

CONTRACT PROCUREMENT AND AUTHORITY TO CONTRACT

Purpose

This policy sets forth requirements for contract procurement and City Council's delegation of authority for entering into contracts. "Entering into a contract" or "executing a contract" is synonymous with the awarding and signing of a contract and means the formal approval of the contract terms and intent to be bound thereby. "Contracts" includes all agreements, purchase orders, and purchase requisitions, which is applicable regardless of whether the City is expending or receiving funds. The types of contracts covered by this policy include, but are not limited to, settlements, right of entry agreements, cost sharing agreements, joint defense agreements, cooperative agreements, reimbursement agreements, grant agreements, professional services agreements, former employee services agreements, independent instruction and recreation contracts, public works contracts, and "as-needed" or "on-call" services agreements.

Background

The City shall not be bound by any contract or amendment thereto, unless the same shall be made in writing, approved by the City Council or employee designated by the City Council; signed on behalf of the City by (i) the Mayor or by such other employees designated by the City Council, (ii) the City Clerk, and (iii) the City Attorney (Charter § 421). The City Attorney shall approve the form of all contracts made by the City and amendments thereto and all bonds given to the City, endorsing his or her approval thereon in writing (Charter § 602(e)).

Delegation of Authority to Enter Into and Amend Contracts

The City Council hereby delegates its authority to contract to the City Manager and through him or her to the Assistant City Manager, Department Directors, and to the City Attorney as set out below. The City Manager has final authority to approve any contract within the City Manager's approval limit.

All formalities required under the provisions of the Charter shall be applied to these contracts.

The City Manager may make exceptions to the City's standard contract terms, including but not limited to, insurance and indemnification requirements, based on

operational considerations and weighing the particular risks involved. When deciding whether to modify standard contract terms, the City Manager shall consult with the City Attorney, Risk Manager, and Department Directors, as necessary. This authority shall not be delegated below the Assistant City Manager level.

Contracts may not be written to circumvent any of the authority limits described herein.

The City Manager shall, in consultation with the City Attorney, adopt and enforce administrative procedures that ensure: (1) all contracts are entered into at a reasonable, fair and competitive price to the City; (2) all necessary formalities are followed and the requirements of federal, state, and local laws, including Council policies, are met; (3) best accounting practices are followed; and (4) the contracting process of the City is open and transparent, and provides accountability.

A. Authority to Enter into Contracts

The authority to enter into original contracts is delegated as set out below.

1. The City Manager

The City Manager is authorized to execute all contracts without prior Council approval, in an amount that shall not exceed \$120,000. For contracts involving expenditure of funds, the services and the funds must have been approved by the City Council as part of the annual approved budget. Execution of contracts for grants and donations shall be in accordance with City Council Policies F-3, F-25 and B-17. This authority shall not be delegated below the Assistant City Manager level.

2. Department Directors

Department Directors, including the City Attorney and City Clerk, are authorized to execute contracts without prior City Manager or Council approval in an amount not in excess of \$75,000. For contracts involving expenditure of funds, the services and funds must have been approved by the City Council or City Manager as part of the annual approved budget. This authority may not be delegated below the Assistant or Deputy Director level. The City Manager has authority to approve requests for budget increases without City Council approval at the level

set forth in Policy F-3, Section E-1 (“Administration of the Annual Budget, New Appropriations”).

3. City Attorney

The City Attorney is authorized to execute contracts for all services for outside counsel, investigators, and experts related directly to and necessary for prosecution and defense of pending litigation as defined in the Brown Act, and for services for outside counsel, investigators, and experts necessary to address other pending or potential legal claims or legal issues so long as funds for outside counsel, investigators, experts and related legal services were approved by the City Council as part of the approved annual budget. The City Attorney shall keep Council informed regarding any such expense that exceeds \$120,000 on not less than a quarterly basis and shall seek budget updates, if needed, within a timely fashion.

4. Human Resources Director

The Human Resources Director shall have authority to enter into contracts to resolve claims, litigation and other legal disputes where the City is receiving or expending an amount not in excess of \$75,000. This authority may not be delegated below the Department Deputy Director or Risk Manager level.

B. Authority to Amend Contracts

If circumstances arise that were not reasonably foreseeable by the parties at the time of contracting which make extra work or material necessary for the proper completion of the service originally contracted for, a contract amendment and corresponding increase in total contract amount may be necessary. Under those circumstances, the City Manager, Department Directors, City Clerk and City Attorney are authorized to amend contracts as set out below. For purposes of this policy, “total contract amount” is defined as the total consideration paid over the term of the agreement, including any previous amendments to the contract. “Original contract amount” is defined as either the amount of compensation agreed upon when the contract was first entered into or the

amount of compensation most recently approved by the City Council by amendment, whichever is greater.

1. City Manager

Contracts within the City Manager's Contracting Authority

The City Manager may execute any contract amendment, including but not limited to amendments to extend the term of a contract, so long as the total contract amount as amended does not exceed \$120,000 and the term extension does not exceed the maximum allowable contract term.

Contracts approved by City Council

The City Manager may execute any contract amendment, including but not limited to amendments to extend the term of a contract, so long as the total contract amount does not exceed 125 percent of the original contract amount or the original contract amount plus an additional \$120,000, whichever amount is less, and the term extension does not exceed the maximum allowable contract term.

2. Department Directors

The Department Director, including the City Clerk and City Attorney, who entered into the contract or whose department is designated as the contract administrator, may execute any contract amendment, including but not limited to amendments to extend the term of a contract, so long as the total contract amount as amended does not exceed \$75,000 and the term extension does not exceed the maximum allowable contract term.

3. Amendments in Cases of Possible Work Stoppage or Undesirable Delay

The City Manager is authorized to execute a contract amendment that increases the total contract amount up to 150 percent of the original contract amount in cases where a work stoppage or other undesirable consequence will result if approval of the amendment is delayed until the next City Council meeting. Within twenty-four (24) hours, the City Manager shall notify the City Council Members of any such amendment.

4. Amendments Necessary to Address Emergency Situations

In the event of emergency work requiring an amendment to an existing contract, the emergency contracting policy outlined below may be followed.

Special Requirements

Competitive proposals should be obtained for service contracts whenever possible before resorting to negotiated awards.

A. Professional Services Contracts

Services of a professional nature shall be obtained through a qualifications-based selection process based on demonstrated competence and qualifications for the types of services to be performed and with the objective of selecting the most qualified consultant at a fair, reasonable and verifiably appropriate cost. The procedures for achieving this goal shall be adopted and applied by the City Manager in the Administrative Procedures Manual.

B. Services Contracts (Non-Professional)

The City shall select services contractors through a Request for Proposal (RFP) or a Request for Bid (RFB) process, whichever serves the City's best interest. Contracts through the RFB process shall be awarded based solely on pricing and minimum qualifications to determine the most responsive and responsible bidder. Contracts through the RFP process shall be awarded based on both qualifications and pricing to determine the best value to the City.

C. Maintenance and Repair Service Contracts

A service contract for maintenance or repair work that is fixed or of a definite nature (not on-call) and over the formal bid dollar amount in Charter Section 1110 must be requisitioned as a formal public works contract. For contracts not exceeding the formal bid dollar amount, the City may select services contractors

though the RFP or RFB process, whichever serves the City's best interest based on the service to be provided.

D. Public Works Contracts

Contracts for public works where the total expenditures for the project exceed the formal bid dollar amount shall be awarded consistent with the provisions of Charter Section 1110 and relevant provisions of the California Public Contract Code.

E. Procurements and Contracts Involving Federal or Pass-Through Funding

Procurements expending funds from federal grants or awards received directly by the City or from a pass-through agency, such as the State of California, must comply with the provisions of Title 2 of the Code of Federal Regulations ("CFR") Sections 200.318 through 200.326. To ensure the City's adherence to the Federal guidelines related to these procurements and contracts, the City Manager has adopted procurement procedures for such projects in the Administrative Procedures Manual.

F. Independent Instruction and Recreation Contractors

Department Directors are authorized to execute contracts with independent contractors for instructional, educational, cultural, or recreational purposes ("Instruction and Recreation contracts") where the fees paid by the City are based upon either a percentage of fees collected by City for a program or on a flat rate basis for tasks performed by the contractor.

Instruction and Recreation contracts shall not exceed five (5) years in duration and shall include a termination clause granting the City the right, at its sole discretion and with or without cause, to terminate the contract at any time by giving seven (7) calendar days' prior written notice.

Should fees paid under an Instruction and Recreation contract exceed \$75,000 during the term of the contract, the Department Director shall provide written notice to the City Manager identifying the program and independent contractor. The City Manager shall give written notice to the City Council should fees paid exceed \$120,000.

G. On-Call Contracts for Services (Professional or Non-Professional)

The City Manager and Department Directors are authorized to enter into on-call (“as-needed”) agreements for obtaining services, including but not limited to professional services and maintenance and repair services, where the need for services is contingent, does not have a set timeframe, or where the size of the job does not warrant the expense of entering into individual agreements for each service.

On-call services contracts shall not exceed five (5) years and shall include a termination clause granting the City the right, at its sole discretion and with or without cause, to terminate the contract at any time by giving prior written notice of seven (7) calendar days. The City Manager is authorized to extend an on-call services contract for up to six (6) months if work has been authorized or encumbered during the initial term but not completed.

City Council approval is required for: (1) an on-call contract that exceeds \$120,000, and (2) on-call contracts to multiple contractors stemming from a single procurement where the combined amount of the contracts exceeds \$120,000.

On-call contracts may not be used to perform maintenance or repair work in contravention of Charter Section 1110. For example, a project, task, job, or work order in an amount in excess of the formal bid dollar amount in Charter Section 1110 cannot be performed under an on-call maintenance or repair services contract but must be requisitioned as a public works project.

H. Emergencies

Services contracts obtained for purposes of responding to an emergency (as defined in Newport Beach Municipal Code Section 2.20.020) that exceed the signing authority of the City Manager or Department Director as authorized in this policy shall be brought to the City Council at its next regularly scheduled meeting for review and authorization.

I. Contracts with Former Council Members and City Employees

City Council approval is required for the following when not more than five (5) years have passed since a person who is a former Council Member or City employee has left service with the City:

1. All professional services contracts with former Council Member or City employees;
2. All professional services contracts with a corporation or other business entity owned or operated by a former Council Member or City employee or that employs a former Council Member or City employee.

J. Exceptions to Competitive Procurement Requirements

Certain commodities and service types are unique or otherwise not amenable to traditional procurement and bidding procedures. The City Manager shall prescribe in the Administrative Procedures Manual alternative procedures and methods for the procurement of such items, e.g. cooperative agreements and piggyback agreements, and ensure that the pricing involved in the procurements is competitive to the greatest extent possible.

General Procedures

A. Contract Retention

The City Clerk shall retain all original executed contracts in accordance with the City's current adopted Records Retention Schedule. Contracts shall be posted into the City's electronic document database in order to maintain transparency in contracting.

B. Insurance

All contracts shall be accompanied by proof of the appropriate level of insurance at the time of execution. The insurance level required shall be in accordance with

the City's published Contract Templates (or as otherwise approved by the City Manager or Risk Manager).

C. Reporting

At least once annually, the City Manager shall report to the Council the summary of all contracts entered into by the City Manager and Department Directors. The summary shall include the vendor, the department responsible that will oversee the contract, the purpose of the contract, and the contract amount.

Future Amendments to Policy

Any future changes in the provisions of this policy shall be made by resolution of the City Council.

History

Adopted F-14 - 09-22-1969 (Purchase Authority for Goods & Materials)

Reaffirmed F-14 - 03-09-1970

Reaffirmed F-14 - 02-14-1972

Amended F-14 - 11-11-1974

Amended F-14 - 11-24-1975

Amended F-14 - 12-08-1975

Amended F-14 - 11-24-1986

Amended F-14 - 05-26-1987

Adopted F-14 - 01-24-1994 (new F-14) (Authority for Contracts)

Amended F-14 - 01-24-1994 (old F-14) (changed to F-5)

Amended F-5 - 02-26-1996

Amended J-1 - 11-10-1997 (Contracts with Former Employees)

Amended J-1 - 03-09-1998

Amended J-1 - 03-22-1999 (changed to F-20)

Amended F-5 - 03-14-2000

Amended F-20 - 04-08-2003

Amended F-14 - 04-13-2004

Amended F-5 - 11-22-2005

Amended F-14 - 05-09-2006

Amended F-14 & F-5 - 01-25-2011

Amended F-14 - 05-12-2015

Amended F-14 - 02-23-2016 (incorporating F-5 & F-20 and renaming "Authority to Contract")

Amended F-14 - 06-26-2018
Amended F-14 - 02-12-2019
Amended F-14 - 12-13-2022