

Attachment 2

Overview of City's Procurement Process

The City's procurement process is governed by both state and local law. State law requires contracts for construction to be competitively bid pursuant to a set of specific, established rules. In particular, the City is required to award construction contracts to the "lowest responsible bidder" after providing notice in accordance with law. (Pub. Contract Code §§ 20162, 20164.)

However, in awarding contracts for the purchase of professional services, equipment and supplies, the City has some latitude. State law requires the City to adopt regulations and policies to govern such service and supplies procurement, but otherwise provides the City flexibility in determining relevant requirements as long as they are consistent with applicable state law. (Gov. Code § 54202.) Chapter 4.04 of the Municipal Code and the City's Purchasing Procedures (Administrative Instruction Section IV, No. 1) govern the City's purchasing policies and contract procurement processes.

The City's purchasing ordinance distinguishes between three primary types of procurement methods as follows:

1. Competitive Bidding for Construction Projects

Public projects are specifically defined under the Public Contract Code, and generally involve any construction project that is paid with public funds or those projects involving improvements, demolition or other work on public property or facility. Public projects are required to be procured through competitive bidding and the City must award the contract to the lowest bidder whose bid complies with all of the City's solicitation requirements and demonstrates that the bidder is able to perform the work. Under the City's policy, different levels of competitive bidding are required depending on the dollar limit of the underlying project.

For these contracts, cost is generally the sole determining factor, and the lowest responsible bidder is awarded the project even if another bidder appears to be more skilled but is more expensive.

2. Open Market Procedures for Vendors (Supplies and Equipment)

Open Market Procedures is the City's vendor selection process for purchase of goods, supplies, and professional services. These rules do not apply to, and may not be used for, public construction projects.

Contracts for the purchase of goods and services that exceed \$10,000 requires staff to utilize open market procedures. If the contract is \$25,000 or less, staff must obtain at least three quotes, which are informal offers to perform work at a stated price. If the contract is greater than \$25,000, staff will be required to solicit the project, such as issuing a Request for Proposals ("RFPs") and obtain at least three written responses.

Under this vendor selection process, cost can be only one factor in determining which vendor the City will ultimately select for services, equipment, or supplies. This requirement is similarly reflected under SSFMC § 4.04.080.

Thus, when utilizing the open market vendor selection process, the City is focused on the skill, ability, and expertise of the entity or person to be able to provide the service,

equipment, or goods to the City. The selection is based on competence, professional qualifications, and overall value to the City with cost being only one factor in the determination of an award.

Federally Funded Procurements for Vendors (Supplies and Equipment)

Contracts that receive federal funding are required to incorporate and comply with additional terms and conditions. The City's Purchasing Procedures also provide guidance on procuring supplies and equipment contracts that are federally funded. Federally funded procurements also require a written procedure for conducting evaluations and for selecting recipients and awarding the contract to the responsible firm whose proposal is most advantageous to the City with price being only one factor. It is also important to note that federally funded procurements do not include state or local geographical preferences unless specifically authorized by federal law. Each evaluation is a non-discrimination and equal opportunity for all vendors.

3. Open Market Procedures for Architectural and Engineering (A&E) Professional Services

For certain professional services such as architectural, engineering, environmental, land surveying, or construction project management, the Government Code also specifically requires that such services not be awarded solely based on price, but instead based on demonstrated competence. (Gov. Code § 4526.) Both the state law provision and the City's policy reflect the legislative view that when acquiring such services, the City does not necessarily receive the best value when it pays the lowest price. (See e.g., California Attorney General Op. No. 94-819 (February 9, 1995).