



**MEMO**

**Meeting Date:** June 20, 2019

**From:** Ingrid Padilla, City Clerk

**Subject:** Ordinance 639, Waiving Second Reading, Repealing Ordinance Nos. 42 And 546, and Chapters 3.12 And 15.22 of the Brisbane Municipal Code, (Purchase of Supplies and Equipment; Informal Bidding Procedures) and Adding to the Brisbane Municipal Code a Revised Chapter 3.12 Concerning Procurement Procedures for the City of Brisbane Committee Appointments

The Ordinance listed above was introduced at the City Council Meeting of June 6, 2019. No changes were made at the time.

It is on this agenda for consideration of adoption.



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** June 6, 2019

**From:** Clay Holstine, City Manager via Randy Breault, Director of Public Works

**Subject:** Purchasing System Ordinance

### Community Goals/Result

Fiscally Prudent

### Purpose

To have in place a City Purchasing System Ordinance, consistent with the City's recently adopted Procurement Policy, to control City purchases, define who has the authority to purchase supplies, equipment and services and meet federal requirements so the City will be eligible for reimbursement under the Federal Emergency Management Authority's protocols.

### Recommendation

Introduce the attached Ordinance to replace the City's existing purchasing system ordinances in order for the new Ordinance to be consistent with the City's recently adopted Procurement Policy.

### Background

Currently the City's purchasing system ordinances are in two Chapters of the Brisbane Municipal Code, Chapters 3.12 (Purchase of Supplies and Equipment) and 15.22 (Informal Bidding Procedures). In March 2019, City Council adopted a robust Procurement Policy that not only meets the procurement requirements of State law but also provides the statutory framework for the City to be reimbursed if the City incurs costs due to an emergency for which it would be eligible for reimbursement under the Federal Emergency Management Authority (FEMA).

In some respects, this new Policy conflicts with provisions of Chapters 3.12 of 15.22 of the Municipal Code. Accordingly, the attached Ordinance repeals Chapter 3.12 and 15.22 and revises and replaces Chapter 3.12 with provisions that track what is in the Procurement Policy. (The informal bidding procedures of Chapter 15.22 have been incorporated into the revised Chapter 3.12.)

Staff informed the Council in March that if the Policy were adopted, staff would prepare amendments to the Municipal Code, consistent with the Policy, and return those amendments to the Council for its consideration and adoption. Such Ordinance, the salient provisions of which are discussed below, is attached. As mentioned, these provisions track what are already in the Procurement Policy.

## 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 3.12.030. The City's department heads are authorized to procure supplies and equipment subject to certain purchasing limits (see below). Section 3.12.040.
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 3.12.020 A.
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 3.12.020 B.
4. Procurement Standards. California-made supplies, recycled products and sustainable purchases are preferred. Sections 3.12.070 B, F and G. 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 3.12.070 D and E. All contracts are to be in writing. Section 3.12.070 J.
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. Section 3.12.080 B. For purchases of \$5000 or less, competitive quotes are not required if there are unencumbered appropriations for such purchases. Section 3.12.080 B. 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. Section 3.12.080 C. 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. Section 3.12.080 D.
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. Section 3.12.080 E.

7. Prevailing Wages. Prevailing wages must be paid for all public work contracts. Section 3.12.080 F.
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. Section 3.12.090 B. 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 3.12.090 C.
9. Piggy-Backing and Cooperative Purchasing Agreements. In some instances the State or another public agency may go 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. Section 3.12.110.
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 (Section 3.12.120) and for contracts for architectural, landscape architectural, engineering, environmental, land surveying and construction management services. Section 3.12.120 C. 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. Section 3.12.120 G.
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. Section 3.12.130.
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.

**Fiscal Impact**

There is no fiscal impact to the adoption of the Ordinance itself. By adopting the Ordinance, the City will have in place a more robust policy concerning how supplies, equipment and services are purchased.

Measure of Success

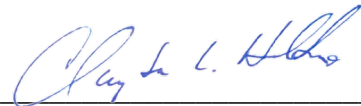
A Purchasing System Ordinance that better defines the purchasing procedures that the City will employ and that also meets the federal standards for reimbursement under FEMA protocols.

**Attachments:**

Ordinance Repealing Chapters 3.12 and 15.22 of the Brisbane Municipal Code and Adding to the Municipal Code a New Chapter 3.12 Concerning the Purchases of Supplies and Equipment



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Randy Breault, Director of Public Works



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Clay Holstine, City Manager

**ATTACHMENT 1**  
**ORDINANCE 639**

**AN ORDINANCE OF THE CITY OF BRISBANE REPEALING IN THEIR ENTIRETY ORDINANCE NOS. 42 AND 546, AND CHAPTERS 3.12 AND 15.22 OF THE BRISBANE MUNICIPAL CODE, (PURCHASE OF SUPPLIES AND EQUIPMENT; INFORMAL BIDDING PROCEDURES) AND ADDING TO THE BRISBANE MUNICIPAL CODE A REVISED CHAPTER 3.12 CONCERNING PROCUREMENT PROCEDURES FOR THE CITY OF BRISBANE**

Whereas, State law requires the City of Brisbane to adopt policies, procedures and bidding regulations governing the purchase of supplies and equipment; and

Whereas, the City adopted in 1962 Ordinance No. 42, codified in Chapter 3.12 of the Brisbane Municipal Code, that set forth the City's purchasing policies; and

Whereas, the City adopted in 2010 Ordinance No. 546, codified in Chapter 15.22 of the Brisbane Municipal Code, concerning informal bidding procedures; and

Whereas, the policies, procedures and bidding regulations in Chapters 3.12 and 15.22 need to be revised and updated in order to conform to applicable State and federal law; and

Whereas, in March 2019, the Brisbane City Council adopted the City of Brisbane Procurement Policy that incorporates and references the laws and regulations that govern the City's purchasing function, including Chapters 3.12 and 15.22 of the Brisbane Municipal Code; and

Whereas, as a result, portions of Chapters 3.12 and 15.22 of the Brisbane Municipal Code are in conflict with certain provisions of the Procurement Policy, which conflicts need to be eliminated.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BRISBANE ORDAINS AS FOLLOWS:**

**Section 1:** Ordinance Nos. 42 and 546, and Chapters 3.12 and 15.22 of the Brisbane Municipal Code, are hereby repealed in their entirety.

**Section 2:** A revised Chapter 3.12 is hereby added to the Brisbane Municipal Code as follows:

**Chapter 3.12            Purchase of Supplies and Equipment**

**Section 3.12.010       Adoption of a Purchasing System.**

In order to establish efficient procedures for the purchase of supplies and equipment, to secure for the city supplies and equipment at the lowest possible cost commensurate with the quality needed, to exercise positive financial control over purchases, to define clearly the authority for the purchasing function and to assure quality of the purchases, a purchasing system, as set forth in this Chapter, and as set forth in the Procurement Policy adopted by the City Council on February 19, 2019 (as said Policy may be amended from time to time, and which Policy is incorporated herein by reference) is adopted.

**Section 3.12.020       Purchasing Authority Based on Purchasing Limits.**

- A. Approval of purchase orders and purchase contracts shall be limited as indicated in the table below; provided, however, after such purchase orders or purchase contracts have been approved, (a) if there is a request for payment in an amount less than the amount of the purchase order or purchase contract, the staff so designated must approve the request (if within the designated staff's purchasing limit) and the Department Head must approve all other such requests and (b) if there is a request for payment that exceeds the approved amount of a purchase order or purchase contract but on a cumulative basis is not more than 20% above the approved amount, the Department Head must approve such requests up to \$72,000 (cumulatively) for all projects (whether or not such projects are subject to the California Uniform Public Construction Cost Accounting Act ("CUPCCAA")) and the City Manager must approve such requests up to \$120,000 (cumulatively) for projects not subject to CUPCCAA and up to \$220,000 (cumulatively) for CUPCCAA projects.

<b>Purchasing Limit</b>	<b>Designated Purchasing Authority</b>
\$1 to \$5,000	Staff designated in writing by Department Head
\$1 to \$60,000	Department Head
\$1 to \$200,000	City Manager; informal purchasing limit for public works is defined by CUPCCAA, as may be amended (Pub. Contract Code, § 22032.).
\$1 to Unlimited	City Council

- B. For purchases of materials and supplies not exceeding \$5000 per purchase, the City

Manager or the Department Head may issue a credit card to designated staff; however, such designation shall be in writing, the total monthly purchases (by an individual) shall not exceed \$5,000 unless authorized in writing by the City Manager or the Department Head, and the total annual purchases (by an individual) shall not exceed \$60,000 unless authorized in writing by the City Manager or the Department Head. Designated staff must document all purchases made by credit card in a form approved by the Finance Department.

- C. The Department Head or the City Manager may approve modifications to contracts or purchase orders, which represent no change in the scope of the character of material or services provided in the original contract or purchase order if the cumulative dollar amount of the modification and the original contract amount are within the award authority limits set forth above. The City Council must approve all modifications exceeding the City Manager's authority limits set forth above.

**Section 3.12.030 City Manager's/Purchasing Officer's Responsibilities.**

The City Manager serves as the Purchasing Officer for purposes of this Ordinance and is sometimes referred to as such in this Ordinance. The City Manager/Purchasing Officer oversees the procurement of materials, supplies, equipment, and services, the administration of the Procurement Policy and procedures, and the management of surplus City property. To perform these functions efficiently and assist departments, the City Manager/Purchasing Officer shall:

- A. Oversee the purchase or contract for supplies and equipment by Department Heads in accordance with purchasing procedures prescribed herein, administrative regulations adopted by the City Manager, and other rules and regulations prescribed by the City Council;
- B. Oversee contract negotiations and recommend execution of contracts for the purchase of supplies and equipment, as necessary;
- C. Act as the Purchasing Officer for the procurement of supplies, equipment, and services in a prudent, efficient and cost-effective manner, subject to the purchasing limits established herein;
- D. Prepare and recommend to the City Council rules governing the purchase of supplies and equipment for the City, and recommended revisions to such rules;



- E. Keep informed of current developments in the field of purchasing, prices, market conditions and new products;
- F. Prescribe and maintain such forms and records as are reasonably necessary to the operation of this Ordinance, the Procurement Policy and other rules and regulations;
- G. Supervise the inspection of all supplies and equipment purchased to insure conformance with specifications; and
- H. Supervise the disposal and sale of surplus property by Department Heads pursuant to Section 3.12.140 of this Chapter.

**Section 3.12.040     Department Heads' Responsibilities.**

The Department Head for each City department is authorized to procure supplies and equipment for his or her respective department subject to the limits set forth in Section 3.12.020 of this Chapter. To meet these responsibilities, each Department Head shall:

- A. Purchase or contract for supplies and equipment in accordance with purchasing procedures prescribed herein, administrative regulations adopted by the Purchasing Officer, and other rules and regulations prescribed by the City Council;
- B. Procurement of supplies and equipment for the department that meets the necessary level of quality at the least expense;
- C. Ensure as full and open competition as possible on all purchases;
- D. Ensure staff is trained on the terminology and requirements set forth in this Ordinance and in the Procurement Policy;
- E. Minimize urgent and sole source purchases and provide written findings and documentation when such purchases may be necessary;

- F. Prohibit splitting orders or projects for the purpose of avoiding procurement requirements or authorization limits;
- G. Anticipate requirements sufficiently in advance to allow adequate time to obtain goods in accordance with best purchasing practices;
- H. Maximize coordination of purchases to take advantage of cost savings for bulk purchases of commonly used goods and services;
- I. Identify the account from which purchases will be made and provide evidence that encumbrance appropriation is available in the budget;
- J. Provide a business justification for each purchase;
- K. Provide appropriate documentation that goods or services have been received, including properly signed off packing/receiving slips and confirmation that items have been received in good condition; and
- L. Prepare and maintain records of invoices approved for payment by the City Council or the Purchasing Officer.

**Section 3.12.050     Encumbrance of Funds.**

Except in cases of emergency, the Purchasing Officer shall not issue any purchase order for supplies or equipment unless there exists an unencumbered appropriation against which the purchase is to be charged.

**Section 3.12.060     Conflicts of Interest and Financial Interests.**

All personnel involved in procurements will comply with the Procurement Policy and any Code of Conduct or Conflict of Interest requirements set forth in applicable State or Federal law including but not limited to the requirements of 23 CFR 172.7 related to consultants acting in a management support role.

**Section 3.12.070     Procurement Standards**

The following procurement standards are adopted:

- A. Anti-Discrimination Policy. Programs receiving state funds, including procurement, may not discriminate on the basis of ethnicity, religion, age, sex, sexual orientation, gender identity, color, or physical or mental disability. Bids by individuals, corporations, or unincorporated associations that discriminate against people on any of these bases will be summarily rejected, regardless of all other provisions and policies.
- B. Preference of California-made Supplies. The City must purchase goods and supplies made in California when price, fitness, and quality being equal to other goods and supplies. If no such goods or supplies are available, then goods and supplies partially made in California are preferred.
- C. Advertisement of California-made Preference. The City shall state in their advertisement that such preferences for California-made supplies will be made.
- D. Prohibition Against Asking for Specific Brand. In any advertisement for supplies, no bid shall be asked for any article of a specific brand or mark nor any patent apparatus or appliances, when such requirement would prevent proper competition on the part of dealers in other articles of equal value, utility, or merit.
- E. Sole Source Procurements. If limitations on the source of supply, necessary restrictions in specifications, necessary standardization, quality considerations, or other valid reasons for waiving competition appears, then purchases may be made without recourse to the competitive bidding provisions of this chapter. Written approval of waiver of competitive bidding shall be given by the same level of authority as set forth in section 3.12.020 of this Chapter above stating the justification for proceeding pursuant to this section.
- F. Purchase and Use of Recycled Products. State law imposes certain recycled product procurement mandates on local governments.
  - 1. If fitness and quality are equal, the City:
    - a. Shall purchase recycled products, as defined in Section 3.12.150 of this Chapter, instead of nonrecycled products whenever recycled products are available at the same or a lesser total cost than nonrecycled items and

- b. May purchase recycled products rather than nonrecycled items at a higher total cost as provided in subsection G of this section 3.12.070 and Appendix C of the Procurement Policy (Sustainable Purchasing Guide).
2. The City may give preference to suppliers of recycled products. The City may define the amount of this preference.
  3. The City shall require bidders, contractors and contracting businesses to certify in writing the minimum, if not exact, percentage of postconsumer materials in the products, materials, goods, or supplies, offered or sold.
  4. Suppliers of the printer or duplication cartridges that the City purchases must certify that the cartridges comply with the requirements for recycled or remanufactured printer or duplication cartridges in section 12156(e) of Public Contract Code.
  5. All printing contracts made by any local public entity shall provide that the paper used shall meet at a minimum the recycled content requirements of section 12209 of the Public Contract Code. See Appendix C of the Procurement Policy, (Sustainable Purchasing Guide).
- G. Preference for Sustainable Purchases. The State of California has passed a number of sustainability and climate goals and regulations such as SB32, which set Greenhouse Gas (GHG) reduction goals. The City has adopted a Climate Action Plan (CAP) to address state mandates, improve the environment and reduce emissions at the local level; City purchasing practices are identified as a CAP Measure. The goal is to use the City's purchasing power influence to offer goods and services with better environmental performance, and to procure products and services from manufacturers and suppliers that demonstrate a high level of environmental and social responsibility.
1. The City may give preference to suppliers of products or services that reduce impacts to human health and the environment, reduce greenhouse gas emissions, remove unnecessary hazards, and improve the overall environmental quality of the region.
  2. More sustainable goods may have higher up-front costs. In many cases, these costs can be justified by lower costs over the life-cycle, due to longer product life, decreased energy or water use, reduced maintenance, less toxic materials, and other factors. Where such conditions may exist, a Life-Cycle Assessment should be considered by staff or included as a specified condition in a Request for Bid, Quote or Proposal

(RFB/RFQ/RFP). This practice is most pertinent for goods, materials, supplies, equipment, services and construction at higher costs or with long expected lifespans.

3. For smaller purchases, completing a Life-Cycle Assessment may be burdensome. At these lower thresholds, the following cost premiums may be applied for purchases that meet the criteria defined with Appendix C of the Procurement Policy (Sustainable Purchasing Guide):

Purchase/Cost	Maximum Cost-Premium
<\$10,000	20%
\$10,000 - \$50,000	10%

4. City specifications and performance standards for products and services shall not require the use of products made from virgin materials nor specifically exclude the use of sustainably preferable products.
  5. Nothing in this Ordinance shall require an agency, employee or vendor under contract with the City to exclude competition or to purchase products or services that do not perform adequately or are not available at a reasonable price in a reasonable period of time.
- H. Division of Public Works Project. Splitting or separating any public work project into smaller work orders or projects for the purpose of evading the provisions of state and local public laws requiring public work to be done by contract after competitive bidding is a misdemeanor and is strictly prohibited.
- I. Emergency Purchases. The City Manager may authorize purchases and contracts for supplies, material, equipment and services to be made free of the bidding requirements of this policy when the purchase or contract for the item or items is immediately necessary for the continued operation of a department or for the preservation of life or property, or when such purchase is required for the health, safety and welfare of the people or for the protection of property.
- J. Written Contract Required. All contracts shall be in writing.
- K. Electronic contracts. All contracts, solicitation of contracts, and payments on contracts may be made in writing by electronic means.
- L. Contract standards. All contracts shall conform to the following standards:

1. City contracts shall be consistent with state and federal laws and shall be fully executed prior to the performance of any contract work. Each contract shall be approved as to form by the City Attorney, unless such contract is consistent with a template pre-approved as to form by the City Attorney.
2. The Purchasing Officer may execute any contract for which authorization has been granted pursuant to ordinance, resolution, or other action of the City Council, providing sufficient unencumbered funds exist. Any contract made, or purported to be made, by the City in violation of this section shall be void and of no force or effect.
3. The term or life of an agreement shall be set, including, dates for required performance, dates for phase completion if applicable, and overall project completion.
4. All contracts shall include provisions for insurance, bonds and indemnity as may be required by the City's Risk Manager or State or Federal law.
5. The Purchasing Officer may approve alternative selection, evaluation, and award procedures for a specific contract or class of contracts (except as provided herein), if available information demonstrates that a substantial cost savings, enhancement in quality or performance, or other public benefit will result from use of the alternative contracting method. The alternative contracting method shall substantially promote the public interest in a manner that could not be achieved by complying with the competitive procurement methods otherwise available under this Ordinance.

### **Section 3.12.080     Procurement Methods**

The following methods of procurement are adopted:

- A. Application. This Section 3.12.080 applies to purchases of supplies or equipment that are not subject to the California Uniform Public Construction Cost Accounting Act (CUPCAA) or the Public Contracts Code.
  
- B. Purchases of \$10,000 or Less
  - 1. Informal Competitive Pricing Encouraged. Competitive bidding is not required for purchases of \$10,000 or less and may be made in the open market; provided, however, purchases of \$10,000 or less shall, whenever possible, be based on at least three competitive quotes, and shall be awarded to the lowest responsible bidder.
  
  - 2. Notwithstanding paragraph 1 of this subsection B, a Department Head or the City Manager may authorize in writing, or issue a credit card to designated staff to acquire materials, equipment, supplies or services when each such purchase has a value of \$5000 or less without the need for three competitive bids provided there exists an unencumbered appropriation in the fund/department/account against which the purchase is to be charged.
  
  - 3. Notice of Solicitation of Quotes. If the City solicits competitive quotes for a purchase of \$10,000 or less, the Purchasing Officer shall solicit quotes by public notice posted either on the City's website or in a public bulletin board in the City Hall, by written requests to prospective vendors, or by telephone. The notice posted in City Hall shall include: (1) a general description of the articles to be purchased; (2) contact information for the appropriate City representative to obtain additional information regarding quote specifications; (3) disclaimer regarding the informal nature of this competitive pricing procedure; (4) the date for the opening of quotes; and (5) the procedure for submitting quotes.
  
  - 4. Records. Written quotes shall be submitted to the Purchasing Officer, or Department Head, who shall keep a record of all open market orders and quotes for a period of one year after the submission of quotes or the placing of orders. This record, while so kept, shall be open to public inspection.

5. Tie quotes. If two or more quotes received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay of re-advertising for bids, the Purchasing Officer may accept the one he or she chooses or accept the lowest bid made by negotiation with the tie bidders at the time of the bid opening. Alternatively, if two or more parties submit an equal lowest quote for materials, the Purchasing Officer may draw lots to determine the grantee.
6. Award. The Purchasing Officer may by purchase order or contract award the purchase to the lowest responsive bidder whose quote fulfills the intended purpose, quality, and delivery needs of the solicitation. In lieu of awarding the purchase, the Department Head or City Manager may reject any and all the quotes, re-advertise for bids, or may negotiate further to obtain terms more acceptable to the City.
7. Inspection. The Purchasing Officer shall inspect supplies and equipment delivered to determine their conformance with the specifications set forth in the order or contract. The Department Head or City Manager 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.

C. Purchases Between \$10,001.00 and \$60,000.00

1. Purchases of \$10,001 to \$60,000 shall be based on at least three requested and documented competitive quotes and shall be awarded to the lowest responsible bidder.
2. Notice of Solicitation of Quotes. If the City solicits competitive quotes for a purchase of \$10,001 to \$60,000, the Purchasing Officer shall solicit quotes by public notice on the City's website, posted in a public bulletin board in the City Hall, by written requests to prospective vendors, or by telephone. The notice posted on the City's website or in City Hall shall include: (1) a general description of the articles to be purchased; (2) contact information for the appropriate City representative to obtain additional information regarding quote specifications; (3) disclaimer regarding the informal nature of this competitive pricing procedure; (4) the procedure for submitting quotes; and (5) the date for the opening of quotes.
3. Records. Written quotes shall be submitted to the Purchasing Officer, or Department Head, who shall keep a record of all open market orders and quotes for a period of one year after the submission of quotes or the placing of orders. This record, while so kept, shall be open to public inspection.



4. Tie quotes. If two or more quotes received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay of re-advertising for bids, the Purchasing Officer may accept the one he or she chooses or accept the lowest bid made by negotiation with the tie bidders at the time of the bid opening. Alternatively, if two or more parties submit an equal lowest quote for materials, the Purchasing Officer may draw lots to determine the grantee.
  
5. Award. The Purchasing Officer may by purchase order or contract award the purchase to the lowest responsive bidder whose quote fulfills the intended purpose, quality, and delivery needs of the solicitation. In lieu of awarding the purchase, the Department Head or City Manager may reject any and all the quotes, re-advertise for bids, or may negotiate further to obtain terms more acceptable to the City.
  
6. Inspection. The Purchasing Officer shall inspect supplies and equipment delivered to determine their conformance with the specifications set forth in the order or contract. The Department Head or City Manager 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.

D. Purchases Exceeding \$60,000.00

1. Competitive Bidding Required. Purchases for supplies and equipment with an estimated value greater than sixty thousand dollars (\$60,000.00) shall be subject to the competitive bidding procedures described herein.
  
2. Notice. The Purchasing Officer shall publish or post a notice inviting bids at least 10 days before the date of opening the bids either on the City's website or on a public bulletin board in City Hall. The notice shall include: (1) a general description of the articles to be purchased; (2) information regarding where bid blanks and bid specifications may be secured; (3) the date, time, and place for the opening of bids; and (4) the procedure for submitting bids.
  
3. Bidders' List. The Purchasing Officer shall also solicit sealed bids from all responsible prospective suppliers whose names are on the bidders' list or who have requested their names to be added thereto.

4. Bidder's Security. When deemed necessary by the Purchasing Officer, bidder's security may be prescribed in the public notices inviting bids. Bidders shall be entitled to return of bid security; provided that a successful bidder shall forfeit his bid security upon refusal or failure to execute the contract within 10 days after the notice of award of contract has been mailed, unless the City is responsible for the delay. The City Council may, on refusal or failure of the successful bidder to execute the contract, award it to the next lowest responsible bidder. If the City Council awards the contract to the next lowest bidder, the amount of the lowest bidder's security shall be applied by the City to the difference between the low bid and the second lowest bid, and the surplus, if any, shall be returned to the lowest bidder.
  5. Bid Opening Procedure. Sealed bids shall be submitted to the Purchasing Officer and shall be identified as bids on the envelope. Bids shall be opened in public at the time and place stated in the public notices. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than 30 calendar days after the bid opening.
  6. Rejection of Bids. The City Manager or the City Council, as applicable, may reject any and all bids presented and re-advertise for bids.
  7. Tie Bids. If two or more bids received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay of re-advertising for bids, the City Manager or the City Council, as applicable, may accept the one it chooses or accept the lowest bid made by negotiation with the tie bidders at the time of the bid opening. Alternatively, if two or more parties submit an equal lowest bid for materials, the Purchasing Officer or City Council may draw lots to determine the grantee.
  8. Award of Contract. Contract award for supplies or equipment exceeding \$60,000 shall be made to the lowest responsible bidder, except as otherwise provided in this Chapter 3.12 or the Procurement Policy.
  9. Inspection. The Purchasing Officer shall inspect supplies and equipment delivered to determine their conformance with the specifications set forth in the order or contract. The Purchasing Officer 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.
- E. Bond Requirements. The following bonding requirements may be required by State or Federal law and as determined by the requesting Department:

1. Bid Bond. All bids for public works require a bid bond in an amount of not less than ten (10%) percent of the total bid price. No bid shall be considered unless such bond or alternate security as set forth below is enclosed with the bid. The successful bidder's bid bond can be released after the successful bidder has signed a contract/agreement with the City and after the successful bidder has presented all other bonds required in the contract. The bid bonds of unsuccessful bidders may be returned as soon as the successful bidder has signed a contract/agreement with the City and after the successful bidder has presented all other bonds required in the contract, or upon the expiration of the bid validity period, whichever comes first. All bid bonds must contain provisions for forfeiture consistent with California Public Contract Code section 20172.
  
2. Labor and Material Bond. Also referred to as "payment bonds", labor and material bonds are required for all construction, public improvement and certain other types of contracts exceeding \$25,000 annually. All contracts for projects valued at \$25,000 or more must, by state law, require a payment bond valued at 100% of the project cost (California Civil Code §9550 - 9554). Labor and material bonds must be held by the City for at least thirty (30) days after the City has filed Notice of Completion or ninety (90) days after completion or cessation of work if a Notice of Completion has not been filed.
  
3. Faithful Performance Bond. Faithful performance bonds assure completion of a contract, job or project in the event the primary contractor does not complete the contract, job or project and help protect public entity resources. Faithful performance bonds are strongly recommended for all construction, public improvement and certain other types of contracts, particularly for high dollar contracts. If a faithful performance bond is required by the bid specifications, the performance bond shall be one hundred (100%) percent of the project cost. Faithful performance bonds are to be returned to the contractor only after the City files a Notice of Completion.
  
4. Material Guaranty Bond. A material guaranty bond (warranty bond) assures the guaranty requirements of the contract in a sum not less than one-half the contract price. The bond shall unconditionally guarantee project materials and workmanship for a period of one year from the date of recording of the Notice of Completion. The bond shall cover 100% of all costs of repairs within the one year period, including all costs of labor, materials, equipment and incidentals.
  
5. Alternative Securities. A bidder or contractor may substitute adequate, alternative securities for any bond called for in the project specifications, subject to approval by the City Attorney. For awarded contracts, alternative security substitutions shall be submitted to the City no later than 10 days after written notice of contract award to

allow processing an escrow agreement in lieu of security. Generally, the alternative security is for the bidder or contractor to deposit cash or a cashier's check in lieu of a bond. A check drawn on the bidder's or contractor's personal or business account is not acceptable. For awarded contracts, cash or cashier's checks are to be delivered to the Finance Department and will be held until all payroll for the job has been verified as paid in compliance with the contract, the notice of completion recorded, the time to file stop notices has expired and all stop notices, if any, issued by suppliers or subcontractors have been released or for which adequate security, such as a bond, has been provided to the City. For bidders, cash or a cashier's check in the amount of 10% of the bid must be submitted with the bid proposal. If a contract is not awarded to the bidder, the security will be returned to the bidder once the contractor to whom the contract has been awarded has fully executed the contract documents.

- F. Prevailing Wages. Local prevailing wage rates shall be paid in accordance with Sections 1770 et seq., as amended, of the California Labor Code on all public works contracts.

### **Section 3.12.090      California Uniform Public Construction Cost Accounting Act**

The California Uniform Public Construction Cost Accounting Act (CUPCCAA [Pub. Contract Code, §§ 22000 et seq.]) provides cost accounting standards and an alternative method for the bidding of public works projects by public entities. By adoption of this Section of the Ordinance, the City has elected to become subject to the California Uniform Public Construction Cost Accounting Act procedures.

- A. Controlling Regulations. The City shall comply with the applicable informal bidding procedures set forth in sections 22030-22045 of the Public Contract Code, as those sections may be amended from time to time, and this Section 3.12.090.

- B. CUPCCAA Projects:

1. As provided in Pub. Contract Code section 22002 (e), a "CUPCCAA project" may include any of the following:
  - a. Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility;
  - b. Painting or repainting of any publicly owned, leased, or operated facility; or

- c. In the case of a publicly owned utility system, “public project” shall include only the construction, erection, improvement, or repair of dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts and higher.
  2. As provided in Pub. Contract Code, section 22002 (d), CUPCCAA projects do not include maintenance work. Maintenance work includes all of the following:
    - a. Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes;
    - b. Minor repainting;
    - c. Resurfacing of streets and highways at less than one inch;
    - d. Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems; and
    - e. Work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts and higher.
  3. The CUPCCAA “facility” for purposes of CUPCCAA projects means “any plant, building, structure, ground facility, utility system, subject to the limitation found in paragraph (3) of subdivision (c) of Pub. Contract Code section 22002, real property, streets and highways, or other public work improvement.”

C. Contracting Procedure Based on Dollar Amount:

1. CUPCCAA projects that do not exceed five thousand dollars (\$5,000) are not subject to competitive bidding requirements.
2. CUPCCAA projects of sixty thousand dollars (\$60,000) or less may be performed by the employees of the City by force account, by negotiated contract, or by purchase order.

3. CUPCCAA projects of two hundred thousand dollars (\$200,000) or less may be let by contract by informal procedures as set forth in subsection E of this Section 3.12.090 and in sections 22030-22045 of the Public Contract Code.
4. CUPCCAA projects of more than two hundred thousand dollars (\$200,000) shall, except as otherwise provided in Pub. Contract Code, Section 22034, be let by contract by a formal bidding procedure.

D. List of Qualified Contractors: The Department head shall maintain a list of qualified contractors, identified according to categories of work. The list shall be developed and maintained in compliance with the minimum requirements as may be specified from time to time by the California Uniform Construction Cost Accounting Commission.

E. Notice Inviting Informal Bids:

1. Where the City proposes to award a contract for a public project pursuant to the informal bidding procedures, notice inviting informal bids shall be either:
  - a. Mailed to all contractors for the category of work to be bid as shown on the list of qualified contractors maintained by the City in accordance with subsection D of this Section 3.12.090; or
  - b. Mailed to the required construction trade journals for San Mateo County designated by the California Uniform Construction Cost Accounting Commission.
2. At the discretion of the Department Head, additional notices inviting informal bids may be given by any or all of the following means:
  - a. The notice may be mailed to both the qualified contractors or the construction trade journals;
  - b. The mailed notice may be sent to additional contractors who are not on the list of qualified contractors but are deemed by the Department Head to be qualified to perform the particular work to be bid; and/or
  - c. The notice may be mailed to any additional construction trade journals or other publications selected by the Department Head, including trade journals designated by the California Uniform Construction Cost Accounting Commission as optional for San Mateo County.

3. All mailing of notices to contractors and construction trade journals or other trade publications shall be completed not less than 10 calendar days before the bids are to be opened.
4. The notice inviting informal bids shall describe the project in general terms and how to obtain more detailed information about the project, and shall state the date, time and place for submitting bids.
5. Notwithstanding the foregoing provisions of this subsection, no mailing of a notice to contractors or construction trade journals shall be required where the Department Head determines the product or service to be acquired by the City is proprietary.

**Section 3.12.100      Public Projects That Are Not CUPCCAA Projects**

- A. Public Projects that are not CUPCCAA Projects. Public projects (as that term is defined in Public Contract Code, section 20161) that are not CUPCCAA projects are subject to a different set of procurement rules set forth in Public Contract Code sections 20160 et seq.
- B. Bidding Required for Public Project Expenditures Exceeding \$5,000. When the expenditure required for a public project exceeds five thousand dollars (\$5,000), it shall be contracted for and let to the lowest responsible bidder after notice.
- C. Bidding Procedure.
  1. Notice: The notice inviting bids shall set a date for the opening of bids and distinctly state the project to be done. The first publication or posting of the notice shall be at least 10 days before the date of opening the bids. Notice shall be published at least twice, not less than five days apart, in the three public places designated in section 1.12.010 of the Brisbane Municipal Code.
  2. Bidder's Security: Bidder's security shall be as set forth in paragraph 4, subsection D of Section 3.12.080.
  3. Rejection or Re-Advertisement of Bids: If two or more bids are the same and the lowest, the City Council may accept the one it chooses. If no bids are received, the City Council may have the project done without further complying with this Ordinance.

4. Economical Determination: After rejecting bids, the City Council may pass a resolution by a four-fifths vote of its members declaring that the project can be performed more economically by day labor, or the materials or supplies furnished at a lower price in the open market.
  
5. Award to Next Lowest Bidder: The City Council may, on refusal or failure of the successful bidder to execute the contract, award it to the next lowest responsible bidder. If the City Council awards the contract to the second lowest bidder, the amount of the lowest bidder's security shall be applied by the City to the difference between the low bid and the second lowest bid, and the surplus, if any, shall be returned to the lowest bidder if cash or a check is used, or to the surety on the bidder's bond if a bond is used.



**Section 3.12.110 Procurement Pursuant To Open Joint Powers Agreements, Piggy-Backing and Cooperative Purchasing**

- A. Joint Powers Agreements (JPA). The City Council may enter an agreement with one or more public agencies to jointly exercise any power common to the contracting parties, including, but not limited to, the authority to levy a fee, assessment, or tax, even though one or more of the contracting agencies may be located outside of California.
- B. Piggybacking. "Piggybacking" is an assignment of existing contract rights to purchase supplies, equipment, or services. Piggybacking is permissible when the solicitation document and resultant contract contains an approval for other public entities to utilize the contract. Such contracts may contain an assignability clause that provides for the assignment of all or a portion of the specified deliverables as originally advertised, competed, evaluated, and awarded. If the supplies were solicited, competed and awarded through the use of an Indefinite Delivery Indefinite Quantity (IDIQ) contract, then both the solicitation and contract award must contain both a minimum and maximum quantity.
- C. Cooperative Purchasing Programs. Purchases of supplies, material, equipment or services, and sales of surplus property made under a cooperative purchasing program, utilizing purchasing agreements maintained by a State, County, or other public agencies are exempt from the requirements of this policy. To the extent possible, cooperative purchases will be competitively awarded, and documentation as to the advantage of the cooperative purchase will be retained.

**Section 3.12.120 Professional Services Contracts**

- A. Professional Services. The City may contract for professional services that are either "special services" or "architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services," as defined in this Section.
- B. Special Services. The City may contract with any persons for the furnishing to the City "special services" and advice in financial, economic, accounting, engineering, legal, or administrative matters if such persons are specially trained and experienced and competent to perform the special services required. (Gov. Code, § 53060.) This statutory authority to contract for special services includes the right to contract for the issuance and preparation of payroll checks.
- C. Contracts for Architectural, Landscape Architectural, Engineering, Environmental, Land Surveying, and Construction Project Management Services.

1. "Architectural, landscape architectural, engineering, environmental, and land surveying services" includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.
  2. "Construction project management" means those services provided by a licensed architect, registered engineer, or licensed general contractor which meet the requirements of California Government Code Section 4529.5 for management and supervision of work performed on state construction projects.
  3. "Environmental services" means those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws. "Environmental services" also includes the processing and awarding of claims pursuant to Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code.
  4. Selection procedure: All architectural, landscape architectural, environmental, engineering, land surveying, and construction project management services shall be procured pursuant to a fair, competitive selection process which prohibits City employees from participating in the selection process when they have a financial or business relationship with any private entity seeking the contract, and the procedure shall require compliance with all laws regarding political contributions, conflicts of interest or unlawful activities.
  5. Evidence of expertise in construction project management: Any individual or firm proposing to provide construction project management services pursuant to this chapter shall provide evidence that the individual or firm and its personnel carrying out onsite responsibilities have expertise and experience in construction project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of a construction project.
- D. Content of Request for Proposals. The City may solicit proposals for necessary professional services by issuing a Request for Proposal (RFP) that contains the following information:
1. A general description of professional services required;
  2. Contact information for the appropriate City representative to obtain additional information regarding the RFP;
  3. Date, time, and method by which RFP must be submitted to the City;

4. Information pertaining to the applicant’s competency to perform the necessary professional services;
  5. Evidence of and/or information demonstrating the professional qualifications necessary for the satisfactory performance of the services required; and
  6. Proposed pricing and, if applicable, scheduling for applicant’s services.
- E. Notice of Request for Proposals. Public Notice of the RFP shall be given as determined by the City Manager.
- F. Contracting Limits. The table below indicates the contracting limits City officers and employees are authorized to issue and approve an RFP, select a professional services supplier/entity, and execute a professional services contract.

\$1 to \$5,000	Staff designated in writing by Department Head
\$1 to \$60,000	Department Head
\$1 to \$200,000	City Manager
\$1 to Unlimited	City Council

- G. Selection Criteria. A proposal for professional services shall be selected based on all of the following criteria:
1. Demonstrated competence;
  2. Professional qualifications necessary for the satisfactory performance of the services required; and
  3. Fair and reasonable price of services.
- H. Prohibited Activities. City employees, officers, and agents participating in the selection process are specifically prohibited from engaging in practices, which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration. This prohibition is in addition to requirements of Section 3.12.060 of this Chapter

**Section 3.12.130 Federal Procurement Policy.**

- A. The Office of Management and Budget’s Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (often referred to as the “Super Circular”), codified at 2 C.F.R. §§ 200.317-200.326, requires non-federal entities, such as the City of Brisbane, to use its own documented procurement procedures which reflect applicable state and local laws and regulations, provided that the procurements conform to applicable federal law and the standards identified in 2 C.F.R. § 200.318.

- B. The federal requirements provided in the Super Circular and this Policy are in addition to any and all applicable requirements provided in the instrument setting forth the terms and conditions of the federal award (i.e. grant agreement, cooperative agreement, federal financial assistance agreement, or cost-reimbursement contract).
- C. General Standards. The following additional standards are required when the City procures supplies or equipment with federal funds in the form of a grant or award:
1. Responsible Contractors. The City must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Factors bearing on whether a contractor is “responsible” include: contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. (2 C.F.R. 200.318(h).)
  2. Oversee Contractors’ Compliance. The City must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. (2 C.F.R. § 200.318(b).)
  3. Avoid Unnecessary Expenditures. The City’s procurement procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. (2 C.F.R. § 200.318(d).)
  4. Maintain Records. The City must maintain records detailing the history of procurement including: the rationale for the method of procurement, the selection of contract type, contractor selection or rejection, and the basis for the contract price. (2 C.F.R. § 200.318(i).)
  5. Time and Material Contracts. The City may use time and material type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. If the City awards this type of contract, it must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls. (2 C.F.R. § 200.318(j)(2).)

6. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms. The City must take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps include: placing qualified small and minority businesses and women's business enterprises on solicitation lists; assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed herein.

D. Procurement Methods. The City must use one of the five procurement methods identified below when purchasing supplies or equipment with federal funds:

1. Micro-Purchases Valued Under \$3,000. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$3,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). To the extent practicable, the City must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive price quotations if the City determines the price quoted is reasonable. (2 C.F.R. § 200.320(a).)
2. Small Purchase Procedures. Informal method of securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold (approximately \$150,000). Price or rate quotations must be obtained from an adequate number of qualified sources. (2 C.F.R. § 200.320(b).)
3. Sealed Bids. Solicitation of bids for services or supplies through a public invitation for bids. A firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is appropriate when the following conditions are met: a complete, adequate, and realistic specification or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the business; the procurement lends itself to a firm fixed price

contract; and the selection of the successful bidder can be made principally on the basis of price. A sealed bidding process must comply with the following requirements:

- a. The invitation for bids is publicly advertised;
  - b. Bids are solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids;
  - c. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
  - d. All bids are publicly opened at the time and place prescribed in the invitation for bids;
  - e. A firm fixed price contract award is made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts may only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
  - f. Any or all bids may be rejected if there is a sound documented reason. (2 C.F.R. § 200.320(c).)
4. Competitive Proposals. Competitive proposals are normally conducted with more than one source submitting an offer when conditions are inappropriate for sealed bids, and either a fixed price or cost-reimbursement type contract is awarded. The competitive proposals method may be used for qualifications-based procurement of architectural/engineering professional services whereby competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The City must comply with the follow requirements when using the competitive proposal method:
- a. The request for proposals must be publicized and identify all evaluation factors and their relative importance;
  - b. Any response to publicized requests for proposals must be considered to the maximum extent practical;
  - c. Proposals must be solicited from an adequate number of qualified sources;
  - d. The City must have and apply a written method for conducting technical evaluations of the proposals received and for selecting recipients; and

- e. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered. (2 C.F.R. § 200.320(d).)
5. Noncompetitive Proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when the item is available only from a single source; the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; the Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the City; or after solicitation of a number of sources, competition is determined inadequate. (2 C.F.R. § 200.320(f).)

E. Additional Requirements for Sealed Bids and Competitive Proposals.

1. Full and Open Competition. All procurement transactions must be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition include but are not limited to: placing unreasonable qualification requirements on firms; requiring unnecessary experience and excessive bonding; noncompetitive pricing practices between firms or between affiliated companies; noncompetitive contracts to consultants that are on retainer contracts; organizational conflicts of interest; specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and any arbitrary action in the procurement process. (2 C.F.R. § 200.319(a).)
2. Excluded Contractors. Contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements. (2 C.F.R. § 200.319(a).)
3. Geographical Preferences. The City may not use statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. When contracting for architectural and engineering services, geographic location may be a selection criterion, provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract. (2 C.F.R. § 200.319(b).)
4. Pre-Qualified Lists. The City must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. (2 C.F.R. § 200.319(d).)

5. Qualification During Solicitation Period. The City must not preclude potential bidders from qualifying during the solicitation period. (2 C.F.R. § 200.319(d).)

F. Procurement of Recovered Materials Exceeding \$10,000.

1. If the City or its contractors makes a purchase or acquisition of a procurement item that exceeds \$10,000 or where the quantity of such items or of functionally equivalent items purchased or acquired in the course of the preceding fiscal year was \$10,000 or more, the City or its contractors must comply with section 6002 of the Solid Waste Disposal Act, which requires, among other things, that such items procured must be composed of the highest percentage of recovered materials practicable (and in the case of paper, the highest percentage of the postconsumer recovered materials practicable), consistent with maintaining a satisfactory level of competition. (Solid Waste Disposal Act § 6002; 40 C.F.R. § 247.)
2. The decision not to procure items that meet the requirements of section 6002 of the Solid Waste Disposal Act shall be based on a determination that such procurement items are (a) not reasonably available within a reasonable period of time; (b) fail to meet the performance standards set forth in the applicable specifications or fail to meet the reasonable performance standards of the procuring agencies; or (c) only available at an unreasonable price. (Solid Waste Disposal Act § 6002; 40 C.F.R. § 247.)
3. The City shall require that vendors certify that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by applicable specifications or other contractual requirements. (Solid Waste Disposal Act § 6002; 40 C.F.R. § 247.)
4. For contracts exceeding \$100,000, the City shall further require the vendor to estimate the percentage of the total material utilized for the performance of the contract, which is recovered materials. (Solid Waste Disposal Act § 6002; 40 C.F.R. § 247.)

G. Contract Requirements.

1. The City must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts



surrounding the particular procurement situation, but as a starting point, the City must make independent estimates before receiving bids or proposals. (2 C.F.R. § 200.323.)

2. The City must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. (2 C.F.R. § 200.323.)
3. Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E - Cost Principles of this Part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles. (2 C.F.R. § 200.323.)
4. The City may not use the cost plus a percentage of cost and percentage of construction cost methods of contracting for purchases with federal funds. (2 C.F.R. § 200.323.)
5. Procurement contracts involving federal funds must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards. (2 C.F.R. § 200.326.)

### **Section 3.12.140     Surplus Property**

- A. Surplus Property. “Surplus property”, as used in this Section, is property that is not real property, such as supplies, equipment, and vehicles that are no longer needed by a given City department and may include waste materials generated in the work process and discarded or abandoned articles, parts, equipment or supplies, material, equipment useful only for reprocessing. This policy does not include the disposal of abandoned or confiscated materials, obtained through law enforcement, subject to holding and/or disposal requirements of State or Federal Law.
- B. Authority. Departments Heads are designated by the Purchasing Officer to recommend the transfer of surplus property between departments as needed and the disposal or sale of all surplus property which cannot be used by any City department, or which have become unsuitable for City use. Disposition of surplus property shall conform to the

requirements of Appendix B of the Procurement Policy (Capital Assets Capitalization and Inventory Control Policy).

- C. Property with No Salvage Value. Surplus personal property with no salvage value, as determined by the Department Head, shall be disposed of in a manner that salvages recyclable components, if practical.
  
- D. Property with Salvage Value. The Department Head shall prepare a memorandum to the City Manager describing the surplus property, the value of the surplus property, and the recommended method of sale or disposal of the surplus property. The City Manager shall authorize the sale of surplus property with salvage value identified by the Department Head, the exchange or trade of such property for procurement of new supplies, materials and equipment. The City Manager shall authorize the disposal of surplus property when sale, exchange or trade of such is impractical or not warranted.
  
- E. Notice Inviting Bids for the Sale of Surplus Property. If the City Manager authorizes the sale of surplus property, the responsible Department Head shall solicit bids by public notice posted either on the City's website or on a public bulletin board at City Hall. The posted notice shall include: (1) a general description of the surplus property for sale; (2) contact information for the appropriate City representative to obtain additional information or inspect the property; (3) disclaimer that the property is being sold "as-is"; (4) the date for the opening of bids; (5) the procedure for submitting bids.
  
- F. Exception to Bidding Requirement. The sale or lease of surplus personal property to a governmental, public or quasi-public agency may be without advertisement for or receipt of bids.
  
- G. Sale to Highest Bidder. The Purchasing Officer may sell the surplus property to the highest bidder. If two or more parties submit an equal lowest bid for materials, the Purchasing Officer may draw lots to determine the successful bidder.
  
- H. Proceeds of Sale or Exchange. The Finance Department shall be notified of the proceeds of any sale or lease of surplus property or the use of such property in trade or exchange for new supplies, materials and equipment.

### **Section 3.12.150 Definitions**

For purposes of this Chapter, the following definitions shall apply:

“Change order” means a written modification of a contract or purchase order.

“City” means the City of Brisbane.

“City Council” shall mean the City Council of the City of Brisbane, the members of the Successor Agency to the Redevelopment Agency of the City of Brisbane, the members of the Housing Authority of the City of Brisbane and the members of the Guadalupe Valley Municipal Utility District.

“City Manager” shall mean the City Manager of the City of Brisbane, or the City Manager’s designee.

“Contractor” means any individual or business having a contract with the City to furnish goods, services, or construction for an agreed upon price and specified term.

“Department” means a specialized functional area within the City or a division, such as Public Works, Finance, Community Development, Police, Fire or Administrative Services.

“Disaster” means a fire, flood, storm, tidal wave, earthquake, terrorism, epidemic, or other similar public calamity that the Governor determines presents a threat to public safety. (Gov. Code, § 8680.3.)

“Day Labor” means work performed by City employees.

“Emergency” refers to a state of war emergency, state of emergency, or local emergency as defined in section 8558 of the Government Code.

“Employee” means a person who is hired to provide services to the City of Brisbane in exchange for compensation who does not provide these services as part of an independent business.

“Federal award” means federal financial assistance that the City may receive directly or from a federal awarding agency or indirectly from a pass-through entity; or a cost-reimbursement contract under the Federal Acquisition Regulations that the City may receive directly from a federal awarding agency or indirectly from a pass-through entity. (2 C.F.R. § 200.38.) The instrument setting forth the terms and conditions of the federal award may be a grant agreement, a cooperative agreement, federal financial assistance agreements, or cost-reimbursement contracts.

“Public Project” as defined in section 22002 of the Public Contracts Code means any of the following:

1. Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility.
2. Painting or repainting of any publicly owned, leased, or operated facility.
3. In the case of a publicly owned utility system, “public project” shall include only the construction, erection, improvement, or repair of dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts and higher.
4. “Public project” does not include “maintenance work,” which includes all of the following:
  - (a) Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes;
  - (b) Minor repainting;
  - (c) Resurfacing of streets and highways at less than one inch;
  - (d) Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems;
  - (e) Work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts and higher.

“Purchasing Officer” means the City Manager or his or her duly authorized agent(s) for purchases of supplies and equipment required by any using agency in accordance with this Policy, the applicable purchasing procedures prescribed by local, state, and federal law, and any regulations adopted by the City Council.

“Recycled products” means goods or materials, including any good or material that has been reused or refurbished without substantial alteration of its original form, that meet the requirements specified in section 12209 of the Public Contract Code.

“Responder” means one who submits a response to a solicitation document.

“Responsible bidder” means a contractor, business entity or individual who is fully capable to meet all of the requirements of the solicitation and subsequent contract. Must possess the full capability, including financial and technical, to perform as contractually required. Must be able to fully document the ability to provide good faith performance.

“Responsive bidder” means a contractor, business entity or individual who has submitted a bid or request for proposal that fully conforms in all material respects to the Request for Proposal or Solicitation and all of its requirements, including all form and substance.

“Simplified Acquisition Threshold” is a dollar amount, set by the Federal Acquisition Regulation (48 C.F.R. Subpart 2.1) in accordance with 41 U.S.C. § 1908, below which the City may purchase property or services using small purchase methods. (2 C.F.R. § 200.88.)

“Solicitation” means an invitation for bids, a request for proposals, telephone calls or any document used to obtain bids or proposals for the purpose of entering into a contract.

“Time and material type contract” means a contract whose cost to the City is the sum of (i) the actual cost of materials and (ii) direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. (2 C.F.R. § 200.318(j)(1).)

“Urgent circumstance” means a circumstance caused by an emergency or disaster, as defined herein.

“Vendor” means a provider, supplier, or seller of goods and services.

**Section 3:** Effective Date. This Ordinance shall become effective 30 days after its passage.

**Section 4:** References to the Brisbane Municipal Code in the Procurement Policy. In the Procurement Policy, there are references to various sections of Chapters 3.12 and 15.22 of the Brisbane Municipal Code. Those references will need to be revised in order to reflect the sections

of the Brisbane Municipal Code set forth in this Ordinance. The Director or Public Works is authorized to make those clerical revisions to Procurement Policy without further action by the City Council.

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Madison Davis, Mayor

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law was thereafter passed at the regular meeting of the City Council of the City of Brisbane held on June 18, 2019 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

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Ingrid Padilla, City Clerk

APPROVED AS TO FORM:



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Thomas McMorrow, City Attorney



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Michael Roush, Legal Counsel