



To: Council Members Terry O’Connell and Karen Cunningham, Members of the Fiscal and Administrative Policies Committee

From: Michael Roush, City Attorney

Subject: Draft Procurement Policy

Date: February 21, 2019

Background

Currently the City does not have a well-defined Procurement Policy although the Brisbane Municipal Code, as required by State law, does establish a purchasing system to secure supplies and equipment at the lowest possible cost, to control City purchases and to define the authority for the purchasing function. See Chapter 3.12, Brisbane Municipal Code. The City needs, however, a more robust Procurement Policy, in part, so that if the City incurs costs due to an emergency for which it would be eligible for reimbursement under the Federal Emergency Management Authority (FEMA), the Policy satisfies federal requirements. This Policy will also be in better compliance with State law concerning the award of certain contracts and provide clarity as to who has purchasing authority based on purchasing limits.

After the Fiscal and Administrative Policies Committee has reviewed and approved the Procurement Policy with whatever changes the Committee deems necessary, staff will request the Policy be considered and adopted by the full Council. Following Council’s adoption of the Policy, staff will prepare amendments to the Municipal Code consistent with the Policy. The salient provisions of the Policy are discussed below.

Discussion

1. The City Manager serves as the City’s “Purchasing Officer” and oversees the procurement of materials, supplies, equipment and services, as well as the administration of the Policy. Section 1.4. The City’s department heads are authorized to procure supplies and equipment subject to certain purchasing limits (see below). Section 1.5.
2. Purchasing authority based on purchasing limits. The Policy sets forth who within the City has the authority to purchase orders or award contracts based on purchasing limits. For purchases under \$5000, the authority is vested in staff designated by the department head; for purchases up to \$60,000, the department head is the authority; and for purchases up to \$200,000, the City Manager. The City Council has the authority for contracts in excess of the City Manager’s authority. In addition, if a contract has been let but there is a subsequent request for payment

that does not exceed 20% above the limit, the department head or City Manager (depending on the amount) may approve such payment (assuming, of course, there are unencumbered funds to do so.) Section 1.3.

3. Use of City issued credit cards. Many routine City purchases are made by designated City staff using credit cards. The Policy limits such purchases to no more than \$5000/month unless the department head or City Manager authorizes in writing a higher amount. All credit card purchases are reviewed and approved by the Finance Department. Section 1.3.1.
4. Procurement Standards. California-made supplies, recycled products and sustainable purchases are preferred. Sections 3.2, 3.6 and 3.7. Generally, a bid shall not ask for a specific brand but sole source procurements are permitted when there are limitations on the source of supply when approved by the City Manager or, depending on the amount in question, by the department head. Sections 3.4 and 3.5. All contracts are to be in writing. Section 3.10.
5. Procurement Methods. For purchases between \$5000 and \$10,000, competitive bidding is not required but, where possible, at least three competitive quotes should be obtained (with the purchase going to the lowest responsible bidder). Solicitations for these purchases are posted on the City's website. Sections 4.2.1 and 4.2.3. For purchases of \$5000 or less, competitive quotes are not required if there are unencumbered appropriations for such purchases. Section 4.2.2. For purchases between \$10,000 and \$60,000 shall be based on at least three documented competitive quotes and awarded to the lowest responsible bidder. Solicitations for these purchases shall also be posted on the City's website. Sections 4.3.1 and 4.3.2. For purchases over \$60,000 shall be based on competitive bidding procedures, such as publishing notices inviting bids, requiring sealed bids, to be opened at a particular date and time, requiring bid bonds and awarding the contract to the lowest responsible bidder. Sections 4.4.1, 4.4.2, 4.4.4, and 4.4.8.
6. Bonding Requirements. In addition to the bid bonds for purchases above \$60,000, for projects above \$25,000, a labor and materials bond (for the benefit of subcontractors), a performance bond (if the general contractor fails to perform) and a warranty bond (to guarantee the work for one year following acceptance) will be required. Sections 4.5.2, 4.5.3 and 4.4.5.
7. Prevailing Wages. Prevailing wages must be paid for all public work contracts. Section 4.6.
8. California Uniform Public Construction Cost Accounting Act (CUPCCAA). This Policy authorizes the City to be subject to the CUPCCAA, a State law (Public Contracts Code, sections 22000 et seq.) that sets forth an alternative method for bidding public works projects such as the construction, renovation and repair work involving any publicly owned, leased or operated facility, but not routine maintenance work on such facilities. Sections 5.3.1 and 5.3.2. These projects of \$60,000 or less may be performed by negotiated contract or purchase order; projects between \$60,000 and \$200,000 may be let by contract by informal procedures; and only those projects more than \$200,000 must be let by formal bidding procedures. Section 5.4.
9. Piggy-Backing and Cooperative Purchasing Agreements. In some instances the State or another public agency may gone through a competitive bidding process for supplies or equipment that another public agency, such as the City, may piggy-back on or utilize without going through its

own competitive bidding process. This section of the Policy authorizes the City to do so. Sections 7.2 and 7.3

10. Professional Service Contracts. Generally the City may contract for specialized professional services, such as legal, accounting or financial, without engaging in a formal competitive bidding process (Sections 8.1 and 8.2) and for contracts for architectural, landscape architectural, engineering, environmental, land surveying and construction management services. Section 8.3. The City may use a Request for Proposal process in order to solicit proposals for these services and select the provider based on demonstrated competence, professional qualifications and fair and reasonable price. Sections 8.4 and 8.7.
11. Federal Procure Requirements. As mentioned in the Background, this Policy is being adopted in part in order to comply with federal laws and regulations when federal funds are being used to procure supplies or equipment or in order to be eligible for reimbursement from FEMA where funds have been spent following a disaster. Chapter 9.
12. Capital Assets Capitalization and Inventory Control Policy. The City currently has this Policy that is to account for and report its fixed assets, to determine which of those assets need to be capitalized and to provide an inventory of assets to safeguard City assets from theft or loss. Generally capital assets with a value of \$5000 or more are to be capitalized except for infrastructure assets that have a \$25,000 capitalization threshold. This Policy is attached as Exhibit B to the Procurement Policy.
13. Sustainable Purchase Guide. The Sustainable Purchase Guide, attached as Exhibit C to the Procurement Policy, is designed to help City employees purchase materials, products or services that are fiscally responsible and have the least impact on the environment.

If the Committee members have any question concerning the Policy prior to the meeting, please let me know.