, an

explanation of why as well as any documentation to support the decision must be included in the staff report.

- Purchase Order is required prior to purchase being made or commencing work unless otherwise authorized by the City Council.
- (D) *Hardware/Building Supply Vendors.* Procurements from hardware or building supply vendors are subject to the following provisions:
- In order for the efficient use of staff time, availability of materials and supplies as well as proximity to a project site will be determining factors in the selection of the vendor for day-to-day purchases.
  - Unless specified otherwise, all other provisions in these Purchasing Guidelines are applicable to the procurement.
- (E) *Used Equipment or Furniture.* Used equipment or furniture may be purchased if the cost can be demonstrated to be a significant savings over the equivalent item purchased new, and subject to the following provisions:
- Used equipment or furniture purchases must be approved by the appropriate Department Director and Director of Finance or City Manager.
  - Unless specified otherwise, all other provisions in these Purchasing Guidelines are applicable to the procurement.
- (F) *Recycled Products and Materials.* Recycled products should be used whenever practical, including products manufactured with post-consumer recycled materials.

**5.2 General Procurement of Services.** The following provisions apply to general procurement of services, excluding public works or design professional services.

- (A) *Up to \$1,000.* Services costing up to and including \$1,000 per vendor, per project, per fiscal year, are subject to the following provisions:
- Requesting two quotes is encouraged, but optional, for services costing up to \$1,000.
  - Electronic quote submittals are acceptable.
  - When services are standardized or of uniform quality, the award will be given to the vendor with the lowest quote. If the services are not standardized or not of uniform quality and the contract is not awarded to

the vendor with the lowest quote, an explanation of why as well as any documentation to support the decision must be maintained by the requesting department.

- Prior to services being performed, the Department Director must determine if a written agreement is required in addition to a Purchase Order after evaluating the level of risk based on the location and type of service being performed.
  - If the Department Director determines that a written agreement is not required, an Agreement Determination Form will be signed by the Department Director and submitted with the invoice for payment.
  - If the determination is made that a written agreement is not required and additional work puts the service over \$1,000, an agreement will then be required.
  - If the Department Director determines that a written agreement is required, the department will use a standard template agreement approved by the City Attorney.
  - Contact the City Attorney or City Clerk for questions regarding requirements for written agreements.
- (B) *Services \$1,000-\$10,000.* Services costing over \$1,000 and up to and including \$10,000 per vendor, per project, per fiscal year are subject to the following provisions:
- Requesting two quotes is encouraged, but optional, for services costing over \$1,000 and up to \$5,000.
  - Procurements for services over \$5,000 and up to and including \$10,000 require the request of three written quotes, evidence of which must be submitted with the invoice, including the request for quote.
  - Electronic submittals are acceptable.
  - When services are standardized or of uniform quality, the award will be given to the vendor with the lowest quote. If the services are not standardized or not of uniform quality and the agreement is not awarded to the vendor with the lowest quote, an explanation of why as well as any documentation to support the decision must be maintained by the requesting department.

- A written agreement is required, using the City's current standard template agreement, or a form otherwise approved by the City Attorney.
  - Maintenance services over \$1,000, excluding routine janitorial services, are subject to prevailing wage compliance.
  - Contact the City Attorney or City Clerk if needed regarding requirements for the written agreement.
- (C) *Services \$10,000-\$50,000.* Services costing over \$10,000 and up to and including \$50,000 per vendor, per project, per fiscal year are subject to the following provisions:
- Request three written quotes, evidence of which must be submitted with the Purchase Requisition, including the request for quote.
  - Electronic quote submittals are acceptable.
  - When services are standardized or of uniform quality, the award will be given to the vendor with the lowest quote. If the services are not standardized or not of uniform quality and the agreement is not awarded to the vendor with the lowest quote, an explanation of why as well as any documentation to support the decision must be submitted with the Purchase Requisition.
  - A written agreement is required, using the City's current standard template agreement, or a form otherwise approved by the City Attorney.
  - Maintenance services over \$15,000, excluding routine janitorial services, are subject to prevailing wage requirements, including DIR registration. See section 3.9 regarding DIR reporting requirements.
  - Contact the City Attorney or Risk Manager for agreement questions if needed.
  - Purchase Order is required prior to purchase being made or commencing work unless otherwise authorized by the City Manager.
- (D) *Services over \$50,000 and over \$100,000 on fully reimbursed general contracts.* Services costing more than \$50,000 and \$100,000 on fully reimbursed contracts per vendor, per project, per fiscal year, are subject to the following requirements:
- Request three written quotes, evidence of which must be submitted with the Purchase Requisition, including the request for quote.

- Electronic quote submittals are acceptable.
- The \$50,000 and \$100,000 on fully reimbursed contract threshold applies to each separate scope of work or project.
- City Council must approve all agreements over \$50,000 and \$100,000 on fully reimbursed contracts before a Purchase Order will be issued, subject to the exceptions specified in Section 2, above.
- Staff report submitted to City Council will include information regarding the quotes received, the recommended vendor selection, and the reasons for that recommendation.
- When services are standardized or of uniform quality, the award will be given to the vendor with the lowest quote. If the services are not standardized or not of uniform quality and the recommendation is that the agreement not be awarded to the vendor with the lowest quote, an explanation of why as well as any documentation to support the decision must be included in the staff report.
- Maintenance services over \$15,000, excluding routine janitorial services, are subject to prevailing wage requirements, including DIR registration. See Section 3.9 regarding DIR reporting requirements.
- All departments will use a standard template agreement, unless otherwise approved by the City Attorney.
- Contact the City Attorney or City Clerk if needed regarding requirements for the written agreement.
- Purchase Order is required prior to purchase being made or commencing work unless otherwise authorized by the City Council.

**5.3 Design Professional Services.** Procurement of design professional services is subject to the following provisions, as well as Article XXII of the California Constitution, and Government Code section 4529.10, et seq:

- Design professional services must be procured by a fair, competitive selection process based on demonstrated competence and professional qualifications necessary for the services.
- An RFQ, RFP, or combined RFQ/RFP procedure should be used to procure design professional services. The process must require compliance with all laws regarding political contributions, conflict of

interest, or unlawful activities. The RFQ or RFP form must be approved by the City Attorney's office.

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- A City employee may not participate in the selection process if the employee has a financial relationship with the person or firm seeking a contract.
- Unless specified otherwise, all other provisions in these Purchasing Guidelines are applicable to the procurement.

**5.4 Public Works Contracts.** Public works contracts must be procured in accordance with the California Uniform Public Construction Cost Accounting Act ("CUPCCAA"), depending on the dollar amount, as further specified in Public Contract Code section 22032, as may be amended from time to time, and as further specified below:

- Public works contracts of \$60,000 or less may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order
- Public works contracts over \$60,000 and up to \$200,000 or less, must use the informal bid procedure specified in Chapter 4 of Title 7 of the Hercules Municipal Code, and Public Contract Code section 22034.
- Public works contracts over \$200,000 must use formal bidding procedures as specified in Chapter 4 of Title 7 of the Hercules Municipal Code, and in Public Contract Code section 22037.
- Immediately upon the effective date, any changes to the statutory threshold amounts in Public Contract Code section 22032, will apply to these Purchasing Guidelines and be deemed to amend the amounts set forth herein.
- Public works contracts must be awarded to the lowest responsible bidder.
- Contracts over \$10,000 require a Purchase Order prior to purchase being made or commencing work unless otherwise authorized by the City Manager or Director of Finance.
- Budgeted public works contracts up to \$100,000 may be awarded by the City Manager or his/her authorized representative.

- Public works contracts over \$100,000 or unbudgeted contracts over \$50,000 must be awarded by the City Council before a Purchase Order will be issued.
- Subject to prior approval of the City Council, design-build procurement may be used for qualified public works contracts in excess of \$1,000,000, subject to the provisions of Public Contract Code section 22160 et seq., as may be amended from time to time. Any person or entity that performs services for the City relating to the solicitation of a design-build project, is disqualified from submitting a proposal to the City as a design-build entity or from joining the design-build team that is awarded the design-build contract.
- Staff report submitted to the City Council should include information regarding the bids received, including bid amounts, and recommended selection based on the lowest responsive bid from a responsible bidder.
- Public works contracts must be awarded and administered in compliance with the applicable prevailing wage and DIR registration requirements set forth in Labor Code section 1720 et seq. See Section 3.9, above.
- For questions regarding public works contracts, contact the City Attorney's office.

**5.5 Emergency Purchases.** In an emergency, as defined in these Purchasing Guidelines, and as declared by the City Manager or City Council, essential goods and services may be obtained without following the City's usual procurement procedures.

- (A) *During Business Hours.* An emergency arising or discovered DURING the City's normal business hours is subject to the following provisions:
  - The Finance Director or designee must confirm the declaration of the emergency with the City Manager.
  - The Finance Director or designee will either issue a Purchase Order and purchase the required goods and services or authorize the responsible department to do so.
- (B) *After Business Hours.* An emergency arising or discovered AFTER normal business hours is subject to the following provisions:
  - City employees must obtain authorization from the City Manager before making purchases on an emergency basis.

- If the City Manager is unavailable, contact the City Attorney or Department Director for emergency authorization.
  - Any City employee who makes an emergency purchase after normal business hours must submit receipts to the responsible Department Director the following workday.
- (C) *Emergency Construction Services.* A public works contract procured on an emergency basis, may be awarded in compliance with the emergency procedures set forth in Public Contract Code Section 22050, as may be amended from time to time.
- (D) *Reporting Emergency Purchases to Purchasing.* For each emergency purchase made, the Department Director must, no later than five days thereafter, submit to the Finance Director a memo listing all expenditures, where the goods or services were used and include an explanation of the circumstances of the emergency that justified the use of emergency procedures.
- (E) *Reporting Emergency Purchases to City Council.* The Finance Director will submit monthly to the City Council a list of all emergency purchases for goods or services costing more than \$50,000 per vendor, made during the preceding month, with an explanation of the circumstances of each. The Department Director will be responsible for responding to the City Council's questions about the emergency purchase.

## **6. FEDERAL PROCUREMENT**

Any procurement made pursuant to a federal award or subject to reimbursement, in whole or in part, with federal funds must comply with the City's procurement procedures, state law, and the applicable Federal Procurement Requirements, including 2 CFR §§ 200.322 ("Procurement of recovered materials"), 2 CFR § 200.323 ("Contract cost and price"), 2 CFR § 200.324 ("Federal awarding agency or pass-through entity review"), 2 CFR § 200.325 ("Bonding requirements"), and 2 CFR § 200.326 ("Contract provisions"). In the event of any conflict between City, state, or federal requirements, the most stringent requirement must be used. (See 2 CFR 200.318.) City personnel must comply with funding agency requests for review of technical specifications or procurement documents as provided in 2 CFR § 200.324.

### **6.1 General Federal Requirements and Recommendations**

- (A) *Required Contract Provisions.* Pursuant to 2 CFR § 200.326, contracts for federally-funded procurements must contain the applicable provisions described in Appendix II to Part 200 – *Contract Provisions for non-Federal Entity Contracts Under Federal Awards.*



(B) *Solid Waste Disposal Act*. Federally-funded procurements must comply with the Solid Waste Disposal Act, as further specified in 2 CFR § 200.322.

(C) *Cost/Price Analysis*. For federally-funded procurements in excess of the currently applicable Simplified Acquisition Threshold, including contract modifications, a cost or price analysis must be performed, and which must include making independent estimates before receiving bids or proposals. (See 2 CFR § 200.323.) Costs or prices based on estimated costs for federally-funded contracts are allowable only as provided in 2 CFR § 200.323.

(D) *Profit Negotiation*. For a federal contract awarded without price competition, profit must be negotiated as a separate element of price. To establish fair and reasonable profit, consideration must be given to the complexity of the work, the contractor's risk, the contractor's investment, the amount of subcontracting, record of past performance, and industry profit rates, as further specified in 2 CFR § 200.323(b).

(E) *Excess or Surplus Property*. When it will reduce project costs and is feasible, use of federal excess and surplus property is encouraged over purchasing new. (See 2 CFR § 200.318(f).)

(F) *Value Engineering*. For larger federally-funded construction projects, a provision for value engineering may be added to the construction contract, subject to prior authorization from the Department Director. A value engineering provision must include a clear procedure for submission, approval, and cost-sharing of savings, consistent with Public Contract Code section 7101, and approval as to form by the City Attorney. (See 2 CFR § 200.318(g).)

(G) *Geographical Preferences*. Notwithstanding the provisions of Section 7.5, Local Preference, geographical preferences may not be used for federally-funded procurements, unless expressly authorized by the awarding agency. (See 2 CFR § 200.319(b).)

(H) *Time and Materials*. A time and materials contract may not be used for a federally-funded procurement, unless the Director has determined that no other type of contract is suitable for the procurement, and provided the procurement complies with 2 CFR § 200.318(j). Similarly, a "cost plus" contract may not be used, as further specified in 2 CFR § 200.323.

(l) *Intergovernmental Agreements.* Use of intergovernmental agreements is encouraged where appropriate. (See 2 CFR § 200.318(e); and see Section 7.4, *Cooperative Purchasing Agreements*, below.)

## **6.2 Federal Contractor Requirements**

- (A) *Responsible Contractors.* Contracts will only be awarded to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement, with consideration given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. (See CFR § 200.318(h).) A contractor must also be “responsible” as determined under California law, including Public Contract Code section 1103.
- (B) *Small and Minority Businesses.* The City will take all necessary affirmative steps, including those identified in 2 CFR § 200.321(b), to assure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible.

**6.3 Methods of Procurement.** Depending on the type and amount of goods or services, the City will use one of the below methods of procurement, consistent with 2 CFR § 200.320 and as further described and defined in Section 5 of these Purchasing Guidelines.

- (A) *Procurement by micro-purchases.* The City may acquire supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold in 2 CFR § 200.67. A micro-purchase contract may be awarded without soliciting competitive quotes provided the price is reasonable, unless otherwise specified under the City’s procurement procedures. To the extent practicable, the City will distribute micro-purchases equitably among qualified suppliers. (See 2 CFR § 200.320(a).)
- (B) *Procurement by small purchase procedures.* The City may use simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold in 2 CFR § 200.88. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. (See 2 CFR § 200.320(b).)
- (C) *Procurement by sealed bids (formal advertising).* The City may publicly solicit sealed bids to be opened in public and award a fixed price contract to the lowest responsible bidder, in the manner required for formal bidding as specified in chapter 4 of Title 7 of the Hercules Municipal code, and in compliance with 2 CFR § 200.320(c)(1).

- (D) *Procurement by competitive proposals.* The City may use this method when the conditions for use of sealed bids is not appropriate and more than one source submits an offer following a request for proposal. If the City uses this method, it must comply with the requirements of 2 CFR § 200.320(d), in addition to any other applicable City or state requirements, including, the requirements for procuring design professional services set forth in Section 5.3, *Design Professional Services*, above.
- (E) *Procurement by noncompetitive proposals.* The City may solicit a proposal from only one source when the item is available only from a single source, the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation, the federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the City, or competition is determined to be inadequate after solicitation of a number of sources. The procurement must comply with the provisions of Section 7.3, *Sole Source Negotiated Agreements*, below, in addition to the requirements set forth in 2 CFR § 200.320(f).

## 7. QUOTES

**7.1 Requesting Department Responsibility.** Requesting department will solicit, receive and evaluate quotes for goods and/or services as set forth below:

- All solicitations for quotes must include a written description of the goods or services to be purchased, including drawings, diagrams, or formal specifications if required.
- All requests for quotes must be made within the same timeframe to ensure fair competition.
- All requests for quotes must include a submittal deadline.
- If delivery is required, the quote must include delivery costs.
- All vendors will be treated equally and fairly at all times by all personnel, with equal information given to each vendor who participates in the procurement process.

**7.2 Alternate Vendor.** In the event that the lowest quoter is unable to provide the goods, an alternate vendor will be used in sequence of lowest quote, subject to prior approval from the Department Director or designee.

### **7.3. Sole Source Negotiated Agreements.**

- (A) It is the City's policy to encourage competition in procurements. However, a negotiated agreement may be used for purchases of unique goods or services that are available from only one source, subject to prior approval of the Finance Director.
- (B) The requesting department is responsible for supplying the Finance Director with a concise written justification, approved by the Department Director or designee, for the sole source purchase. Requests for sole source procurements over \$50,000 must be reviewed by the City Manager and approved by the City Council.

### **7.4. Cooperative Purchasing Agreements**

- (A) When it is in the City's best interest, as determined by the Finance Director, departments may purchase goods or services through Cooperative Purchasing Agreements with other governmental or public agencies.
- (B) Purchases through Cooperative Purchasing Agreements may be accomplished without soliciting competitive quotes.
- (C) Departments seeking to use a Cooperative Purchasing Agreement must submit all information regarding the Cooperative Purchasing Agreement to the Finance Director.
- (D) The Finance Director will submit the Cooperative Purchasing Agreement to the City Attorney's office for review and approval as to form. It is the department's responsibility to provide any additional information, if required by the City Attorney's office, by submitting the information to the Finance Director.

### **7.5 Local Preference**

- (A) For the purchase of goods or services, excluding public works contracts, when two or more proposals or quotes are the same, in unit, quality, service and total cost, preference should be given to the vendor who operates within the planning area as defined in the City's General Plan if the quote for services or taxable goods is:
  - less than \$10,000 and is within 5% of the lowest quote;
  - more than \$10,000 up to \$500,000 and is within 3% of the lowest quote;

- more than \$500,000 up to \$1,000,000 and within 2% of the lowest quote;
  - more than \$1,000,000 and within 1% of the lowest quote.
- (B) Notwithstanding the foregoing, for procurements subject to the Federal Procurement Requirements the City may not consider or use geographical preferences in the evaluation of bids or proposals, except as provided in 2 CFR § 200.319.

## **8. PURCHASE REQUISITION**

**8.1** A Purchase Requisition is required for a Purchase Order to be issued.

**8.2** The requesting department prepares the Purchase Requisition in the manner specified by the Finance Director for the entire amount of the purchase including tax, shipping and handling, etc. and codes with the correct accounting code(s).

**8.3** Prior to submitting the Purchase Requisition for approval by the Finance Director, all documents verifying compliance with these Purchasing Guidelines must be attached. These documents, as updated from time to time, may include:

- Written quotes with request for quote showing product specifications and quote tabulation, if appropriate.
- Staff report and executed resolution or voting log if executed resolution is unavailable, if required.
- Executed contract/agreement or amendment for services.
- Insurance and endorsements or bonds if required.
- Verification of City of Hercules business license if conducting business in the City of Hercules. If not required, add a note documenting why it is not required.
- Sole source memo including verification of sole source and authorization from the Finance Director or City Manager, as applicable.

**8.4** The Finance Director's approval will be granted provided the department has sufficient funds budgeted to pay for the purchase, all documents are attached to the Purchase Requisition and are acceptable, and the purchase is made in compliance with these Purchasing Guidelines.

## **9. FINANCE DIRECTOR REVIEW**

If the Purchase Requisition is not complete and accurate, a Purchase Order will not be issued and the requesting department will be notified. If the Purchase Requisition is complete and accurate, see Section 8.

Quotes provided to staff occasionally include estimates of shipping and/or handling charges and sometimes estimated tax. Staff can make adjustments up to \$100 to affected Purchase Orders. Any adjustments will be within the previously approved budgets adopted by City Council.

A Purchase Order is required prior to purchase being made or work commencing unless otherwise provided in these Purchasing Guidelines or as authorized by the City Manager.

## **10. PURCHASE ORDERS AND AGREEMENTS**

**10.1** With the exception of emergency purchases, Purchase Orders are required for all goods or services costing more than \$10,000.

**10.2** A Purchase Order will only be issued after the Finance Director or designee has approved the Purchase Requisition. Invoices for purchases requiring a Purchase Order will not be paid until a Purchase Order has been issued and approved.

**10.3** Change Orders or amendments that increase Purchase Order amount over \$50,000 require prior approval from the City Council. Documents verifying compliance with these Purchasing Guidelines as outlined in Purchase Requisition, Section 5.3 of these Purchasing Guidelines, must be submitted with the Change Order or amendment.

**10.4** Written agreements must use the appropriate City Attorney-approved agreement template, unless otherwise approved by the City Attorney. Department Directors must obtain the most current form from the City Clerk's office. Old forms should not be re-used because legal requirements may change.

**10.5** Contracts must contain a clear and accurate description of the technical requirements for the procurement, all requirements which must be fulfilled by the contractor, and all factors to be used in evaluating bids or proposals.

## **11. BLANKET PURCHASE ORDER**

**11.1** Blanket Purchase Orders may use goods or services that are used by the City for ongoing operations, where vendors agree to honor a price for a given product or

service for a given period of time. The City may not know specifically how much of the product or service will be consumed or where or when it will be consumed.

**11.2** Blanket Purchase Orders have the same requirements that are outlined in these Purchasing Guidelines as other goods or services.

**11.3** Departments will be responsible for issuing Purchase Requisitions against Blanket Purchase Orders.

## **12. OTHER PURCHASING METHODS**

**12.1 Credit Cards.** Credit card purchases are governed by these Purchasing Guidelines. A credit card can be used for items such as: authorized travel expenses, hotel reservations, business meeting meals, training, and ordering goods from vendors approved by the Department Director.

- (A) The City Manager will be issued a credit card with a \$10,000 limit to be used for City business expenditures only.
- (B) The City Attorney will be issued a credit card with a \$5,000 limit to be used for City business expenditures only.
- (C) Department Directors (with City Manager approval), and non-limited service employees (with Department Director approval) will be issued a credit card with a limit designated by the Department Director, not to exceed \$5,000, to be used for City business expenditures only.
- (D) It is the responsibility of every individual issued a credit card to reconcile and attach supporting documentation, with the appropriate account code(s), including Purchase Order number if applicable.
- (E) The credit card statement and supporting documentation is to be forwarded to the Finance Director after the following approval:
  - City Manager approves Department Director statements.
  - Finance Director approves City Manager and City Attorney statements.
  - Department Directors approve their staff's statements.

**12.2 Petty Cash.** Petty cash may be used for purchases up to \$50, subject to compliance with Administrative Policy #27.

### **13.EXCEPTIONS TO REQUIREMENTS FOR PURCHASE ORDER OR AGREEMENT**

The following items do not require the use of Purchase Orders and are not subject to the provisions of these Purchasing Guidelines except the requirement for a written agreement as otherwise specified in Section 3 of these Purchasing Guidelines:

- Annual maintenance payments
- Annual lease payments
- Employee benefits
- Bond and trust account payments
- Computer hardware/software maintenance
- Developer reimbursement agreements
- Escrow payments
- Insurance
- Pass-through payments
- Prepayments such as PG&E contract work

#### **13.1 No Agreement and No Purchase Order: General**

- Bank and trustee services and fees
- California Department of Public Health – Water Permit
- City of Pinole - Wastewater
- Contra Costa County election costs
- Contra Costa County Local Enforcement Agency – Solid Waste Permit
- Contra Costa County – Stormwater Utility Administration
- County Health Inspection and SART Exams
- Department of Justice (live scan)
- Deposit accounts
- Employee reimbursements
- Employment health/medical services
- Fuel (gasoline/diesel)
- Membership/dues
- Offsite training expenses
- Permits when paid in one payment
- Postage
- Regional Water Quality Control Board – Wastewater Permit
- Subscriptions
- Refunds
- Travel expenses
- Utility payments

**13.2 No Agreement and No Purchase Order: Vehicle/Equipment Maintenance and Rental Equipment.** The City Manager may grant signature authority, in writing, for certain maintenance and rental equipment. When a City employee is designated



in writing to sign for maintenance work or rentals, no agreement and no purchase order are required. This exception applies to:

- Vehicle Equipment Maintenance
- Rental Equipment

**13.3 No Agreement and a Blanket Purchase Order: Amazon purchases.** The Administrative Services Department will issue a Blanket Purchase Order for an amount not to exceed \$50,000 for all purchases made through Amazon, including Amazon subsidiaries and subcontractors. Not-to-exceed amounts within the Blanket Purchase Order will be allocated by department. For these allocated amounts, no written agreement is required.

## **14. MISCELLANEOUS PROCEDURES**

**14.1 Pre-packaged “Out of the Box” Software Agreement.** Pre-packaged “out of the box” software often requires the acceptance of terms of agreement in order to install, support or maintain the software. Since vendors will not change the terms of agreement, it becomes a business decision as to the need of the software and risk level faced and is subject to Department Director approval in consultation with the City Attorney. A software Purchase Approval form is required for all software agreements regardless of the dollar amount of software to be purchased.

**14.2 Beginning/Mid-Year Over \$50,000 Staff Report.** Finance will prepare a staff report before the beginning of each fiscal year and at mid-year, if necessary, that will authorize the use of vendors for recurring services or goods amounting to over \$50,000 for the upcoming fiscal year. Vehicles and equipment are not considered recurring for the purpose of this section. The over \$50,000 staff report will list the vendor and the estimated cost of goods or services for the fiscal year. Departments will provide information to Finance including vendor name, purpose, estimated amount to be spent, quote tabulation sheet as well as providing copies of the request for quotes, quotes and/or agreement in order for the staff report to be prepared. Department representatives must be available at the City Council meeting to answer questions regarding the goods or services they are requesting.

**14.3 Long-Term Agreements.** All long-term agreements and/or Purchase Orders that have not been approved by City Council where a vendor holds the price from year-to-year must be re-quoted once every two years to ensure that the City is obtaining the best price for the goods and/or services.

**14.4 Insurance Expiration Listing.** Once per quarter, the Finance Director will send departments a listing of insurance expirations. It is the department’s responsibility to submit updated insurance information to the Finance Director.

**14.5 Delivery of Goods Only.** A Purchase Order only, not an agreement, is required if a vendor is delivering goods and not providing any other services; there is no associated risk, e.g., for heavy equipment or supplies for construction; and the goods are not custom-ordered or fabricated for the City.

**14.6 Product Warranties.** Each department will keep all product warranties for goods or services purchased by that department.

## **15. MONITORING AND OVERSIGHT OF RECEIPT OF GOODS OR SERVICES**

Upon receipt of the goods or services, the requesting department must inspect the items to determine if:

- the condition is acceptable,
- the purchase is complete,
- the specifications were met, and
- billed services have been completed satisfactorily.

**15.1** If the items are acceptable and the service rendered is complete, the requesting department will approve the invoice and forward it to Accounts Payable.

**15.2** If the items are not acceptable or incomplete, or the services were not provided as required, the requesting department will contact the vendor, or complete a requisition for a Change Order to the Purchase Order to reflect the differences.

**15.3** If items are back-ordered and are to be delivered at a later date and the balance of the order is not received within 30 days, the requesting department will contact the vendor, or complete a requisition for a Change Order to the Purchase Order to cancel the balance of the order and reflect the differences.

**15.4** The City will maintain oversight to ensure that goods and services are provided in accordance with the terms, conditions, and specifications set forth in each Purchase Order or contract.

**15.5** The City will maintain records sufficient to detail the history of all procurements. Records will include rationale for the method of procurement used, selection of contract type, contractor selection or rejection, and the basis for the contract price.

## **16. INVOICE PAYMENT PROCEDURES**

**16.1** The City desires to pay its bills in a prompt manner to take advantage of discounts and to avoid late charges and penalties. All invoices should be addressed

to the **City of Hercules, 111 Civic Center Drive, Hercules, CA 94547, Attention: Finance Department.** Invoice payment is contingent upon receiving a proper invoice, including applicable sales tax, and delivery of the goods or services. All departments must cooperate by approving invoices and check requests, if correct, and promptly returning the invoice to the Finance Department. Departmental approval signifies that the invoice is correct and the goods or services have been received. The invoice must reach the Finance Department within seven working days after the department receives and verifies the receipt of the goods or services. If the invoice cannot be returned within seven working days, the Finance Department should be notified of the reason for the delay.

**16.2** The Finance Department issues checks on the last working day of each week. In order for a check request, invoice or any other payment document to be issued on these processing dates, the Finance Department must receive proper documentation, including all authorization signatures, no later than Thursday at noon of the previous week. Unless otherwise required, invoices will be scheduled for payment 30 days after date of invoice, if correct and charges are appropriate.

**16.3** The Finance Department will prepare a disbursement report weekly to be reviewed and approved by the Director of Finance or designee before checks can be released.

**16.4** Manual checks will be issued only in emergency situations, with prior approval from the Director of Finance or designee. Departments must plan ahead for funds, especially travel, conference registration and per diem requests.

**16.5** Notify the Finance Director regarding any disputed invoices, including information about the amount in dispute and the basis of the dispute.

## **17. UNAUTHORIZED PURCHASES**

**17.1** If any department purchases or contracts for any goods or services without complying with the provisions of these Purchasing Guidelines, such purchases or contracts may be void and of no effect, unless thereafter approved by the person or entity required by these Purchasing Guidelines to approve such purchases or agreements. However, the City Council or authorized staff is under no obligation to approve unauthorized purchases not made in accordance with these Purchasing Guidelines.

**17.2** If a purchase or contract is found to not comply with these Purchasing Guidelines, a memo signed by the Department Director must be submitted to the Finance Director with a copy to the City Manager, detailing what was out of compliance, how it happened, and what steps will be taken to ensure that these Purchasing Guidelines will be adhered to in the future.

**17.3** An employee who makes an unauthorized purchase or otherwise violates the Policy may be subject to discipline.

**17.4** The Department Director approving an unauthorized purchase will be held accountable for identifying and correcting non-conforming purchases made by department employees. Repeated instances of non-conforming purchases within a department may lead to disciplinary action against the Department Director.

**17.5** No department can divide orders for goods or services in order to evade the dollar limits of these Purchasing Guidelines.

**17.6** No goods or services for personal use may knowingly be purchased on City accounts or with City funds.

## **18. SURPLUS PROPERTY**

**18.1** All departments must submit an annual report in October to Purchasing, showing all capital asset goods and equipment or Information Systems hardware or software that are no longer used or that have become obsolete or worn out. Purchasing will make useable items available to other departments.

**18.2** Purchasing, with approval from the Director of Finance , has authority to sell all goods and equipment which cannot be used by any department or which have become unsuitable for City use, or to exchange the same for or trade in the same on new goods or equipment.

**18.3** Under no circumstances will any Department Director or any City employee sell, give away, exchange, rent, loan or borrow City owned property without prior written authorization from the Director of Finance through Purchasing. **This prohibition applies to any capital asset or property that may have a value when sold for scrap (e.g. water meters).** Surplus property must be stored for future use by other departments or disposed of after approval of the Director of Finance. Finance and Information Systems surplus items require the approval of the City Manager.

**18.4** All checks received for property sold, after authorization from the Director of Finance, must be made payable to "City of Hercules."

## **19. CAPITAL ASSETS**

**19.1** Capital assets include the following:

- Land parcels
- Site improvements
- Buildings/structures

- Machinery and equipment
- Licensed vehicles
- Major infrastructure
- Right of ways/easements
- Capital improvements
- Assets of an intangible nature

**19.2** The following items are not considered capital assets:

- Records and drawings, consumable supplies, and spare parts and inventory items
- Leased property and personal property of employees
- Maintenance and repair of capital assets

**19.3** Equipment includes moveable property which is relatively permanent and/or of significant value such as generators, pumps, machines, tools, vehicles and portable or removable devices. Items with a value under \$10,000 will not be included unless included in the City's Equipment Replacement Program.

**19.4** Inventory tags are used primarily to identify items that fall within the definition of capital assets, to provide departments with a reference when conducting their annual inventories and to provide a means of listing, cataloging and controlling assets of the City. Although it may not be feasible to tag each category of capital assets, it should be assigned an inventory number.

**19.5** When adding, disposing of, or trading-in capital assets, an Asset Information Form must be completed and submitted to Finance along with Purchase Requisition, if required. This will provide the capital asset monitor with adequate information. All disposals (trade-in, donation or disposal of irreparable assets) must be approved by the Finance Director prior to disposal.

**19.6** The following procedures must be completed when requesting pick-up or delivery of surplus equipment and/or vehicles:

- (A) Complete City Asset Information form, located on the City intranet.
- (B) Submit the completed form to Finance.

**19.7** Each department will be responsible for arranging for the pick-up of requested surplus equipment.