

**CITY OF OAKLAND**  
**Agenda Report**

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OFFICE OF THE CITY CLERK  
OAKLAND  
2004 JUL -1 PM 8:20

TO: City Administrator  
ATTN.: Deborah Edgerly  
FROM: Finance and Management Agency  
DATE: July 13, 2004

**RE: AN ORDINANCE AMENDING ORDINANCE NO. 7937, C.M.S., ADOPTED FEBRUARY 6, 1969, AND AMENDMENTS THERETO, CODIFIED AT OAKLAND MUNICIPAL CODE TITLE 2, CHAPTER 2.04, PURCHASING SYSTEM, ARTICLE 1, BIDDING, CONTRACTING AND PURCHASING, TO INCREASE THE CITY ADMINISTRATOR'S CONTRACT APPROVAL LIMITS, REVISE CITY COUNCIL APPROVAL LIMITS ACCORDINGLY, REVISE THE LOCAL BUSINESS PREFERENCE, MAKE NECESSARY CORRECTIONS, CLARIFICATIONS, DELETE OBSOLETE PROVISIONS AND CODIFY CURRENT PROCEDURES**

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**SUMMARY**

On May 11, 2004, the Finance and Management Committee discussed this item and requested staff to resubmit the report at a later date. At the direction of the Committee the report is now being resubmitted for consideration. An ordinance has been prepared amending the Oakland Municipal Code, Chapter 2.04 regulating the Purchasing System. This report will address recommendations to amend Sections 2.04.020 and 2.04.030 relating to the authority of the City Administrator; Section 2.04.040 to clarify the intent of the ordinance language; and Section 2.04.020.C to reduce the total allowable preference percentage in awarding contracts to local/small-local business enterprises to a maximum of five percent. This amendment is to implement two of the eight recommendations presented to Council from Team 6C, Moving Oakland Forward initiative and previous discussions with the Finance and Management Committee. Staff has attached the executive summary and recommendations to this report.

The accompanying Ordinance also includes changes incorporated by the Office of the City Attorney to address errors and obsolete provisions in the published version of the Purchasing Ordinance that were discovered during the evaluation process. Discussion pertaining to the City Attorney's changes can be found in two separate reports previously submitted by the City Attorney to the Council and attached to this report for reference.

**FISCAL IMPACT**

Approving this amendment will not have an adverse fiscal impact on the City budget. The cost savings anticipated are attributable to lower indirect costs associated with the elimination of waste, cost reduction and cost avoidance measures. These recommendations will not result in the loss of any FTE. Cost savings associated with the reduced Purchasing preference program cannot be calculated at this time due to insufficient data.

## **BACKGROUND**

This amendment is based on recommendations submitted by Team 6C from the Moving Oakland Forward campaign and discussions from the Finance and Management Committee. The objective of Team 6C was to review the Purchasing process, determine its strengths and weaknesses, and develop a strategy to make the process more user-friendly for the City's internal and external customers. The team used several methods to identify the areas that, if changed, could provide the greatest impact on the procurement process. The team conducted an internal customer survey to gather information from the perspective of the end-user, knowledge worker, and approver, and, performed a telephone survey of the City's suppliers to get their perspective on doing business with the City of Oakland from an outsider's point of view. Staff also contacted other municipalities, states, the federal government and corporate procurement offices to benchmark Oakland against the perceived top industry performers. Finally, staff contacted purchasing professional organizations and associations, such as the Institute of Supply Management (formerly the National Association of Purchasing Management), the Center for Advanced Purchasing Studies, and the California Association of Public Purchasing Officers to determine the industry's best practices.

The Finance and Management Committee has accepted the following recommendations from the Moving Oakland Forward team:

- ▶ Recommendation No. 1 — authorizes Council to approve contracts during the budget process.
- ▶ Recommendation No. 2 — authorizes the establishment of an on-line reference manual for Purchasing.
- ▶ Recommendation No. 3 — authorizes the use of a Procurement Card Purchasing program.
- ▶ Recommendation No. 5 — authorizes a comprehensive training program on a regular basis.
- ▶ Recommendation No. 6 — authorizes the implementation of an electronic-procurement program.
- ▶ Recommendation No. 7 — authorizes the implementation of an annual purchasing plan.

The Finance and Management Committee has directed staff to revise recommendations 4 and 8 and return them to the Committee for final approval.

## **PROPOSED POLICY DESCRIPTION**

Recommendation No. 4 is to increase the Purchasing thresholds, and the City Administrator's contracting authority. The Finance and Management Committee proposed the following exceptions:

1. Contracts related to new programs or projects not previously approved by Council.
2. Contracts paid by Redevelopment Agency funds.
3. Contracts paid for by funds from Voter-Approved Measures.
4. Contracts related to information technology.

The City Administrator's contracting authority for the above contract types will be limited to fifty thousand dollars, (\$50,000), for non-professional, non-technical, non-consulting and procurement contracts; and fifteen thousand, (\$15,000) for professional, technical and consulting services.

Based on the team's extensive research and fact-finding efforts, staff discovered that the authority of the City Administrator is below accepted industry standards. Staff is recommending that the City Administrator's authority be raised to \$250,000 for supplies or a combination of supplies and services, and \$150,000 for professional, technical and consulting service contracts. Establishing increased procurement thresholds is designed to reduce bottlenecks in the procurement process, realize cost avoidances, reduce repetitive processes, reduce costs, save staff time and increase efficiencies at all levels of the procurement process. Once the new thresholds are established staff will use the Producer Price Index (PPI), and the Purchasing Managers' Index (PMI) to determine and calculate future threshold increases. These increases will not be automatic. Use of the economic escalators would only be a tool to assist staff in advising the Council.

Staff estimates that the increase in the City Administrator's authority will eliminate approximately sixty Committee/Council Agenda reports per year. Semi-annually, staff will forward Council an informational report summarizing the contracts approved by the City Administrator for the purchase of supplies or payment for services, or a combination thereof in excess of \$50,000 and for professional and consulting service agreements in excess of \$15,000.

Additionally, based on recommendations from the Finance and Management Committee, staff is proposing that a Request for Qualifications process be instituted for professional, technical and consulting service contracts in excess of twenty-five thousand dollars (\$25,000) to award a contract in the absence of any competitive process. Exceptions to this requirement will include emergency transactions and sole source contracts with prior written consent from the City Administrator. The City Administrator will draft an Administrative Instruction detailing the requirements and procedures for the Request for Qualifications. The Request for Qualification process will be a tool to assist staff in determining the overall qualifications and acceptability of suppliers not involved in a competitive process.

Recommendation No. 8 proposed a three-year moratorium on the Purchasing preference program to allow City staff time to evaluate the actual costs and effectiveness of this program. The philosophy behind competitive bidding is to promote and create a favorable business environment that makes companies more efficient and reduces costs. In a typical market, prices are determined by: a) the suppliers' cost of production, b) the demand and supply relationship, and c) the intensity of competition among suppliers in the marketplace. Because of the City's policies and programs, many commodities and services are only sourced locally thus having a reverse effect on the market. The stagnated competition is actually increasing the City's costs for certain commodities and services, and encouraging local suppliers to become dependent on City ventures to remain in business. The goal of this recommendation is to stimulate competition and reduce costs to the City.

After discussions with the Finance and Management Committee, Recommendation No. 8 has been amended from its original submission requesting a three-year moratorium, to reduce the allowable percentage for the Purchasing Section's preference program to coincide with that previously approved by Council for the City's Contract and Compliance Office. Staff proposes that qualified bidders will receive up to a 2.5% preference for being a certified local business enterprise and up to an additional 2.5% preference for being a certified small-local business enterprise. Staff concurs with the Finance

and Management Committee that the reduced preference will maintain an incentive for local businesses to remain competitive against non-local businesses. Staff will carefully scrutinize the impact of the reduced preference and submit a follow-up report, should the effects adversely impact the local economy.

In summary, the attached ordinance implements Recommendations 4 and 8, as revised by the Finance and Management Committee. The amendments increase the City Administrator's contracting authority, establish a dollar threshold for City Council approval of contracts, reduce the allowable percentage for local/small-local business preferences, and establish new contracting procedures, as follows:

1. increase the City Administrator's contracting authority in Section 2.04.020; and
2. add a new subsection making contract awards subject to prior City Council appropriation of funds to the City programs, activities, functions or operations, which the procurement or contract is intended to support, to Section 2.04.040; and
3. add new Section 2.04.051 to add requirements for a competitive RFQ or RFP process for the award of professional services contracts, as follows:

**2.04.020 Authority of the City Administrator.**

**A. Contracts Related to Programs or Projects Not Previously Approved, or Paid by Redevelopment Agency Funds, or Paid by Funds From Voter-Approved Measures and Technology Contracts.** For the following contracts the City Administrator's authorized approval limit shall be fifty thousand dollars (\$50,000) for non-professional, non-scientific and non-technical services and procurement contracts or combination thereof, and shall be fifteen thousand dollars (\$15,000) for professional services, provided the purchase meets all other conditions of sections 2.04.020, B and C:

- 1) Contracts related to programs or projects, the terms of which have not been previously approved by the City Council, or related to programs or projects that may only have been identified and approved in the City Council adopted program budget within the prior fiscal year;
- 2) Contracts to be funded, directly or indirectly, by the Redevelopment Agency;
- 3) Contracts to be funded, directly or indirectly, by funds generated by a voter-approved measure; and
- 4) Contracts for any technological, computer or computerized system services, software, equipment, hardware or products.

The City Administrator shall submit to the City Council, on an annual basis, a list of all contracts he/she anticipates will be let within the next year that will be directly or indirectly funded by Redevelopment Agency funds.

The City Administrator's contract approval limit for any contracts not specified in this subsection 2.04.020.A, shall be as set forth below.

**B. Supplies and Services Procurement Contracts.** Subject to 1) the availability of funds, 2) findings

by the City Administrator that contracts for services are of a scientific or technical and temporary nature and shall not result in the loss of employment or salary by any person having permanent status in the competitive service, and 3) the procedures set forth in this article, the City Administrator is authorized to bind the City, by written contract or purchase order, involving an expenditure not exceeding two hundred fifty thousand dollars (\$250,000) in any one transaction by an informal advertising and bidding process and without previous specific action by the City Council, for the purchase of supplies or payment for services, or a combination thereof, to be furnished to the City, provided full appropriation of the contract as set forth in section 2.04.040.A below has occurred.

**C. Professional Services and Consultant Agreements.** Subject to 1) the availability of funds, 2) findings by the City Administrator that the contract is for services of a professional, scientific or technical and temporary nature and shall not result in the loss of employment or salary by any person having permanent status in the competitive service, and 3) the procedures set forth in this article, the City Administrator is authorized to bind the City, by written contract, involving an expenditure not exceeding one hundred fifty thousand dollars (\$150,000) in any one transaction by an informal solicitation process and without previous specific action by the City Council, for the payment for services to be furnished to the City, provided full appropriation of the contract as set forth in section 2.04.040.A below has occurred.

**D. Local Vendor Preferences.** The City Administrator is authorized in the evaluation of all sealed, faxed and telephone bids, for the purchase of supplies, to extend a two and one half percent (2.5%) preference for a local business and an additional two and one half percent (2.5%) preference for small local business enterprises in award of all purchase orders.

**E. Emergency Supply and Services Procurement.** In a situation deemed by the City Administrator to be an emergency for the immediate preservation of the public peace, health or safety, the City Administrator may authorize a contract or purchase order exceeding two hundred fifty thousand dollars (\$250,000) in any one transaction, without advertising or previous specific action by the City Council, for the purchase of supplies or payment for services, or a combination thereof, to be furnished to the City. All emergency contracts awarded by the City Administrator shall be presented for informational purposes to the City Council within a reasonable time of contract execution.

**F. Emergency Professional Services and Consultant Agreements.** In a situation deemed by the City Administrator to be an emergency for the immediate preservation of the public peace, health or safety, the City Administrator may authorize a contract exceeding one hundred fifty thousand dollars (\$150,000) in any one transaction, without previous specific action by the City Council, for the payment for services, or a combination thereof, to be furnished to the City. All emergency contracts awarded by the City Administrator shall be presented for informational purposes to the City Council within a reasonable time of contract execution.

**G. City Administrator Authority During City Council Annual Recess.** Notwithstanding the provisions of subsections A and B of this section, during the month of August through the first City Council meeting in September, known as the annual recess of the City Council, as provided for in the City Council's Rules of Procedures, the City Administrator shall be authorized (1) to bind the city, by

written contract or purchase order, involving an expenditure not exceeding five hundred thousand dollars (\$500,000), without previous specific action by the City Council, for the purchase of supplies or payment for services, or a combination thereof, in any one transaction, to be furnished to the city, subject to the availability of funds and procedures set forth in this article, including competitive bidding, and (2) Administrator to bind the city, by written contract, involving an expenditure not exceeding three hundred thousand dollars (\$300,000) in any one transaction, subject to the availability of funds for the payment for professional services and consultant services furnished to the city and procedures set forth in this article, without previous specific action of the City Council. Professional services and consultant agreements in excess of one hundred fifty thousand dollars (\$150,000) and contracts for the purchase of supplies, bid services or combination thereof in excess of two hundred fifty thousand dollars (\$250,000) shall be subject to the City Council's recess agenda process and shall be presented to the City Council for ratification upon return from its annual recess.

**2.04.030 Supplies and services procurement contracts in excess of two hundred fifty thousand dollars (\$250,000) and professional services or consultant agreements in excess of one hundred fifty thousand dollars (\$150,000).**

**A. Contracts Related to New Programs or Projects, or Paid by Redevelopment Agency Funds, Or Paid by Funds From Voter-Approved Measures and Technology Contracts.** Unless otherwise provided herein, all contracts identified in section 2.04.020.A above for supplies, non-professional, non-technical or non-scientific services or a combination of such services and supplies involving an expenditure exceeding fifty thousand dollars (\$50,000), and all contracts identified in section 2.04.020.A above for professional services or consultants involving an expenditure exceeding fifteen thousand dollars (\$15,000), shall be awarded by the City Council. No contract shall be binding or of any force or effect until signed by the City Administrator. City Administrator signature shall constitute certification that there remains unexpended and unapplied balances of the appropriations or funds applicable thereto sufficient to pay the estimated expense of executing such contract.

**B. Supplies and Services Procurement Contracts.** Unless otherwise provided herein, all contracts for supplies, services or a combination of services and supplies involving an expenditure exceeding two hundred fifty thousand dollars (\$250,000) shall be awarded by the City Council. No contract shall be binding or of any force or effect until signed by the City Administrator. City Administrator signature shall constitute certification that there remains unexpended and unapplied balances of the appropriations or funds applicable thereto sufficient to pay the estimated expense of executing such contract.

**C. Professional Services or Consultant Agreements.** Unless otherwise provided herein all contracts for professional services or consultants involving an expenditure exceeding one hundred fifty thousand dollars (\$150,000), shall be awarded by the City Council. No contract shall be binding or of any force or effect until signed by the City Administrator. City Administrator signature shall constitute certification that there remains unexpended and unapplied balances of the appropriations or funds applicable thereto sufficient to pay the estimated expense of executing such contract.

#### **2.04.040 Contracting Procedures.**

##### **A. Contracts Subject to Council Appropriation and Allocation of Program or Contract Funds.**

All contracts authorized hereunder by the Council or City Administrator shall be subject to the prior appropriation and allocation of funds by the City Council for the City programs, activities, functions or operations, which the procurement of any equipment, supplies, materials, commodities, services of any type, or combination thereof, or professional services are intended to support.

##### **B. Use of Informal and Formal Contracting Procedures.**

1. Informal solicitation, bidding or RFP or RFQ procedures established by the City Administrator shall be used for the purchase of supplies, services, including professional services, or combination thereof when the total cost of the purchase or contract exceeds five hundred dollars (\$500), but is less than fifty thousand dollars (\$50,000) in any one transaction or term agreement;
2. Formal advertising, solicitation, bidding or RFP or RFQ procedures, as provided under Sections 2.04.050 and 2.04.051 below, shall be used for the purchase of supplies, services, including professional services, or combination thereof when the total cost of the purchase or contract exceeds fifty thousand dollars (\$50,000) in any one transaction or term agreement.

##### **C. Purchase Orders, Contract Format, Petty Cash.**

1. Purchase orders shall be used for all procurements and contracts in excess of five hundred dollars (\$500). The purchase order shall incorporate by reference all relevant agreements, including but not limited to the City of Oakland Professional Services Agreement, negotiated agreements, vendor agreements and exhibits, attachments, addendums and other supporting documents thereto, that, together, constitute the entire agreement.
2. All purchases and contracts for supplies, services or combination thereof in excess of five hundred dollars (\$500) shall be in writing, in the written format required under City Administrator procedures.
3. The City Administrator shall institute control procedures for petty cash funds without prior use of purchase orders or contracts.

##### **D. Miscellaneous Procedures.**

1. Notwithstanding the above, nothing herein shall preclude the City Administrator from placing any purchase, procurement or contract within his approval limit on the City Council Agenda for discussion or approval.
2. The City Administrator shall institute informal and formal contacting procedures for the purchase of supplies or combination of services and supplies.
3. The City Administrator shall institute formal contracting procedures for professional, scientific and technical services contracts, as needed.
4. The City Administrator shall maintain a centralized list of all contracts executed by him, or his delegate, within his authorization limit.
5. Pursuant to the City Charter, the City Attorney will draft standardized contract terms and

conditions and standardized contracts for use in contracting for professional services, purchasing, procurement and contracting for supplies, services or combination thereof.

6. Pursuant to the City Charter, the City Attorney will approve the form and legality of all formal written contracts before the execution thereof.

**2.04.051. Competitive Process and Qualification-based Awards for Professional Services Contracts.**

**A. Request for Qualifications (“RFQ”) or Proposal (“RFP”) for Professional Services Contracts in Excess of \$25,000.** The City Administrator, or his or her designee, shall conduct a request for proposal (“RFP”) or Request for Qualifications (“RFQ”) process for the award of contracts that exceed twenty five thousand dollars (\$25,000) and are exempt from bidding under section 2.04.050.I.1, above. The City’s RFP and RFQ processes shall be set forth in a City Administrator’s Administrative Instruction. The RFP or RFQ requirement applies, but is not limited, to contracts for professional, technical or specialized services. The selection and award of contracts for professional services shall be made on the basis of demonstrated competence and qualifications for the types of services to be performed, at fair and reasonable prices to the City.

**B. Waiver.** Upon a finding and determination by the City Council or its designee that it is in the best interests of the City, the City Council may waive the requirement for an RFP or RFQ process.

Remaining Provisions Unchanged. All other articles, sections, subsections, sentences, clauses or phrases of the Oakland Municipal Code Section 2.04 shall remain unchanged and in full force and effect.

**KEY ISSUES AND IMPACTS**

Increasing the purchasing thresholds will greatly reduce paperwork, acquisition and delivery time, thereby enhancing the City's procurement relationship with its internal and external customers. Additionally, by increasing the procurement thresholds it will give staff time to more efficiently process all requests for materials and services. This recommendation is based on an analysis of data collection from the Economic History Resources Services, a sampling of Council agenda items, and comparisons of other local agency practices.

Staff’s revised recommendation to reduce the purchasing preference limits rather than institute a three-year moratorium coincides with the direction and current limits authorized by Council for the Contract and Compliance Office.

**SUSTAINABLE OPPORTUNITIES**

**Economic:** By reducing the Local/Small-local preferences to a maximum of five percent the goal is to stimulate competition and reduce the overall costs to the City.

**Social Equity:** There is no direct impact to the community.

**Environmental:** Authorization of this amendment will assist the Council in achieving its source



reduction and sustainability goals by eliminating the printing and reproduction of approximately sixty Council/Committee reports per year.

**DISABILITY AND SENIOR CITIZEN ACCESS**

There is no direct impact to seniors or persons with disabilities.

**RECOMMENDATION (S) AND RATIONALE**

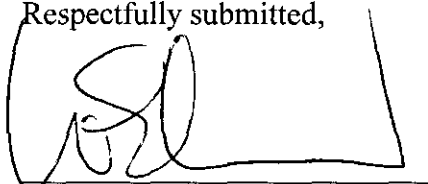
Staff believes that it is in the best interests of the City of Oakland to implement the recommendations of the Moving Oakland Forward teams to improve staff efficiency and to reduce the cost of procurement and contracting. Staff recommends that the City Council authorize an amendment to the Oakland Municipal Code, Chapter 2.04 sections 2.04.020, 2.04.030, 2.04.040, and 2.04.051 as related to the recommendations of the Moving Oakland Forward team, as follows:

1. increase the City Administrator's contracting authority in Section 2.04.020; and
2. add a new subsection making contract awards subject to prior City Council appropriation of funds to the City programs, activities, functions or operations, which the procurement or contract is intended to support, to Section 2.04.040; and
3. add new Section 2.04.051 to add requirements for a competitive RFQ or RFP process for the award of professional services contracts, as stated herein.

**RECOMMENDATION**

Staff recommends that Council approve this ordinance.

Respectfully submitted,



WILLIAM E. NOLAND

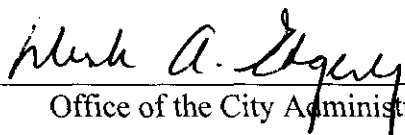
Director, Finance and Management Agency

Prepared by:

JIMMIE D. JACKSON, C.P.M.

Purchasing Supervisor

APPROVED AND FORWARDED TO  
FINANCE AND MANAGEMENT COMMITTEE



Office of the City Administrator

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CITY OF OAKLAND



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January 27, 2004

**FINANCE AND MANAGEMENT COMMITTEE**  
Oakland, California

**Subject: REPORT AND RECOMMENDATION FROM THE CITY ATTORNEY REGARDING THE PROPOSED ORDINANCE AMENDING ORDINANCE NO. 7937 C.M.S., AND AMENDMENTS THERETO, CODIFIED AT OAKLAND MUNICIPAL CODE CHAPTER 2.04, "PURCHASING SYSTEM" IMPLEMENTING MOVING OAKLAND FORWARD TEAM RECOMMENDATIONS AND CORRECTING ERRORS, DELETING OBSOLETE PROVISIONS AND UPDATING THE ORDINANCE.**

Chairperson Wan and Members of the Committee:

**INTRODUCTION**

The Moving Oakland Forward Team on contracting is recommending that the City Council increase the City Manager's authority from \$15,000 to \$150,000 for professional services contracts and from \$50,000 to \$250,000 for purchases of other goods and services, in addition to several other changes. These recommendations are described in a companion report from the Director of Finance.

In addition, the City Attorney has included new provisions setting forth appropriation requirements, a competitive process for professional services contracts and authorizing Council Committees to approve contracts at the request of the Finance Committee.

The City Attorney has also amended the ordinance to correct typographical errors and garbled language, delete obsolete provisions, reference new programs and codify longstanding and purchasing practices.

The legislation is included with the report from the Financial Services Agency regarding the Moving Forward Team's recommendation.

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**RECOMMENDATION**

We recommend that the Council adopt the clean-up provisions and updates reflected in the ordinance amendment attached to the report from the Director of Finance, regardless of whether the Council adopts the policy recommendations of the Moving Oakland Forward Team. The Purchasing Ordinance (Ordinance, No. 7937 C.M.S.) was adopted in 1969 and has been amended on various occasions. The reason for the City Attorney's recommendation is that the current Purchasing Ordinance contains typographical errors that garble the language, obsolete provisions and does not reflect longstanding procedures and practices. If the Council does not adopt the ordinance attached to the Financial Services Agency's report, the City Attorney recommends that the Council direct staff to return to Council adopt the ordinance amendments needed to address general clean up.

**DISCUSSION**

**A. New Provisions Adding Requirements & Codification of Existing Practices**

Per the direction of the Finance Committee, the following new provisions have been added to the proposed ordinance:

- **City Manager Authority.** In addition to the new contract limits and full appropriation requirement discussed in the Finance Director's Report, this section was amended reflect the City Manager's authority to make findings regarding the nature and term of service contracts. (See O.M.C. Section 2.04.020.A & B.)
- **Emergency Contracts.** This section was amended to codify existing practice. The City Manager's current practice is to provide informational reports to the City Council regarding the emergency contracts he executes. (See O.M.C. Sections 2.04.020.D & E.)
- **Council Committee Contract Approval.** This new section would authorize City Council Committees to approve contracts, with the exception of contracts requiring waiver of advertising and bidding and services contracts requiring a 2/3 vote of the Council. The legal basis for Committee approval of contracts and limitations is discussed in a separate City Attorney opinion. (See O.M.C. Section 2.04.030.C.)
- **Existing Use of Purchase Orders and Informal Advertising and Bidding Limit.** New provisions added to this section would reflect several longstanding practices for use of purchase orders and advertising and bidding of contracts within the City Manager's contract limit (known as "informal bidding"). The current practice of issuing purchase orders for all procurements and professional services contracts over \$500.00 would be codified. Purchase orders are used as a means of processing payments, regardless of the contract format. New provisions would also limit the use of informal advertising and bidding procedures to procurement and construction contracts up to \$50,000.00, regardless of the City Manager's

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contract authority. The Purchasing Ordinance does not currently address the use of informal advertising and bidding procedures. (See O.M.C. Section 2.04.040.)

**B. Clarifications, Updating, Corrections & Obsolete Provisions**

Longstanding errors in the published version of the ordinance as well as updates and deletions of obsolete language should be done at this time, as follows:

- Local Vendor Preferences. In addition to vendor preference revisions discussed in the Finance Director's report, race-based references were deleted and language was added authorizing the City Manager to extend any preferences permitted or required by law. This brings the section into compliance with changes in state law and will allow the City to extend disadvantaged business enterprise preferences on federally funded projects, in addition to any other race-based or gender-based preferences permitted or required by law. (See O.M.C. Section 2.04.020.C.)
- Typographical errors. The section stating the City Manager's contract authority during the Council recess contains numerous typographical errors. Due to these errors, the provisions concerning professional services contracts are garbled. Sentences have been corrected to make these provisions consistent with the provisions for procurements and clarify that professional services contracts authorized during the recess are subject to the availability of funds. (See Section O.M.C. 2.04.020.F.)
- Obsolete Contract Procedures. The section delineating the use of purchase orders for procurements in excess of \$15,000.00, and use of formal (i.e., written) contracts for professional services contracts in excess of \$15,000.00, was deleted. The City's longstanding practices are to issue purchase orders for all procurement and professional services contracts in excess of \$500.00, and to execute written agreements for professional services contracts in excess of \$5,000.00. Written agreements are also executed for procurements and services contracts less than \$5,000.00 as appropriate. (See O.M.C. Section 2.04.040.)
- Affirmative Action Requirements. The revisions bring the section into compliance with changes in state law and will allow the City to require vendors and contractors to submit proof of Affirmative Action plans to the extent permitted and or required by law. (See O.M.C. Section 2.04.170.A & B.)
- Cooperative Purchase Agreements. Language was added to clarify and codify the City's longstanding practice of cooperative purchase of supplies, materials and services through the contracts of other governmental agencies without Council approval. (See O.M.C. Section 2.04.080.)

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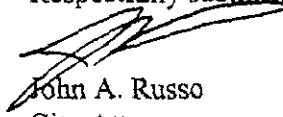
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CONCLUSION

If the Council decides not to adopt the Moving Oakland Forward Team's recommended increase in City Manager contracting authority and other policy changes, the City Attorney recommends that the City Council adopt the clean up provisions of the proposed ordinance. This would accomplish necessary corrections, updates and deletions pertaining to City Manager Contract authority, procedures for emergency contracts, informal advertising and bidding, payment and cooperative purchasing.

Respectfully submitted,



John A. Russo  
City Attorney

Attorneys Assigned:  
Doryanna M. Moreno

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FINANCE & MANAGEMENT CMTE.  
JAN 27 2004

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CITY OF OAKLAND



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January 27, 2004

**FINANCE AND MANAGEMENT COMMITTEE**  
Oakland, California

**Re: CITY ATTORNEY OPINION REGARDING PROPOSED AMENDMENTS TO  
OAKLAND MUNICIPAL CODE, CHAPTER 2.04, "PURCHASING SYSTEM" TO  
AUTHORIZE CITY COUNCIL COMMITTEE APPROVAL OF CONTRACTS**

Dear Chairperson Wan and members of the Committee:

This report accompanies the City Manager's report recommending procurement and contracting revisions of the Public Strategies Group, and legislation which amends Oakland Municipal Code Chapter 2.04, ("Purchasing Ordinance"). The revisions include a recommendation to expedite contracting by authorizing City Council Committees to approve contracts. A new provision authorizing Committee approval of procurement contracts is included in Section 2.04.030 of the proposed legislation.

**Issue**

Whether the City Council may authorize City Council Committees to approve contracts?

**Brief Answer**

Yes. The City Council may authorize a single or several Committees of the City Council to authorize and award contracts, except for services contracts of a permanent or non-professional, non-specialized or non-technical nature, and provided that all Committee-approved contracts have been advertised and bid as required under Oakland Municipal Code Chapter 2.04, section 2.04.050.

Proposed language authorizing Council Committees to approve/award contracts is included in section 2.04.030.C of the proposed amendments. To implement this section, the Council must amend the Council Rules to establish new voting

**FINANCE & MANAGEMENT CMTE**  
JAN 28 2004

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requirements for approval of contracts, and must establish new Committee approval and legislative processes.

### Analysis

#### 1. Committee Contract Approval

The City Council could delegate to a single or several City Council Committees the authority to award procurement, construction and professional services contracts. The Oakland City Charter, Article VIII, section 808 authorizes the Council to establish contracting procedures for purchase or contract by ordinance.<sup>1</sup> The Council has adopted comprehensive purchasing and contracting procedures, set forth in Oakland Municipal Code Chapter 2.04, "Purchasing Ordinance". The Council can amend the Purchasing Ordinance to authorize a Council Committee or Committees to award City contracts, except for contracts requiring Council waiver of competitive processes or contracts for permanent services or non-professional/specialized/technical services. These exceptions are discussed below. A provision authorizing Council Committee approval of contracts is included in the proposed amendments.<sup>2</sup>

##### A. Waiver of Advertising and Competitive Bidding

The City Council may not delegate its authority to waive advertising and bidding to Council Committees. Article VIII, section 808 of the Oakland Charter requires the City Council to make specific findings, on a case-by-case basis, for contracts awarded

<sup>1</sup> Article VIII, Section 808 provides, in part:

(a) The Council shall establish by ordinance the conditions and procedures for any purchase or contract, including advertising and bidding requirements, and may provide that all bids may be rejected. The ordinance may provide that under specified conditions, which the Council must find and determine exist in each applicable instance, advertising and bidding may be dispensed with. (Emphasis added.)

<sup>2</sup> Section 2.03.030.C of the accompanying legislation states:

C. Council Committee Contract Approval. City Council Committees may approve all contracts in accord with the authorization and legislative process set forth in the Rules of the Oakland City Council, excluding:

1) contract awards for which City of Oakland Charter Article VIII, Section 808(a) and section 2.04.050.I, below, require waiver of advertising and bidding requirements by the Council; and  
2) professional service and other service contracts for which City of Oakland Charter Article IX, Sections 902 (e) requires findings by a two thirds (2/3) vote of the Council that, regardless of nature or term, the contract is in the public interest because of economy or better performance.

Contracts excluded from this section shall be approved by the full City Council as set forth in sections 2.04.030 A and B above.

without advertising and bidding.<sup>3</sup> Therefore, the Council may not delegate procurement, construction or service contract awards to City Council Committees that require waiver of advertising and bidding. The waiver provision is set forth under Oakland Municipal Code Chapter 2.04, section 2.04.050.

B. Permanent Services, or Non-Professional, Non-Specialized and Non-Technical Services

Council Committees also would be foreclosed by the Charter from approving service contracts of a permanent or of a non-professional, non-specialized or non-technical nature. Article IX, Section 902(e) of the Charter authorizes award of permanent services contracts or non-professional/specialized/technical services contracts after a finding by a "two-thirds (2/3)" vote of the Council that such contracts are in the public interest because of economy or better performance.<sup>4</sup> The express two-thirds vote requirement would preclude approval of such contracts by any legislative body or individual other than the Council.

The types of contracts requiring a two-thirds (2/3) Council vote would include services such as janitorial or other biddable services that do not require any licensing or special/technical training or knowledge and can be awarded on the basis of lowest responsive and responsible bid. While this category would also include any permanent services contracts, it has not been the City's practice to award such contracts.

2. Implementation

In order to implement Council Committee approval of contracts, the Council must amend the Council Rules to authorize Council Committees to take the final actions needed to award contracts. Currently, Council Rules do not authorize Council Committees to take any final actions. Non-committee members can attend committee meetings and comment on proposed contract, but they cannot vote on Committee items.

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<sup>3</sup> See footnote 1 above.

<sup>4</sup> Oakland Charter Article IX, Section 902, The Competitive Service, provides:

... The competitive Civil Service shall include all offices and employments in the City government except:

(e) Individuals or organizations engaged by contract after a finding by the Council or the Board of Port Commissioners, as the jurisdiction may be, that the service is of a professional, scientific or technical nature and is temporary in nature, or after finding by vote of two-thirds of the members of the Council or said Board that the performance of the service by contract, regardless of nature or term, is in the public interest because of economy or better performance; provided, that no such contract for service shall result in the loss of employment or salary by any person having permanent status in the competitive service. (Emphasis added.)



Additionally, the Council must establish new Committee approval requirements and legislative processes. The Council Rules require that the Council approve all contracts by resolution. The Charter requires five (5) votes for the passage of a resolution.<sup>5</sup> Therefore, to permit Committees (which consist of four members) to finally approve contracts, the Council must amend its Rules of Procedure. Also, the Council must establish a new vote-approval requirement by setting 1) a minimum number of votes to authorize a contract, or 2) a simple majority vote as provided under Robert's Rules.

Because Committees can not take action by resolution, the City Council also must adopt/approve a new form of legislation to establish an official record of final contract actions and to track the City's contract awards. Currently, resolutions constitute the City's official record of Council contract authorizations.

Conclusion

As indicated above, the City Council may delegate contract approval authority to City Council Committees for procurement, construction and service contracts that are professional, technical or scientific and temporary in nature. To implement such a decision, the Council must amend its Rules of Procedure and the Purchasing Ordinance. A new provision authorizing City Council Committees to approve contracts within Charter limits is included in the accompanying legislation that amends the Purchasing Ordinance. To track contract approvals, the Council should approve a new legislative process. The Council also must amend its Rules of Procedure to delete the resolution requirement for contract approvals.

Respectfully submitted,



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<sup>5</sup> Oakland Charter Article II, Section 210, Council Action, provides:

The Council shall provide by *resolution* for the order of business and the rules of procedure for the conduct of Council meetings. The Council shall act by ordinance or *resolution* or motion. The "ayes" and "noes" shall be taken on the passage of all ordinances and resolutions and entered upon the journal of the Council's proceedings. Each proposed ordinance or *resolution* shall be introduced in written or printed form. The affirmative vote of five members of the Council shall be required to adopt any ordinance or resolution, except as otherwise provided by this Charter or by general law.  
(Emphasis added.)

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APPROVED AS TO FORM AND LEGALITY  
*Debra M. Davis*  
CITY ATTORNEY

ORDINANCE NO. \_\_\_\_\_ C.M.S.

**AN ORDINANCE AMENDING ORDINANCE NO.7937 C.M.S., ADOPTED FEBRUARY 6, 1969, AND AMENDMENTS THERETO, CODIFIED AT OAKLAND MUNICIPAL CODE TITLE 2, CHAPTER 2.04, PURCHASING SYSTEM, ARTICLE I, BIDDING, CONTRACTING AND PURCHASING, TO INCREASE THE CITY ADMINISTRATOR'S CONTRACT APPROVAL LIMITS, REVISE CITY COUNCIL APPROVAL LIMITS ACCORDINGLY, REVISE THE LOCAL BUSINESS PREFERENCE, MAKE NECESSARY CORRECTIONS, CLARIFICATIONS, DELETE OBSOLETE PROVISIONS AND CODIFY CURRENT PROCEDURES**

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**WHEREAS**, Oakland Charter Section 808, subsection A, authorizes the City Council to establish, by ordinance, the conditions and procedures for any purchase or contract, including advertising and bidding requirements, rejection of bids and elimination of advertising and bidding; and

**WHEREAS**, the City Council has adopted Ordinance No. 7937 C.M.S., as amended, known as the City of Oakland "Purchasing Ordinance" and set forth at Oakland Municipal Code Title 2, Chapter 2.04, Article I, which establishes the procedures for procurement and contracting, and establishes contract approval processes and authority of the City Administrator to bind the City by written contract or purchase order; and

**WHEREAS**, at the request of the City Council, staff was directed to evaluate and re-engineer the City's purchasing procedures; and

**WHEREAS**, errors and obsolete provisions in the published version of the Purchasing Ordinance were discovered during the evaluation process; and

**WHEREAS**, a Moving Oakland Forward team directed to review the City's purchasing processes conducted extensive research and fact-finding and recommends several changes to the City's procurement processes that would increase staff efficiency and reduce the City's costs of procurement and contracting; and

**WHEREAS**, the City Administrator has found and determined that it is in the best interests of the City of Oakland to implement the recommendations of the Moving Oakland Forward team to improve staff efficiency and to reduce the costs of procurement and contracting; and

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**WHEREAS**, the City Council finds that services of a professional, and technical nature that are temporary in nature include, but are not limited to, contracts for a finite term that provide for analysis, appraisal, architectural, audit, banking, design, development, financial, engineering, feasibility, geotechnical,

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investment, legal, software, hardware and equipment maintenance, recruiting, research, software development and/or customization and other technology development, temporary office, testing and training services, and contracts for similar services, not identified, which require state licensing or certification, specialized training or expertise or advanced educational degrees; and

**WHEREAS**, Amendments to the Oakland City Charter have re-designated the City Manager as the City Administrator for contracting purposes; and

**WHEREAS**, the City Council hereby adopts the findings of the City Administrator set forth in his report accompanying this ordinance amendment; and

**WHEREAS**, staff wishes to correct errors, delete obsolete provisions and codify new provisions reflecting the City's longstanding informal and formal bids practices and policies in addition to implementing the recommendations of the Moving Oakland Forward Team; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1. Revisions.** Oakland Municipal Code Title 2, Chapter 2.04, Purchasing System, Article I, Bidding, Contracting and Purchasing, shall be amended to:

1. add definitions for "Formal Bidding" and "Informal Bidding" to Section 2.04.010; and
2. renumber current Section 2.04.020 and include the Equal Benefits program; and
3. increase the City Administrator's contract authority in Section 2.04.020 for certain types of contracts; and
4. retain City Administrator's existing contract authority for contracts related to programs or projects not previously approved, or paid by redevelopment agency funds, or paid by funds from voter-approved measures and technology contracts; and
5. add a new subsection making contract awards subject to prior City Council appropriation of funds to the City programs, activities, functions or operations, which the procurement or contract is intended to support, to Section 2.04.040; and
6. reflect current laws regarding affirmative action in Sections 2.04.060, Lowest Responsible Bidder and 2.04.170, Affirmative Action Program for Supplies, Materials, Commodities and Equipment; and
7. add new Section 2.04.051 to add requirements for a competitive RFQ or RFP process for the award of professional services contracts; and
8. delete, replace or modify obsolete provisions throughout the chapter, as follows:

**2.04.010. Definitions.**

The following words and phrases whenever used in this article shall be construed as defined in this section:

"Apprentice" is defined as that term is defined in the Oakland Municipal Code.

"City Administrator" means the City Administrator of the city of Oakland or an officer specifically designated to act for the City Administrator. Authorizations not specified in this article shall be made in writing by the City Administrator and filed with the City Clerk.

"Disadvantaged business enterprise (DBE) is defined as that term is defined in the Oakland Municipal Code.

"Formal Bidding" as used herein means the solicitation and bidding or request for proposal ("RFP") or request for qualification ("RFQ") processes required under Sections 2.04.050 and 2.04.051, below, for purchases, procurements and construction, services and professional services contracts in excess of fifty thousand dollars (\$50,000).

"Informal Bidding" as used herein means the solicitation and bidding or request for proposal ("RFP") or request for qualification ("RFQ") processes required by the City Administrator and set forth in City Administrator-issued Administrative Instructions for purchases, procurements and construction, services and professional services contracts of fifty thousand dollars (\$50,000) or less.

"Local business enterprise" and "small business enterprise means a business firm with fixed offices or distribution points located within the city boundaries and as otherwise defined under Oakland's LBE/SLBE construction, procurement and professional services contracting programs.

"Local hire is defined as that term is defined in the Oakland Municipal Code.

"Prevailing wages" is defined as that term is defined in the Oakland Municipal Code.

"Professional services" means services which are of an advisory nature that provide a recommended course of action or personal expertise that will result in a transmittal of information to the city, either verbal or written, related to city administration and management or program management, innovation and which must be performed by appropriately licensed consultants, architectural or engineering personnel, or which are so technical or complex in nature that such services must be performed by persons possessing unique or special training, education or skills. Notwithstanding the above, this definition shall not include contracts for services between the city and another public entity.

"Local business enterprise" is defined as that term is defined in the Oakland Municipal Code.

"Purchase" means and includes rental or lease of supplies, as well as purchase.

"Services" means and includes labor, professional services, consulting services, or a combination of services and supplies which shall include public works projects.

"Supplies" means and includes supplies, materials, commodities and equipment.

#### **2.04.015 Scope of the purchasing ordinance.**

All provisions of this chapter shall apply to city of Oakland contracts for public works projects, public works construction projects, procurements and purchases (as defined in Section 2.04.010), and to services including, but not limited to, contracts for services that are professional, technical or scientific in nature as well as contracts for any other services.

#### **2.04.020 Authority of the City Administrator**

**A. Contracts Related to Programs or Projects Not Previously Approved, or Paid by Redevelopment Agency Funds, or Paid by Funds From Voter-Approved Measures and Technology Contracts.** For the following contracts the City Administrator's authorized approval limit shall be fifty thousand dollars (\$50,000) for non-professional, non-scientific and non-technical services and procurement contracts or combination thereof, and shall be fifteen thousand dollars (\$15,000) for professional services, provided the purchase meets all other conditions of sections 2.04.020, B and C:

- 1) Contracts related to programs or projects, the terms of which have not been previously approved by the City Council, or related to programs or projects that have only been identified and approved in the City Council adopted program budget within the prior fiscal year;
- 2) Contracts to be funded, directly or indirectly, by the Redevelopment Agency;
- 3) Contracts to be funded, directly or indirectly, by funds generated by a voter-approved measure; and
- 4) Contracts for any technological, computer or computerized system services, software, equipment, hardware or products.

The City Administrator shall submit to the City Council, on an annual basis, a list of all contracts he/she anticipates will be let within the next year that will be directly or indirectly funded by Redevelopment Agency funds.

The City Administrator's contract approval limit for any contracts not specified in this subsection 2.04.020.A, shall be as set forth below.

**B. Supplies and Services Procurement Contracts.** Subject to 1) the availability of funds, 2) findings by the City Administrator contracts for services are of a scientific or technical and temporary nature and shall not result in the loss of employment or salary by any person having permanent status in the competitive service, and 3) the procedures set forth in this article, the City Administrator is authorized to bind the City, by written contract or purchase order, involving an expenditure not exceeding two hundred fifty thousand dollars (\$250,000) in any one transaction by an informal advertising and bidding process and without previous specific action by the City Council, for the purchase of supplies or payment for services, or a combination thereof, to be

furnished to the City, provided full appropriation of the contract as set forth in section 2.04.040.A below has occurred.

The City Administrator shall, annually, prepare and submit to the City Council a report listing all contracts for the purchase of supplies, services (i.e., non-professional, non-technical or nonscientific) or combination thereof between fifty thousand dollars (\$50,000) and two hundred fifty thousand dollars (\$250,000) that were let by the City Administrator, or his or her designee, under the authority of this section 2.04.020.B during the prior year.

**C. Professional Services and Consultant Agreements.** Subject to 1) the availability of funds, 2) findings by the City Administrator that the contract is for services of a professional, scientific or technical and temporary nature and shall not result in the loss of employment or salary by any person having permanent status in the competitive service, and 3) the procedures set forth in this article, the City Administrator is authorized to bind the City, by written contract, involving an expenditure not exceeding one hundred fifty thousand dollars (\$150,000.00) in any one transaction by an informal solicitation process and without previous specific action by the City Council, for the payment for services to be furnished to the City, provided full appropriation of the contract as set forth in section 2.04.040.A below has occurred.

The City Administrator shall, annually, prepare and submit to the City Council a report listing all professional services contracts between fifteen thousand dollars (\$15,000) and one hundred and fifty thousand dollars (\$150,000) that were let by the City Administrator, or his or her designee, under the authority of this section 2.04.020.C during the prior year.

**D. Local Vendor Preferences.** The City Administrator is authorized in the evaluation of all sealed, faxed and telephone bids, for the purchase of supplies, to extend a two and one half percent (2.5%) preference for a local business and an additional two and one half percent (2.5%) preference for small local business enterprises in award of all purchase orders.

The City Administrator shall semiannually prepare and submit to the City Council a report on the City's utilization of small local business participation in City contracts for the prior year.

**E. Emergency Supply and Services Procurement.** In a situation deemed by the City Administrator to be an emergency for the immediate preservation of the public peace, health or safety, the City Administrator may authorize a contract or purchase order exceeding two hundred fifty thousand dollars (\$250,000.00) in any one transaction, without advertising or previous specific action by the City Council, for the purchase of supplies or payment for services, or a combination thereof, to be furnished to the City. All emergency contracts awarded by the City Administrator shall be presented for informational purposes to the City Council within a reasonable time of contract execution.

**F. Emergency Professional Services and Consultant Agreements.** In a situation deemed by the City Administrator to be an emergency for the immediate preservation of the public peace, health or safety, the City Administrator may authorize a contract exceeding one hundred fifty thousand dollars (\$150,000.00) in any one transaction, without previous specific action by the City Council, for the payment for services, or a combination thereof, to be furnished to the City. All emergency contracts awarded by the City Administrator shall be presented for informational purposes to the City Council within a reasonable time of contract execution.

**G. City Administrator Authority During City Council Annual Recess.**

Notwithstanding the provisions of subsections A and B of this section, during the month of August through the first City Council meeting in September, known as the annual recess of the City Council, as provided for in the City Council's Rules of Procedures, the City Administrator shall be authorized (1) to bind the city, by written contract or purchase order, involving an expenditure not exceeding five hundred thousand dollars (\$500,000.00), without previous specific action by the City Council, for the purchase of supplies or payment for services, or a combination thereof, in any one transaction, to be furnished to the city, subject to the availability of funds and procedures set forth in this article, including competitive bidding, and (2) to bind the city, by written contract, involving an expenditure not exceeding three hundred thousand dollars (\$300,000.00) in any one transaction, subject to the availability of funds for the payment for professional services and consultant services furnished to the city and procedures set forth in this article, without previous specific action of the City Council. Professional services and consultant agreements in excess of one hundred fifty thousand dollars (\$150,000.00) and contracts for the purchase of supplies, bid services or combination thereof in excess of two hundred fifty thousand dollars (\$250,000.00) shall be subject to the City Council's recess agenda process and shall be presented to the City Council for ratification upon return from its annual recess.

**H. Apprentice Hiring and Local Hire.** The City Administrator is authorized in evaluation of all sealed, faxed and telephoned bids for public works projects to require contractors to comply with the city's apprentice hire and local hire programs as set forth in this code.

**I. Living Wage.** The City Administrator is authorized in evaluation of all sealed, faxed and telephoned bid and/or proposals for services to require contractors or consultants to comply with the city's living wage ordinance, as set forth under Oakland Municipal Code Chapter 2.28.

**J. Prevailing Wage.** The City Administrator is authorized in evaluation of all sealed, faxed and telephoned bids and/or proposals for public works projects to require bidders/contractors to pay prevailing wages as required under this code.

**K. Oakland Specifications for Public Works Construction ("Greenbook").** The City Administrator is authorized in evaluation of all sealed, faxed and telephoned bid and/or proposals for public works construction to require bidders/contractors to comply with and perform construction in accord with the Oakland Specifications for Public Works Construction ("Greenbook"), as set forth in this code. Notwithstanding the above,

nothing herein is intended to limit authority of the City Council to modify the specifications for public works construction by legislative action on a case-by-case basis.

**L. Local Business Contracting Programs.** The City Administrator is authorized in the evaluation of all sealed, faxed and telephoned bids, for public works projects and for the purchase of supplies and in evaluation of proposals for professional services contracts, to require contractors to comply with, and to extend the benefits of, Oakland's LBE/SLBE construction, procurement and professional services contracting programs, as set forth in this code.

**M. Equal Benefits Program.** The City Administrator is authorized in the evaluation of all sealed, faxed and telephoned bid and/or proposals for services to require contractors or consultants to comply with the City's Equal Benefits Program requirements.

#### **2.04.030 City Council Approval Requirements.**

**A. Contracts Related to New Programs or Projects, or Paid by Redevelopment Agency Funds, Or Paid by Funds From Voter-Approved Measures and Technology Contracts.** Unless otherwise provided herein, all contracts identified in section 2.04.020.A above for supplies, non-professional, non-technical or non-scientific services or a combination of such services and supplies involving an expenditure exceeding fifty thousand dollars (\$50,000.00), and all contracts identified in section 2.04.020.A above for professional services or consultants involving an expenditure exceeding fifteen thousand dollars (\$15,000.00), shall be awarded by the City Council. No contract shall be binding or of any force or effect until signed by the City Administrator. City Administrator signature shall constitute certification that there remains unexpended and unapplied balances of the appropriations or funds applicable thereto sufficient to pay the estimated expense of executing such contract.

**B. Supplies and Services Procurement Contracts.** Unless otherwise provided herein, all contracts for supplies, services or a combination of services and supplies involving an expenditure exceeding two hundred fifty thousand dollars (\$250,000.00) shall be awarded by the City Council. No contract shall be binding or of any force or effect until signed by the City Administrator. City Administrator signature shall constitute certification that there remains unexpended and unapplied balances of the appropriations or funds applicable thereto sufficient to pay the estimated expense of executing such contract.

**C. Professional Services or Consultant Agreements.** Unless otherwise provided herein all contracts for professional services or consultants involving an expenditure exceeding one hundred fifty thousand dollars (\$150,000.00), shall be awarded by the City Council. No contract shall be binding or of any force or effect until signed by the City Administrator. City Administrator signature shall constitute certification that there remains unexpended and unapplied balances of the appropriations or funds applicable thereto sufficient to pay the estimated expense of executing such contract.



**D. Contract Extensions, Renewals, Amendments.** The requirements for City Council approval specified in this section 2.04.030 shall apply to all expenditures, extensions, amendments or renewals relative to a single contract whenever aggregated expenditures under a single contract exceed 1) the City Administrator's contract approval limit, or 2) the amount approved by Council in the authorizing resolution.

#### **2.04.040 Contracting Procedures.**

**A. Contracts Subject to Council Appropriation and Allocation of Program or Contract Funds.** All contracts authorized hereunder by the Council or City Administrator shall be subject to the prior appropriation and allocation of funds by the City Council for the City programs, activities, functions or operations, which the procurement of any equipment, supplies, materials, commodities, services of any type, or combination thereof, or professional services are intended to support.

#### **B. Use of Informal and Formal Contracting Procedures.**

1. Informal solicitation, bidding or RFP or RFQ procedures established by the City Administrator shall be used for the purchase of supplies, services, including professional services, or combination thereof when the total cost of the purchase or contract exceeds five hundred dollars (\$500.00), but is less than fifty thousand dollars (\$50,000.00) in any one transaction or term agreement;
2. Formal advertising, solicitation, bidding or RFP or RFQ procedures, as provided under Sections 2.04.050 and 2.04.051 below, shall be used for the purchase of supplies, services, including professional services, or combination thereof when the total cost of the purchase or contract exceeds fifty thousand dollars (\$50,000.00) in any one transaction or term agreement.

#### **C. Purchase Orders, Contract Format, Petty Cash.**

1. Purchase orders shall be used for all procurements and contracts in excess of five hundred dollars (\$500.00). The purchase order shall incorporate by reference all relevant agreements, including but not limited to the City of Oakland Professional Services Agreement, negotiated agreements, vendor agreements and exhibits, attachments, addendums and other supporting documents thereto, that, together, constitute the entire agreement.
2. All purchases and contracts for supplies, services or combination thereof in excess of five hundred dollars (\$500.00) shall be in writing, in the written format required under City Administrator procedures.
3. The City Administrator shall institute control procedures for petty cash funds without prior use of purchase orders or contracts.

#### **D. Miscellaneous Procedures.**

1. Notwithstanding the above, nothing herein shall preclude the City Administrator from placing any purchase, procurement or contract within his approval limit on the City Council Agenda for discussion or approval.
2. The City Administrator shall institute informal and formal contacting procedures for the purchase of supplies or combination of services and supplies.
3. The City Administrator shall institute formal contracting procedures for professional, scientific and technical services contracts, as needed.
4. The City Administrator shall maintain a centralized list of all contracts executed by him, or his delegee, within his authorization limit.
5. Pursuant to the City Charter, the City Attorney will draft standardized contract terms and conditions and standardized contracts for use in contracting for professional services, purchasing, procurement and contracting for supplies, services or combination thereof.
6. Pursuant to the City Charter, the City Attorney will approve the form and legality of all formal written contracts before the execution thereof.

#### **2.04.050. Bid procedure.**

**A. When Advertising Required.** Where the cost of services, supplies or combination thereof required by the city exceeds the sum of fifty thousand dollars (\$50,000.00), the City Clerk shall call for formal bids therefore by advertising at least once in the official newspaper of city not less than ten calendar days prior to the date set for receiving said bids. The City Administrator may deem it advisable to require more than one advertising of the call for bids.

**B. Bid Security.** Whenever the city calls for bids for services, and whenever the City Administrator deems it to be advisable in calls for bids for supplies, each bidder shall be required to submit with the bid as bid security either cash, certified check, or a cashier's check of or on some responsible bank in the United States, in favor of and payable at sight to the city of Oakland, in an amount not less than ten percent of the aggregate amount of the bid. If the bidder to whom the contract is awarded shall, for twenty (20) calendar days after receipt of such contract fails or neglects to enter into the contract and file the required bonds, the bid security shall be forfeited, the City Administrator shall draw the money due on such bid security and pay the same or any cash deposited into the City Treasury, and under no circumstances shall it be returned to the defaulting bidder. In lieu of the foregoing, any bid may be accompanied by a surety bond furnished by a corporate surety admitted in the state of California or Lloyds or London; or, for contracts where the compensation there under is five million dollars (\$5,000,000.00) or less, the surety bond may be furnished by a United States nonadmitted corporate surety which appears on the Treasury List subject to the bonding limits which the Treasury List imposes on such surety; or, for contracts where the compensation there under is one million dollars (\$1,000,000.00) or less, the surety bond may be furnished by a United States nonadmitted corporate surety which has an A.M. Best rating of A+; or, for contracts where the compensation there under is five hundred thousand dollars (\$500,000.00) or less, the surety bond may be furnished by a United States nonadmitted corporate surety which has an A.M. Best rating of A-, guaranteeing to the

city that said bidder will enter into the contract and file the required bonds within said period. Failure of the bidder to enter into the contract as specified herein shall result in a forfeiture of the amount specified in the surety bond. With the approval of the City Administrator, prospective bidders may file annual surety bonds covering all bids to be made by such bidder during a calendar year.

**C. Multiple Bids.** No person, firm, or corporation shall be allowed to make or file or be interested in more than one bid for the same supplies, services or both.

**D. Bid Forms.** All bids shall be made upon forms to be prepared by city and furnished upon application. All bids shall be clearly and distinctly written without any erasure or interlineation.

**E. Opening of Bids and Awards.** All bids submitted under this section shall be sealed, identified as bids on the envelope and shall be submitted to the City Clerk at the place and time specified in the public notice inviting bids. Bids shall be opened by the City Administrator or his or her designated representative, in public, at the time and place designated in the notice inviting bids. Bids received after the specified time shall not be accepted and shall be returned to the bidder unopened. The contract shall be let to the lowest responsible bidder, as defined herein, by the City Council at any time not exceeding sixty (60) calendar days after bid opening. The City Council may reject any and all bids and waive any informalities or minor irregularities in the bids.

In the bid for Public Works Construction Projects, the City Administrator may deem it advisable to delay the submission of a list of subcontractors that shall be utilized on the project. Such list shall be sealed, identified as a subcontractor list on the envelope and be submitted to the City Clerk at the place and time specified in the public notice inviting bids.

**F. Disposition of Bid Security.** All bid securities and bid bonds shall be returned to the unsuccessful bidders after award of the contract to the successful bidder. The bid security and bid bond of the successful bidder shall be returned after execution of the contract and deposit of the necessary bonds.

**G. Approval of Faithful Performance and Labor and Materials Bonds--Waiver.** Faithful performance and labor and material bonds in an amount equal to at least fifty (50) percent of the contract price shall be required by city specifications of contracts for services and shall be approved as to form by the City Attorney. Whenever the City Administrator deems it to be advisable in the purchase of supplies, City Administrator may require the furnishing of a faithful performance bond in an amount equal to at least twenty-five (25) percent of the total amount of the contract price, which bond shall be approved as to form by the City Attorney.

**H. Time of Completion.** The contract shall specify the time within which the work shall be commenced and when it shall be completed in accordance with specifications. The City Administrator may extend said time for acts of the city, acts of God, weather or strikes, or other circumstances over which the contractor has no control. The Council may extend said time, but in no event shall the time for the performance of any contract

be extended more than ninety (90) days in addition to extensions as authorized by the City Administrator, except by a two-thirds vote of the Council.

In case of failure on the part of the contractor to complete the contract within the time specified in the contract or within said extension of said time as herein provided for, the contract may be terminated and the contractor shall not be paid or allowed any further compensation for any work done under said contract, and the City Administrator may proceed to complete such contract either by reletting or otherwise, and the contractor and contractor's surety shall be liable to the city for all loss or damage which the city may suffer on account of contractor's failure to complete the contract on time.

**I. Exceptions to Competitive Bidding.** Upon the finding and determining in each instance by the City Council that any of the following conditions exist, the restrictions and provisions of this section shall not apply:

1. To contracts involving the obtaining of professional or specialized services such as, but not limited to, services rendered by architects, engineers, and other specialized professional consultants;
2. Where calling for bids on a competitive basis is impracticable, unavailing or impossible;
3. Placement of insurance coverage;
4. When public work is performed by the city with its own employees;
5. In other cases when specifically authorized by the City Council after a finding and determination that it is in the best interests of the city.

**J. No Bids.** If no valid bids are received after advertising therefore as required in this article, the City Administrator may proceed to hire or have the services performed or purchase the supplies in the open market.

#### **2.04.051. Competitive Process and Qualification-based Awards for Professional Services Contracts.**

**A. Request for Qualifications ("RFQ") or Proposal ("RFP") for Professional Services Contracts in Excess of \$25,000.** The City Administrator, or his or her designee, shall conduct a request for proposal ("RFP") or Request for Qualifications ("RFQ") process for the award of contracts that exceed twenty five thousand dollars (\$25,000.00) and are exempt from bidding under section 2.04.050.I.1, above. The City's RFP and RFQ processes shall be set forth in a City Administrator's Administrative Instruction. The RFP or RFQ requirement applies, but is not limited, to contracts for professional, technical or specialized services. The selection and award of contracts for professional services shall be made on the basis of demonstrated competence and qualifications for the types of services to be performed, at fair and reasonable prices to the City.

**B. Waiver.** Upon a finding and determination by the City Council or its designee that it is in the best interests of the City, the City Council may waive the requirement for an RFP or RFQ process.

#### **2.04.60. Lowest responsible bidder.**

In addition to price, in determining the lowest responsible bidder, consideration shall be given to:

- A.** The quality and performance of the supplies to be purchased or services to be provided by the seller;
- B.** The ability, capacity and skill of the bidder to perform the contract or provide the supplies or services required;
- C.** The ability of the bidder to provide the supplies or services promptly or within the time specified, without delay;
- D.** The character, integrity, reputation, judgement, experience and efficiency of the bidder;
- E.** The quality of bidder's performance on previous purchases by, or contracts with, the city;
- F.** The ability of the bidder to provide future maintenance, repair parts and services for the use of the supplies purchased;
- G.** As permitted by law, the certified bidders affirmative action hiring plan to be submitted with all sealed bids for supplies and commodities over five thousand dollars (\$5,000.00).
  - 1. To be considered responsible and as permitted by law, bidder shall submit certification that bidder is in compliance with all provisions of Executive Order No. 11246 (as amended by Executive Order No. 11375), and
  - 2. To be considered responsible and as permitted by law, the bidder must have a current work force racially and ethnically proportionate to the population parity for the area from which bidder's work force is drawn (national, state, or local), must comply with subsection (G)(1) of this section, or must have an affirmative action plan to achieve population parity for the area in which they do business. The plan should include all aspects of employment recruiting, hiring, promotions, and layoff.

#### **2.04.070 Open market purchase.**

Except as otherwise provided by this chapter or unless otherwise directed by the City Administrator, all purchases of supplies or services involving an expenditure of city funds in an amount not exceeding fifteen thousand dollars (\$15,000.00) shall be purchased, when feasible and when in the best interest of the city, in the open market by written quotation or telephone solicitation, without newspaper advertisement and without observing the procedure prescribed for the award of formal bid purchases. The procedure for such open market purchases shall be as specified in control procedures to be established by the City Administrator.

#### **2.04.080 Cooperative purchasing agreements.**

Where advantageous for the city, the City Administrator may purchase supplies or services as defined in Section 2.04.010, through legal contracts of other governmental jurisdictions or public agencies without further solicitation or formal bidding and without Council approval.

#### **2.04.090 Surplus supplies, purchases.**

When it is advantageous to the city, the City Administrator may direct the purchase of surplus supplies from the United States Government, or any agency thereof, or from the state of California, or any agency thereof, or any public body, without compliance with open market purchase provisions, formal bidding requirements or entering into a formal contract therefore.

#### **2.04.100 Inspection and testing.**

The receiving department shall inspect supplies delivered and services performed to determine their conformity with the specifications set forth in the purchase order or contract and shall report any deficiencies to the City Administrator or officer authorized by the City Administrator. The city may require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with specifications.

#### **2.04.110 Contract splitting prohibited.**

**A.** It is unlawful to split or separate into smaller work orders, projects, purchase orders or contracts or any public work project, for the purpose of evading the provisions of this article.

**B.** Splitting or separating a transaction shall mean and include the reducing the amount of any supply or service to be furnished to the city under circumstances where there is a reasonable knowledge that the same supply or service will be additionally required within the same budgetary term, there are funds available for the project or purchase and the sole purpose is to knowingly avoid the formal calling of bids. In instances where it is deemed to be to the benefit of the city to split or separate a transaction, the proposed splitting or separation shall be referred to the City Council for its findings and determination in accordance with Section 2.04.050I.

#### **2.04.120 Surplus supplies and equipment--Disposal or destruction.**

**A. Authority of Purchasing Supervisor.** All using departments shall submit to the Purchasing Supervisor, at such times and in such form as Purchasing Supervisor shall prescribe, reports showing all supplies which are no longer used or which have become obsolete or worn out. The Purchasing Supervisor shall have authority to sell at public auction after advertising for one day in the official newspaper of city all supplies which cannot be used by any department or which have become unsuitable for city use, or to

exchange or trade in the same for new supplies. However, the sales of such supplies may be made to other public bodies at the fair market value.

**B. Authority of City Administrator.** Except as otherwise prohibited by law, the City Administrator may authorize the abandonment, destruction or donation to public bodies, charitable, civic or nonprofit organizations, of city property which has no commercial value or of which the estimated cost of continued care, handling, maintenance or storage would exceed the estimated proceeds of sale. Such determination shall be made in writing and countersigned by the Director of General Services and City Administrator.

**C. Donation of Property.** Except as otherwise prohibited by law, the donation to public bodies, charitable or nonprofit civic organizations, of surplus supplies or any other surplus property owned by the city (excluding real property) which property has a value exceeding its continued care, handling, maintenance or storage, may be authorized only by resolution or ordinance of the City Council upon a finding and determination by the City Council that such property is surplus to the needs of the city and that the donation is in the best interests of the city.

**D. Sale of Property.** Sale by means other than public auction of surplus supplies or any other surplus property owned by the city (excluding real property) may be authorized only by resolution or ordinance of this City Council upon a finding and determination by the City Council that such sale is in the best interests of the city. However, such sales shall be authorized only at or above the fair market value of the property as determined by the City Administrator.

#### **2.04.130 Administrative controls.**

The City Administrator shall prepare administrative directives and controls sufficient to carry out the intent of this article.

#### **2.04.140 Collusion with bidder--Effect on officer.**

Any officer of the city, or of any department thereof, who shall aid or assist a bidder in securing a contract to furnish labor, material or supplies at a higher price than that proposed by any other bidder, or who shall favor one bidder over another by giving or withholding information or who shall willfully mislead any bidder in regard to the character of the material or supplies called for, or who shall knowingly accept materials or supplies of a quality inferior to those called for by the contract, or who shall knowingly certify to a greater amount of labor performed than has been actually performed, or to the receipt of a greater amount or different kind of material or supplies than has been actually received, shall be deemed guilty of malfeasance and shall be removed from office, and be forever ineligible to hold any office or employment in or under the city.

#### **2.04.150 Unauthorized purchases-- Exceptions.**

It is unlawful for any officer or employee to purchase or contract for supplies or services for the city other than as hereinafter prescribed, excepting purchases made from petty

cash, emergency purchases or other purchases made in conformance with control procedures established by the City Administrator. Any purchases, contracts or obligations to pay made contrary to the provisions of this article shall be null and void.

#### **2.04.160 Expenditures from restricted gift proceeds.**

Notwithstanding any other provision of this article, the City Administrator is authorized to expend moneys derived from gifts and donations to the city in accordance with any special conditions of the donor attached to said gifts and donations when the gift with the special conditions has been approved and accepted by the City Council by resolution.

#### **2.04.170 Affirmative action program for supplies, materials, commodities and equipment.**

**A.** To the extent permitted by law, the Purchasing Supervisor will establish a goal in the purchase of supplies and commodities which reflects the minority composition of the Standard Metropolitan Statistical Area (SMSA). Separate goals will be established for public works projects, community development projects and economic development and employment contractors.

**B.** To the extent permitted by law, the Purchasing Supervisor will submit a yearly affirmative action plan for the purchasing of supplies and commodities to the City Administrator. The plan is to include: affirmative action requirements of vendors; a local vendor report which includes a local minority supplier development program, a progress report and new year participation goals; and an outline of new ideas developed to advance the affirmative action program during the coming year.

#### **2.04.180 Design-build project delivery method.**

The city may use the alternative fast-track project delivery method commonly known as "design-build" with or without formal bidding when the circumstances surrounding the project substantiate that it is in the "best interests of the city" to waive formal bidding pursuant to Section 2.04.050. The City Administrator, or his or her designee, will prepare and publish an administrative instruction, which will contain guidelines for the use of such alternative project delivery methods. These guidelines will provide the criteria and administrative procedures for the use of such alternative project delivery methods such as design-build.

#### **2.04.190 Construction Manager-at-risk project delivery method.**

The city may use the alternative project delivery method commonly known as "construction manager-at-risk" with or without formal bidding when the circumstances surrounding the project substantiate that it is in the "best interests of the city" to waive formal bidding pursuant to Section 2.04.050. The City Administrator, or his or her designee, will prepare and publish an administrative instruction, which will contain guidelines for the use of such alternative project delivery methods. These guidelines will



provide the criteria and administrative procedures for the use of such alternative project delivery methods such as construction manager-at risk.

**SECTION 2. Remaining Provisions Unchanged.** Except as amended herein, all provisions, articles, sections, subsections, sentences, clauses or phrases of Oakland Municipal Code Chapter 2.04, shall remain unchanged and in full force and effect.

**SECTION 3. Severability.** If any article, section, subsection sentence, clause or phrase of this ordinance or exhibit hereto is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

**SECTION 4. Effective Date.** This ordinance shall become effective immediately on final adoption if it receives six (6) or more affirmative votes; otherwise it shall become effective upon the seventh (7<sup>th</sup>) day after final adoption.

317038v1

IN COUNCIL, OAKLAND, CALIFORNIA, (DATE), 20(YEAR)

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN AND  
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST:

CEDA FLOYD  
City Clerk and Clerk of the Council  
of the City of Oakland, California

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FINANCE & MANAGEMENT CMTE.  
JUL 13 2004