

MEETING DATE: August 14, 2006

AGENDA ITEM : Discussion of Criteria for Re-bidding of City Contracts.

ATTACHMENTS

	<u>Pages</u>
1. Excerpts from the City Code of Beverly Hills	1-4
2. Excerpts from the City Code of Santa Monica	5-7
3. Excerpts from the City Code of West Hollywood	8-10

City of Beverly Hills

Municipal Code

3-3-104: BID REQUIREMENTS, PURCHASING PROCEDURES, AND CONTRACTING PROCEDURES:

This section shall govern the procedures for bidding and awarding all purchase orders and contracts, including purchases of goods and supplies, contracts to perform services, and contracts to perform public projects. Bidding requirements and other purchasing and contracting procedures are categorized into four (4) different levels set forth below. Each level shall govern purchases and contracts of different values. Level 1 shall govern the least expensive purchase orders and contracts and level 4 shall govern the most expensive purchase orders and contracts. The city council shall from time to time, as it determines appropriate, establish by resolution the maximum dollar amounts of purchases and contracts that are authorized pursuant to each of the four (4) levels. Notwithstanding any provision of this article, the bidding and other procedures for awarding public project contracts shall not violate the limitations of the uniform public construction cost accounting act.

- A. Level 1 Purchases: Purchases and contracts which are authorized to be awarded pursuant to level 1 procedures may be awarded by the director of the department for which the purchase or contract is made. This level of purchasing is authorized without competitive bidding.
- B. Level 2 Purchases: Purchases and contracts which are authorized to be awarded pursuant to level 2 procedures may be awarded by the purchasing agent. Purchases of supplies and equipment and contracts for public projects shall require competitive oral bidding, as described in this subsection. If the purchasing agent determines that competitive oral bidding for a particular service contract is in the best interest of the city, the purchasing agent may require competitive oral bidding for that contract, as described in this subsection. With regard to contracts for public projects, if the purchasing agent determines that a different competitive bidding procedure is in the best interest of the city, the purchasing agent may solicit written bids as provided in subsection C of this section or solicit sealed bids as provided in subsection D of this section.
 - 1. Bids shall be orally solicited from a minimum of three (3) sources and may be received orally.
 - 2. With regard to the purchase of supplies or equipment, after the receipt of bids from those who elect to the solicitation, the purchasing agent shall award the purchase to the lowest responsible bidder, or shall reject all bids, unless the purchasing agent determines that award of the purchase to a different

bidder is in the best interest of the city. The purchasing agent may waive any irregularities or informalities in any bid or bidding.

3. With regard to contracts for services and contracts to perform public projects, the purchasing agent shall award the contract to the lowest responsible bidder only if the purchasing agent determines that such action is in the best interest of the city. The purchasing agent may reject all bids, or waive any irregularities or informalities in any bid or bidding.

4. The purchasing agent may waive the requirement to orally solicit bids if equipment, supplies, services or public project performance is available from only one source and may solicit only two (2) bids if equipment, supplies, services or public project performance is available from only two (2) sources.

C. Level 3 Purchases: Purchases and contracts which are authorized to be awarded pursuant to level 3 procedures may be awarded by the city manager. Purchases of supplies and equipment shall require competitive written bidding, as described in this subsection. Contracts for public projects shall require competitive written bidding, as described in subsection E of this section. If the city manager determines that a competitive bidding procedure for a service contract is in the best interest of the city, the city manager may solicit oral bids as provided pursuant to subsection B of this section or the city manager may require competitive written bids as provided in this subsection.

1. Bid specifications shall be prepared and written notices soliciting written bids shall be disseminated to a list of at least three (3) prospective bidders chosen by the city manager. Such notices shall include the closing date of the bid.

2. Bids shall be submitted in writing and must be received prior to the bid closing date to be considered.

3. With regard to the purchase of supplies or equipment, the city manager shall award the purchase to the lowest responsible bidder, or shall reject all bids, unless the city manager determines that award of the purchase to a different bidder is in the best interest of the city. The purchasing agent may waive any irregularities or informalities in any bid or bidding.

4. With regard to contract for services, the city manager shall award the contract to the lowest responsible bidder only if the city manager determines that such action is in the best interest of the city. The city manager may reject all bids, or waive any irregularities or informalities in any bid or bidding.

5. The city manager may waive the requirement to solicit bids if the equipment, supplies or services is available from only one source and may

solicit only two (2) bids if the equipment, supplies or services is available from only two (2) sources.

D. Level 4 Purchases: Purchases which must be made pursuant to level 4 procedures shall be approved by the city council. All purchases of supplies and equipment shall require competitive written bidding, as described in this subsection. Contracts for public projects shall require competitive written bidding, as described in subsection E of this section. If the city council determines that a bidding procedure for a service contract is in the best interest of the city, the city council may solicit oral bids as provided in subsection B of this section, solicit written bids as provided in subsection C of this section or solicit sealed bids as provided in this subsection.

1. Bid specifications shall be prepared, and notices inviting sealed bids shall be disseminated to at least three (3) prospective bidders approved by the city manager.

2. Bids shall be sealed, and shall not be opened until the time and place designated in the bid specifications. Bids must be received prior to the bid opening to be considered.

3. With regard to the purchase of supplies and equipment, the city council shall award the bid to the lowest responsible bidder, or shall reject all bids, unless the city council determines that the award of the purchase to a different bidder is in the best interest of the city. The city council may waive any irregularities or informalities in any bid or bidding.

4. With regard to contracts for services, the city council shall award the contract to the lowest responsible bidder only if the city council determines that such action is in the best interest of the city. The city council may reject all bids or waive any irregularities or informalities in any bid or bidding.

5. The city manager may waive the procedures required by this subsection D if the city manager determines that the equipment, supplies or services is available only from a single source and may send a notice inviting bids to only two (2) prospective bidders if the city manager determines that the equipment, supplies or services is available from only two (2) sources.

E. Contracts For Public Projects: All contracts for public projects of more than twenty five thousand dollars (\$25,000.00) shall require competitive written bidding, as described in this subsection.

1. Bid specifications shall be prepared and notices inviting sealed bids shall be disseminated as set forth in subsection E2 or E3 of this section. In addition, bid plans and working details shall be adopted by the city council for all public projects exceeding one hundred thousand dollars (\$100,000.00).

2. For those public projects of more than twenty five thousand dollars (\$25,000.00), but less than or equal to one hundred thousand dollars (\$100,000.00), all notices inviting sealed bids shall be sent to: a) the construction trade journals specified in California Public Contract Code section 22036, or b) a list of qualified contractors, identified according to categories of work and which has been developed in compliance with the criteria issued by the California uniform construction cost accounting commission, or c) both; unless the supplies, equipment or services are proprietary. Such notices shall be mailed not less than ten (10) calendar days before bids are due. The notices shall describe the project in general terms, how to obtain more detailed information regarding the project, and the time and place for the submission of bids.

If all bids received are in excess of one hundred thousand dollars (\$100,000.00), the city council may, by passage of a resolution by a four-fifths (4/5) vote, award the contract at one hundred ten thousand dollars (\$110,000.00) or less without complying with the bidding procedures set forth in subsection E3 of this section, provided that the city council determines that the cost estimate of the project was reasonable.

3. For those public projects of more than one hundred thousand dollars (\$100,000.00) the notice inviting sealed bids shall comply with the provisions of California Public Contract Code section 22037, or the successor statute thereto.

4. Bids shall be sealed, and shall not be opened until the time and place designated in the bid specifications. Bids must be received prior to the bid opening to be considered.

5. The city manager or the city council shall award the bid to the lowest responsible bidder, or reject all bids pursuant to the Public Contract Code section 22038, or its successor statute. The city manager or the city council may waive any irregularities or informalities in any bid or bidding. (1962 Code § 2-9; amd. Ord. 94-O-2225, eff. 1-6-1995; Ord. 04-O-2447, eff. 5-21-2004)

[Back to Main Page - New](#)
[Search Print results](#)

Search Results

Search terms:

+Purchasing

[2.24.020 Organization of
Purchasing Division.](#)

[2.24.180 Specifications.](#)

[2.24.050 Requisitions and
estimates.](#)

[Chapter 2.24 PURCHASING
SYSTEM](#)

[1507 Centralized purchasing.](#)

[2.24.030 Powers of
Purchasing Agent.](#)

[2.24.130 Purchase orders.](#)

[2.24.040 Additional powers
of Purchasing Agent.](#)

[2.24.060 Unforeseen needs.](#)

[1508 Competitive bidding.](#)

[2.24.090 Informal purchasing
procedures.](#)

[2.24.010 Rules and
regulations.](#)

[2.12.250 Finance
Department.](#)

[2.24.150 Forwarding of
purchase order.](#)

[2.24.160 Receipt of goods.](#)

[4.24.060 Board part of
government.](#)

[7.20.290 Disinterment for
exchange of graves, crypts,
or niches.](#)

[2.24.100 Formal bidding
procedures.](#)

[2.24.070 Competitive
bidding.](#)

[2.24.140 Encumbrance of
funds.](#)

[1602 Term of franchise.](#)

[3.12.360 Obstructing
pedestrian or vehicular
traffic.](#)

[2.24.080 Exceptions to
competitive bidding.](#)

[2.24.110 Sale of real
property.](#)

Santa Monica Municipal Code

[Up](#)

[Previous](#)

[Next](#)

[Main](#)

[Search](#)

[Print](#)

[No
Frames](#)

[THE CHARTER OF THE CITY OF SANTA MONICA](#)
[ARTICLE XV—FISCAL ADMINISTRATION](#)

[[remove highlighting](#)]

1508 Competitive bidding.

Before making any purchase of, or contract for, supplies, materials or equipment, the **purchasing** agent shall give ample opportunity for competitive bidding, under such rules and regulations and with such exceptions as the City Council may prescribe by ordinance.

[Back to Main Page - New](#)
[Search Print results](#)

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Search terms:

+Purchasing

[2.24.020 Organization of Purchasing Division.](#)

[2.24.180 Specifications.](#)

[2.24.050 Requisitions and estimates.](#)

[Chapter 2.24 PURCHASING SYSTEM](#)

[1507 Centralized purchasing.](#)

[2.24.030 Powers of Purchasing Agent.](#)

[2.24.130 Purchase orders.](#)

[2.24.040 Additional powers of Purchasing Agent.](#)

[2.24.060 Unforeseen needs.](#)

[1508 Competitive bidding.](#)

[2.24.090 Informal purchasing procedures.](#)

[2.24.010 Rules and regulations.](#)

[2.12.250 Finance Department.](#)

[2.24.150 Forwarding of purchase order.](#)

[2.24.160 Receipt of goods.](#)

[4.24.060 Board part of government.](#)

[7.20.290 Disinterment for exchange of graves, crypts, or niches.](#)

[2.24.100 Formal bidding procedures.](#)

[2.24.070 Competitive bidding.](#)

[2.24.140 Encumbrance of funds.](#)

[1602 Term of franchise.](#)

[3.12.360 Obstructing pedestrian or vehicular traffic.](#)

[2.24.080 Exceptions to competitive bidding.](#)

[2.24.110 Sale of real property.](#)

Santa Monica Municipal Code

[Up](#)

[Previous](#)

[Next](#)

[Main](#)

[Search](#)

[Print](#)

[No](#)

[Frames](#)

[Article 2 ADMINISTRATION](#)

[Chapter 2.24 PURCHASING SYSTEM](#)

2.24.080 Exceptions to competitive bidding.

The competitive bid procedure is not applicable to those instances where:

(a) Competition does not exist, such as membership in professional organizations, meetings, conventions, travel, legal advertising, public utilities, and proprietary items of original equipment manufacturers and/or their authorized exclusive distributors;

(b) Competitive bid procedures have already been utilized, such as in purchasing from Federal, California State or County governments, including, State of California agencies and agencies of counties, cities and special districts in the State of California and these materials and services are supplied to the City at the same or better price, as was obtained through the Federal, State of California agencies and agencies of counties, cities and special districts in the State of California competitive bid procedures;

(c) Items to be purchased are for resale to the public, such as but not limited to the Civic Auditorium snack bar or cemetery plot marking products;

(d) Contracts are for professional services;

(e) The work involved consists of maintenance or repair of public buildings, public works, streets, drains, sewers, utilities, parks or playgrounds by City employees;

(f) Items to be purchased are circulating library materials, including books, periodicals, films, and recordings.

(Prior code § 2506A; amended by Ord. No. 1284CCS, adopted 8/23/83; Ord. No. 1743CCS § 5, adopted 5/10/94; Ord. No. 1998CCS § 5, adopted 1/9/01)

6

[Back to Main Page - New](#)
[Search Print results](#)

Search Results

Search terms:

+Purchasing

[2.24.020 Organization of
Purchasing Division.](#)

[2.24.180 Specifications.](#)

[2.24.050 Requisitions and
estimates.](#)

[Chapter 2.24 PURCHASING
SYSTEM](#)

[1507 Centralized purchasing.](#)

[2.24.030 Powers of
Purchasing Agent.](#)

[2.24.130 Purchase orders.](#)

[2.24.040 Additional powers
of Purchasing Agent.](#)

[2.24.060 Unforeseen needs.](#)

[1508 Competitive bidding.](#)

[2.24.090 Informal purchasing
procedures.](#)

[2.24.010 Rules and
regulations.](#)

[2.12.250 Finance
Department.](#)

[2.24.150 Forwarding of
purchase order.](#)

[2.24.160 Receipt of goods.](#)

[4.24.060 Board part of
government.](#)

[7.20.290 Disinterment for
exchange of graves, crypts,
or niches.](#)

[2.24.100 Formal bidding
procedures.](#)

[2.24.070 Competitive
bidding.](#)

[2.24.140 Encumbrance of
funds.](#)

[1602 Term of franchise.](#)

[3.12.360 Obstructing
pedestrian or vehicular
traffic.](#)

[2.24.080 Exceptions to
competitive bidding.](#)

[2.24.110 Sale of real
property.](#)

Santa Monica Municipal Code

[Up](#)

[Previous](#)

[Next](#)

[Main](#)

[Search](#)

[Print](#)

[No](#)

[Frames](#)

[Article 2 ADMINISTRATION](#)

[Chapter 2.24 PURCHASING SYSTEM](#)

[\[remove highlighting \]](#)

2.24.090 Informal purchasing procedures.

(a) Convenience Purchase Orders.

(1) Individual purchases related to the City's maintenance requirements, amounting to less than five thousand dollars aggregate amount per purchase order are exempted from competitive bid requirements;

(2) In the event that the savings potential clearly does not justify this exemption, open market request-for-quotation procedures shall be followed.

(b) **Open Market Orders.**

(1) Except as provided in Sections 2.24.071, 2.24.073, 2.24.080 or 2.24.090, public works projects, all purchases of supplies, materials, equipment or contractual services, and all sales of personal property of the City which has been obsolete or unusable, or for any other reason is to be disposed of, which are not more than one-hundred thousand dollars in amount, shall be made in the open market, without the requirement of formal newspaper advertising.

(2) All open market purchases, wherever possible, shall be based upon not less than three competitive bids and shall be awarded to the person offering the overall best bid.

(3) The **Purchasing Agent** shall solicit bids by direct mail or electronic mail request to prospective vendors, or by telephone, and by public notice on the bulletin board in the **Purchasing Department**. The **Purchasing Agent** shall keep a record of all open market orders and the bids submitted in competition thereon, and such records shall also be open to public inspection.

(c) (1) Notwithstanding any other provisions of this Section, prior to awarding a contract the **Purchasing Agent** shall provide a one percent price preference to all City businesses submitting open market order bids upon which will be levied a State of California sales tax. The **Purchasing Agent** shall administer the bidding preference so that bid amounts received from City businesses are reduced by one percent solely to determine the rank order of the bids in the selection process. It after the one percent preference is applied, a City business has submitted a bid which is equal to or is lower than all other bids, the **Purchasing Agent** shall award the contract to the City business so long as it is otherwise the most responsible and best bidder.

(2) For purposes of this provision a City business shall be a business licensed by the City of Santa Monica to conduct business in the City and which shall have a place of business within the City other than a post office mailing box. (Prior code § 2507; amended by Ord. No. 1284CCS, adopted 8/23/83; Ord. No. 1743CCS § 6, adopted 5/10/94; amended by Ord. No. 1900CCS § 1, adopted 2/17/98; Ord. No. 1951CCS § 1, adopted 9/14/99; amended by Ord. No. 1998CCS § 6, adopted 1/9/01)

7

- ✚ WEST HOLLYWOOD MUNICIPAL CODE
Covering Ordinances Through Ordinance No. 06-734 [This Edition Updated June 16, 2006.]
- ✚ Title 1 GENERAL PROVISIONS
- ✚ Title 2 ADMINISTRATION AND PERSONNEL
 - ✚ ARTICLE 1 - CITY ADMINISTRATION
 - ✚ ARTICLE 2 - DEPARTMENTS
 - ✚ ARTICLE 3 - COMMISSIONS AND BOARDS
 - ✚ ARTICLE 4 - MISCELLANEOUS
- ✚ Title 3 REVENUE AND FINANCE
- ✚ Title 4 (RESERVED)
- ✚ Title 5 BUSINESS LICENSES, REGULATIONS AND PERMITS*
- ✚ Title 6 (RESERVED)
- ✚ Title 7 HEALTH
- ✚ Title 8 (RESERVED)
- ✚ Title 9 PUBLIC PEACE, MORALS AND SAFETY
- ✚ Title 10 VEHICLES AND TRAFFIC
- ✚ Title 11 STREETS, SIDEWALKS, PUBLIC PLACES AND INFRASTRUCTURE
- ✚ Title 12 (RESERVED)
- ✚ Title 13 BUILDINGS AND CONSTRUCTION
- ✚ Title 14 FIRE PROTECTION
- ✚ Title 15 ENVIRONMENTAL PROTECTION, POLLUTION AND SOLID WASTE
- ✚ Title 16 (RESERVED)
- ✚ Title 17 RENT

The West Hollywood Municipal Code

3.08.010 Authorization to Execute Contracts.

The City Manager, and his/her designee, is authorized to enter into the following types of contracts:

- a. Contracts required of an applicant as a condition of approval of a permit, license, or other grant of approval not involving expenditure of city funds;
- b. Contracts involving the allocation of county, state or federal funds pursuant to a program previously approved by the City Council where the form of contract is standard and used in substantially the same form by all applicants and has been approved by the City Attorney;
- c. Contracts involving the expenditure of city funds where:
 1. The funds are used in connection with residential or commercial revitalization of private property,
 2. The program and its budget have been approved by the City Council,
 3. The funds are used in connection with grants that are allocated on a first-come, first-serve basis in accordance with established criteria,
 4. The same or substantially the same contract is used in all cases,
 5. The form of the contract has been approved by the City Attorney;
- d. Contracts for services for a sum not to exceed twenty-five thousand dollars (\$25,000.00) for which funds have been budgeted in the current year budget and where the form of the contract has been approved by the City Attorney;
- e. Contracts or amendments to contracts which the City Council has expressly authorized the City Manager to execute; and
- f. Amendments to contracts previously approved by the City Council not involving expenditure of city funds, or modifying the duration and/or amount of the contract in strict accordance with a specific line item in the approved city budget.

(Ord. 01-605 § 1, 2001; Ord. 97-505 § 2 (part), 1997; prior code § 2700)

All
 Search
 Browse
 Document
 Contents
 HitList

Search



Records: 2479 Hits: 0

HOME



8

The West Hollywood Municipal Code

- ✚ WEST HOLLYWOOD MUNICIPAL CODE
Covering Ordinances Through Ordinance No. 06-734 [This Edition Updated June 16, 2006.]
- ✚ Title 1 GENERAL PROVISIONS
- ✚ Title 2 ADMINISTRATION AND PERSONNEL
 - ✚ ARTICLE 1 - CITY ADMINISTRATION
 - ✚ ARTICLE 2 - DEPARTMENTS
 - ✚ ARTICLE 3 - COMMISSIONS AND BOARDS
 - ✚ ARTICLE 4 - MISCELLANEOUS
- ✚ Title 3 REVENUE AND FINANCE
- ✚ Title 4 (RESERVED)
- ✚ Title 5 BUSINESS LICENSES, REGULATIONS AND PERMITS*
- ✚ Title 6 (RESERVED)
- ✚ Title 7 HEALTH
- ✚ Title 8 (RESERVED)
- ✚ Title 9 PUBLIC PEACE, MORALS AND SAFETY
- ✚ Title 10 VEHICLES AND TRAFFIC
- ✚ Title 11 STREETS, SIDEWALKS, PUBLIC PLACES AND INFRASTRUCTURE
- ✚ Title 12 (RESERVED)
- ✚ Title 13 BUILDINGS AND CONSTRUCTION
- ✚ Title 14 FIRE PROTECTION
- ✚ Title 15 ENVIRONMENTAL PROTECTION, POLLUTION AND SOLID WASTE
- ✚ Title 16 (RESERVED)
- ✚ Title 17 RENT STABILIZATION*
- ✚ Title 18 (RESERVED)
- ✚ Title 19 ZONING ORDINANCE

3.08.060 Bidding Procedures.

a. Purchases of supplies and equipment of an estimated value of greater than twenty-five thousand dollars (\$25,000.00) shall be by written contract with the lowest responsible bidder after notice. Such notice shall invite sealed bids, include a general description of the supplies or equipment to be purchased, state where bid forms and specifications may be obtained and specify the time and place of the opening of bids.

b. Such notice shall be published in a newspaper of general circulation printed and published in the city, or if there is none, it shall be posted in not less than three public places in the city designated by ordinance for the posting of public notices. The City Manager shall also mail a copy of such notice to anyone who has requested to be so notified.

c. All notices pursuant hereto shall be published, posted or mailed, as the case may be, not less than ten days prior to the date specified for the opening of bids.

d. When deemed necessary by the City Council, bidder's security may be prescribed in the public notices inviting bids. Bidders shall be entitled to the return of bid security provided that a successful bidder shall forfeit its bid security upon refusal or failure to execute the contract within ten 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.

e. Bids shall be submitted to the City Manager and shall be so identified on the envelope. Bids shall be opened at the time and place specified in the notice inviting sealed bids. Copies of all bids received by the City Manager shall be retained by the City Clerk for public inspection during regular business hours for not less than two years following the bid opening.

f. The City Council may reject any and all bids, may waive any irregularity in any bid, and may re-advertise for bids.

g. In the event that the City Council decides to award the contract, the contract shall be awarded to the lowest responsible bidder except as otherwise provided herein.

h. If two or more bids received are for the same total amount

- ✚ WEST HOLLYWOOD
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Covering Ordinances
Through Ordinance No.
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- ✚ Title 1 GENERAL
PROVISIONS
- ✚ Title 2 ADMINISTRATION
AND PERSONNEL
 - ✚ ARTICLE 1 - CITY
ADMINISTRATION
 - ✚ ARTICLE 2 -
DEPARTMENTS
 - ✚ ARTICLE 3 -
COMMISSIONS
AND BOARDS
 - ✚ ARTICLE 4 -
MISCELLANEOUS
- ✚ Title 3 REVENUE AND
FINANCE
- ✚ Title 4 (RESERVED)
- ✚ Title 5 BUSINESS
LICENSES,
REGULATIONS AND
PERMITS*
- ✚ Title 6 (RESERVED)
- ✚ Title 7 HEALTH
- ✚ Title 8 (RESERVED)
- ✚ Title 9 PUBLIC PEACE,
MORALS AND SAFETY
- ✚ Title 10 VEHICLES AND
TRAFFIC
- ✚ Title 11 STREETS,
SIDEWALKS, PUBLIC
PLACES AND
INFRASTRUCTURE
- ✚ Title 12 (RESERVED)
- ✚ Title 13 BUILDINGS AND
CONSTRUCTION
- ✚ Title 14 FIRE
PROTECTION
- ✚ Title 15
ENVIRONMENTAL
PROTECTION,
POLLUTION AND SOLID
WASTE
- ✚ Title 16 (RESERVED)
- ✚ Title 17 RENT
STABILIZATION*
- ✚ Title 18 (RESERVED)
- ✚ Title 19 ZONING
ORDINANCE

The West Hollywood Municipal Code

3.08.070 Purchases on the Open Market.

Purchases of supplies and equipment of an estimated value of twenty-five thousand dollars (\$25,000.00) or less may be made by the City Manager on the open market after solicitation of pro-posals from prospective sellers in accordance with administrative regulations promulgated by the City.

(Ord. 01-605 § 3, 2001: Ord. 97-505 § 2 (part), 1997: prior code § 2706)

3.08.080 Exceptions.

Sections 3.08.060 and 3.08.070 shall not apply to the purchase of supplies and equipment under the following circumstances:

- a. Such supplies or equipment are of an estimated value of less than two thousand five hundred dollars (\$2,500.00);
- b. Such supplies or equipment are unique because of their quality, durability, availability, or fitness for a particular use;
- c. Such supplies or equipment are available from only one source;
- d. The City Manager has determined that exigent circumstances require the immediate purchase of such supplies or equipment;
- e. Such supplies or equipment are provided by an independent contractor pursuant to an agreement with the city for the furnishing of labor and materials for other than the construction of a public works project.

(Ord. 01-605 § 4, 2001: Ord. 97-505 § 2 (part), 1997: prior code § 2707)

3.08.090 Inspection and Testing.

The City Manager shall inspect supplies and equipment delivered to determine their conformance with the specifications set forth in the order or contract. The City Manager shall have 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 specifications.

(Ord. 97-505 § 2 (part), 1997: prior code § 2708)

3.08.100 Discrimination.

All contractors contracting with the city pursuant to this chapter

10