

ORDINANCE NO. 2381

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VICTORVILLE, CALIFORNIA, AMENDING CHAPTER 2.28 OF THE VICTORVILLE MUNICIPAL CODE TO INCREASE THE CITY MANAGER'S PURCHASING AND CONTRACTING AUTHORITY, REVISE RELATED BIDDING THRESHOLDS, AND UPDATE VARIOUS PROVISIONS OF THE CITY'S PURCHASING SYSTEM

WHEREAS, Chapter 2.28 of the Victorville Municipal Code ("VMC") contains the current purchasing, procurement, and contracting rules for the City of Victorville ("City"); and

WHEREAS, the current rules specify certain dollar amount thresholds to regulate the purchasing and contracting authority of the City Manager and activate certain solicitation and competitive bidding procedures consistent with the City's Charter public works authority and other applicable laws; and

WHEREAS, while the current rules provide guidelines as to competitive bidding thresholds and authority of the City Manager in the areas of purchasing and contracting, the dollar amount thresholds have not been adjusted in nearly a decade, despite increasing costs of goods, services, and construction; and

WHEREAS, a survey of the signature and purchasing authority of City Managers in neighboring high desert cities reveals that the Victorville City Manager's current threshold amount of twenty-five thousand dollars (\$25,000) or less is low; and

WHEREAS, in light of the foregoing facts, the City Council finds it will further the efficient administration of City affairs to increase the City Manager's contracting and purchasing authority from the current threshold amount to fifty thousand dollars (\$50,000) or less; and

WHEREAS, to maintain the internal consistency of the City's purchasing system it is also necessary to adjust certain competitive bidding thresholds commensurate with the increased contracting and signature authority of the City Manager and make other harmonizing changes; and

WHEREAS, the City Council further finds it desirable to make certain other updates to Chapter 2.28 to incorporate other City Manager purchasing and contracting authority previously granted by separate City Council Resolutions, such as those governing power purchases for Victorville Municipal Utility Services ("VMUS") and cell tower leases on City-owned property; and

WHEREAS, the City Council wishes to adopt this Ordinance to effectuate the increase in the City's Manager's purchasing and contracting authority and associated bidding thresholds, and make necessary updates to the City's purchasing system; and

WHEREAS, the City Council finds these changes will streamline the City's purchasing functions, making City operations more cost-efficient, while maintaining prudent control and reporting mechanisms in the best interest of the City and its residents.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF VICTORVILLE DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Recitals.

The recitals set forth above are true and correct, and are hereby incorporated by this reference as if set forth in their entirety.

Section 2. Amendment of Chapter 2.28

CHAPTER 2.28 "PURCHASING SYSTEM" OF THE VICTORVILLE MUNICIPAL CODE IS HEREBY AMENDED IN ITS ENTIRETY TO READ AS FOLLOWS:

Chapter 2.28 - PURCHASING SYSTEM

Article I. - General

2.28.010 - Purpose.

The purpose of this chapter is to:

- (1) Provide the authority and procedural requirements for city officers to enter into contracts;
- (2) Establish efficient procedures for the purchase and procurement of supplies and equipment and/or general and consultant/professional services at the lowest possible cost commensurate with the quality needed; to exercise positive financial control over purchases; to clearly define authority for the purchasing function; and to assure the quality of purchases;
- (3) Create rules and regulations governing the procurement of public works project construction contracts in accordance with the city's charter powers over its municipal affairs; and
- (4) Maintain the goals of competitive solicitations providing best value to the city:
 - (A) To ensure adequate, fair and open competition;
 - (B) To give all bidders an opportunity to compete; and
 - (C) To invite bidders to offer the best product or service.

2.28.012 – Applicability.

- (a) The provisions of this Chapter shall apply to purchases and procurements made by the City, its departments and divisions, VMUS, and the Southern California Logistics Airport Authority ("SCLAA"). When the SCLAA is utilizing the procurement provisions of this Chapter, the following terms shall have the following meanings:
 - (1) "City" shall be deemed to mean the SCLAA;
 - (2) "Council" or "City Council" shall be deemed to mean the SCLAA Board of Directors;
 - (3) "Mayor" shall be deemed to mean to the SCLAA Chairman;
 - (4) City Manager shall be deemed to mean the SCLAA Executive Director.
- (b) The Victorville Water District ("VWD"), although a subsidiary district of the City, retains the statutory identity and powers of a County Water District. Where permitted by the County Water District Law (*Cal. Gov. Code § 30000 et seq.*), this Chapter, and other applicable laws; the VWD may vary from the procedures and rules for purchases and procurements set forth in this Chapter. Variances may occur only upon recommendation of the City Manager (when acting in his *ex officio* capacity as the VWD

General Manager) and City Council approval (when acting in its *ex officio* capacity as the VWD Board). When the VWD is utilizing the procurement provisions of this Chapter, the following terms shall have the following meanings:

- (1) "City" shall be deemed to mean the VWD;
- (2) "Council" or "City Council" shall be deemed to mean the VWD Board of Directors;
- (3) "Mayor" shall be deemed to mean to the VWD Chairman;
- (4) "City Manager" shall be deemed to mean the VWD General Manager.

2.28.014 – Certain Non-Discretionary Purchases Exempt from Solicitation Requirements.

Certain types of non-discretionary purchases/payments are not readily adaptable to the open market and competitive selection process. Except where otherwise required by federal law or by reason of the source of funding for the project, non-discretionary purchases are exempt from the bidding and solicitation requirements set forth in Articles III, IV and V of this Chapter. Examples of non-discretionary purchases include, but are not limited to:

- (1) Bank charges and fees;
- (2) Debt Service payments;
- (3) Insurance premiums;
- (4) Memberships, dues, and subscriptions;
- (5) Reimbursement of expenses;
- (6) Newspaper advertisements and notices
- (7) Utility service provider payments, utility connection and/or installation charges required to ensure the continued daily operation of the City; and
- (8) California Independent System Operator (CAISO) fees and charges;
- (10) Franchises awarded by the City Council or governed by the provisions of the California Public Utilities Code or other statute of the state of California.

2.28.015 - Amendments to bidding thresholds and contract award dollar amounts.

Any dollar amounts set forth in this chapter which trigger bidding thresholds or determine the award and signature authority for contracts may be amended from time to time by resolution or ordinance of the city council.

2.28.020 – Splitting Projects or Purchases; Non-compliance with procurement guidelines.

- (a) The city shall not split any project, work, service or purchase into small projects, works, services or purchases for the purpose of avoiding any bidding or contracting requirements of this Code.
- (b) Every person who willfully and knowingly violates the procurement guidelines for the purpose of evading the competitive bidding requirements outlined in this chapter is guilty of a misdemeanor.

2.28.025 - City council approval required.

City council approval is required for all contracts unless otherwise specified in this chapter, this code, or the charter.

2.28.030 - General procedural requirements.

All contracts shall conform to the procedural requirements set forth in this section unless otherwise specified in this chapter, this code or the charter.

- (1) All contracts must be in writing and be signed in the name of the city. When the authority for the award of a contract rests with the city council, and the city council has not by ordinance, resolution, or specific Council action expressly authorized execution by the city manager or other city official, such contract shall be executed by the mayor (or the mayor pro tem in the mayor's absence). When so authorized by the provisions of this chapter, this code or a duly adopted ordinance, resolution, or action of the city council, the city manager or his/her properly designated designees may execute contracts.
- (2) Contracts must include appropriate insurance and indemnification provisions and be reviewed by the city's risk manager prior to execution.
- (3) All contracts must be approved as to form by the city attorney prior to execution.
- (4) A signed original of each contract entered into must be filed with the office of the city clerk.

2.28.035 - Bid security, bonds and insurance.

- (a) When Required. The city manager shall have the authority to require bid security, payment (labor and materials) and performance bonds, as well as specific types and amounts of insurance coverage in connection with all types of contracts to the extent required by this chapter, this code or upon a determination of the city manager that it is in the best interest of the city to do so.
- (b) Bid Security. If required by a notice inviting bids or the provisions of this chapter, bid security shall be submitted with the bid and shall be in the form of a certified check, cashier's check or surety bond. If a bidder fails to submit the required bid security with the bid, the bid shall be deemed nonresponsive.
 - (1) After bids are opened, bid security is irrevocable for the period specified in the notice inviting bids. If the successful bidder fails to execute a contract within ten days after the date of the award of the contract, or as otherwise specified in any notice of award or notice to proceed, the total amount of the bid security shall be forfeited to the city (unless such delay in execution is caused by the city). The bid security of an unsuccessful bidder shall be returned to the bidder no later than sixty calendar days from the date of contract award.
 - (2) Bids for public works projects subject to the informal or formal bidding procedures set forth in Sections 2.28.200 and 2.28.210 or the provisions of the Uniform Public Construction Cost Accounting Act shall require the submission of bid security in an amount equal to at least ten percent of the bid. For public works project contracts let under the provisions of Sections 2.28.190 or 2.28.270, and contracts for supplies and equipment and general or consultant/professional services, the city manager is authorized to determine if bid security is needed on a case-by-case basis.
- (c) Payment and Performance Security. Notices inviting bids for public works projects subject to the informal or formal bidding procedures set forth in Sections 2.28.200 and 2.28.210 shall require the submission of payment and performance bonds, each in an amount equal to one hundred percent of the contract price at the time the contract is executed.
 - (1) Public works project contracts let under the provisions of Sections 2.28.270 or 2.28.230 shall also require the submission of payment and performance bonds, each in an amount equal to one hundred percent of the contract price at the time the contract is executed, unless the city council determines otherwise at the time it determines a project qualifies for design/build or a bidding exception.
 - (2) Payment and performance bonds for public works projects shall be extended in the full amount of the contract for a one-year warranty period beyond the date of acceptance of the work by the city.

- (3) For public works project contracts let under the provisions of Section 2.28.190, and contracts for supplies and equipment and general or consultant/professional services, the city manager is authorized to determine if payment and/or performance security is needed on a case-by-case basis.
- (d) Admitted Surety Required. All bid, performance and payment bonds required by this chapter or this code must be issued by an "admitted surety" (an insurance organization authorized by the insurance commissioner to transact surety insurance in the State of California).
- (e) Form of Bonds. The only bonds acceptable to the city shall be those executed on forms approved by the city attorney and as specified in the invitation/solicitation for bids or proposals.
- (f) Insurance. The city's risk manager shall determine insurance requirements. Successful bidders shall be required to obtain and maintain such policies and amounts of insurance as specified in the bid solicitation or contract documents, including without limitation, general liability, automobile liability, workers' compensation, professional liability (errors and omissions), environmental liability and course of construction. The successful bidder or proposer shall submit certificates of insurance and endorsement forms, as applicable, as evidence that it has the type and amount of insurance coverage required by the bid or proposal documents, prior to beginning any work or project. Such evidence shall be submitted to the city manager promptly upon request and shall be issued by an admitted insurer authorized to operate in the state of California and otherwise acceptable to the city. The required policies shall also be endorsed to name the city, its officers, agents and employees as additional insureds.

2.28.040 - Evaluation of best value bidder.

- (a) For purposes of evaluating whether a bidder is the "best value bidder" pursuant to this chapter, the city council or the city manager, as applicable, shall take into consideration all of the following factors which are applicable to any bid:
 - (1) Price;
 - (2) The bidder's ability, capacity and skills to provide the goods and/or services in accordance with bid specifications;
 - (3) The bidder's ability to provide the goods and/or services promptly, or within the time specified, without delay or interference;
 - (4) The bidder's equipment, facilities, location and resource capacity to provide the goods and/or services;
 - (5) The bidder's ability to provide future maintenance, repair, parts and service for the use of the goods purchased or facility constructed, if appropriate;
 - (6) The bidder's favorable record of performance under prior contracts with the city (if any) and other purchasers where such bidder has previously been awarded such contracts;
 - (7) The bidder's favorable record of compliance with laws, regulations, guidelines and orders governing prior or existing contracts performed by the bidder, if applicable;
 - (8) The bidder's experience, integrity, judgment, reputation and financial resources enabling it to perform the work according to the specifications and terms of the solicitation and the city's contractual requirements;
 - (9) The bidder's demonstration of the quality and performance of the supplies to be purchased or services to be provided;
 - (10) The number and scope of any conditions/limitations attached to the bidder's bid; and
 - (11) Any other relevant factor(s) which demonstrate the value of the bid and furthers best interests of the city in procuring the supplies or services sought.

- (b) The city council or city manager, as applicable, shall have absolute discretion in determining the applicability and relative weight of any or all of the factors set forth in this section and are not required to award a contract to the lowest monetary bidder.

2.28.045 - Waiver of irregularities.

When it is in the best interests of the city to do so, the city manager and/or the city council, as applicable, shall have the discretion to waive any informalities or minor irregularities in any bid process described in this chapter.

2.28.050 - Definitions.

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

- (1) "Best value bidder" means the bidder who represents the best value to the city as determined under Section 2.28.040 of this chapter.
- (2) "Change order" means a change or addendum to an executed contract.
- (3) "City manager" means the city manager of the city or such designee or designees as he/she shall authorize in writing to act on his/her behalf in accordance with the limitations set forth in this definition and this chapter. The City Manager serves ex officio as the SCLAA Executive Director. Unless otherwise specified by ordinance or resolution of the city council, the city manager may only delegate his/her authority to award and/or execute contracts/change orders to a deputy city manager or city department heads/directors, and with respect to contracts, any such delegation shall not exceed ten thousand dollars (\$10,000.00) per single transaction or term agreement, unless the city manager provides specific additional written authorization up to a limit of twenty-five thousand dollars (\$25,000.00). The city manager may not delegate his/her authority to declare an emergency, except that in the event of the absence or disability of the City Manager, a Deputy City Manager may declare an emergency in his stead.
- (4) "Consultant/professional services" means services which involve the exercise of professional discretion and independent judgment based on an advanced or specialized knowledge, expertise or training gained by formal studies or experience. Such services include, but are not limited to, those provided by appraisers, architects, attorneys, engineers, instructors, insurance advisors, financial advisors, physicians and other specialized consultants. The procurement of professional services is governed by Section 2.28.280.
- (5) "Contract" or "contracts" mean formal written agreements to do or not to do a certain thing. "Contract" or "contracts" and "agreement" or "agreements" are synonymous.
- (6) "Emergency" means a sudden occurrence that poses a threat to the public health, safety or welfare, and/or the property of the city requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. Determination of whether an emergency exists shall be within the discretion of the city council or the city manager as set forth elsewhere in this chapter.
- (7) "Deputy City Manager/Treasurer" means the Deputy City Manager/Treasurer for the City or such designees as he/she shall authorize in writing to act on his/her behalf.
- (8) "General services" means and includes any work performed or services rendered by an independent contractor, with or without the furnishing of materials, including, but not limited to, the following:
 - (A) Maintenance or nonstructural repair of city buildings, structures or improvements which does not require engineering plans, specifications or design, including, but not limited to, unscheduled replacement of broken window panes, fire extinguisher maintenance, minor roof repairs, plumbing, elevator maintenance, custodial services and pest control;
 - (B) Repair, modification and maintenance of city equipment and software;

- (C) Cleaning, analysis, testing, moving, removal or disposal (other than by sale) of city supplies and equipment;
- (D) Care or maintenance of public grounds, including, but not limited to, trees, shrubbery, flowers, lawns;
- (E) Providing temporary personnel services;
- (F) Providing other miscellaneous services to facilitate city operations;
- (G) Performing repair, demolition or other work required to abate nuisances under this code;
- (H) Licensing software;
- (I) Leasing or rental of equipment (personal property) for use by the city;
- (J) A maintenance agreement for equipment owned or leased by the city;
- (K) Abatement or cleanup of hazardous materials; provided however that, any time such abatement or cleanup involves preparation of an asbestos or other hazardous materials report, a consultant/professional services agreement shall also be required.

"General services" does not include work defined as consultant/professional services under subsection 2.28.050(4) of this section, nor work defined as a "public project" or a "public works project" in paragraphs (A) through (C) of subsection 2.28.050(9) of this section.

- (9) "Public project" or "public works project" means any of the following:
 - (A) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility.
 - (B) Major painting or repainting of any publicly owned, leased, or operated facility.
 - (C) In the case of a publicly owned utility system, "public project" shall include only the construction, erection, improvement, or repair of dams, reservoirs, powerplants, and electrical transmission lines of two hundred thirty thousand volts and higher.
 - (D) The following items of "maintenance work" may, in the sole discretion of the city, be classified as either "general services" or a "public works project" for purposes of procurement under this chapter:
 - (1) Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes.
 - (2) Minor repainting.
 - (3) Resurfacing of streets and highways at less than one inch.
 - (4) Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems.
 - (5) Work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, powerplants, and electrical transmission lines of two hundred thirty thousand volts and higher.
 - (E) For purposes of this definition, "facility" means any plant, building, structure, ground facility, utility system, subject to the limitation found in paragraph (C) of this subsection, real property, streets and highways, or other public work improvement.
- (10) "Responsive bid" means a bid submitted by a bidder which conforms in all material respects to the requirements of any notice inviting quotations, informal bids or formal bids, as described in this chapter.
- (11) "Responsible bid" or "responsible offer" means a bid/offer submitted by a bidder or offeror who has demonstrated the attributes of trustworthiness, quality, fitness, capacity and experience to perform a contract, in the sole determination of the city.

- (12) "Supplies and equipment" means and includes all supplies, materials, goods, commodities (excluding electricity and natural gas), and equipment purchased on behalf of the city, except for supplies or materials furnished for a public project.
- (13) "Technology product" means hardware, software, or communications equipment; or related equipment or goods which incorporate any such items.
- (14) "Negotiated Contract" means a contract awarded on the basis of a direct agreement with a contractor, vendor, consultant or other service provider without the requirement of a competitive bidding or request for proposals/qualifications process. However, a Negotiated Contract can and often should be awarded after negotiations with parties having submitted responses to requests for proposals or qualifications. See Section 2.28.110.
- (15) "Energy Purchases" means any contract with a private or public supplier of commodities and services for the purchase or sale-incidental-to-purchase of electricity or natural gas and related energy products and services, including, without limitation, unbundled renewable energy credits ("RECs"), scheduling coordinator services, regulatory compliance instruments, and resource adequacy. "Energy Purchases" also include master or enabling agreements containing general terms and conditions that provide for the execution of one or more purchase or sale-incidental-to-purchase transactions under the terms of a standard form contract and any exhibit, addendum or confirmation.
- (16) "VMUS" means Victorville Municipal Utility Services, the City's municipal electricity and gas utility.
- (17) "Sole Source Purchase" means unique services, and/or supplies and equipment that can be obtained from only one vendor, or one distributor authorized to sell in this area, with singular characteristics or performance capabilities or which have specific compatibility components with existing City products, rendering bidding or quotation requirements futile or meaningless. All Sole Source Purchases shall be supported by written documentation.

Article II. - Contract Authority

2.28.060 - City manager authority.

- (a) The responsibility and authority for the solicitation of purchases and procurement of general services, consultant/professional services, supplies and equipment, and public works projects is hereby vested in the city manager who shall be the purchasing officer for the city.
- (b) The city manager is authorized to make purchases, award and enter into contracts on behalf of the city in conformance with the provisions set forth in this chapter, this code or the charter.
- (c) The city manager may delegate in writing to those persons specified in subsection 2.28.050(3) the authority to purchase or contract for specified supplies, services and equipment and construction of public works projects, provided such delegations, purchases and contracts are made in conformity with the all provisions of this chapter.
- (d) Subject to the procedures and any specific exceptions set forth in this chapter, the city manager is authorized to enter into and sign for on behalf of the city, without the prior approval of the city council, contracts for the purchase/procurement of general services, and/or supplies and equipment (or a combination of both):
 - (1) Which do not exceed an initial compensation figure of fifty thousand dollars in any single transaction or term agreement. As to a change order to such contract, the limit of authority shall not exceed an amount that increases the original contract price by more than thirty percent (30%). Cumulative additional change orders in excess of the foregoing limit must be approved by the city council; and
 - (2) For which moneys have been appropriated and for which there is an unexpended and unencumbered balance of such appropriation sufficient to pay the expense of the contract.

- (e) In addition to the authority in subsections (a) through (d) of this section, the city manager is authorized to enter and execute, for and on behalf of the city, the following contracts:
- (1) Contracts with public agencies or public utility companies regarding construction or use of public improvements or utility facilities, which require no payment of money by the city or which provide for payment of money to the city in an amount not in excess of fifty thousand dollars under each contract;
 - (2) Contracts for community social or recreational services, or for the use of city property or facilities, in accordance with established administrative guidelines, which require no payment of money by the city or which provide for payment of money to the city in an amount not in excess of fifty thousand dollars under each contract;
 - (3) Contracts for consultant/professional services in an amount up to fifty thousand dollars in any single transaction or term agreement. Alterations, deviations, additions or deletions from the original scope of work for a consultant/professional services contract, which are determined by the city to be necessary during the progress of work, shall be documented by a supplemental agreement. The city manager is authorized to enter into and execute, for and on behalf of the city, supplemental agreements for consultant/professional services contracts as follows:
 - (A) For contracts originally entered into and executed by the City Manager under the authority currently or previously provided for in this Section, supplemental agreements in an amount up to twenty-five thousand dollars, or fifty percent (50%) of the original contract price, whichever is less.
 - (B) For contracts originally entered into and executed by the City Council, the City Manager may enter into and execute supplemental agreements in an amount up to fifty thousand dollars, or fifteen percent (15%) of the original contract price, whichever is less.
 - (4) Contracts and change orders for construction of public works projects, within the parameters set forth in Article IV of this Chapter.
 - (5) Leases for Telecommunication Facilities ("Cell Tower Leases") located on City-owned property, and/or renewals/extensions of currently-existing Cell Tower Leases, provided that:
 - (A) They are of a routine nature;
 - (B) They do not, or did not, in the event of an extension/renewal, require any third party (Credit Entity) consents;
 - (C) They are on the City's standard Cell Tower Lease form (as such may be modified from time-to-time following review by the City's Risk Manager and the City Attorney);
 - (D) They do not exceed a term of thirty (30) years (including any renewal periods);
 - (E) They result in annual rents of \$ 36,000.00, or less; and
 - (F) They are reviewed and approved as to form by the City Attorney and the City's Risk Manager prior to execution.
 - (6) Non-disturbance and amendment, assignment and assumption agreements relating to the Cell Tower Lease in Liberty Park originally dated September 22, 2010, provided that prior to execution any such agreements have (i) been reviewed by and approved as to form by the City Attorney; (ii) been approved by the City's Risk Manager; and (iii) received consent (if required) from the Credit Entity.
 - (7) Other lease agreements, conveyances and instruments requiring the City seal, provided that such lease agreements, conveyances, or instruments do not (i) concern property (real or personal) valued in excess of fifty thousand dollars (\$50,000.00); or (ii) provide for payment of money to the City in an amount in excess of fifty thousand dollars (\$50,000.00) per single

transaction, lease or term agreement. Equipment leases shall also comply with the provisions of Section 2.28.130;

- (8) Contracts for Energy Purchases by VMUS as specified in Article VIII of this Chapter;
- (f) In an emergency the city manager may authorize the expenditure of any unencumbered funds to respond to the emergency, notwithstanding the fact that such moneys may not have been appropriated for such purpose, but only to the extent that such moneys have not been appropriated or are otherwise unavailable. Such action shall be ratified by city council as soon as practicable, and with respect to any emergency involving a public works project such action shall be ratified by the city council as set forth in Section 2.28.240.
- (g) The VWD General Manager (or such persons as he/she may designate, provided such designation is made in writing) is authorized to make purchases and execute contracts or agreements for the assignment of water rights in lieu of replacement or make-up assessments in the Mojave Basin Area on behalf of the VWD, provided that:
- (A) at no time will the total price paid for the assignment of water rights in lieu of replacement or make-up assessments exceed the amount authorized for such purchases in the annual budget approved by the VWD Board;
 - (B) the term of any transaction or agreement entered into shall not exceed one (1) year;
 - (C) no purchase of assignment of water rights in lieu of replacement or make-up assessments shall exceed that required to fully meet such obligations;
 - (D) at no time will any purchase of assignment of water rights in lieu of replacement or make-up assessments be made at a per acre foot rate greater than that published by the Watermaster for purchases of replacement water at the time such purchase is made; and
 - (E) such procurement of the assignment of water rights in lieu of replacement or makeup assessments shall be made in full compliance with the Rules and Regulations of the Mojave Basin Watermaster.

2.28.070 - Encumbrance of funds.

The city manager shall not issue any purchase order or enter into any contract for supplies and equipment, general services or consultant/professional services unless there exists an unencumbered appropriation in the department/division against which such purchase is to be charged, except in cases of emergency or in cases where specific authority has been first obtained from the city council.

2.28.075 - Reporting requirements.

On a semi-annual basis, the city manager shall present to the city council during an open meeting a report listing all purchases, contracts and change orders entered into by the city manager during the preceding six months (excluding any contracts which were awarded by the city council, but subsequently executed by the city manager pursuant to a resolution or minute order of the city council and purchase orders or contracts for supplies and equipment or general services totaling less than five thousand dollars in any single transaction or term agreement). The semi-annual reports shall include, without limitation, the following information:

- (1) The name of the party or parties with whom the city has contracted;
- (2) The total amount of the expenditure associated with the contract (including any amendments or change orders);
- (3) The term and expiration date of the contract; and
- (4) A brief description of the subject matter and purpose of the contract.

Article III. - Supplies, Equipment and General Services

2.28.080 - Purchases of general services and supplies and equipment with an estimated cost of five thousand dollars or less.

For purchases of general services and/or supplies and equipment with an estimated cost of five thousand dollars or less per any single transaction or term agreement, additional purchasing procedures shall be established by an administrative regulation of the city manager.

2.28.090 - Purchases of general services or supplies and equipment with an estimated cost in excess of five thousand dollars but not more than fifty thousand dollars.

- (a) Quotation Requirement. The purchase of supplies and equipment and general services with an estimated cost in excess of five thousand dollars, but not more than fifty thousand dollars per any single transaction or term agreement, may be made by the city manager, in the open market by following the procedures prescribed in this article.
- (1) Minimum Number of Quotations. Open-market purchases are required to be based on at least three written quotations.
 - (2) Notice of Inviting Quotations. The city manager shall solicit quotations by written request (including facsimile or electronic mail on vendor stationery) or telephone to prospective vendors.
 - (3) Quotations. Written quotations (including facsimile and electronic mail on vendor stationery) shall be submitted to the city manager, who shall keep a record of all open-market orders and quotes. Such records shall be maintained for a period of time in compliance with state law and the city's records retention schedule and shall be available for public inspection during normal city business hours.
 - (4) No Bid/No Responsive Bid. If no bid, or no responsive bid, is received after inviting quotations under this section, the city manager may proceed to hire or have the general services performed or purchase the supplies and equipment in the open market without further compliance with this section.
 - (5) Rejection of Bids. The city manager at his/her discretion may reject any or all bids and readvertise for bids in the event all bids are rejected.
 - (6) Award of Contract. The city manager is authorized to award a contract for fifty thousand dollars or less when there are budgeted funds for the item(s) and the amount of the award is not more than the quoted amount. If responsive and responsible bids are received, the city manager shall make award of the contract to the best value bidder, even if such bidder did not submit the lowest monetary bid. The factors from Section 2.28.040 upon which the award was based shall be set forth in writing.
- (b) Exceptions. The quotation procedure under this section may be dispensed with:
- (1) In the event the city manager determines the existence of an emergency as defined in subsection 2.28.050(6), and provided such procurement is made in accordance with the applicable provisions of subsection 2.28.060(f);
 - (2) When the City Manager determines in writing (using the city's sole-source justification form) that such procurement constitutes a Sole Source Purchase.
 - (3) Where the general services, supplies or equipment are purchased through a cooperative purchasing arrangement pursuant to Section 2.28.120;
 - (4) Where general services or supplies and equipment are purchased through competitive or noncompetitive negotiations pursuant to Section 2.28.110; and

2.28.100 - Purchases of general services or supplies and equipment with an estimated cost in excess of fifty thousand dollars.

- (a) **Bidding Requirement.** The city manager shall solicit bids for supplies and equipment and general services with an estimated cost in excess of fifty thousand dollars per single transaction or term agreement by following the formal bid procedure prescribed in this section.
 - (1) **Notice Inviting Bids.** The notice inviting bids shall include a general description of the supplies and equipment or general services to be purchased, and shall state where bid forms and specifications may be secured, and the final time and place for submitting bids.
 - (A) **Published Notice.** The notice inviting bids shall be published at least one time, ten calendar days before the date of opening of the bids in a newspaper(s) of general circulation, printed and published locally. The city manager may also give such additional notice as he/she deems appropriate.
 - (B) **Bidder's List.** The city manager shall also solicit sealed bids from responsible prospective suppliers whose names are on the city's bidder's list.
 - (2) **Bid Opening Procedure.** Bidders shall submit sealed bids to the city manager or such department head as may be identified in the notice inviting bids, and shall identify them as bids on the envelope in accordance with the notice inviting bids. Invitations for bids shall require a bid opening at a designated place, date and time when the city clerk, or his or her designee, shall publicly open.
 - (3) **Rejection of Bids.** In its discretion, the city council may reject any and all bids presented, and may re-advertise for bids in the event all bids are rejected.
 - (4) **Reserved.**
 - (5) **No Bid/No Responsive Bid.** If no bid, or no responsive bid is received after inviting bids under this section, the city manager may proceed to procure the general services or purchase the supplies and equipment in the open market.
 - (6) **Award of Contract.** The city council shall have the authority to award a contract for purchase of supplies and equipment or general services with a cost in excess of fifty thousand dollars. If responsive and responsible bids are received, the city council shall make award of the contract to the best value bidder, even if such bidder did not submit the lowest monetary bid. The factors from Section 2.28.040 upon which the award was based shall be set forth in writing.
- (b) **Exceptions.** The bidding procedures under this section may be dispensed with:
 - (1) In the event the city council determines the existence of an emergency as defined in subsection 2.28.050(6) and provided such procurement is made in accordance with the applicable provisions of subsection 2.28.060(f);
 - (2) Where it is determined by the city council that such procurement constitutes a Sole Source Purchase. The basis upon which this determination is made shall be prepared by the city manager in writing and presented to the city council for approval using the city's sole-source justification form;
 - (3) Where the general services, supplies or equipment are purchased through a cooperative purchasing arrangement pursuant to Section 2.28.120;
 - (4) Where supplies and equipment or general services are purchased through competitive or noncompetitive negotiations pursuant to Section 2.28.110; and

2.28.110 - Negotiated purchases.

- (a) **Applicability.** A purchase may be had by negotiations when the purchase is for:
 - (1) A technology product, as defined in subsection 2.28.050(13);
 - (2) An addition to, or repair or maintenance of, existing equipment which can be more efficiently added to, repaired or maintained by an authorized company or manufacturer;
 - (3) Equipment which must be compatible with existing equipment, by reason of the training of the personnel or an inventory of existing replacement parts kept by the city;

- (4) Public art (which may or may not also fall within the Sole Source Purchase exception).

The affected department head shall state in writing the basis for a determination that this section applies.

Before any purchase is made under this section, a determination of the applicability of this section and the method of negotiation (competitive or noncompetitive) must first be approved by the city manager when the purchase involves fifty thousand dollars or less. For purchases under this section in excess of fifty thousand dollars, city council approval shall be required, following its determination of the applicability of this section and method of negotiation (competitive or noncompetitive).

- (b) Method of Negotiation. When a negotiated purchase is approved under subsection (a) of this section, the purchase may be made by either (1) competitive negotiation following a request for proposals or (2) noncompetitive negotiation.
- (c) Competitive Negotiation Following a Request for Proposals.
 - (1) Request for Proposals. Under this method, proposals are requested from a number of sources and the request for proposals is publicized. The request for proposals must identify all the significant evaluation factors, including price or cost and their relative importance. Proposals must be solicited from an adequate number of qualified sources to permit reasonable competition.
 - (2) Receipt of Proposals. Sealed proposals must be submitted by the date and time specified on the prescribed forms and shall be identified in the publicized invitation for proposals.
 - (3) Negotiation. The highest ranking offeror based on the factors set forth in Section 2.28.040, the "best value offeror," will be selected for contract negotiation. If agreement cannot be reached with the highest ranked offeror, the second highest ranked offeror (and the third, and so on) will be contacted, with the best value offeror (or other offerors, in order) dismissed from further consideration on that particular project. All elements of the negotiation process shall be documented by the city department conducting the negotiations and submitted to the Deputy City Manager/Treasurer. Offerors submitting responsible offers shall be accorded fair and equal treatment with respect to opportunity for discussion and revision of proposals. Any revisions are permitted after submission in writing and prior to the award of a contract.
 - (4) Award and Notification. An award may be made to the best value offeror, as defined in subsection 2.28.110(c)(3), whose proposal provides the best value to the city. All offerors participating in the process shall be notified in writing of the successful award. Except as may otherwise be provided for in this Chapter, contracts in excess of fifty thousand dollars shall be awarded by the City Council and executed by the Mayor.
- (d) Noncompetitive Negotiations. When there is only one source, purchase can be made through solicitation and negotiation directly with that source. The affected department head shall state in writing the basis for the determination that this subsection applies, and before any purchase is made, that determination must be approved in writing by the city manager (for contracts involving an estimated cost in excess of five thousand dollars, but not more than fifty thousand dollars) or the city council (for contracts involving an estimated cost in excess of fifty thousand dollars). Except as may be otherwise provided for in this Chapter, contracts in excess of fifty thousand dollars shall be awarded by the City Council and executed by the Mayor.

2.28.120 - Purchases of supplies and equipment through cooperative purchasing arrangements.

The city manager may purchase supplies and equipment without complying with the quotation or bidding requirements of this chapter, if such purchases are based on an agreement or cooperative purchasing program entered into by any local, state or federal governmental agency, regardless of whether the city is named party to the agreement or an actual participant in such a program, provided it satisfies the criteria below:

- (1) Any local, state, or governmental agency program, if the underlying purchase was made using quotation or bid procedures at least as restrictive as the city's. However, city council approval is required on any cooperative purchases or agreement in excess of fifty thousand dollars; or

- (2) The California Multiple Award Schedules (CMAS), the California Communities Purchasing Program, the Western States Contracting Alliance (WSCA), the County of Los Angeles, the U.S. Communities Government Purchasing Alliance, California State Contracts administered by the Department of General Services (DGS) or other purchasing programs deemed by the city manager to be in conformance with the city's quotation or bid procedures to permit reasonable competition.

In all such cases, the supplies and equipment purchased must be the same and be offered at the same price as the supplies and equipment subject to the agreement or program, except that (1) up to ten percent variation is allowed for customizing the order or for desirable city options, and (2) in addition, a cost of living adjustment (using the Riverside-San Bernardino-Ontario Counties Consumer Price Index—Urban, All Items) can be added for up to three years.

2.28.130 - Equipment leasing.

- (a) Leasing of purchasable or non-purchasable equipment shall be in accordance with Section 2.28.080, 2.28.090 or 2.28.100, depending upon the cost of an annual lease.
- (b) Each contract for the leasing or rental of equipment for the city shall contain a provision permitting the city to terminate the contract at the end of any fiscal year during the term of the contract upon not less than thirty days' written notice to the other party.

2.28.140 - Inspection and testing.

The city manager may inspect supplies and equipment and general services delivered, and determine their conformance with the specifications set forth in the order or contract. The city manager has 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 specifications.

2.28.150 - Surplus supplies and equipment.

Each department shall submit to the city manager, at such times and in such forms as the director prescribes, reports showing all supplies and equipment which are no longer used or which have become obsolete or worn out. The city manager has the authority to sell or otherwise dispose of all supplies and equipment which cannot be used by any department or which have become unsuitable for city use, or to exchange the same for or trade the same in on new supplies and equipment. Disposition may include city property which has no commercial value or for which the estimated cost of continued care, handling, maintenance or storage would exceed the estimated proceeds of sale. Sales procedures may include negotiated sales, acceptance of sealed bids or public auction. Services of a paid auctioneer may be used, as appropriate. City manager approval is needed for disposition of supplies and/or equipment when the total estimated value exceeds five thousand dollars. The city manager has the authority to make transfers between departments of any usable surplus supplies or equipment.

2.28.160 - Local vendor preference.

A local preference may be granted in the purchase of supplies and equipment by the city, pursuant to the following provisions:

- (1) Definition. Whenever used in this section, the phrase "local bidder/vendor" shall mean a business, firm, or enterprise with fixed offices or locally taxable distribution points within the city, which regularly maintains an inventory for sale within the corporate limits of the city, holds a valid business license, issued by the city, and bearing a street address within the city.
- (2) Local Preference. In awarding purchase orders and contracts for supplies and equipment, the city may grant a preference of three percent to local bidder/vendors. The bids of all local bidders/vendors shall be reduced by three percent prior to determining the best value bidder. The preference shall not exceed an aggregate sum of one thousand dollars for any single purchase order or contract awarded under this chapter.

- (3) **Identical Bids.** If after applying the preference provided for in subsection (2) of this section, identical bids are submitted by a bidder/vendor and a bidder who is not local, the contract shall be awarded to the local bidder/vendor. Identical bids by two or more local bidder/vendors shall be determined by past satisfactory experience with the city.
- (4) **Exceptions.** Notwithstanding the foregoing, the provisions of this section shall not apply under any of the following circumstances:
 - (A) When application of the provisions of this section is prohibited by state or federal law or the requirements of a state or federal grant;
 - (B) When a contract with the city to purchase supplies and equipment will be funded in whole or in part by donations or gifts to the city, to the extent that the provisions of this section would conflict with any conditions attached by the donor of the donation, provided that the donation and any conditions attached to it have been accepted and approved by the city council;
 - (C) When the city manager determines that a contract with the city to purchase supplies and equipment results from an emergency, and also determines either that any delay in the execution or performance of the contract would jeopardize the public health, safety, or welfare of the citizens of the city, or that the operational effectiveness of a significant municipal function would be seriously threatened if the contract were not entered into expeditiously.
- (5) **Good Faith Effort to Contact Local Vendors.** The city shall make a good faith effort when soliciting bids for supplies or equipment to solicit bids or proposals from local vendors.
- (6) **City Manager Authorization.** The city manager may promulgate rules and regulations to implement the provisions of this section.
- (7) **Enforcement and Penalties.** In the event that the city manager makes a finding that a bidder for a contract has made an intentional misstatement in order to obtain a local vendor preference under regulations adopted pursuant to this section, the bidder may be subject to any remedy available to the city at law or equity.
 - (A) A finding by the city manager that a bidder for a contract has made an intentional misstatement in order to obtain a local vendor preference shall be regarded by the city council as a basis for determining whether the bidder is a responsible bidder for the present contract or for future contracts.
 - (B) A bidder who has been disqualified as a responsible bidder by a determination of the city council, based on a finding by the city manager that the bidder made an intentional misstatement in order to obtain a local vendor preference, shall be disqualified from bidding on all contracts with the city for a period of not less than one year from the date of the disqualification, as determined by the city council.

Article IV. - Public Works Projects

2.28.170 - Charter authority; exemption from public contract code; exceptions.

- (a) **Charter authority.** Having been empowered by its charter to exercise full control over its municipal affairs, the city council hereby establishes its own standards, procedures, rules and regulations for the bidding, award and performance of contracts for public works projects which constitute municipal affairs, except as may be otherwise specified in this Article IV.
- (b) With respect to guidance regarding what public works projects constitute municipal affairs, the city manager shall consider the following factors, and prior to preparing bid documents, shall make a written determination, after consultation with the City Attorney, whether a public works project so qualifies:
 - (1) The extent of the city's control over the public project;

- (2) The extent to which the city is the source of the funds used to finance the public project; and
 - (3) The extent to which the public project is local in nature and scope.
- (c) Exemption from Public Contract Code. Pursuant to section 1100.7 of the California Public Contract Code ("Public Contract Code"), the city council declares that the definitions and provisions pertaining to contracting for public works projects set forth in Article IV and elsewhere in this chapter, shall govern the notice, publication, cost of public works projects triggering formal or competitive bidding (and exceptions thereto), method of awarding of contracts and contracting during an emergency with respect to public works projects constituting municipal affairs. The city is expressly exempt from provisions of the Public Contract Code which conflict with the provisions of its charter, this chapter or this code.
- (d) Exceptions.
- (1) When public works projects or other applicable contracts are funded by state or federal sources, including but not limited to, loans or grants, the city shall comply with any contract solicitation, bidding, evaluation and award rules or regulations required in order to receive such state or federal funds.
 - (2) For those public works projects determined not to qualify as municipal affairs, or those public works projects that do not utilize state and/or federal funding requiring particular bidding rules or regulations, the city shall follow the procedures set forth in the Uniform Public Construction Cost Accounting Act, Public Contract Code section 22000 et seq. (the "Act"). The bid limitations set forth set forth in section 22032 of the Act, as adjusted periodically by the Uniform Construction Cost Accounting Commission, shall apply and the city hereby adopts the informal bid procedure set forth in section 22034 of the Act to govern its selection of contractors under section 22032(b) of the Act.
- (e) Although plans, specifications and working details shall be prepared for any public works project required to be bid using the formal bidding procedures set forth in Section 2.28.210, there shall be no requirement for the city council to adopt plans, specifications, and working details for such public works project prior to the project being bid.
- (f) Notwithstanding any Public Contract Code provisions relating to claims or payment of claims, any claims relating to public works projects or payment for same shall be resolved pursuant to Title 1, Division 3.6, Part 4 of the California Government Code, or this code. The city shall not be obligated to arbitrate any claim.

2.28.180 - Construction contract change orders.

- (a) All construction contract change orders shall comply with the city of Victorville standard construction specifications and/or such construction specifications as may be set forth in the contract documents for a particular public works project. The work description and justification should relate to the original project and should be necessary to achieve its original scope. Change Orders should not be used for additional tasks/work unrelated to the original contract unless the City Council has waived the competitive bidding requirements and adopted a resolution making one or more of the findings in accordance with Section 2.28.230. Change orders shall be approved and issued in writing by the city manager prior to the work being performed, subject to the provisions of the following subdivision (b).
- (b) Provided the funding for the public works project contract has been previously approved and the expenditure of funds authorized by the city council, the city manager shall have the authority to execute change orders; provided however, that if a single contract change order (or the cumulative amount of change orders on a given public project) exceeds fifteen (15%) of the total contract price or two hundred thousand dollars (whichever amount is less), the city manager shall obtain city council approval prior to executing the change order. In emergency situations where stopping the work will result in severe repair or replacement delays and subject the city to excessive additional costs due to the delay in the project, the City Manager may approve a change order that exceeds these limits provided he/she presents said change order to the city council for ratification at the next city council meeting. All construction

contract change orders approved by the city manager shall be reported to the city council in the city manager's semi-annual reports described in Section 2.28.075.

2.28.190 - Public works contracts with an estimated cost of fifty thousand dollars or less.

Any public works project with an estimated cost of fifty thousand dollars or less, including any contingency established for change orders, is not subject to any competitive bidding requirements and may be performed by the employees of the city (force account) or awarded by Negotiated Contract or by purchase order. The city manager shall obtain a cost estimate from the project engineer or architect prior to issuing a purchase order or negotiating a contract with a responsible contractor. The city manager shall have the authority to award and execute any contract for a public works project awarded under this section.

2.28.200 - Public works contracts with an estimated cost in excess of fifty thousand dollars but not more than five hundred thousand dollars; informal bidding procedures.

- (a) Except as otherwise provided in this article, a public works project with an estimated cost which exceeds fifty thousand dollars, but is not more than five hundred thousand dollars including any contingency established for change orders, shall be let to contract by the city council using the informal bid procedures set forth in this section.
- (b) The informal bidding procedures are as follows:
 - (1) Bidder's List. The city manager may compile and maintain a list of qualified contractors, identified according to categories of work. Minimum criteria for development and maintenance of the contractors' list shall be consistent with administrative rules and regulations established by the city manager.
 - (2) Notice. If the city manager compiles and maintains a list of qualified contractors, all contractors on the city's list for the category of work being bid shall be mailed a notice of inviting informal bids (unless the product or service is proprietary). If no list of qualified contractors is maintained, an announcement/advertisement shall be placed in construction trade journals as deemed appropriate by the project engineer or requesting department. The city manager or requesting department may also give such other notice as they deem appropriate (including but not limited to, newspaper publication, posting at city hall or on the city's web site).
 - (3) Minimum Time Period. All mailing of notices to contractors and announcements/advertisements published in the construction trade journals or other appropriate media pursuant to subsection 2.28.200(2) shall be completed not less than ten calendar days before bids are due.
 - (4) Notice Contents. The notice inviting informal bids shall describe the project in general terms; provide an opportunity to obtain more detailed information about the project; state the time and place for submission of bids; require that the name of the bidder, the project title, and the term "bid" be written or otherwise affixed on the front of the envelope containing the bid; and list the city department/representative authorized to receive the bids. The notice inviting informal bids shall also contain a statement that bids received after the submission deadline, or bids submitted to the improper place or to the improper department/representative shall be returned unopened.
 - (5) Bid Opening Procedure. Bids shall be submitted to the appropriate city department/representative as designated in the notice inviting bids and shall be opened by the department representative (or his/her designee) at the time stated in the notice of inviting bids. A written record and tabulation shall be made at that time of all bids received, and any bids submitted after the deadline or submitted to a place or city department/representative not specified in the notice inviting bids shall be returned unopened.
 - (6) Determination of Best Value Bidder. The city department representative (or his/her designee) in consultation with the city engineer/project manager, shall:
 - (A) Make an analysis of the bids for compliance with the general bid terms and the technical bid specifications;

- (B) Rank the bidders from highest to lowest, based on the factors set forth in Section 2.28.040 (the highest ranking bidder shall be the best value bidder); and
 - (C) Forward the ranking and all bids submitted to the city manager with a recommendation for rejection of all bids or award to the best value bidder. The city manager shall make the final recommendation for award to the city council.
- (7) Award. The city council has the authority and discretion to award a contract or reject any or all bids on public works projects solicited under the informal bid process set forth in this section.
- (A) If responsive and responsible bids are received and no decision to reject all bids is made, the city council shall make award of the contract to the best value bidder, even if such bidder did not submit the lowest monetary bid, provided the award amount is within the unencumbered appropriation for that item.
 - (B) The factors from Section 2.28.040 of this chapter upon which the award was based shall be set forth in writing. Upon the refusal or failure of the best value bidder to execute the contract, the city council may award the contract to the next highest ranking best value bidder.
- (8) Tie Bids. If two or more bids received are for the same total amount or unit price, quality and service being equal, the city council may accept the one it chooses based upon a straw vote.
- (9) No Bids. If no bids are received, the project may be let pursuant to Section 2.28.190 without further need for compliance with this section.

2.28.210 - Public works contracts in excess of five hundred thousand dollars; formal bidding procedures.

- (a) Except as otherwise provided in this article, a public works project with an estimated cost of more than five hundred thousand dollars including any contingency established for change orders, shall be let to contract using the formal bid procedures set forth in this section.
- (b) The formal bidding procedures are as follows:
 - (1) Publication. A notice inviting formal bids shall be published at least once in a newspaper(s) of general circulation in the city not less than fourteen calendar days prior to the bid opening. Such formal notice inviting bids shall also be mailed to all construction trade journals, as determined by the project engineer or city manager as appropriate for the area, at least fourteen calendar days prior to the date of opening the bids. The city manager or project engineer may also give such other notice as they deem appropriate.
 - (2) Notice Contents. The notice of inviting formal bids shall state the time and place for receiving and opening of sealed bids, distinctly describe the project, require that the name of the bidder, the project title, and the term "bid" be written or otherwise affixed on the front of the envelope containing the bid, and contain a statement that bids received after the submission deadline (or in the improper place) shall be returned unopened.
 - (3) Bid Opening Procedures. Sealed bids shall be submitted to the place designated in the notice inviting bids and shall be opened by the city clerk's staff in public at the time and place stated in the notice of inviting bids. A written record and tabulation shall be made at that time of all bids received, and any bids submitted after the deadline specified in the notice inviting bids (or bids submitted to the improper place) shall be returned unopened.
 - (4) Determination of Best Value Bidder. The city manager, in consultation with the city engineer/project manager, shall:
 - (A) Make an analysis of the bids for compliance with the general bid terms and the technical bid specifications;
 - (B) Rank the bidders from highest to lowest, based on the factors set forth in Section 2.28.040 (the highest ranking bidder shall be the best value bidder); and

- (C) Prepare a recommendation to the city council for rejection of all bids or award to the best value bidder.
- (5) Award. The city council has the authority and discretion to award the contract or reject any or all bids on public works projects solicited under the formal bid process set forth in this section.
 - (A) If responsive and responsible bids are received and no decision to reject all bids is made, the city council shall make award of the contract to the best value bidder, even if such bidder did not submit the lowest monetary bid, provided that the award amount is within the unencumbered appropriation for that item.
 - (B) The factors from Section 2.28.040 upon which the award was based shall be set forth in writing. Upon the refusal or failure of the best value bidder to execute the contract, the city council may award the contract to the next highest ranking best value bidder.
- (6) Tie Bids. If two or more bids received are for the same total amount or unit price, quality and service being equal, the city council may accept the one it chooses based upon a straw vote.
- (7) No Bids. If no bids are received, the project may be let pursuant the informal bid procedures set forth in Section 2.28.200, or the city manager may request that the city council authorize procurement using Section 2.28.190.

2.28.220 - Rejection of Bids.

- (a) The city may, in its discretion, reject any bids presented if the city, prior to rejecting all bids and declaring that the project can be more economically performed by employees of the city, furnishes a written notice to an apparent low monetary bidder. The notice shall inform the bidder of the city's intention to reject the bid and shall be mailed at least two business days prior to the hearing at which the city intends to reject the bid. If after the first invitation of bids all bids are rejected, after reevaluating its cost estimates of the project, the city shall have the option of either of the following:
 - (1) Abandoning the project or re-advertising for bids using the applicable procedure based on the monetary bid thresholds described in this article; or
 - (2) By passage of a resolution by a four-fifths vote of the city council declaring that the project can be performed more economically by city employees (force account) or awarded by Negotiated Contract or purchase order, the city may have the project done in such manner, without further compliance with this article.

2.28.230 - Exceptions to bidding requirements.

- (a) The city council, after reviewing and considering the facts of a particular public works project, may waive or modify the bidding requirements of this article by finding that any one or more of the following circumstances exist:
 - (1) Limitations on the source or the scope and nature of the contract are such that no more than one contractor is available to meet the technical specifications and/or quality considerations of the project.
 - (2) The work is of a highly specialized nature.
 - (3) There would be no competitive advantage to requiring bidding for the contract.
 - (4) The cost of the work would be significantly increased or its completion significantly delayed.
 - (5) An emergency, as determined by the city council exists. In the event of an emergency, the procedure set forth in Section 2.28.240 shall be followed.
 - (6) After making the findings set forth in Section 2.28.270, the city council determines that the city's interests would best be served by entering into a negotiated design/build contract for the public project's construction.
 - (7) There exist other specific considerations justifying the waiver of the bidding requirements.

- (b) The facts and circumstances supporting the city council's determination that one or more of the bidding exceptions set forth in this section exempts a public works project from the competitive bidding procedures in this article shall be set forth in a resolution requiring a four-fifths vote (with the exception of a determination of the applicability of design/build, which shall only require a simple majority vote). Such resolution shall also specify the manner in which such public works project shall be procured (e.g., by Negotiated Contract, by formal or informal RFP/Q, by seeking written quotations, or such other method as the city council shall authorize).

2.28.240 - Emergency procedures.

In the event of an emergency (deemed by the city council to exist based on the factors in the definition set forth in subsection 2.28.050(6) of this chapter) the city council may proceed at once to replace, repair or in an appropriate case, construct any public works project without giving notice for bids to let contracts. The work may be done by day labor under direction of the city council, by contract, or by a combination of the two. The city council delegates to the city manager the power to declare the existence of an emergency and to take the actions set forth in this section, subject to confirmation by the city council, by a four-fifths vote at its next meeting.

2.28.250 – Reserved.

2.28.260 - Prevailing wages.

- (a) Payment of prevailing wages required. Except as specified in subdivision (b) of this section, the city will comply with State prevailing wage law when awarding and/or putting contracts for public works projects out to bid.
- (b) Exceptions. Contracts for public works projects of twenty-five thousand dollars or less when the project is for construction work, or fifteen thousand dollars or less when the project is for alteration, demolition, repair, or maintenance work, are exempt from prevailing wage requirements, unless:
 - (i) Payment of prevailing wage is compelled by the terms of a Federal or State grant or is otherwise funded from a source that requires prevailing wage; or
 - (ii) The public project is a matter of statewide concern (not a municipal affair). For guidance regarding what constitutes a municipal affair, see subsection 2.28.170(b).
- (c) Each notice inviting bids shall specify that a public works project is subject to state prevailing wage law, unless one of the section 2.28.260(b) exceptions applies.
- (d) For purposes of this section, the "city" includes any agency of the city and any entity controlled by the city whose contracts would be subject to this the provisions of this section.
- (e) For purposes of determining if a project is the type of public project subject to the payment of prevailing wages under this section, the terms "public project" and/or "public works projects," shall have the same meaning as the term "public works," set forth in California Labor Code Section 1720.

2.28.270 - Design/build contracts for selected city projects.

- (a) The city shall not be required to comply with the provisions of this article or any state law pertaining to the bidding, awarding and/or administration of a contract for a public works project if the city council concludes that the project constitutes a municipal affair and that the city's interests would best be served by utilizing a negotiated design/build procurement for the project's construction.
- (b) For purposes of this chapter, "design/build" means a procurement process in which both the design and construction of a public works project are procured from a single entity.
- (c) The city council's conclusion for a design/build contract should be based upon supportive findings that the proposed design/build contract will:

- (1) Provide for realistic and accurate budget estimates at the start of the planning process and thus contribute to more effective budget management;
 - (2) Avoid the delays and costly change orders that result from the traditional design-bid-build method of contracting, and
 - (3) Allow the city council to consider the overall design, aesthetics, and quality standards of the project's design to provide features not available through the design-bid-build method.
- (d) Projects determined by the city council to be suitable for design-build, shall be procured using the formal RFP/Q solicitation procedures set forth in subsections 2.28.280(d) and (e) of this chapter. The city manager is authorized to develop appropriate additional rules and regulations to carry out the intent of this section, including but not limited to: information to be included in RFP/Q solicitations, procedures for evaluating design/build proposals, and rules for awarding design/build contracts.

Article V. - Professional Services

2.28.280 - Award of consultant/professional services contracts based upon competence.

- (a) **Factors to Consider.** In contracting for those consultant/professional services as defined in subsection 2.28.050(4), such contracts should only be awarded to firms or persons who have demonstrated an adequate level of experience, competence, staffing and other professional qualifications necessary for above satisfactory performance of the services required. Once the department requesting the service has determined that a firm has an adequate level of competence, the cost of the service may be considered, however, the lowest cost may not be the sole factor in deciding which firm or who shall be awarded the contract. It may be in the city's best interest to award the contract to a firm based on the scope of services available, unique skills, staffing levels, timing, prior experience, past working relationship or other factors required by the requesting department or proposed by that firm, and as such factors are set forth in the city's purchasing policies and guidelines. The information needed to determine that level of competence, other qualifications and the procedure for selecting such services shall be determined by the department requesting the service.
- (b) **Request for Proposal/Qualification.** The acquiring of professional services shall be procured through Negotiated Contract and may include requests for proposals/qualifications. Contracting for professional services is centralized through the purchasing division unless prior approval to decentralize is given by the city manager. Decentralized contracting for professional services shall be the responsibility of the department head requesting the service. The city manager may be contacted to assist in the formal request for proposal/qualification ("RFP/Q") process.
- (c) **Contracts—Informal Process.** The department head may recommend professional service or consulting contracts with qualified consultants/firms on file with the city. The requesting department is required to contact a minimum of three consultants/firms, unless the city manager authorized the entering into or the award of a specific service contract. The department head shall recommend to the city manager the firm or person to be awarded the contract before awarding any professional service contract. Written justification shall be provided by the department head setting forth the reasons for recommending such firm or person awarded the contract. Professional service contracts should be on the city's standard form and shall be reviewed and approved as to form by the office of the city attorney.
- (d) **Contracts—Formal RFP/Q Solicitation Process.** As an alternative to the procedures described in subsection (c) of this section, departments may utilize a sealed request for proposal process, administered by the city manager and subject to the following requirements:
 - (1) **RFP/Q Solicitation Process.** The city shall adopt a resolution describing the procedures for the formal RFP/Q solicitation process.
 - (2) **Advertisement.** The city manager shall advertise in appropriate publications and/or use the professional services listings, as available, during the solicitation process.
 - (3) **Fourteen-Day Notice.** Notice inviting RFP/Q's should be advertised at least fourteen calendar days before the due date of submission of the RFP/Q.

- (4) Notice Contents. The notice shall, at a minimum, describe the general type of service needed, how the RFP/Q minimum scope of work can be obtained, the requirement of a written sealed proposal, and state the closing date, place, and time for submission of the RFP/Q.
 - (5) Solicitation Procedure. Sealed request for proposals/qualifications should be submitted to the city manager. RFP/Q's need not be opened publicly. All proposals shall be analyzed by the city manager and the requesting department for compliance with RFP/Q requirements, value of total scope of services and a recommendation made to city council for selection, or for follow up interviews of those submitting a proposal.
- (e) Award. Professional service contracts with an estimated cost of more than fifty thousand dollars require the approval of the city council.

Article VI. - Procurement Protest Procedures

2.28.290 - Protest Procedures.

Procurements shall be protested in accordance with this section. Protests not complying with the provisions of this section shall not be reviewed.

- (1) Definitions. For the purpose of this section:
 - (A) "Interested party" means an actual bidder or offeror, and any contractor or subcontractor identified by name in any bid, proposal, or response to solicitation.
 - (B) "Bid" includes "offer" and "proposal" in the context of formal, informal, or negotiated procurements.
 - (C) "Filing date" or "submission date" means the date of receipt by the city clerk or the city manager.
 - (D) "Days" means calendar days.
 - (E) "Procurement staff" means the Deputy City Manager/Treasurer or other department director initiating the procurement being protested, or his or her designees of any of these persons.
 - (F) "Reviewing official" means the city manager or his or her designee.
- (2) Grounds for Protest. Any interested party may file a written protest on any of the following grounds:
 - (A) The existence of a significant defect, error or omission in the solicitation documents issued by the city;
 - (B) Failure of the city to follow the procedures of this chapter;
 - (C) Failure of the city to apply correctly the standards of review, evaluation, or scoring of a bid or proposal as specified in the solicitation documents therefore;
 - (D) Award of the contract by the city to a bidder other than the best value bidder in violation of this chapter; or
 - (E) Such other grounds provided for under federal or state law or in equity.
- (3) Protest Contents and Filing. Protests shall be delivered or sent by registered mail to the Deputy City Manager/Treasurer for protests of purchases of materials, supplies, equipment, services and public projects and shall:
 - (A) Include the name, address, and business telephone number of the protestor;
 - (B) Identify the project under protest by name, solicitation number, and submission date;
 - (C) Contain a concise statement of the grounds for protest and the facts supporting such grounds;

- (D) Include all supporting documentation. Documentation submitted after filing will not be reviewed.

Protestors may be represented by legal counsel at their own expense. Protestors shall bear all costs of the protest other than salary and personnel costs of city employees.

(4) Review of Protests.

- (A) Protests of Solicitation Documents. Interested parties wishing to protest city solicitation documents must do so within seven days after the date of their issuance and in no event later than the date of the bid or proposal opening, unless the interested party did not know of the facts giving rise to the protest prior to bid or proposal opening.
 - (i) In such cases, protests shall be submitted within seven days after the interested party knew or should have known of such facts.
 - (ii) Upon receipt of a protest, procurement staff shall review all the submitted materials and create and retain a written record of their review.
 - (iii) Not later than twenty days after receipt of the protest, procurement staff shall respond at least generally to each material issue raised in the protest.
 - a. Procurement staff may elect, but are not obligated, to attempt to resolve the protest with the affected parties. "Resolution" means the formal withdrawal of a protest by the protestor, or written acknowledgement of protest resolution signed by the city and the protestor. If procurement staff elects to attempt resolution, protestors shall be notified in writing of an opportunity to present evidence for consideration by the city and such technical or other staff as the city deems necessary. Procurement staff shall then make a formal recommendation for decision to the reviewing official and shall notify the protestors of that decision. A record of the resolution proceedings shall be made. If procurement staff elects not to attempt resolution, or if no resolution is achieved, procurement staff shall recommend to the reviewing official a suggested disposition of the protest.
 - b. After review and consideration of procurement staff's recommendation and the evidence contained in the record of proceedings, the reviewing official shall render a written decision in the matter not later than fifteen days after receipt of the recommendation and shall give notice thereof in writing to the protestor and such other interested parties as the reviewing official deems appropriate. Notice of decision may be given by electronic facsimile, U.S. postal service, or in person.
 - c. Any protestor excepting to the decision of the reviewing official may appeal in writing to the city council by filing with the city clerk a written notice of such appeal not later than fifteen days after dispatch of the reviewing official's decision. The city clerk will calendar the protest for city council hearing and give notice of the time and place of the hearing.
 - d. Should the city council deny the protest, the city shall proceed with its procurement in accordance with the established solicitation documents. If the city council sustains the protest, procurement staff shall proceed as directed by the city council.
 - e. In the event of a timely protest, procurement staff shall not proceed with the solicitation until all administrative and judicial remedies have been exhausted or until the city manager determines that the award of a contract without delay is necessary to protect substantial interests of the city.
- (B) Protests on Other Grounds. In cases of protests involving aspects of a city procurement other than solicitation documents, the following procedures apply:
 - (i) Interested parties shall protest city procurement matters other than solicitation documents within five days after contract award.

- (ii) All protests timely received shall be considered pursuant to the provisions of this section.
 - (iii) Protests sustained wholly or partially by the city council or city manager will be rectified as soon as practicable in accordance with the direction of the city council or the city manager.
 - (iv) If a protest sustained by the city council cannot be settled satisfactorily pursuant to the terms of its decision and applicable law, all procurement activity for the specific project may be suspended by the city. The city reserves the right to continue the procurement, terminate the procurement, repeat the solicitation, cancel all or part of the procurement, postpone the procurement, or take any other lawful action with regard thereto.
- (C) Protests of Procurements Exceeding One Million Dollars.
- (i) Interested parties protesting procurements exceeding one million dollars shall comply with the procedures contained in the section except that in lieu of appeal to the reviewing official, a protestor may request that the protest be heard and decided at an administrative hearing.
 - (ii) A written request for administrative hearing shall be accompanied by a certified or cashier's check in the amount of one thousand dollars, payable to the city, and shall be received by the city manager or city clerk not later than ten days after dispatch of the procurement staff's determination. The request for hearing shall include the specific grounds of the appeal.
 - (iii) The city shall select and engage an impartial and qualified person to act as hearing officer in the pending protest. The protestor shall have the right to twice reject the selected hearing officer, provided that the city is notified of such rejection within three days after notice to the protestor of the name of the hearing officer.
 - (iv) The protest shall be heard not later than thirty-five days after receipt of the protestor's request for hearing. Protests not heard in a timely manner shall be deemed withdrawn, unless the city and the protestor otherwise mutually agree in writing.
 - (v) After hearing the protest, the hearing officer shall promptly forward to the city council his or her written findings and recommendations regarding disposition of the protest. The city council may adopt or reject all or part of the findings and may accept, reject, or modify the recommendations of the hearing officer or, alternatively, render an independent decision and directions for disposition of the protest and the progress of the solicitation and procurement at issue.
 - (vi) Costs of the hearing officer and expenses of the protest shall be borne by the protestor. The sums deposited with the request for hearing shall be credited to the costs of the hearing officer and other hearing expenses. Any unexpended portion of the deposit shall be refunded to the protestor. Protestors substantially prevailing on all of the material issues of their protests may apply to the city council for consideration of a reasonable allocation of costs of the protest between protestor and city.
- (D) Protests of Federally Funded Procurements. If the protested procurement involves federal funds, the procurement staff, reviewing official, and hearing officer shall accompany their respective decisions with notice to the protestor of the right to appeal to the appropriate federal agency, which shall be identified by name and address. Such an appeal shall be filed with such agency within five days of the dispatch of the rejection notice to the protestor or in accordance with any other applicable federal procedures. Federal agencies may entertain protests alleging that the city has failed to adopt written protest procedures or has failed to follow such procedures. Appeals to the Federal Transit Administration shall comply with FTA Circular 4220.1 or the most current version as amended and supplemented from time to time.

Article VII. - Use of Recycled Products

2.28.300 - Recycled products.

- (a) If fitness and quality are equal, the city shall purchase recycled products, as defined in Section Public Contract Code Section 12200, instead of nonrecycled products whenever recycled products are available at the same or a lesser total cost than nonrecycled items.
- (b) Certification of percentage of postconsumer materials.
 - (1) All businesses, as defined in Section Public Contract Code Section 12200, must certify in writing the minimum, if not exact, the percentage of postconsumer materials in the products, materials, goods, or supplies, offered or sold. All contract provisions impeding the consideration of recycled products shall be deleted in favor of performance standards. With respect to printer or duplication cartridges that comply with the requirements of Public Contract Code Section 12156(e), the certification required by this subsection shall specify that the cartridges so comply.
 - (2) This certification requirement may be waived if the percentage of postconsumer material in the products, materials, goods, or supplies can be verified in a written advertisement, including, but not limited to, a product label, a catalog, or a manufacturer or vendor Internet Web site.
- (c) All printing contracts made by any local public entity shall provide that the paper used shall meet the recycled content requirements of Public Contract Code Section 12209.

Article VIII – Energy Purchases by Victorville Municipal Utility Services (“VMUS”)

2.28.310 – City Manager Authorization.

- (a) The City Manager or his/her duly authorized designee is authorized to procure, approve and execute, for and on behalf of the City, contracts for Energy Purchases, provided that:
 - (1) at no time will the total commitment for future Energy Purchases exceed thirty million dollars (\$30,000,000);
 - (2) the term of any transaction or contract entered into under this Article shall not exceed five (5) years;
 - (3) no Energy Purchases shall be made in excess of those required to meet VMUS' forecasted customer load requirements and revenue; and
 - (4) all such Energy Purchases also comply with the provisions of Sections 2.28.320 and 2.28.340 of this Article.
- (b) To provide future flexibility and the ability to promptly respond to changing energy markets, the City Council may amend the limits of authorization set forth in this section by resolution or ordinance.

2.28.320 – Industry Standard Contracts, Confirmations and Master Agreements.

Contracts and confirmations for Energy Purchase shall be in the form of industry-standard contracts/confirmations which have either: (i) been previously authorized and approved by the City Council in the form of existing enabling (master) agreements for Energy Purchases; or (ii) been reviewed and approved by both the City Attorney and the City's Risk Manager as conforming to industry (and City) standards or having terms similar to the City's currently-existing approved master or other agreements for Energy Purchases prior to use or execution by the City Manager.

2.28.330 – Contracts for Energy Purchases Requiring City Council Approval.

Any contracts for Energy Purchases that do not fall within the confines of both Sections 2.28.310 and 2.28.320 of this Article must be approved by the City Council and executed by the Mayor.

2.28.340 – Solicitation and Procurement of Energy Purchases.

Although the competitive solicitation procedures set forth in Articles III, IV and V of this Chapter are not mandated for Energy Purchases, the City Manager and/or the VMUS Director of Utilities shall observe industry standard energy procurement best utility practices and to ensure competitive pricing and Energy Purchases that are in the best interests of the City and VMUS customers. All Energy Purchase shall require the written certification of the City Manager or the VMUS Director of Utilities that the price is competitive and such purchase is in the best interests of the City.

Section 3. Repeal of Conflicting Provisions and Resolutions.

All the provisions of the Victorville Municipal Code heretofore adopted by the City council of the City of Victorville that are in conflict with the provisions of this Ordinance are hereby repealed as of the effective date hereof. On the day this Ordinance becomes effective, all previously-adopted resolutions of the City Council will be superseded to the extent they are inconsistent with the provisions of this Ordinance.

Section 4. Severability.

The City Council declares that, should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Ordinance as hereby adopted shall remain in full force and effect.

Section 5. CEQA Exemption.

The City Council finds that the adoption of this Ordinance is not subject to the California Environmental Quality Act (“CEQA”), pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines (California Code of Regulations, Title 14, Chapter 3) because the adoption will not result in a direct or reasonably foreseeable indirect physical change in the environment and the adoption is not a project as defined in Section 15378 of the CEQA Guidelines.

Section 6. Effective Date.

This Ordinance shall take effect thirty (30) days after its final passage.

Section 7. Certification.

The City Clerk of the City of Victorville is hereby directed to certify to the passage and adoption of this Ordinance and to cause it to be published as required by law.

ORDINANCE NO. 2381

THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT ON OCTOBER 18, 2018.

PASSED, APPROVED AND ADOPTED THIS 18th DAY OF SEPTEMBER, 2018.



MAYOR OF THE CITY OF VICTORVILLE

ATTEST:

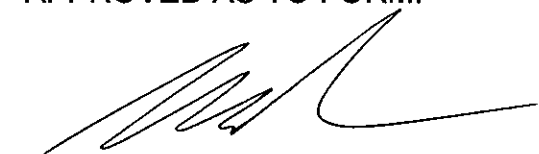


CITY CLERK

9/29/18

DATE

APPROVED AS TO FORM:



CITY ATTORNEY

I, CHARLENE ROBINSON, City Clerk of the City of Victorville and ex-officio Clerk to the City Council of said City, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 2381 which was duly adopted at a meeting held on the 18th day of September, 2018 by the following roll call vote, to wit:

AYES: Councilmembers Garcia, Cox, Kennedy and Negrete

NOES: Councilmember Gomez

ABSENT: None

ABSTAIN: None



CITY CLERK OF THE CITY OF VICTORVILLE