

## CHAPTER 41: CENTRAL PURCHASING

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### 41.01 SHORT TITLE

This Ordinance shall be known and may be cited as the “Purchasing Ordinance of the City of Richmond.”

### 41.02 DEFINITIONS

For the purposes of this Ordinance the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. Words indicating masculine gender shall also refer to the feminine gender. The word “shall” is always mandatory and not merely directory.

- (a) "MAYOR" is the Mayor of the City of Richmond.
- (b) "CITY" is the City of Richmond.
- (c) "COMMON COUNCIL" is the Council for the City of Richmond.
- (d) "CONTROLLER" is the City Controller for the City of Richmond.
- (e) "DEPARTMENT OF FINANCE" is the Department of Finance and Purchasing for the City of Richmond.
- (f) "CONTRACTUAL SERVICES" shall mean and include, but not be limited to, all towel and cleaning service; other labor contractual services; leases for all grounds, buildings, office or other space required by the using departments; and the rental, repair or maintenance of equipment, machinery and other city-owned personal property. The term shall not include professional and other contractual services which are in their nature unique and not subject to competition such as legal, accounting, or consulting services, except as a part of a grant supported by Federal funds.
- (g) "SUPPLIES" shall mean and include all supplies, material, and equipment.
- (h) "USING DEPARTMENT" is any department, agency, commission, bureau or other unit in the City government using supplies or procuring contractual services as provided for in this Ordinance, and includes the Richmond Sanitary District as authorized by its Central Purchasing Resolution, and any school system or governmental unit with which the Controller negotiates an intergovernmental agreement for cooperative purchasing as authorized herein to the extent and for the purposes authorized by such intergovernmental agreement.
- (i) "FEDERAL GRANTS" shall include all federal grants.
- (j) "STATE GRANTS" shall include all state grants but shall not include Motor Vehicle Highway or Local Road and Street funds, or state tax revenues.
- (k) "PUBLIC WORKS" means the construction, alteration or repair of a public building, airport facility, highway, street, alley, bridge, sewer, drain, or other improvement that is paid out of a public fund or out of a special assessment.

#### 41.03 ESTABLISHMENT OF CENTRAL PURCHASING

- (a) The function of central purchasing for all departments shall be performed by the Department of Finance pursuant to this chapter of the Code.

(b) The Controller shall be responsible for and/or assign the duties required to implement central purchasing to employees of the Department of Finance. Such assignment may be to a separate Director of Purchasing.

(c) This Ordinance shall set forth the procurement policies and procedures to be followed by the using departments of the City of Richmond. In the event that a using department is proposing to expend Federal or State grant funds, the using department shall comply with the procurement rules and regulations as set forth by the applicable Federal or State Agency provided the same includes, at a minimum, the provisions set forth in this ordinance.

#### 41.04 SCOPE OF PURCHASING AUTHORITY AND OBJECTIVES

(a) Objectives - The objectives of this Chapter and Central Purchasing include the following:

(i) To purchase or contract for all supplies and contractual services needed by any using department which derives its support wholly or in part from the City, or from a Federal or State grant of which the City is the grantee, in accordance with purchasing procedures as prescribed by this Code and such rules and regulations as the Controller shall adopt for the internal management and operation of the function of Central Purchasing and such other rules and regulations as shall be prescribed by the Mayor and the Common Council.

(ii) (Minimum expenditure) - To procure for the City the highest quality in supplies and contractual services at least expense to the City.

(iii) (Encourage competition) - To discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases and sales.

(iv) (Rules and regulations) - To establish and amend, when necessary, all rules and regulations authorized by this Code and any others deemed necessary to its operation.

(v) (Purchasing analysis) - To keep informed of current developments in the field of purchasing, prices, market conditions and new products, and secure for the City the benefits of research done in the field of purchasing by other governmental jurisdictions, national technical societies, trade associations having national recognition, and by private businesses and organizations.

(vi) (Forms) - To prescribe and maintain such forms as are reasonably necessary to the operation of this Ordinance, subject to approval of such forms by the State Board of Accounts, where prescribed by Indiana law.

(vii) (Standard nomenclature) - To prepare and adopt a standard purchasing nomenclature for using departments and suppliers.

(viii) (Vendors catalog file) - To prepare, adopt and maintain a vendors' catalog. Said catalog shall be filed according to materials and shall contain descriptions of vendors' commodities, prices, and discounts.

(ix) (Bulk purchases) - To utilize the possibilities of buying "in bulk" so as to take full advantage of discounts.

(x) (Federal tax exemptions) - To procure for the City all Federal Tax exemptions to which it is entitled.

(xi) (Disqualification of bidders) - To have the authority to declare vendors, who default on their quotations, irresponsible bidders and to disqualify them from receiving any business from the municipality for a stated period of time.

(xii) (Intergovernmental agreements) - To negotiate intergovernmental agreements with school systems and other governmental units authorizing cooperative and joint bidding with such units where there is economic justification for such; provided, that no agreement shall be negotiated which would require the actual co-mingling of City Funds with those of such school systems and governmental units.

(xiii) (Public Works) - To see that all Public Works (construction) projects comply with I.C. 36-1-12, including the applicable provisions of I.C. 36-1-12-3(a) regulating the City's own work force.

(b) Unauthorized purchases

Except as provided herein, it shall be unlawful for any City officer or employee to order the purchase of any supplies or make any contract within the purview of this Code other than through the Department of Finance, and any purchase ordered or contract made contrary to the provisions hereof shall not be approved by the City officials, and the City shall not be bound thereby.

(c) Powers reserved

Nothing in this section shall be construed to prevent the lawful advertising, awarding of bids and letting of contracts by the Board of Public Works and Safety of the City, and by the Richmond Sanitary District Board of Commissioners.

#### 41.05 PUBLIC WORKS

The Indiana Public Works (construction) statute IC 36-1-12 shall establish the procedures governing public works projects performed or contracted for by all using departments, and is incorporated by reference herein.

#### 41.06 AUTHORITY TO SET SPECIFICATIONS

In addition to all other powers and duties conferred above, the Department of Finance shall have authority to prepare and adopt written specifications for all purchases and contracts within the scope of its purchasing authority, subject to the following guidelines.

- (a) Consult with the department heads and other officials of using departments to determine their precise requirements and endeavor to prescribe those standards which meet the needs of the majority of such department.
- (b) Make use of the laboratory and engineering facilities of the using departments and technical staffs thereof in connection with the preparation and adoption of standards and written specifications.
- (c) Consult with experts outside the using agencies for technical assistance in the preparation and adoption of standards and written specification.
- (d) All specifications shall be definite and certain and shall permit competition, provided, however, that the provisions of this subsection shall not apply to non-competitive types and kinds of supplies and services.
- (e) Maintain a file of all written specifications and current standards adopted, which file shall be made available for inspection by using departments and the general public.
- (f) Upon written memoranda stating the reason therefore, exempt any using department from use of the supply described in any standard specification.

#### 41.07 REQUISITION AND ESTIMATES

All using departments, either by or with the authorization of the Head of the Department, shall file with the Department of Finance detailed requisitions or estimates of their requirements in supplies and contractual services in such manner, at such times, and for such future periods as the Controller or Director shall prescribe.

- (a) Unforeseen requirements

A using department shall be permitted to file at any time a requisition or estimate for any supplies and contractual services the need for which was not foreseen when the detailed estimates were filed.

(b) Revisory power

The Department of Finance shall examine each requisition or estimate and shall have the authority to revise it as to quantity, quality or estimated cost; but revision as to quality shall be in accordance with the standards and specifications established pursuant to this Code.

#### 41.08 ENCUMBRANCE OF FUNDS

Except in cases of emergency, no purchase order shall issue for delivery on a contract or open market purchase until the Controller has certified that there is to the credit of the using department a sufficient unencumbered appropriation balance, in excess of all unpaid obligations, to defray the amount of such order.

#### 41.09 PROHIBITION OF INTEREST

Any purchase order or contract within the purview of this ordinance in which any city officer, elected or appointed, has a financial interest, shall be void provided that before the execution of a purchase order or contract, the Board of Public Works and Safety shall have the authority to waive compliance with this Section when it finds such action to be in the best interests of the City, upon the filing of a written statement of such interest with the Board of Public Works and Safety and the Common Council. Board of Sanitary Commissioners shall likewise have authority, with respect to its officers, employees, agents and its purchases, to waive compliance with this Section when it finds such action to be in the best interests of the operation of the Sanitary District and upon filing of a written statement of such interest with the Board of Sanitary Commissioners and the Common Council. Such Boards shall have no authority to waive compliance with this section with regard to Federal Grants.

(a) Gifts and rebates

Every officer, employee, and agent of the City, including the members of all boards, commissions, and other appointed bodies, is expressly prohibited from accepting, directly or indirectly, from any person, company, firm or corporation to which any purchase order or contract is or might be awarded, any gift, rebate of money or entertainment having a value in excess of \$10.00 per day, except where given for the use and benefit of the City and is reported in writing to the City Attorney within 7 calendar days after the occurrence.

(b) Loans

No officer, employee, or agent of the City, including the members of all boards, commissions and other appointed bodies, shall accept loans from an individual or organization having prospective or actual dealings with the City or using departments unless such individual or organization is in the business of making loans in the ordinary course of business.

(c) Avoidance of appearance of impropriety

Every officer, employee or agent of the City, including the members of all boards, commissions and other appointed bodies, shall make every effort, in his or her contact with individuals or organizations having prospective or actual dealings with the City, to conduct themselves in such a manner as to not allow themselves to be put into a position where their judgments can be influenced, and so as to avoid even the appearance of impropriety.

(d) Code of conduct

No employee, officer, or agent of the City, including the members of all boards, commissions or other appointed bodies, shall participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when such person, any member of his immediate family, his partner, or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for the award.

(e) Disciplinary action

Any person found by the Board of Public Works and Safety or the Board of Sanitary Commissioners to have violated the prohibitions of subsections (a) or (b) above shall, in addition to and independently of the prosecution or results of any civil or criminal investigation or suit, be subject to appropriate disciplinary action including suspension or dismissal. Any person found to have violated the prohibitions of subsections (c) or (d) above shall be subject to such lesser disciplinary action, including temporary suspension without pay, as deemed warranted.

#### 41.10 PROCUREMENT PRACTICES AND COMPETITIVE BIDDING

All procurement transactions regardless of whether by sealed bids, quotes or by negotiation and without dollar value, shall be in a manner that provides maximum open and free competition consistent with the provisions of this ordinance and all applicable state and federal procurement practices requirements. [All purchases of supplies and contracts for contractual services, and all sales of personal property which has become obsolete and unusable shall, except as specifically provided herein, be based wherever possible on competitive bids.] Non-competitive purchases may only be made in conformance with the provisions of Indiana Code 5-22.

#### 41.11 FORMAL CONTRACT PROCEDURE

Except as otherwise provided by this Chapter, the procedures promulgated in Indiana Code 5-22, as may be amended from time to time by law, shall be followed for all purchases of supplies and/or contractual services by the City.

(a) Purchasing Agency

For the purposes of I.C. 5-22, the "Purchasing Agency" for the City of Richmond shall be the Board of Public Works and Safety except that the "Purchasing Agency" for the Richmond Sanitary District shall be the Board of Sanitary Commissioners.

(b) Purchasing Agent

For purposes of I.C. 5-22, the "Purchasing Agent" for the City of Richmond (including the Richmond Sanitary District) shall be the City Controller, the Director of Purchasing, or any other employee of the City of Richmond that may be so designated by the City Controller.

(c) Bidders list

All responsible prospective suppliers who have requested their names to be added to a "Bidders List" shall be sent a copy of such newspaper notice or such other notice as will acquaint them with the proposed purchase or sale. In any case invitations sent to the vendors on the "Bidders List" shall be limited to commodities that are similar in character and ordinarily handled by the trade group to which the invitations are sent.

(d) Bid deposits

When deemed necessary, bid deposits shall be prescribed in the public notices inviting bids. Unsuccessful bidders shall be entitled to return of surety. A successful bidder shall forfeit any surety upon failure on his part to enter a contract within 10 days after the award.

(e) Bid opening procedure

Bids shall be submitted sealed to whomever is designated to receive such bids on behalf of the City and shall be identified as bids on the envelope. Bids shall be opened in public at the time and place stated in the notice. A tabulation of all bids received shall be available for public inspection.

(f) Rejection of bids

All bids, parts of all bids, or bids for any one or more supplies or contractual services included in the proposed contract may be rejected when the public interest will be served thereby.

(g) Bidders in default to the City or Wayne County

The bid of any contractor who is in default on the payment of taxes, licenses or other monies due the City or Wayne County, Indiana, shall not be accepted.

(h) Awarding of contract

In conjunction with the formal contract procedures set forth by state law, contracts shall be awarded to the lowest responsible bidder. In determining "lowest responsible bidder", in addition to price, the following shall be considered:

(1) The ability, capability and skill of the bidder to perform the contract and provide the service required

(2) Whether the bidder can perform the contract or provide the service within the time specified and without delay or interference

(3) The character, integrity, reputation, judgment, experience and efficiency of the bidder

(4) The quality of performance of previous contracts or services to the City

(5) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services, including all applicable federal regulations

(6) The sufficiency of the financial resources available to bidder in performing the contract or providing the service

(7) The quality, availability and adaptability of the supplies or contractual services to the particular use required

(8) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract

(9) The number and scope of conditions attached to the bid

(i) Award to other than low bidder

When the award is not given to the lowest bidder, a full and complete statement of the reasons for placing the order elsewhere shall be prepared and filed with the other papers relating to the transaction.

(j) Tie bids

If all bids received are for the same total amount or unit price, quality and services being equal, all bids shall be rejected and the same shall be re-bid. If the rejection of such bids would seriously delay or impede the operations of the City or using department, the award may be made to one of the bidders by drawing lots in public.

(k) Performance bonds

A performance bond, before entering a contract, in such amount as reasonably necessary to protect the best interests of the City, may be required.

(l) Prohibition against subdivision

No contract or purchase shall be subdivided to avoid the requirements of this Section.

(m) Alteration/correction of bids

When the bidder discovers a mistake before the scheduled bid opening, the bidder shall be permitted to withdraw the bid or to correct the error without revealing the amount of the bid. This shall be accomplished by submitting a notice of withdrawal before the scheduled bid opening time and/or by submitting a corrected sealed bid.

When a mistake is discovered after the bid opening, the following shall be done:

- (1) If discovered by the Purchasing Agent, bid verification in writing shall be requested.
- (2) The Purchasing Agent may correct a clerical mistake after verification is made by the bidder.
- (3) A bid may be withdrawn without prejudice upon submission of evidence that a non-intentional error occurred.
- (4) Corrections of mistakes other than clerical errors shall not be permitted unless evidence of the mistake and of the bid is clear and convincing on the face of the bid and the bid as received and as actually intended and corrected is the lowest bid received. The Purchasing Agent shall determine whether clear and convincing evidence of a mistake exists, and shall document its findings in writing to be submitted to the Purchasing Agency with any recommendations. Where clear and convincing evidence is not present, the bidder shall not be permitted to withdraw without

prejudice or to correct the mistake. Any bond or bid deposit shall be forfeited if the bidder fails to enter into a contract.

#### 41.12 QUOTES AND OPEN MARKET PROCEDURE

All purchases of supplies at least \$25,000, but not more than \$75,000, shall be subject to the invitation of quote system set forth in I.C. 5-22-8-3. All purchases of supplies less than the estimated value of \$25,000, shall also use the same invitation of quote procedure, subject to any adjustments made thereto by the City's Purchasing Policy developed by the Controller and/or Director, which may include, but not be limited to, allowing quotes to be secured by phone on smaller purchases and/or allowing purchases to be made singularly on the open market for even smaller purchases.

(a) Minimum number of quotes

Except for small purchases not requiring quotes pursuant to the City's Purchasing Policy, all open market purchases shall, wherever possible, be based on at least three competitive quotes, and shall be awarded to the lowest responsible offeror in accordance with the same standards set forth in subsection 41.11(h) above.

(b) Notice inviting quotes

Quotes may be solicited from prospective vendors; from the appropriate trade group; by telephone; or by any other reasonable inquiry.

(c) Filing

All open market orders and the quotes submitted in competition thereon shall be filed and available for public inspection.

#### 41.13 SOLICITATION OF OFFERS

All solicitations of offers, whether by competitive sealed bids or competitive quotes in the open market, shall be prepared as follows:

(a) Technical requirements

All such solicitations shall incorporate a clear and accurate description of the technical requirements for the material product or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, shall set forth those minimum essential characteristics and standards to which it must conform to satisfy its intended use.

(b) Brand name or equal descriptions

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements in a solicitation, a “brand name or equal” description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated. The Director of Purchasing shall have final authority to determine whether supplies meet such a “brand name or equal” description.

(c) Requests for proposals

Requests for proposals, where utilized, shall identify all significant evaluation factors, including price or cost where required and their relative importance, and shall comply with all other applicable technical requirements of this chapter and of I.C. 5-22-9.

(d) Other requirements

All such solicitations shall clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

#### 41.14 REQUESTS FOR PROPOSALS

In some cases, it may be impossible or impractical to set forth and/or create all necessary specifications to allow competitive bidding or invitation of quotes. Pursuant to state law, if a purchasing agent makes a written determination that the use of competitive sealed bidding (or in the case of smaller purchases, the use of invitation or solicitation of quotes) is either not practicable or not advantageous to the governmental body, the purchasing agent may award a contract using Requests for Proposals (RFP) as set forth within this section. Specifically, interested vendors of goods or services shall be invited to submit a proposal which shall be evaluated competitively by the standards set out in the RFP, and as set out below.

(1) Evaluation of Requests for Proposals (RFP) shall be based upon technical expertise, experience, performance history and other criteria from firms that provide the required services. Proof of when and to whom all RFP's were distributed or mailed must be retained.

(2) An RFP must include:

- the factors or criteria that will be used to evaluate the proposals;
- a statement concerning the relative importance of price and the other evaluation factors;
- a statement concerning whether the proposal must be accompanied by evidence of financial responsibility such as a bond or certified check, which may be imposed in accordance with rules adopted by the governing body;

- a statement about whether discussions may be conducted for clarification only with responsible offerors concerning their proposal after proposals have been opened.
- (3) Public notice of an RFP must be given in accordance with I.C. 5-3-1.
- (4) Proposals not subject to the formal contract procedure must be opened so as to avoid disclosure of contents to competing offerors during the process of negotiations. Negotiation with vendors after the bid documents have been opened to public review shall be strictly prohibited. To the extent permitted by state law, all proposals shall become public record after an award is made.
- (5) A register of proposals must be prepared and open for public inspection after the contract award containing the following:
- a copy of the request for proposals,
  - a list of all persons to whom copies of the request for proposals were given,
  - a list of all proposals received including the names and addresses of all offerors, the dollar amount of each offer, the name of the successful offeror and the dollar amount of the offeror's offer,
  - the basis on which the award was made, and
  - the entire contents of the contract file except for proprietary information such as trade secrets or financial information not required to be made available for public inspection under the terms of the proposal
- (6) An award may be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the governmental body, taking into consideration price and the other evaluation factors set forth in the RFP.

#### 41.15 SERVICES

- (a) The purchase of services shall be subject to the quote procedures set forth in I.C. 5-22-8-3 and Section 41.12 herein, subject to any adjustments made thereto by the City's Purchasing Policy developed by the Controller and/or Director; however, at all times, every effort should be made to secure the necessary services at the best competitive price.
- (b) Recognizing that professional services may be associated with unique issues, it is strongly encouraged that these services shall be procured in similar fashion to the Request for Proposals (RFP) procedure, except for the necessity that they be published prior to a proposal submission. Professional services include services of an accountant, architect, attorney, construction manager, engineer, financial advisor, project administrator, project manager, tax analyst or other persons who provide consulting type services.

#### 41.16 EMERGENCY PURCHASES

(a) Verbal Purchase Order

In the case of an actual emergency in which immediate procurement is essential to prevent delays in the work of the using department and which may vitally affect the safety or convenience of citizens, the department head or person designated by the department head may obtain a verbal purchase order number from Purchasing.

(b) Recorded explanation

The department head shall follow up the issuance of an emergency purchase order number to the Purchasing Agent with a requisition within 24 hours.

(c) Emergency procedure

The Controller or Director shall prescribe by rules and regulations the procedure under which emergency purchases by heads of using departments may be made.

#### 41.17 INSPECTION AND TESTING

(a) The Department of Finance shall inspect or authorize the inspection of all deliveries of supplies or contractual services to determine their conformance with the specifications set forth in the order or contract. The Controller shall have the authority to authorize using departments having the staff and facilities for adequate inspection to inspect all deliveries made to them.

(b) The Department of Finance shall have the authority to require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with the specifications. In the performance of such tests, the Department of Finance shall have the authority to make use of laboratory facilities of any using department or of any outside laboratory, and to assess, or pro-rate the assessment of costs for such testing against the using department which is to receive the tested supplies where no provision is made in the contract with the vendor for the vendor to bear such costs.

#### 41.18 COOPERATIVE PURCHASING

The Department of Finance shall have the authority to join with other units of government in cooperative purchasing plans when the best interests of the City would be served thereby.

#### 41.19 CONSTRUCTION WITH STATE LAW

The provisions of this Ordinance are intended to supplement Indiana Code 5-22 (Public Purchasing), 36-1-11 (Disposal of Property), and 36-1-12 (Public Work Projects), which chapters shall prevail in the event of conflict with any provision of this Code.

#### 41.20 CONSTRUCTION WITH REGARD TO CONTRACTS AND PROCUREMENT SUPPORTED BY FEDERAL FUNDS

It is the specific intent of the Common Council in adopting this Ordinance to enact a procurement system which meets the standards governing state and local grantee procurement as regards procurements and contracts using Federal funds and which is certified by Federal grantor agencies. Therefore, as regards such procurements and contracts, the provisions of this Ordinance are intended to be construed as compatible with the fulfilling the requirements contained in Attachment O of Office of Management and Budget Circular No. A- 102, Revised, contained in Federal Register Vol. 44, No. 159, pages 47874 to and including 47878 and such additional requirements as are contained therein which may be required for such certification are hereby adopted and incorporated herein by reference as regards contracts and procurements using Federal funds wherein the City or a using department is a grantee, including but not limited to the following provisions of the Procurement Standards contained in such attachment:

- (a) Section 8. Procurement Procedures
- (b) Section 9. Contracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms
- (c) Section 12. Contract Pricing
- (d) Section 13. Grantee Procurement Records
- (e) Section 14. Contract Provisions

#### 41.21 EFFECT ON BOARD OF PUBLIC WORKS AND SAFETY

No provision herein shall be deemed to limit the powers of the Board of Public Works and Safety as defined in state law.

#### 41.22 PENALTIES

The Controller, after consulting with the City Attorney and providing reasonable notice to the person involved with an opportunity for such person to be heard, is authorized to debar a person for cause from consideration for award of contracts. The debarment shall be for a period of not more than 3 years. After consultation with the City Attorney, the Controller is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any

activity which might lead to debarment. The suspension shall be for a period not to exceed 3 months. The causes for debarment include:

- (a) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract
- (b) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a City contractor
- (c) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals
- (d) Violation of contract provisions, as set forth below, of a character which is regarded by the purchasing agent to be so serious as to justify debarment action;
- (e) Deliberate failure, without good cause, to perform in accordance with the specification or within the time limit provided in the contract
- (f) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
- (g) Any other cause determined to be so serious and compelling as to affect responsibility as a City contractor, including debarment by another governmental entity for any cause listed in this Code
- (h) For violation of the ethical standards set forth under applicable Federal, State, or local laws

The Controller shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of his rights concerning judicial or administrative review. A copy of the decision shall be mailed or delivered in person to the debarred or suspended person. A decision to debar or suspend shall be final and conclusive, unless fraudulent, or the debarred or suspended person within 10 days after receipt of the decision takes an appeal to the Board of Public Works and Safety or commences a timely action in court in accordance with applicable law.

#### 41.23 BID PROTEST

- (a) Right to protest

Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Board of Public Works and Safety. Protesters are urged to seek resolution of their complaints initially with the Controller. A protest with respect to an invitation for bids or request for proposals shall be submitted in writing prior to the opening of bids or the closing date of proposals, unless the aggrieved person did not know and should not have known of the facts giving rise to such protest prior to bid opening or the closing date for proposals. The protest shall be submitted within 7 calendar days after such aggrieved person knows or should have known of the facts giving rise thereto.

(b) Stay of procurements during protests

In the event of a timely protest hereunder, the Department of Finance shall not proceed further with the solicitation or award of the contract until all administrative and judicial remedies have been exhausted or until the Board of Public Works and Safety makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of the City.

(c) Decision of the Controller

All claims by a contractor against the City relating to a contract, except bid protests, shall be submitted in writing to the Controller for a decision. The contractor may request a conference with the Controller on the claim. Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

(d) Notice to the contractor of the Controller's decision

The decision of the Controller shall be promptly issued in writing, and mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of his appeal rights hereunder.

(e) Finality of Controller's decision and contractor's right to appeal

The Controller's decision shall be final and conclusive unless, within 7 calendar days from the date of receipt of the decision, the contractor mails or otherwise delivers a written appeal to the Board of Public Works and Safety or commences an action in a court of competent jurisdiction.

(f) Failure to render timely decision

If the Controller does not issue a written decision regarding any contract controversy within 21 days after written request for a final decision, or within such longer period as may be agreed upon between parties, then the aggrieved party may proceed as if an adverse decision had been received.

(g) Authority of the Controller to settle bid protests and contract claims

The Controller is authorized to settle any protest regarding the solicitation or award of a City contract, or any claim arising out of the performance of a City contract, prior to an appeal to the Board of Public Works and Safety or the commencement of an action in a court of competent jurisdiction.

(h) If prior to the bid opening or the closing date for receipt of proposals, the Controller, after consultation with the City Attorney, determines that a solicitation is in violation of federal, state, or municipal law, then the solicitation shall be cancelled or revised to comply with applicable law.

(i) If after bid opening or the closing date for receipt of proposals, the Controller, after consultation with the City Attorney, determines that a solicitation or a proposed award of a contract is in violation of federal, state, or municipal law, then the solicitation or proposed award shall be cancelled.

(j) If, after an award, the Controller, after consultation with the City Attorney, determines that a solicitation of award of a contract was in violation of applicable law, then if the person awarded the contract has not acted fraudulently or in bad faith, the contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the City, or the contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract prior to the termination or if the person awarded the contract has acted fraudulently or in bad faith the contract may be declared null and void or voidable if such action is in the best interests of the City.

#### 41.24 SEPARABILITY

If any provision of this ordinance as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

#### 41.25 PURCHASE OF SUPPLIES MANUFACTURED IN THE UNITED STATES

Supplies manufactured in the United States shall be specified for all purchases and shall be purchased unless the City determines that:

(a) the supplies are not manufactured in the United States in reasonably available quantities;

(b) the price of the supplies manufactured in the United States exceeds by an unreasonable amount the price of available and comparable supplies manufactured elsewhere;

(c) the quality of the supplies manufactured in the United States is substantially less than the quality of comparably priced available supplies manufactured elsewhere; or

(d) the purchase of supplies manufactured in the United States is not in the public interest.

#### 41.26 ORDINANCES REPEALED

This Ordinance, from and after its effective date, shall contain all of the provisions of a general nature pertaining to the subjects herein enumerated and embraced. All prior ordinances pertaining to the subjects treated by the ordinance shall be deemed repealed from and after the effective date of this Ordinance.

(Ord. 60-1999)