

CITY OF OAKLAND

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CITY ATTORNEY



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December 7, 2004

**HONORABLE CITY COUNCIL**  
Oakland, California

President De La Fuente and Members of the Committee:

Subject: 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 1) INCREASE THE CITY ADMINISTRATOR'S CONTRACT APPROVAL LIMITS, 2) REVISE CITY COUNCIL APPROVAL LIMITS ACCORDINGLY, 3) REVISE THE LOCAL BUSINESS PREFERENCE, 4) MAKE NECESSARY CORRECTIONS, CLARIFICATIONS, DELETE OBSOLETE PROVISIONS AND 5) CODIFY CURRENT PROCEDURES

At its November 16, 2004 meeting, the City Council introduced amendments to the Purchasing Ordinance. Before it introduced the Ordinance, as amended, the Council accepted the following amendments to the ordinance which are reflected in the attached redlined version of the ordinance:

1. Page 5 – “contact” was changed to “contract”;
2. Page 8 – 2.04.030(B) was changed to 2.04.030(A)2
3. Page 8 – The language of section 2.04.020(B)(3), entitled “Appropriation Resolution” was repeated at 2.04.030(A)(2)(c) to clarify that the City Administrator may execute certain contracts for which there is a council approved appropriation resolution.
4. Page 8 – “D” was changed to “C”

Very truly yours,

*for Barbara J. Parker*  
JOHN RUSSO  
City Attorney

Assigned Attorney:  
Barbara J. Parker

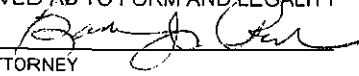
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APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

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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 1) INCREASE THE CITY ADMINISTRATOR'S CONTRACT APPROVAL LIMITS, 2) REVISE CITY COUNCIL APPROVAL LIMITS ACCORDINGLY, 3) REVISE THE LOCAL BUSINESS PREFERENCE, 4) MAKE NECESSARY CORRECTIONS, CLARIFICATIONS, DELETE OBSOLETE PROVISIONS AND 5) CODIFY CURRENT PROCEDURES**

**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 recommends 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 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

**WHEREAS**, the City Council finds that services of a professional, scientific and technical nature that are temporary 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, 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, that 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 adopts the findings of the City Administrator set forth in the 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," "Informal Bidding" and "Appropriation Resolution" to Section 2.04.010; and
2. renumber current Section 2.04.020; and
3. increase the City Administrator's contract authority in Section 2.04.020 for certain contracts; and
4. retain City Administrator's existing 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 in Section 2.04.020.A; 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 that 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.

"Appropriation Resolution" is defined as a City of Oakland resolution approved by the City Council that includes:

1. a description of the material or service to be obtained under contract;
2. a not-to-exceed contract amount for the material or service;
3. identification of the funding source for the material or service;
4. an estimated time frame for execution and completion of the contract; and,
5. a statement identifying the contract-related program or project as "new" or "previously existing."

"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, Solicitation or Proposals/Qualifications" means the competitive processes (advertising and bidding or solicitation) required in Sections 2.04.050 (supplies, services or combination ) and 2.04.051 (professional services), for the purchase of supplies, services or combination in excess of fifty-thousand dollars (\$50,000), or for the purchase of professional services in excess of twenty-five thousand dollars (\$25,000).

"Informal Bidding" means the competitive processes (advertising and bidding or solicitation) required by the City Administrator in a City Administrative Instruction for the purchase of supplies, services or combination up to and including fifty thousand dollars (\$50,000), or for the purchase of professional services up to and including twenty-five thousand dollars (\$25,000).

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

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

"Professional services" means services 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 that must be performed by appropriately licensed consultants,*

architectural or engineering personnel or that are so technical or complex that such services must be performed by persons with 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.

"Purchase" means purchase or rental or lease of supplies.

"Services" means labor or a combination of services and supplies that shall include public works projects.

"Supplies" means 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.

#### **2.04.016 City Council Approval of Grant Awards.**

Notwithstanding any authority granted herein, all grant awards made from money or funds donated, given or granted to the city from any public or private source shall be approved by the City Council regardless of the amount of grant award.

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

**A. City Administrator's Purchase Authority.** Except as provided in section 2.04.020.B, the City Administrator shall have authority to bind the city by written contract or purchase order without previous specific action of the Council as follows:

1. **Supplies, Services or a Combination .** Purchases up to two hundred fifty-thousand dollars (\$250,000) in any single transaction or term agreement; and
2. **Professional Services.** Purchases up to one hundred fifty-thousand dollars (\$150,000.00) in any single transaction or term agreement.

**B . Limits for Non-Budget Identified, Redevelopment Agency Funded, Affordable Housing, Voter-Approved Measure Funded and Technological, Computer-Related Purchases or Contracts.** The City Administrator's contract authority is subject to lower limits for certain types of purchases or contracts.

##### **1. Purchases or Contracts Subject to Lower Limits:**

- a. Purchases or contracts related to programs or projects that have not been previously identified in:
  - i) the current, approved CIP Budget, or

- ii) the approved operating budget; or
- b. Purchases or contracts for services or supplies related to affordable housing projects; or
- c. Purchases or contracts that are or will be funded, directly or indirectly, by the Redevelopment Agency; or
- d. Purchases or contracts that are or will be funded, directly or indirectly, by funds generated by a voter-approved measure; or
- e. Purchases or contracts for any technological, computer or computerized system services, software, equipment, hardware or products.

2. **Purchase Limits.** The City Administrator is authorized to bind the city by written contract or purchase order for the types of purchases or contracts identified above without previous specific action of the Council as follows:

- a. **Supplies, Services or a Combination.** Purchases up to fifty- thousand dollars (\$50,000) in any single transaction or term agreement;
- b. **Professional Services.** Purchases up to fifteen thousand dollars (\$15,000) in any single transaction or term agreement.

3. **Appropriation Resolution.** Notwithstanding the limits in this section, any purchase or contract identified in a Council-approved Appropriation Resolution is subject to the City Administrator's limits in 2.04.020.A.

**C. Advertising and Bidding or Solicitation.** The City Administrator shall conduct competitive solicitation processes required in this Chapter (Section 2.04.040.B) for all purchases or contracts within City Administrator authority.

**D. Reports.** The City Administrator shall present the following reports to the City Council on an annual basis:

- 1. **Redevelopment Agency-Funded Contracts.** A prospective report listing all contracts anticipated within the next year to be directly or indirectly paid from Redevelopment Agency funds.
- 2. **General Report.** A report listing all purchases and contracts authorized by the City Administrator, or the City Administrator designee, within the City Administrator's contract authority during the prior year.

**E. Findings Required for Service Contracts.** The City Administrator shall make determinations required by Oakland Charter Section 902(e) for service contracts as follows:

- 1. **Professional Services Contracts.** Contracts for professional services shall be of a professional, scientific or technical and temporary nature.
- 2. **Council Approval for Other Service-Only Contracts.** The City Administrator shall submit all other service-only contracts to the Council for approval. Such contracts shall be in the public interest because of economy or better performance and must obtain a vote of two-thirds of the members of the Council.

**3. Loss of Employment or Salary.** Contracts for professional services or services-only shall not result in the loss of employment or salary by any person having permanent status in the competitive service.

**F. 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 to local business enterprises and an additional two and one half percent (2.5%) preference to 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 participation by local and small local business enterprises in City contracts for the prior year.

**G. 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.

**H. 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.

**I. 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. Contracts for professional

services, supplies, services or combination that are in excess of the City Administrator's authority 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.

**J. 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.

**K. 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.

**L. 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.

**M. 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.

**N. Local Business Contracting Programs.** The City Administrator is authorized in the evaluation of all sealed, faxed and telephoned bids for public works projects, 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.

**O. Equal Benefits Program.** The City Administrator is authorized in the evaluation of all sealed, faxed and telephoned bids 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. Council Award of Purchases or Contracts in Excess of City Administrator's Authority.** The Council shall award any purchase orders or contracts in excess of the City Administrator's authority as follows:



1. **City Council Authority.** Except for purchases subject to limits in section 2.04.030.BA(2), the Council shall award all contracts in the following amounts:
  - a. **Supplies, Services or Combination.** Purchases in excess of two hundred and fifty-thousand dollars (\$250,000) in any single transaction or term agreement; and
  - b. **Professional Services.** Purchases in excess of one hundred fifty-thousand dollars (\$150,000.00) in any single transaction or term agreement.
  
2. **Non-Budget Identified, Redevelopment Agency Funded, Affordable Housing, Voter-Approved Measure Funded and Technological, Computer-Related Purchases or Contracts.** The Council shall award all contracts in excess of the City Administrator's limits as follows:
  - a. **Supplies, Services or Combination.** Purchases in excess of fifty-thousand dollars (\$50,000) in any single transaction or term agreement;
  - b. **Professional Services.** Purchases in excess of fifteen thousand dollars (\$15,000) in any single transaction or term agreement.
  - c. **Appropriation Resolution.** Notwithstanding the limits in this section, any purchase or contract identified in a Council-approved Appropriation Resolution is subject to the City Administrator's limits in 2.04.020.A.

**B. Validity of Contracts.** Legislative actions of the Council awarding any contract shall not constitute a contract. No contract shall be binding or of any force or effect until signed by the City Administrator. The City Administrator's signature shall constitute certification that there remains unexpended and unapplied balances of the appropriations or funds sufficient to pay the estimated expense of executing the contract.

**DC. 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 of an existing or expired contract or term agreement whenever aggregated expenditures under the original contract or term agreement, or extensions, renewals or amendments exceed 1) the City Administrator's contract approval limit, or 2) the total contract amount approved by Council in a City of Oakland resolution.

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

**A. Contracts Subject to Council Appropriation and Allocation of Program or Contract Funds.** All contracts authorized 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 purchase of any supplies, professional or other services or combination are intended to support.

**B. Limits for Informal and Formal Solicitation Procedures.**

1. **Informal Advertising and Bidding.** Informal advertising and bidding procedures established by the City Administrator are required for purchase orders or contracts for supplies, services or combination involving expenditures between five hundred dollars (\$500.00) and fifty-thousand dollars and one cent (\$50,000.01) in any single transaction or term agreement;
2. **Formal Advertising and bidding.** Formal advertising and bidding, described in Section 2.04.050, is required for purchase orders or contracts for supplies, services or combination involving expenditures in excess of fifty thousand dollars (\$50,000.00) in any one transaction or term agreement.
3. **Informal RFP/RFQ Process.** Informal advertising and solicitation of proposals/qualifications is required for professional services contracts involving expenditures of twenty-five thousand dollars (\$25,000) or less;
4. **Formal RPF/RFQ Process.** Formal advertising and solicitation of proposals/qualifications described in 2.04.051 is required for professional services contracts involving expenditures of more than twenty-five thousand dollars (\$25,000).

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

1. Purchase orders shall be used for all purchases of supplies, services or combination or professional services 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 that, together, constitute the entire agreement.
2. All purchases and contracts for supplies, services or combination or professional services in excess of five hundred dollars (\$500.00) shall be in writing, in a format approved by the City Attorney.
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 shall preclude the City Administrator from placing any purchase, procurement or contract within the City Administrator's approval limit on the City Council Agenda for discussion or approval.
2. The City Administrator shall institute informal contacting procedures for the purchase of supplies, services or combination.
3. The City Administrator shall institute informal and formal contracting procedures for the purchase of professional services.
4. The City Administrator shall maintain a centralized list of all contracts executed by the City Administrator, or the City Administrator's designees, within the City Administrator's authorization limit, for the prior year.

5. Pursuant to the City Charter, the City Attorney will draft standardized contract terms and conditions and standardized contracts for professional services, purchasing, procurement and for supplies, services or combination.
6. Pursuant to the City Charter, the City Attorney will approve the form and legality of all contracts before their execution.

#### **2.04.050. Bid Procedure.**

**A. When Advertising Required.** When the cost of services, supplies or combination required by the city exceeds fifty-thousand dollars (\$50,000.00), the City Clerk shall call for formal bids by advertising at least once in the official newspaper of city not less than ten calendar days before the date for receiving 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 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.

Alternatively, any bid may be accompanied by a surety bond as follows:

1. For contract bids of five hundred thousand dollars (\$500,000.00) or less, the surety bond must be furnished by a United States non-admitted corporate surety that has an A.M. Best rating of A-, at minimum, guaranteeing to the city that the bidder will enter into the contract and file the required bonds within the period; and
2. For contract bids over five hundred thousand dollars and one cent (\$500,000.00) and one million dollars (\$1,000,000.00), the surety bond must be furnished by a United States non-admitted corporate surety that has an A.M. Best rating of A+, at minimum; and
3. For contract bids over one million dollars (\$1,000,000.00) and five million dollars (\$5,000,000.00), the surety bond must, at minimum, be furnished by a United States non-admitted corporate surety that appears on the Treasury List subject to the bonding limits which the Treasury List imposes on such surety; and
4. For contract bids in excess of five million dollars (\$5,000,000.00), the surety bond must be furnished by a corporate surety admitted in the state of California or Lloyds or London.
5. Prospective bidders may file annual surety bonds covering all bids to be made by such bidder during a calendar year with approval of the City Administrator.

If the bidder to whom the contract is awarded shall, for twenty calendar days after receipt of the contract, fail or neglect to enter into the contract and file the required bonds, the bid security or bid surety bond shall be forfeited. The City Administrator shall draw the money due on such bid security or bid surety bond and pay the same or any

cash deposited into the City Treasury, and under no circumstances shall it be returned to the defaulting bidder.

**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 written without any erasure or interlineations.

**E. Opening of Bids and Awards.** All bids submitted under this section shall be sealed, identified as bids on the envelope and 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 the City Administrator's 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 calendar days after bid opening. The City Council may reject any and all bids and waive 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 to be on the project. Such list shall be sealed, identified as a subcontractor list on the envelope and 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. 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 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 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 percent of the contract price; that 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 begin and when it shall be completed according to specifications. The City Administrator may extend 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 the time, but in no event shall the time for the performance of any contract be extended more than ninety 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 the extension of the time as provided, the contract may be terminated and the contractor shall not be paid or allowed any further compensation for any work done under the 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 that the city may suffer because contractor fails to complete the contract on time.

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

1. To contracts involving professional or specialized services such as, but not limited to, services rendered by architects, engineers and other specialized professional consultants;
2. When 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 as required, 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 or Proposal for Professional Services Contracts in Excess of \$25,000.** The City Administrator, or the City Administrator's 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. 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 based on 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 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.~~2.04.060. 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; and
- B. The ability, capacity and skill of the bidder to perform the contract or provide the supplies or services required; and
- C. The ability of the bidder to provide the supplies or services promptly or within the time specified, without delay; and
- D. The character, integrity, reputation, judgment, experience and efficiency of the bidder; and
- E. The quality of bidder's performance on previous purchases by, or contracts with, the city; and
- F. The ability of the bidder to provide future maintenance, repair parts and services for the supplies purchased; and
- G. As permitted by law, a certified bidder's 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.**

When 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 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.

#### **2.04.100 Inspection and Testing.**

The receiving department shall inspect supplies delivered and services performed to determine their conformity with the specifications 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 that are necessary to determine 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 means reducing the amount of any supply or service to be furnished to the city when there is a reasonable knowledge that the same supply or service will be additionally required within the same budgetary term, when there are funds available for the project or purchase and the sole purpose is to knowingly avoid the formal calling of bids. When it is 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 determination in accordance with Section 2.04.050.1.

#### **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 that are no longer used or that 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 that cannot be used by any department or that 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 that 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 Finance and Management and City Administrator.

**C. Donation of Property.** Except as otherwise prohibited, 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) that 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 by the City Council that such property is surplus to city needs 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 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 guilty of malfeasance and shall be removed from office, and be forever ineligible to hold any city office or employment.

#### **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 prescribed, excepting purchases made from petty cash, emergency purchases or other purchases conforming to 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 the 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 that reflects the minority composition of the Standard Metropolitan Statistical Area. 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 that 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 the City Administrator's designee, will prepare and publish an administrative instruction that will contain guidelines for the use of such alternative project delivery methods. These guidelines will provide the criteria and procedures for 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 it is in the best interests of the city to waive formal bidding pursuant to Section 2.04.050. The City Administrator, or the City Administrator's designee, will prepare and publish an administrative instruction that will contain guidelines for such alternative project delivery methods. These guidelines will provide the criteria and procedures for alternative project delivery methods such as construction manager-at risk.

**SECTION 2. Remaining Provisions Unchanged.** Except as amended, 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 is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions, 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 or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

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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