CITY OF CUPERTINO **PUBLIC WORKS PURCHASING POLICY**	**Citywide Policy Manual**
	Attachments: Purchasing Matrix
Effective Date: January 22, 2024	**Responsible Department:** Administrative Services
Related Policies & Notes: Purchasing Policy, Responsible Contracting for Public Works Projects, Environmentally Preferred Purchasing Policy, Ethics Policy, Gifts and Gratuities Policy	

I. GENERAL INFORMATION

Purpose

To provide the City of Cupertino a means of assuring continuity and uniformity in its purchasing operations, and to provide guidelines in implementing Cupertino Municipal Code Chapters 3.23 regarding the contracting and bidding of Public Works projects. Public Works projects are administered and solicited solely from the Department of Public Works.

The intention of this Public Works Purchasing Policy ("PW Policy") is to identify nuances and differences that exist between the contracting for public works projects and the purchase of goods and services, which are defined in the Purchasing Policy. This PW Policy should be used as a complement to the Purchasing Policy and referred to when a Public Works contract is required. As such, only sections or sub-sections explicit to a Public Works bid or contract are included.

A Public Works contract, as defined by section 22002 of the Public Contract Code, is an agreement for the construction, reconstruction, erection, alteration, renovation, improvement, demolition and repair work involving any publicly owned structure, leased or operated facility. This policy is intended to guide the procurement of a public works projects. It is important to note that the Department of Industrial Relations defines a public work separately for the purpose of prevailing wage determination.

Goals

The objectives of this PW Policy are:

- To comply with all current laws and regulations.
- To be transparent.
- To provide a cost-effective purchasing function.
- To invest in public works at the optimum time, in the appropriate quantities and of the appropriate quality for the intended purpose.
- To ensure the continuity of City operations.

- To encourage competitive bids from responsible providers who are qualified, capable and willing to meet the City's requirements.
- To maintain a reputation for fairness and integrity.
- To ensure open, honest and fair competition for the City's business.
- To support the City's ultimate goal to serve the best interests of the public.

Responsibilities

The City Manager or designee is the Purchasing Officer authorized to execute purchases in the manner established by this PW Policy.

The citywide Purchasing Policy identifies responsibilities the Finance and Purchasing Divisions and all staff shall be responsible for regarding non-construction services.

The Public Works Department shall be responsible for the items in the citywide Purchasing Policy and this PW Policy, as well as the following:

- Keep informed of current developments in the field of purchasing for Public Works projects including prices, market conditions, and new products or innovations.
- To perform full and open competition on all purchases, considering use of the California Uniform Public Construction Cost Accounting Act ("CUPCCAA"), unless an approved exemption exists.

Overview

As a general rule and unless exempt by the Cupertino Municipal Code ("CMC"), this PW Policy or applicable law or regulation, purchases shall be by a low bid competitive process. The purchase of certain Public Works projects through the use of CUPCCAA will adhere to the guidelines of the Public Contract Code.

Consistent with the City's Purchasing Policy, under no circumstance should purchases be split to avoid competitive procurement requirements. Compliance with these rules shall be monitored via City's Financial System, responsible department staff, Department Head or designee, and Finance and Purchasing Divisions.

The Purchasing Division can assist, counsel, direct and inform the Public Works Department of resources and actions to take to ensure compliance with the City's Municipal Code, applicable law and this Policy. However, Public Works staff are responsible for being knowledgeable about applicable law, the requirement of the citywide Purchasing Policy and any related policy regarding purchasing (i.e. environmentally preferred purchasing, responsible contracting for Public Works, etc.). Each staff member is responsible for only making purchases that comply with applicable law and policy.

Budget

The budget appropriation is the authorization by the City Council to procure specified equipment, supplies, materials and consulting or construction services for City operations during

a specific fiscal year, July 1 through June 30. For capital projects, funding may be carried over multiple fiscal years based on the completion date. The budget carry-over process begins in June of each year and these requests can be sent to the Finance Division for processing.

California Uniform Public Construction Cost Accounting Act (CUPCCAA)

The City Council adopted the use of CUPCCAA in 1986 (Resolution No. 7032) in accordance with Public Contract Code (PCC) Section 22000, electing to follow the procedures identified in this Act, as amended. The decision to utilize CUPCCAA as the procurement method is at the discretion of the Department Head or designee, and may be determined per project or need. Projects procured through the CUPCCAA process are available for public works projects and will be in accordance with the limits listed in PCC Section 22032. These projects will be contracted by procedures set forth in the Public Contract Code and in accordance with this PW Policy.

For reference, a maintenance project is routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility which includes minor repainting, minimal resurfacing, and landscape maintenance. Such projects are not Public projects under CUPCCAA. This is more thoroughly defined in PCC 22002. Maintenance projects are governed by the citywide Purchasing Policy.

The use of CUPCCAA requires that vendors are solicited annually by the City to be included on a list of potential vendors for contract opportunities throughout each fiscal year. This list is maintained by the Department of Public Works and determines qualified contractors available for Public Works solicitation opportunities.

Prevailing Wages

Public Works projects require payment of prevailing wages by the contractor to their employees for classifications identified by the Department of Industrial Relations (DIR), in accordance with Labor Code 1720. The DIR defines a public work as construction, alteration, demolition, installation, or repair work which may include pre-construction and post-construction activities. By state law, prevailing wages are required to be paid for a public work project contract that exceeds $1,000. However, if a public work project exceeds $15,000 for maintenance work; or $25,000 for construction, alteration, demolition, installation or repair; then the project shall be registered with the DIR and appropriate payroll submittals and additional reporting requirements will need to be met by the contractor. Refer to the DIR website for Prevailing Wage Requirements for more information or contact the Purchasing Manager or City Attorney.

III. THRESHOLDS FOR PROCUREMENT

Purchases Valued up to $60,000*

Public works projects up to $60,000 are not required to complete a competitive quote or bid process. However, nothing shall prevent collecting informal quotes, especially if the CUPCCAA list is not relied on to select the contractor. Authority to proceed with selecting a contractors: (i) from the CUPCCAA list, (ii) outside of the CUPCCAA list, or (iii) after an informal solicitation;

and award of the contract is granted by the delegated purchasing authority. In addition, in no situation shall a public works project be artificially split.

The CUPCCAA list or informal competitive process outlined in this policy shall be noted and referenced, as applicable, when requesting a Purchase Order (PO). The resulting contract for this purchase will include a required PO, appropriate contract for services, and all applicable documentation that shall be maintained by the Responsible Staff Member and/or Project Manager.

* The amount for competitive purchases will comply with PCC 22032(a), as may be amended.

Purchases Valued greater than $60,000 through $200,000**

Public works projects valued greater than $60,000 through $200,000 shall be made through an informal competitive bid process under CUPCCAA. However, if CUPCCAA is not relied on to select the contractor, then the formal Invitation for Bids process for procurements over $200,000 is required. Authority to proceed with CUPCCAA or a formal bid solicitation for the contract is granted at the Department Head level. In no situation shall a purchase be artificially split.

Refer to the procurement procedures identified in Section V. for additional information.

The CUPCCAA list or competitive process outlined in this policy shall be noted and referenced, as applicable, when requesting a Purchase Order (PO). The resulting contract for this purchase will include a required PO, appropriate contract for services, and all applicable documentation that shall be maintained by the Responsible Staff Member and/or Project Manager.

** The amount for informal competitive purchases will comply with PCC 22032(b), as may be amended.

Purchases Valued greater than $200,000***

Public works valued greater than $200,000 shall be made through a formal bid process. In no situation shall a purchase be artificially split.

Competitive bids are required to be solicited broadly and advertised on the City's website. Refer to the formal procurement procedures identified in Section V for additional information.

The resulting contract for this purchase will include a required PO, appropriate contract for services, and all applicable documentation that shall be maintained by the Responsible Staff Member and/or Project Manager. Submittal of a requested PO will include appropriate department approvals before transmittal to the Purchasing and Finance Division for approval and processing.

*** The amount for formal competitive purchases will comply with PCC 22032(c) as may be amended.

IV. INFORMAL AND FORMAL COMPETITIVE BID SOLICITATIONS

The City requires that all public work contracts valued above $60,000 go through a competitive selection process. An informal bid process is utilized when the expected total contract cost is expected to be between $60,000 to $200,000 (or as adjusted in accordance with the CMC). A formal bid process is utilized when the expected total contract cost exceeds $200,000 (or as adjusted in accordance with the CMC). Public works projects to solicit bids shall include a clearly defined project scope of work, specifications, requirements, plans and/or expectations that allow the City to determine the contractor recommended for award based on the lowest responsive and responsible bid.

Informal Request for Bid

The CUPCCAA section in this PW policy identifies the PCC requirements to follow when utilizing CUPCCAA for soliciting informal bids. Informal competitive bids shall be solicited from a minimum of three qualified contractors on the CUPCCAA established list and in accordance with the guidance in this section and the California Uniform Construction Cost Accounting Commission Policies and Procedures Manual. If qualified contractors are not available on the CUPCCAA list, then the bid shall be solicited using the Formal Invitation for Bid process described in this Section V. Typically, informal bid solicitations are communicated electronically and bids are received electronically or via paper submittal. The Public Works Department shall retain records of vendor outreach communication to document throughout the process.

Informal bids are typically developed by the Project Manager and reviewed within the department or by the Department Head, as necessary. Informal bids shall utilize the bid template developed and include specific project details, requirements, specifications, timelines, license or qualification requirements, a bid sheet and other relevant details that will allow a potential contractor to submit a bid. An informal bid may use the Project Manual bid template, if desired. A due date for bids to be submitted needs to be identified.

A City Contact should be identified and accessible to address questions and clarifications. Clarification information that changes details in the bid shall be provided to all identified contractors/vendors and posted on the Business Opportunity Website if the project is publicly advertised in this manner.

An informal bid can be presented via email, with attachments that best represent the project, unless posted on the Business Opportunity Website. Bids are provided directly to the City Contact or uploaded to the Business Opportunity Website (if utilized). Receipt and retention of communication from a vendor indicating they will not bid is important. Bids will be opened at the time and date identified. The City Contact will review the bids to determine bidder responsiveness and responsibility with support from the Purchasing Division and City Attorney, as necessary. Any bid information should be documented and maintained, with appropriate information submitted to Finance Division when requesting a purchase order.

The Purchase Order and contract shall be awarded to the lowest cost, responsive and responsible bidder whose bid meets the requirements and criteria set forth in the request for bids. Tie bids or no bids shall follow guidance in the CMC. A bid protest shall follow the instructions in the bid documents or as defined in the template Project Manual. The Purchasing Officer, or delegee, has contract award authority for informal procurements.

Formal Invitation for Bid via Project Manual

Formal competitive bids for public works shall be publicly available to any potential contractor. Identification of, and outreach to, specifically qualified contractors is encouraged. Public notification of a formal bid process occurs through the posting on the City's Business Opportunity Website and are published in a newspaper of general circulation. Advertisement on an alternative online public bidding platform will also meet this requirement. Contractors desiring information about any formal bid via the Project Manual shall be directed to the Business Opportunity Website or specified public bidding platform for specific information. A record of vendor outreach is available in the Business Opportunity Website or alternate bidding platform for documentation or reference.

Public Works capital improvement projects utilize a Project Manual template for bidding. This manual includes standard bidding requirements, contract requirements, forms and a structure to add specific elements for each project (i.e. specifications, plans, etc.). The Project Manual should be reviewed and revised as necessary annually. The Project Manual is developed by the Project Manager, specific subject matter experts and reviewed within the department or by the Department Head, as necessary. The Project Manual shall include a specific scope of work, project requirements and specifications, plans, license or contract qualification requirements, a Bid Form and any additional relevant details that will inform a potential bidder of the project. Bid documents are typically presented in a PDF format but may be presented in other document forms to best collect bid information or present the project.

A City Contact should be identified and accessible to address questions and clarifications. Responses to questions, changes to any details in Project Manual, or edits to bid forms or documents contained within the Project Manual shall be posted on the Business Opportunity Website (or other bidding platform) to ensure all prospective bidders are notified or aware of these changes. In the situation when a document or detail in the original Project Manual has changed, was replaced or is newly included, an Addendum shall be developed to identify the specific actions.

The following items shall also be included in the contractor selection process.

i. Invitation and Notice: Project Manual shall include specifications of the project and all contractual terms and conditions applicable including, but not limited to, the project name and number, the bid due date and time, bid opening date and time and location for the bid opening. The notice inviting bids shall be published in a newspaper not less than fourteen (14) calendar days prior to the date of the opening of bids or in accordance with

PCC 22037. The notice inviting bids shall be published on the City website or alternate public bidding platform, ensuring proper outreach to local builder's exchange.

ii. Bid Opening: Bids shall be received by the City Clerk, or electronically submitted through the Business Opportunity Website, not earlier than the time designated in the Notice Inviting Bids. Bid openings can be performed electronically however when held virtually via video or teleconference for federally-funded projects, or when desired, the website or call-in number will be included as the place of opening on the Notice Inviting Bids. The amount of each bid and such other relevant information as the City deems appropriate, together with the name of each bidder shall be posted on the City website on the first working day after 48 hours of the bid opening and remain open to public inspection for a period of not less than fifteen (15) calendar days after the bid opening. The City is not responsible for any bids arriving after the scheduled bid due date and time or that are not clearly marked and shall be returned unopened.

iii. Bid Evaluation and Acceptance: Bids received at or prior to the bid due date and time shall be unconditionally accepted without alteration or correction, except as authorized in this policy. Bids shall be evaluated based on the requirements set forth in the Project Manual, which may include criteria to determine acceptability such as contractor qualifications, licensure requirements, references, subcontractors list and bid proposal to conclude who is the lowest responsive and responsible bidder. A formal low bid that is not responsive can be rejected by City Council. A low bidder that is deemed not responsible is entitled to a hearing with the City Council to discuss the issue as outlined in the CMC.

iv. Correction or Withdrawal of Bids: Subject to any provisions of applicable law or regulations to the contrary, correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, shall be in accordance with this section. Mistakes discovered before bid opening may be modified or withdrawn by written notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, no corrections to bid or provisions shall be permitted, but in lieu of bid correction, a low bidder may be permitted to withdraw its bid within 5 days of bid opening if:

- A mistake was made.
- He or she gave the public entity written notice within five working days, excluding Saturdays, Sundays, and state holidays, after the opening of the bids of the mistake, specifying in the notice in detail how the mistake occurred.

- The mistake made the bid materially different than he or she intended it to be.
- The mistake was made in filling out the bid and not due to error in judgment or to carelessness in inspecting the site of the work, or in reading the plans or specifications.

All decisions to permit the correction or withdrawal of bids shall be supported by a written determination made by the City.

v. Bid Protest: A bid protest process shall be defined in the Public Work Bid Project Manual. A bid protest process shall outline the entities able to submit a protest, the actions and information necessary when submitting the protest, the time required to submit a protest and the process for resolution of the bid protest. A bid protest withdrawn by the entity that has submitted it will not be considered in the recommendation of award. A bid protest will be resolved by the awarding authority as outlined in the CMC.

vi. Award: The Purchase Order and contract shall be awarded to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the request for bids. Tie bids or no bids follow guidance in the CMC. The City Council has contract award authority for formal procurements.

VII. CONTRACTS/LEGAL AGREEMENTS

Types of Contracts

Regular Construction Contracts: Construction contracts for specified services, including any required materials, supplies or equipment, generally for a specified period of time and generally for a specified price or hourly rate.

Change Orders and Amendments: Amendments to a construction contract are rare as most adjustments to complete a project are addressed through a documented change order process. Change orders are controlled under the direction of the Director of Public Works, or designee, and are up to the amount approved by the delegated authority at time of award. Approved change orders are incorporated into the contract by virtue of their approval and will define the specific changes to the contract, specifications, plans, etc. to complete the project. The City can delete work from the original contract amount if such change will allow the project to be completed as originally specified.

Change orders shall be limited to avoid any material alteration in the original contract, referred as a "cardinal" change. Whether a change is "cardinal" depends upon whether it is viewed as (1) unreasonably altering the character of the work, (2) unduly increasing the cost of the work, or (3) effecting a material change in the work constituting a radical departure from the original contract.

Cardinal changes shall be discussed with the Purchasing Division and City Attorney's Office, as appropriate.

Construction contract amendments that increase the contract amount beyond the contingency will require the approval of City Council.

Design-Build Contracts: Design-build contracts are a delivery method for construction projects that combines the architectural, engineering and construction services required for a project into a single contractual agreement. Design build contracts are typically reserved for high value projects and selected via best value as prescribed in the Public Contract Code.

Contractor's Bonding Requirements

The City's standard bid specifications and template contracts includes payment and performance bond forms. The City does not require the surety company to utilize the bond forms; however, the bond paperwork must conform to the requirements stated in the solicitation or contract specifications and the conditions listed below.

Under certain bidding conditions, prospective vendors will be required to furnish bonds along with their bid and awarded contract. Cash, cashier's check, or certified checks may be substituted for bonds. If the Department of Public Works is aware that a bidder will be submitting cash as surety, notify the Finance Division so appropriate security measures can be taken.

All bid bonds on Public Works projects must be original and executed by an admitted surety insurer. Bonds furnished by insurance, bonding, or surety companies are acceptable to the City under the following conditions, as determined by the City Attorney's Office:

- An A.M. Best rating of "A" or better;
- A financial size rating of "VIII" or better;
- Company must be authorized to do business in the State of California;
- The following must be produced within ten (10) calendar days of receipt of request(s) for copies:
    - Original or certified copy of unrevoked appointment, power of attorney, by-laws, or other instrument entitling or authorizing person executing bond to do so; and
    - Certified copy of certificate of authority of insurer issued by Insurance Commissioner;

The following bonding requirements may be required as determined by the Department of Public Works:

Bid Bond: Bid bonds are required as assurance that the bidder's quotation is sincere and well intentioned. If a bidder fails to enter into an agreement with the City once the award is made, the City may, at the discretion of the Director of Public Works, submit a claim against the bid bond. Bid bonds will be included with the bid. As set forth in the **Project Manual**, the bid bond

requirement will be for an amount of not less than ten percent (10%) of the total bid price. The successful bidder's bid bond can be released after they have signed a contract/agreement with the City and after they have 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 they have presented all other bonds required in the contract, or upon the expiration of the bid validity period, whichever comes first.

Payment Bond: Also referred to as "Labor & Material Bonds," Payment Bonds assure payments to subcontractors and material suppliers in the event the primary contractor defaults or becomes insolvent. All contracts for public work projects valued at $25,000 or more, are required by state law to require a Payment Bond valued at 100% of the project cost. Payment Bonds may be held by the City for at least thirty (30) days after the City has filed a Notice of Completion or 90 days after completion of cessation of work if a Notice of Completion has not been filed.

Performance Bond: 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 thus help protect public entity resources. Performance bonds are strongly recommended for all construction, public improvement and certain other types of contracts, particularly for high dollar contracts. Bid specifications shall require a performance bond in an amount up to one hundred percent (100%) of the total amount of the quotation if the contract value of the project exceeds $25,000. Such performance bond may be returned to the contractor only after the City files a Notice of Completion.

Alternate Securities: As provided by Public Contract Code § 22300, Contractor may request in writing that it be allowed, at its sole expense, to substitute securities for the retention withheld by City. Any escrow agreement entered into pursuant to this provision must fully comply with Public Contract Code § 22300 and will be subject to approval as to form by City's legal counsel.

Progressive Bonding: At the discretion of the Department, a progressive bonding option may be used. This option is an alternative for on-call or not-to-exceed type contracts wherein the total amount of work is not guaranteed to the contractor. At the time of signing and executing the contract, the contractor shall execute and file an initial performance bond to the satisfaction and approval of the City, in the amount of $100,000 conditional upon the faithful performance of the contract. Contractor shall also, at the time of signing and executing the contract, file with the City a public works payment and materials bond in the amount of $50,000. Additional performance and payment bond for project work orders more than $100,000 shall be submitted by the Contractor no later than 14 days after execution of work orders.

Duty to Notify Award of Public Works Contracts

In accordance with the provisions of Section 1773.3 of the Labor Code, the City of Cupertino shall provide notice to the Department of Industrial Relations (DIR) of the award of any public works contract subject to the requirements of Chapter 1 of the Labor Code, within thirty days of the award, but in no event later than the first day the contractor has workers employed on the project.

The notice shall be transmitted electronically to the DIR and shall include the name of the contractor, any subcontractor listed on the successful bid, the bid and contract award dates, the contract amount, the estimated start and completion dates, job site location, and any additional information the DIR specifies that aids in the administration and enforcement of this section.

City Manager's signature: Matt Morley

Date: 01/22/24

Director of Administrative Services' signature: Kroz

Date: 01/22/24

Revisions:

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